

Superior Asphalt

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

In the Matter of Remedial)
Action by:)
SUPERIOR ASPHALT AND CONCRETE) Enforcement Order
COMPANY) No. DE 91TC-C444
)

To: Superior Asphalt and Concrete Company
Post Office Box 10268
Yakima, Washington 98909

I.

Jurisdiction

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

II.

Statement of Facts

2.1 Superior Asphalt and Concrete Company (henceforth Superior Asphalt) operates an asphalt production facility at 2000 East Beech, Yakima, Washington, within the SW 1/4 of the NE 1/4 of Section 20, Township 13 North, Range 19 East, Willamette Meridian. The facility is adjacent to a series of ponds. Pond A is the northern-most pond and discharges to Pond B. Pond B discharges to Pond C. Pond C discharges to the Yakima River.

2.2 Department of Ecology personnel have observed withdrawal and filtration of groundwater conducted by Superior Asphalt at the site. This water was then discharged to ground near surface water (Pond B) and flowed into Pond B. A sheen characteristic of petroleum contamination was observed on the ground at the point of discharge and on the surface of Pond B.

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2.3 Water discharged as described above was sampled by representatives of Superior Asphalt and found to contain Total Petroleum Hydrocarbons.

2.4 Petroleum product was used to clean equipment at the facility in the past, according to statement(s) by a Superior Asphalt representative.

2.5 Truck cleaning occurred at a site located near surface water (Pond A), according to description of a Superior Asphalt representative. Department of Ecology personnel observed discolored (black) soil on the shore of Pond A near this site. Department of Ecology personnel detected odor characteristic of petroleum at the location of the discolored soil.

2.6 "Petroleum product" and "Total Petroleum Hydrocarbons" are "hazardous substances" as defined in the Model Toxics Control Act.

2.7 Release or threatened release of petroleum product and Total Petroleum Hydrocarbons at the facility, as described above, may present a threat to human health and the environment.

III.

Ecology Determinations

3.1 Superior Asphalt is an "owner or operator" as defined at RCW 70.105D.020(6) of a "facility" as defined in RCW 70.105D.020(3).

3.2 The facility is known as Superior Asphalt and is located at 2000 East Beech, Yakima, Washington.

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

3.4 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

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substances from the facility, as defined at
RCW 70.105D.020(10).

3.5 By letter dated August 5, 1991, Ecology notified Superior Asphalt of its status as a "potentially liable person" under RCW 70.105D.040 after notice and opportunity for comment.

3.6 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.

3.7 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 Superior Asphalt take the following remedial actions and that these actions be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein. In accordance with WAC 173-340-840(5), sampling data shall be submitted according to Appendix 2 (including Appendices A, B, C, D, and E to Appendix 2): GROUNDWATER SAMPLING DATA SUBMITTAL REQUIREMENTS.

4.1 Submit a draft work plan for an interim action. The purpose of the interim action is to prevent the migration of contamination in surface water or groundwater. At a minimum the interim action shall include:

- a. Facility information and site conditions map. Facility information shall include the collection and submission to Ecology of the information required in the Site Hazard Data Collection Summary Sheets for Washington Ranking Method, which are incorporated by this reference as Appendix 1 of this Order. Appendix 1 is an enforceable part of this Order.

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- b. Sufficient information to characterize (1) groundwater gradient; (2) the distribution, concentration, and extent of hazardous substances present in the soil, surface water, and ground water both on and off the site; (3) impacts of past and present site activity on surface water bodies such as ponds, streams or rivers; and the feasibility of interim action options.
- c. Information on current and potential land use (including zoning) associated with the site and adjacent areas potentially impacted by the site.
- d. A description and evaluation of alternative interim cleanup actions.
- e. Completion of a report which presents all of the information collected and evaluation conducted (including results of the field investigation and raw laboratory data with associated quality assurance/quality control data).

