

MODEL TOXICS CONTROL ACT

ENFORCEMENT ORDER

In the Matter of: ) Remedial Action ORDER  
 ) No. DE 91-E701  
Whitty's Minimart (Exxon) )  
485 S. Main )  
Colville, WA 99114 )

To: Mr. Carroll Whitten  
c/o Whitten Oil, Inc.  
370 West 5th Avenue  
Colville, WA 99114-3006

I.

Jurisdiction

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

II.

Statement of Facts

1. Carroll Whitten, dba Whitty's Minimart, is the owner of a facility located at 485 South Main Avenue, Colville, Washington, within Stevens County. This site is located on the northeast corner of Main and Dominion Streets. It is bounded by Main street (Highway 395) on the west and Dominion Street on the south.
2. The facility is operated as a retail fuel outlet and convenience store. It has been operated as a retail fuel outlet for a period of years, inclusive of the time during which the incidents described in ¶3 and ¶5 occurred.
3. In 1984, an investigation at this site conducted by Soil Exploration, Inc. determined that a gasoline dispenser line had been leaking. The leak was confirmed by means of "petro-tight" testing of the dispenser lines. According to a report dated August 16, 1984, the product released as a result of this leak manifested itself as a gasoline film on the storm water adjacent to the site and on an unnamed creek, also adjacent to the site. The storm water drain is tributary to the creek. There were also strong gasoline vapors detected in the storm water drain and at the creek outfall. This situation had been reported periodically over a two year period prior to this investigation.

4. Remediation efforts initiated as result of the investigation consisted of the installation of an interceptor trench extending north-south along Main Street on the west side of the site. A recovery sump was installed at the downgradient end of the trench to be used for product recovery on an on-going basis as required. The sump was pumped out on a sporadic basis for 2-3 years following installation. It has not been maintained since that time.
5. In April, 1990, Ron Harbolt, Public Works Director for the City of Colville, contacted Ecology after he had received a report of strong gasoline vapors and gasoline film on the unnamed creek referenced in ¶3. Ecology responded to and confirmed what had been reported. At that time gasoline vapors and a sheen were also found on the storm water, at an access point to the southwest of Whitty's Minimart. An Ecology representative who investigated the 1984 incident, confirmed the similarity of product distribution between the two incidents.
6. On April 26, 1990, approximately 1" of gasoline was measured on the ground water within a monitoring well adjacent to the underground storage tanks (USTs) at Whitty's Minimart. This well was installed in 1984 as part of the 1984 investigation referenced in ¶4.
7. Gasoline product has been identified in a creek, on the ground water and in soils both on and adjacent to the referenced site. Gasoline vapors have been identified within a culvert diverting the creek and within the storm water line. Gasoline vapors and product have been observed at the point on the creek where it discharges out of a culvert and into an open channel at the site of a private residence.
8. Ecology representatives contacted Carroll Whitten's office at the time of the initial investigation in 1990. Carroll Whitten and Jeff Whitten were notified of the findings of the initial investigation verbally. In a letter dated May 7, 1990, Ecology provided Carroll Whitten formal notification of the results of the investigation and advised him of the regulatory requirements provided by MTCA and the opportunity to proceed with independent actions.
9. In a letter dated May 18, 1990, Ecology issued Carroll Whitten a proposed finding of potential liability status. A response to that proposed finding was submitted by Federated Insurance on Mr. Whitten's behalf.
10. By letter dated June 26, 1990, Ecology notified Carroll Whitten of his status as a "potentially liable person" (PLP) under RCW 70.105D.040 after notice and opportunity for comment.
11. On August 29, 1990, Ecology initiated an emergency interim action to mitigate the release of gasoline into the ground water and creek. An Ecology contractor installed interceptor trenches along with a vapor phase extraction system adjacent to the site.

12. In the continued absence of any independent actions at this site, on March 4, 1991, Ecology, through its contractor, initiated a remedial investigation to confirm the source of the contamination. This investigation involved the drilling of soil borings and monitoring wells and extensive sampling. The report on this investigation was submitted to Ecology on June 26, 1991. The report identifies the Whitten site as the source of a very recent or ongoing release of the observed contamination.
13. On June 14, 1991, an Ecology contractor conducted a video inspection of the storm water line in which gasoline has been observed. That inspection identified water and/or contaminant leaking into the system at joints along the sewer water culvert. Those identified leaks were restricted to an area extending approximately 75' north of the storm water access at the southwest corner of the Whitten site. These findings would suggest that product entering the storm water line is doing so at a point(s) immediately adjacent to Whitty's Minimart facility.
14. Ecology has provided the opportunity for the PLP to take independent actions to investigate and remediate the effects of the release at this site. Actions taken by the PLP have reportedly included a review of inventory records, a tank-tightness test and an unspecified investigation by a private consulting firm.

