



- Bill Morsey

State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Carroll D. Besadry
Secretary

101 South Webster Street
Box 7921
Madison, Wisconsin 53707
TELEPHONE 608-266-2621
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November 24, 1992

CERTIFIED MAIL

File Ref: 4190
FID# 816025430
CASE# NWD-92-023

Ms. Chris Day
PO Box 115
Danbury, WI 54830

Mr. Dale Schultz
Route 3 Box 334
Dairyland, WI 54830

Mr. Frank L. Day
Route 3
Dairyland, WI 54830

RECEIVED
NOV 30 1992
SAFETY & BLDGS. DIV.

Dear Ms. Day, Mr. Schultz, and Mr. Frank Day:

RE: Moose Junction Lounge Contaminated Site - Dairyland, Douglas County

Enclosed is Administrative Order No. NWD-92-023 (Order) issued by the Department of Natural Resources (Department) requiring you to hire an environmental consultant to: investigate and determine the extent and degree of groundwater and soil contamination; develop a remedial action plan; and report all results to the Department. The Order also requires you to arrange for implementation of the recommended and approved investigation and remedial actions.

As a result of the spill in question, the Department sampled Dale Schultz' well on 1/21/92 and Ms. Dickman's well on 10/12/92 because both wells are at risk of contamination. No evidence of contamination was found in Schultz' well. Analysis of Dickman's well detected the probable presence of hydrocarbons but could not quantify the substances at that time. As the remediation of this site proceeds, it is imperative that monitoring of these wells continue on a quarterly basis to assess the safety of consuming the water supplied by these wells.

The Department believes that you are liable for the hazardous substance spill in question. The Department has the jurisdiction to amend this Order, if appropriate, to include recovery of the costs expended for supplying an alternative water source. If you wish to contest this Administrative Order, please refer to the Notice at the end of the Order.

If you have questions regarding this Order, please contact Mary Bell Pratt, Environmental Enforcement Specialist, at (715)635-4266, or Deborah Johnson,

Attorney at Law, Bureau of Legal Services, at (608)266-0846. Technical questions concerning implementation of this Order should be directed to Tom Kendzierski, Hydrogeologist, at (715)635-4057.

Sincerely,



John LaFontaine, Director
Office of Environmental Enforcement
Division of Enforcement

JL:PN

Encs. Remedial Investigation Checklist (remedchk.lis)
Applicable Codes (remedcod.ref)

cc: Roy Jacobson - EE/5
Deborah Johnson - LC/5
Bureau of Solid/Hazardous Waste Management - SW/3
Mary Bell Pratt- NWD/Spooner
Tom Kendzierski - NWD/Spooner
Dave Herrick - NWD/Spooner
John Prohaska - NWD/Spooner
ENTRACK/LMD

q:\cases\mooseown.ltr

BEFORE THE

STATE OF WISCONSIN

DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Discharge of a)
Hazardous Substance Allegedly Caused)
by Moose Junction Lounge in the)
Township of Dairyland, Douglas)
County, Wisconsin)

ORDER No. NWD-92-023
ENTRACK FID No. 816025430

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The following constitutes a summary of the Findings of Fact and Conclusions of Law upon which the Department of Natural Resources (Department) bases Order No. NWD-92-023:

FINDINGS OF FACT

1. Moose Junction Lounge (MJL) is a tavern and gasoline station occupying a parcel of land located in the Southeast Quarter of the Southeast Quarter of the Southeast Quarter (SE 1/4 of the SE 1/4 SE 1/4), Section Eighteen (18), Township Forty-Four (44) North, Range Fourteen (14) West, Douglas County, Wisconsin.
2. The Department of Industry, Labor, and Human Relations (DILHR) tank inventory lists a 1000-gallon gasoline underground storage tank on the MJL site since 1970.
3. Frank L. and Chris Day purchased by land contract the MJL site from Edward and Ceil Lyons in May 1980 and operated the business until September 1991.
4. Dale L. Schultz purchased by land contract the MJL site from Frank L. and Chris Day in September 1991 and has operated the business since that time.
5. On Oct. 18 and 19, 1990, Aqua-Tech, Inc. conducted a site assessment at the MJL site for the Wisconsin Department of Transportation project 8010-01-00.
6. The analyses of soil and groundwater samples collected as part of the Aqua-Tech, Inc. site assessment showed presence in the soil of petroleum products as well as ground water exceedances of ch. NR 140, Wis. Adm. Code, Preventive Action Limits (PAL) and Enforcement Standards (ES) as shown in the following table¹:

¹Environmental Assessment Report for the Moose Junction Lounge, November 1990, prepared by Aqua-Tech, Inc.