The work plan shall include a detailed description of all work to be performed with respect to the site. The work plan shall include a sampling and analysis plan which includes a quality assurance/quality control plan. A health and safety plan, issued as a separate document shall also be submitted. In addition, the work plan shall include a schedule of all work that is to be performed.

The draft interim action work plan shall be submitted to and received by Ecology within five (5) weeks after the effective date of this Order.

4.2 Submit a final interim action work plan, which addresses Ecology's comments on the draft work plan, for Ecology approval.

The final interim action work plan shall be submitted to and received by Ecology within three (3) weeks after Superior Asphalt receives Ecology's comments on the draft work plan.

4.3 Conduct and finance an interim action in accordance with the approved interim action work plan. The interim action shall be conducted in accordance with the schedule contained in the approved interim action work plan.

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4.4 Conduct a remedial investigation/feasibility study (RI/FS) which is in accordance with WAC 173-340-350. The purpose of this RI/FS is to collect and evaluate sufficient information to enable the selection of a cleanup action which is protective of human health and the environment.

The draft RI/FS work plan shall be submitted to and received by Ecology within (8) weeks after the site is placed on the state hazardous sites list described in WAC 173-340-330. The final RI/FS work plan addressing Ecology's comments shall be submitted for Ecology approval three (3) weeks after Ecology's comments are received. The RI/FS shall be completed in accordance with the schedule contained in the approved RI/FS work plan.

4.5 Implement and finance the cleanup option chosen by Ecology in the Final Cleanup Action Plan.

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

Superior Asphalt 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. Superior Asphalt 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 may result in interest charges.

5.4 Designated Project Coordinators

The project coordinator for Ecology is:

Robert D. Swackhamer
Department of Ecology
106 South 6th Avenue
Yakima, Washington 98902-3387

Superior Asphalt shall notify Ecology of its project coordinator within ten (10) calendar days of receiving this Order. The project coordinator(s) shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communications between Ecology and Superior Asphalt, 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 Superior Asphalt change project coordinator(s), written notification shall be provided to Ecology or Superior Asphalt 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.

Superior Asphalt 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.

5.6 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 Superior Asphalt. In the course of oversight of this Order under the Model Toxics Control Act, Ecology shall provide reasonable notice before entering property unless an emergency prevents notice. When acting under other statutes, Ecology shall provide notice consistent with the appropriate statute. Ecology shall allow split or replicate samples to be taken by Superior Asphalt during an inspection unless doing so would interfere with Ecology's sampling. Superior Asphalt shall allow split or replicate samples to be taken by Ecology and shall provide Ecology seven (7) days notice before any sampling activity.

5.7 Public Participation

Superior Asphalt shall prepare a public participation plan for the Site. Ecology shall maintain the responsibility for public participation at the Site. Superior Asphalt shall help coordinate and implement public participation for the Site.

5.8 Retention of Records

Superior Asphalt 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 Superior Asphalt, a record retention requirement meeting the terms of this paragraph shall be required of such contractors and/or agents.

5.9 Dispute Resolution

Superior Asphalt 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 of this Order. Ecology resolution of the dispute shall be binding and final. Superior Asphalt 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

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 is not prevented by terms of this Order from issuing additional Orders regarding this facility.

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 Superior Asphalt.

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

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 Superior Asphalt 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 Superior Asphalt may have in the Site or any portions thereof, Superior Asphalt 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, Superior Asphalt shall notify Ecology of the contemplated transfer.

5.12 Compliance With Other Applicable Laws

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

VI.

Satisfaction of this Order

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

VII.

Enforcement

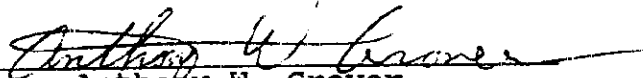
7.1 Pursuant to RCW 70.105D.050, this Order may be enforced as follows:

- 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.

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- C. In the event Superior Asphalt refuses, without sufficient cause, to comply with any term of this Order, Superior Asphalt 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: OCT 31 1991


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

AWG/RDS:vw
g:supord mem

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APPENDIX 1