

L&C Deli
FS 1035

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

In the Matter of Remedial Action by:)
The 205 Group)
5512 Northeast 109 Court, Suite G)
Vancouver, Washington 98662)
Vancouver Oil Co., Inc.)
1503 Northeast 136th Street)
Post Office Box 528)
Vancouver, Washington 98666)

ENFORCEMENT ORDER
No. DE 92TC-S111

TO: Mr. Richard Johnson
The 205 Group
5512 Northeast 109 Court, Suite G
Vancouver, Washington 98662

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 The 205 Group.

1. The 205 Group is the owner of the facility formerly known as the L&C Deli, a gasoline station and mini-mart, located at 13908 Northeast 20th Avenue, Vancouver, Washington.
2. The source of gasoline found in a sewer line was traced to this site during a spill response by the Department of Ecology on September 18, 1987.
3. In early November 1987, Ecology contracted Crowley Environmental Services to perform initial abatement measures. A total of seven test pits were excavated in an effort to determine the extent of contamination.

Floating free petroleum product was found on the ground water surface in two of the test pits. No obvious signs of contamination were observed in the remaining five test pits.

4. In mid-November 1987, a product recovery system was installed. By the time recovery measures ceased one year later, a total of 524 gallons of gasoline had been recovered.

5. In August 1990, The 205 Group was issued Order No. DE 90-S138 by Ecology. The Order required a remedial investigation/feasibility study (RI/FS) to be conducted at the site. The purpose of this Order was to facilitate the remediation of the remaining contamination present in the soil and ground water.

6. In October 1990, a total of seven borings were drilled on-site, four of which were finished as monitoring wells. The results of this first phase of investigation are described in a report submitted to Ecology in November 1990. Since the results of this study were inconclusive, that is, the full extent of soil and ground water contamination was not determined, additional investigation was deemed necessary.

7. In February 1991, 11 additional soil borings were drilled on-site and off-site near utility trenches. Three of the borings were finished as monitoring wells. The final results of both investigations are described in a draft remedial investigation submitted to Ecology in March 1991. A draft feasibility study was submitted to Ecology in April 1991.

8. In August 1991, final versions of the remedial investigation and feasibility study were received by Ecology.

9. In October 1991, a Cleanup Action Plan (CAP) was prepared by Ecology.

III.

Ecology Determinations

1. The 205 Group is an "owner or operator" as defined in RCW 70.105D.020(6) of a "facility" as defined in RCW 70.105D.020(3).
2. The facility was known as the L&C Deli, a gasoline station and mini-mart, and is located at 13908 Northeast 20th Avenue, Vancouver, 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 has been a release of hazardous substances from the facility, as defined at RCW 70.105D.020(10).
5. By letter dated August 7, 1990, Ecology notified the 205 Group 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. 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 the 205 Group implement the Preferred Alternative as described in the attached final Cleanup Action Plan (Exhibit A). The remedial actions shall be

conducted in accordance with Chapter 173-340-400 WAC. The 205 Group shall carry out the provisions of the cleanup action within the due dates specified, including, but not limited to, the following deliverables:

1. Engineering design report.
2. Construction plans and specifications.
3. Operation and maintenance plan.
4. Compliance monitoring plan.
5. Sampling and analysis plan.
6. Health and safety plan.

The above deliverables, including a proposed schedule for the implementation of the remedial action, may be combined into one draft document containing all applicable and appropriate elements addressed in Chapter 173-340-400 WAC. These draft documents shall be due to Ecology within six (6) weeks after the effective date of this Order. Final versions of the deliverables shall be submitted within five (5) weeks after receipt of Ecology's comments on the draft document. The remedial action shall be implemented in accordance with the schedule in the approved remedial design documents.

V.

Terms and Conditions of Order

1. Definitions

Unless otherwise specified, the definitions set forth in Chapter 70.105D RCW and Chapter 173-340 WAC shall control the meanings of the terms used in this Order.

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.

3. Remedial Action Costs.

The 205 Group 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. The 205 Group 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 an itemized statement of costs may result in interest charges.

4. Designated Project Coordinators.

The project coordinator for Ecology is:

Tammy Hall
Department of Ecology
Southwest Regional Office
Post Office Box 4775
Olympia, Washington 98504-7775

The project coordinator for the 205 Group is:

Richard Johnson
Johnson, Sullivan, Vomacka
5512 Northeast 109 Court, Suite G
Vancouver, Washington 98662

The project coordinator(s) shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communications between Ecology and the 205 Group, 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 the 205 Group change project coordinator(s), written notification shall be provided to Ecology or the 205 Group 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 similar expert, with appropriate training, experience and expertise in hazardous waste site investigation and cleanup. The 205 Group 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.

Except where necessary to abate an emergency situation, the 205 Group shall not perform any remedial actions at the L&C Deli 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 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 205 Group. Ecology shall provide reasonable notice before entering property unless an emergency prevents notice. Ecology shall allow split or replicate samples to be taken by the 205 Group during an inspection unless doing so interferes with Ecology's sampling. The 205 Group shall allow split or replicate samples to be taken by Ecology and shall provide seven (7) days notice before any sampling activity.

7. Public Participation

The 205 Group shall prepare and/or update a public participation plan for the site. Ecology shall maintain the responsibility for public participation at the site. The 205 Group shall help coordinate and implement public participation for the site.

8. Retention of Records.

The 205 Group 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 205 Group, then the 205 Group agrees to include in their contract with such contractors or agents a record retention requirement meeting the terms of this paragraph.

9. Dispute Resolution.

The 205 Group may request Ecology to resolve any factual or technical disputes which may arise during the implementation of this Order. Such request shall be in writing and directed to the signatory to this Order. Ecology resolution of the dispute shall be binding and final. The 205 Group 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.

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 areas or to the environment, Ecology may Order the 205 Group to stop further implementation of this Order for such period of time as needed to abate the danger.

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 the 205 Group 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 the 205 Group may have in the site or any portions thereof, the 205 Group 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 205 Group shall notify Ecology of the contemplated transfer.

12. Compliance with Other Applicable Laws.

All actions carried out by the 205 Group 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 the 205 Group's receipt of written notification from Ecology that the 205 Group 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

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 205 Group refuses, without sufficient cause, to comply with any term of this Order, the 205 Group 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 Chapter 70.105D RCW.

Effective date of this Order: March 5, 1992

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

By Morgan Lewis