**SUMMARY OF GROUNDWATER ANALYSIS (UG/L)
OCTOBER 18-19, 1990**

Parameter	Sample MJW-1	Sample MJW-2	Sample MJW-3	ENF/PAL
Depth (feet)	6.6	8.0	4.4	
Benzene	19,900	15,100	ND	5.0/0.067
Toluene	82,900	15,100	ND	343/68.6
Ethylbenzene	29,100	1,375	ND	1,360/272
Xylene	199,000	7,490	1.5	620/124

7. On December 7, 1990, the Wisconsin Department of Transportation (DOT) sent a copy of the Aqua-Tech, Inc. assessment report to the Department.
8. Based on the Aqua-Tech, Inc. assessment report, the Department issued a Responsible Party Letter to Chris Day on December 18, 1990 identifying her responsibility under s. 144.76 (3), Wis. Stats.
9. Follow-up contact by the Department between February 1992 and September 1992 determined that neither Chris Day, as past owner, nor Dale Schultz, as the new owner, had investigated the extent and degree of contamination nor performed necessary remediation of the contamination at the MJL site.
10. On September 24, 1992, the Department issued a Notice of Violation (NOV) to both Chris Day and Dale Schultz. The MJL underground storage tank was identified as a probable source of groundwater contamination. Their responsibilities for determining the source and extent of contamination and final remediation under s. 144.76 (3), Wis. Stats., was explained in the NOV.
11. In September 1992 John Prohaska searched the records of spill reports submitted since 1976 and found no reported spill at the MJL site.
12. On October 5 and 6, 1992, RMT, Inc. conducted an additional investigation for the Department of Transportation to further determine the source of petroleum-impacted soil and groundwater encountered during the 1990 investigation. Six additional soil borings were installed and samples were analyzed for petroleum volatile organic compounds (PVOC's) and gasoline-range organics (GROs).
13. The highest analytical results from the October 5th and 6th investigation were acquired from boring B3 which was taken closest to the existing underground storage tank. The findings are listed in the following table²:

²Moose Junction Lounge Environmental Assessment Report, October 23, 1992, prepared by RMT, Inc. for Wisconsin Department of Transportation

**SUMMARY OF GROUNDWATER ANALYSIS (UG/L)
OCTOBER 5-6, 1992**

Parameter	B-1	B-2a	B-3	B-4	B-5	B-6	ENF/PAL
Benzene	<1.0	7,400	42,000	22,000	2.9	4,800	5.0/0.067
Toluene	<1.0	18,000	48,000	30,000	8.6	3,100	343/68.6
Ethylbenzene	<1.0	2,400	6,500	5,900	4.0	1,300	1360/272
Xylene	<3.0	11,300	29,000	23,000	19.7	770	620/124
1,2-Dichloroethane	<1.0	<1.0	180	120	<1.0	57	5.0/0.5
Gasoline Range Organics (GRO)	<100	3900	460,000	4,100	100	4,200	
Lead (total)	130	NS	1900	<20	26	200	50/5