### III.

#### Ecology Determinations

1. Carroll Whitten, is an "owner or operator", as defined at RCW 70.105D.020(6) of a "facility" as defined at RCW 70.105D.020(3).
2. The facility is known as Whitty's Minimart and is located at 485 South Main Avenue, Colville, Washington.
3. The substances found at the facility, as well as in ground and surface water adjacent to 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 and near the facility and all factors known to Ecology, it has been determined that 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 18, 1990, Ecology issued Carroll Whitten a proposed finding of potential liability status. A response to that proposed finding was submitted by Federated Insurance on Mr. Whitten's behalf.

6. By letter dated June 26, 1990, Ecology notified Carroll Whitten of his status as a PLP under RCW 70.105D.040 after notice and opportunity for comment.
7. Pursuant to RCW 70.105D.030(1) and 70.105D.050, Ecology may require PLPs 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.
8. 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 Carroll Whitten take the following remedial actions.

1. Conduct and Report on a Focused Remedial Investigation. The purpose of the investigation is to specifically identify the source of the gasoline product now migrating into the ground and surface water. In response to information obtained during this investigation, Ecology may determine that an interim action is required. Any interim actions that may need to be taken will be approved by Ecology in writing prior to implementation.

To fulfill the goals of the Remedial Investigation, the following actions shall be performed:

- a. Within fifteen (15) calendar days of receipt of this ORDER submit to Ecology the following:
  - (1) An annotated list of all work performed on the underground storage tank (UST) systems on this site since 1982. This list will include the dates and description of all work, repairs, equipment replacement, dispenser calibration, and the justification for the actions performed.
  - (2) A copy of all reports describing work associated with the UST system since 1982. This would include reports of any investigative work performed at this site. This would exclude the 1984 report prepared by Soil Exploration Company and dated August 16, 1984.
- b. Within thirty (30) calendar days of receipt of this ORDER conduct integrity tests on all underground storage tanks which are now, or have previously been, used for the storage of gasoline and submit a report detailing the results of those tests.

- (1) All underground piping conveying product shall be isolated and tested separate from the tanks.
  - (2) The testing method must be appropriate for this specific system and site conditions. The method employed must receive prior written approval from the Ecology Project Coordinator.
  - (3) Ecology shall be notified 48 hours prior to the beginning of the tightness testing. Ecology will be provided the opportunity to observe all work associated with the tank system testing.
- c. Subsequent to, and within thirty (30) calendar days of, the actions specified in b., unless otherwise directed by Ecology, conduct and report on a visual inspection of the dispenser pumps, fittings and distribution lines. The purpose of the visual inspection will be directed towards identifying evidence of an active or recent release.
- (1) Ecology shall be notified prior to any excavation. Ecology shall be provided the opportunity to observe all work associated with the visual inspection.
2. In the event that a specific source or cause of the release is identified, the designated project coordinator shall contact Ecology immediately. At that time, interim actions designed to stop the release and migration of product shall be proposed. Upon approval from Ecology, the appropriate action(s) will be implemented. No interim actions shall be implemented without Ecology's prior written approval.
3. To facilitate the communication with Ecology, the following provisions shall apply:
- a. The designated Project Coordinator for Carroll Whitten shall, at a minimum, unless otherwise approved by Ecology, submit the following reports to Ecology's Project Coordinator:
    - (1) A weekly verbal report indicating the results of efforts concluded and intended actions. These reports shall serve to clarify issues of concern and questions regarding proposed courses of action. The frequency and timing of the reports may be amended with approval from Ecology.
    - (2) Within thirty (30) days of completion of the investigation described herein, an interim written report summarizing investigative work completed at the site and, if appropriate, interim actions taken in response to the discovery of a release. This report shall include a copy of all field data obtained from actions taken during the Remedial Investigation.

4. Ecology and other appropriate agencies shall be contacted immediately if the Remedial Investigation activities identify conditions which may pose an immediate threat to human health or safety. Potential threats on this site may include the accumulation of vapors or the presence of free product.

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 Actions Costs.

Carroll Whitten 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. Carroll Whitten 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, 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 ninety (90) days of receipt of this itemized statement of costs may result in interest charges.

4. Designated Project Coordinators.

The project coordinator for Ecology is:

Michael R. Boatsman  
State of Washington  
Department of Ecology  
N. 4601 Monroe, Suite 100  
Spokane, WA 99201-1295

Carroll Whitten shall notify Ecology of the name, address and telephone number of his designated Project Coordinator.

The project coordinator(s) shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communications between Ecology and Carroll Whitten 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 Carroll Whitten change project coordinator(s), written notification shall be provided to Ecology or Carroll Whitten 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.

Carroll Whitten shall notify Ecology as to the identity of such engineer(s), hydrogeologist(s), and of any contractors subcontractors to be used in carrying out the terms of this Order, in advance of their involvement at the Site.

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

7. Public Participation

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