14. This additional investigation also indicates that the underground storage tank on the MJL property is the probable source of soil and groundwater contamination in the vicinity of MJL.
15. The RMT, Inc. report of October 23, 1992 suggests groundwater flow to be to the south with an apparent change in elevation of the water table of approximately 8 feet from the northern-most boring to the southern-most.
16. The Dickman private well is located immediately to the south of MJL site and is at immediate risk of contamination.
17. On October 12, 1992, the Department sampled the Dickman well for VOC's.
18. On October 28, 1992, the State Lab of Hygiene analysis of the Dickman well sample indicated the possibility of hydrocarbon contamination; quantification of contaminants was not possible with this sample.
19. On October 23, 1992, Dale Schultz notified DILHR the underground storage tank had been pumped dry and taken out of service during the last two weeks of October.
20. On November 4, 1992, the Department conducted an environmental enforcement conference with Chris Day and Dale Schultz. DILHR representatives John Anderson & Ted Johnson were in attendance at this meeting also. Chris Day and Dale Schultz agreed to work together to hire an environmental consultant as soon as possible and comply with the Administrative Order the Department was preparing. A sample of a lust order schedule was given to both responsible parties.

CONCLUSIONS OF LAW

1. Petroleum products and their constituents are hazardous substances as defined by s. 144.01(4m), Wis. Stats.
2. Under s. 144.76(3), Wis. Stats., Dale Schultz, as owner and operator of MJL, and Frank L. Day and Chris Day, as parties with an ownership interest in the site, possessed or controlled a hazardous substance which was discharged, or caused the discharge of a hazardous substance, and shall take the actions necessary to restore the environment to the extent practicable and minimize the harmful effects from the discharge to the air, lands or waters of the state.
3. Under s. 144.76(7)(c), Wis. Stats., the Department has the authority to issue Special Orders to the person or persons possessing, controlling, or responsible for the discharge of hazardous substances to fulfill their duty imposed by s.144.76(3), Wis. Stats.
4. This Order is reasonable and necessary to accomplish the purposes of s. 144.76, Wis. Stats., and is enforceable under ss. 144.98 and 144.99, Wis. Stats.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, The Department hereby orders Dale Schultz, Frank L. Day, and Chris Day to:

1. Within 30 business days of the effective date of this Order, provide the Department with the name of the qualified environmental consultant hired to conduct the investigation outlined in this Order. The investigation is to determine the extent and degree of contamination at, and emanating from, the site and to prepare plans to remediate the effect of the contamination.

INVESTIGATION PLAN

2. Within 60 business days of the effective date of this Order, submit an investigation plan to the Department for its review and approval. Design the investigation plan to define the extent and degree of horizontal and vertical soil and groundwater contamination resulting from the discharge of petroleum products.

Design the investigation plan in accordance with the attached Remedial Investigation Checklist (incorporated herein as Attachment A) and all Department leaking underground storage tank guidance. Include a time schedule for implementing the investigation on all properties affected by the discharge.

Incorporate into the investigation plan a quarterly VOC sampling schedule for the Schultz and Dickman water supply wells.

If the Department requires modifications to the investigation plan, reply to the Department's comments within 15 business days of the date of the Department's notification. The Department may place conditions in the plan approval.

INVESTIGATION, REPORT AND REMEDIAL ACTION PLAN

3. Within 10 business days of the Department's approval of the investigation plan, conduct the investigation according to the terms and conditions of the Department's plan approval and all applicable federal and state laws and guidance (current revision).
4. Within 30 business days of the Department's approval of the investigation plan, submit a report of the findings of the investigation and a remedial action plan for soil and groundwater contamination.

IF FURTHER CONTAMINATION IS DISCOVERED

5. If the investigation plan approved by the Department under Paragraph 3 is not sufficient to fully define the degree and extent of the contamination, the investigation report shall propose an additional investigation plan for Department review and approval. The report shall be designed to complete the investigation and shall include a proposed time schedule for a remedial action plan, or an interim remedial action plan.

If the Department requires modification of the investigation report and proposed remedial action plan, reply to the Department's comments within 10 business days of receipt of the Department's notification. The Department may place conditions in the approval of the investigation report and remedial action plan.

Upon approval, continue the investigation and report to the Department as directed by the conditions of the plan approval.

REMEDIAL ACTION

6. Within 20 business days of the Department's approval, conduct the remedial action according to the terms and conditions of the Department's approval and in accordance with all applicable federal and state laws and guidance.

NOTIFICATION OF SAMPLING

7. Notify the Department, in writing, at least 10 business days prior to any sampling performed under the investigation plan or the remedial action plan required by this Order.

REPORTING

8. Submit written monthly progress reports to the Department by the 10th of each month following the effective date of this Order. These monthly progress reports shall:
 - a. Describe the actions which have been taken toward achieving compliance with this Order.
 - b. Include results of sampling, testing and all other data generated during the month.

- c. The following additional information shall be submitted every third month:
- i. Summary Tables for all historical groundwater chemistry data related to each well.
 - ii. Graphs of all historical groundwater chemistry data related to each monitoring well. At a minimum, these graphs shall be drawn depicting ch. NR 140, Wis. Adm. Code, Preventive Action Limit and Enforcement Standard Exceedances for the compounds of concern.
9. Mail or deliver copies of each report, plan or other submittal required by this Order to each of the following addresses:

Wisconsin Department of Natural Resources

Attn: John J. Prohaska
Box 309
Spooner, WI 54801 (2 copies)

Wisconsin Department of Natural Resources
Emergency and Remedial Response Section, SW/3
P. O. Box 7921
Madison, WI 53707 (1 copy)

RIGHT TO AMEND

10. The Department reserves jurisdiction to amend this Administrative Order if such action is necessary for the protection of public health, safety or welfare.

NOTICE OF APPEAL RIGHTS

This order shall become effective unless a written request for a hearing to contest the issuance of this Order, or any of its terms, is filed with the Department within 30 days after the date this Order is mailed. All hearing requests shall be filed either by delivery to the Office of the Secretary of the Department at 101 South Webster Street, Madison, Wisconsin, or by certified mail addressed to the Office of the Secretary, Department of Natural Resources, P.O. Box 7921, Madison, Wisconsin 53707. If a hearing is requested, the Order shall not become effective until the hearing examiner has issued a decision affirming or modifying the Order. This notice is provided pursuant to s. 227.48(2), Wis. Stats.

All hearing requests must be made in accordance with s. NR 2.05(2), Wis. Adm. Code, and must identify the grounds for the petition and the desired modification or change to the Order and include information demonstrating the following:

1. The substantial interest of the petitioner which is injured in fact or threatened with injury by Department action or inaction;
2. That there is no evidence of legislative intent that this interest is not to be protected;

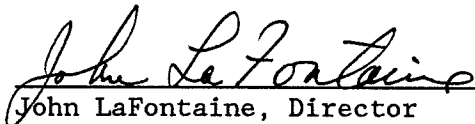
3. That the injury to the petitioner is different in kind or degree from the injury to the general public caused by Department action or inaction; and
4. That there is a dispute of material fact.

For judicial review of a decision, pursuant to ss. 227.52 and 227.53, Wis. Stats., you have 30 days after the decision is mailed, or otherwise served by the Department, to file your petition with the appropriate circuit court and serve the petition on the Department. Such a petition for judicial review shall name the Department of Natural Resources as the respondent.

Dated at Madison, Wisconsin, this 24th day of November 1992.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By:



John LaFontaine, Director
Office of Environmental Enforcement
Division of Enforcement

The Remedial Investigation Checklist
and the
Applicable Codes
were enclosed in the Order
but aren't attached to your copy.

P 351 074 671

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL
(See Reverse)

U.S.G.P.O. 1989-234-555

Sent to Dale Schultz	
Moose Junction Lounge	
Street and No. R3, Box 334	
P.O., State and ZIP Code Dairyland, WI 54830	
Postage	\$.29
Certified Fee	1.00
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt showing to whom and Date Delivered	1.00
Return Receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$ 2.29
Postmark or Date Sent 10-16-92 m8	

PS Form 3800, June 1985

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RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL
(See Reverse)

U.S.G.P.O. 1989-234-555

Sent to		CRIS DAY
Street and No.		P.O. Box 115
P.O., State and ZIP Code		Danbury, WI 54830
Postage	\$.29
Certified Fee		1.00
Special Delivery Fee		
Restricted Delivery Fee		
Return Receipt showing to whom and Date Delivered		1.00
Return Receipt showing to whom, Date, and Address of Delivery		
TOTAL Postage and Fees	\$	2.29
Postmark or Date		

PS Form 3800, June 1985