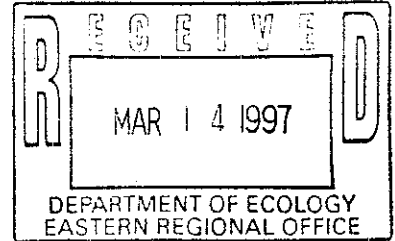


STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

In the Matter of Remedial Action at:)
Whitty's Minimart)
by:)
Mr Carroll Whitten)
and)
Federated Service Insurance)

AGREED ORDER

No 97TC-E101



TO: Mr. Carroll Whitten
370 W. 5th. Avenue
Colville, WA 99114-2110

and

Federated Service Insurance
121 E. Park Square
Owatonna, MN 55060

I.

Jurisdiction

This Agreed Order ("Order") is issued pursuant to the authority of RCW 70 105D.050(1)

II.

Findings of Fact

1. Ecology makes the following Findings of Fact, without admission of such facts by Carroll Whitten (Whitten) or Federated Service Insurance.

2. The former Whitty's Minimart site is located at 485 South Main Street (Hwy 395), Colville, Washington, within Stevens County. The site is located on the northeast corner of Main Street and Dominion Avenue.
3. This site was operated as a retail service station by Whitten from approximately 1977 to 1992. The facility was closed in 1992 and the underground tanks removed in 1993.
4. In 1984, an investigation at this site, conducted on behalf of Federated Service Insurance Company, determined that a gasoline dispenser line had been leaking. According to a report dated August 16, 1984, the gasoline from this leaking line was responsible for gasoline within a storm drain adjacent to the site and for gasoline on an adjacent unnamed creek. It was noted that the storm water drain discharges directly to the creek within 20 feet southwest of the site. There were also strong gasoline vapors noted in the storm drain culvert and at the creek outfall. An interceptor trench and sump were installed at the west side of the site to recover gasoline associated with this release.
5. In April, 1990, the City of Colville contacted Ecology with a report of gasoline contamination on the unnamed creek identified in paragraph 3. An Ecology investigation identified strong gasoline vapors and a sheen on the creek and within a storm drain adjacent to Whitty's Minimart. Strong gasoline vapors were noted at the creek outfall. These vapors were reported to be having adverse health effects on an elderly couple living on property next to the creek.
6. In response to concerns with the potentially explosive accumulation of vapors within the storm drain and creek culverts, the City of Colville fire department flushed the

storm drain with water. This action was effective in mitigating the immediate threat of an explosion

- 7 In a letter dated June 26, 1991, Ecology notified Carroll Whitten of the final determination of his status as a "potentially liable person" (PLP) under RCW 70.105D.040 after notice and opportunity for comment.
- 8 In July, 1991, Ecology issued an enforcement order to Carroll Whitten. This order directed the testing and inspection of all tanks and distribution lines at the facility. As a result of this investigation it was determined that there was a leak in a gasoline distribution line. A visual inspection of this line revealed three (3) holes in the piping. These leaks were located in a section of pipe that reportedly had been replaced following the 1984 incident. These leaks were within 20 feet of the leak identified in 1984.
- 9 In a letter dated August 29, 1991, Ecology notified Federated Service Insurance that a final determination had been made that it was a "potentially liable person" (PLP) as provided under RCW 70.105D.040
- 10 A remedial investigation and feasibility study has been completed for the site. Interim actions have been conducted by Ecology. The PLPs have conducted an interim action under the terms of an amended enforcement order. Investigations at the site have determined that ground water, surface water, and soils in this area have been impacted by the release of gasoline at this site. Diesel contamination was also found during the removal of the underground storage tank systems.

11. Soil and ground water contamination in excess of established cleanup levels remains on-site. This contamination continues to represent a threat to the surface water quality of the unnamed creek.

III.

Ecology Determinations

1. Carroll Whitten and Federated Service Insurance were "owners or operators" as defined at RCW 70 105D 020(11) of a "facility" as defined in RCW 70 105D 020(4).

2. The facility was known as Whitty's Minimart. The site is located at 485 South Main Street, Colville, Washington.

3. The substances found at the facility as described above are "hazardous substances" as defined in RCW 70 105D 020(7).

4. Based on the presence of these hazardous substances at the facility and all factors known to the Department, there has been a release or threatened release of hazardous substances from the facility, as defined in RCW 70 105D 020(19).

5. By letter dated June 26, 1991, Ecology notified Carroll Whitten of his status as a "potentially liable person" under RCW 70 105D 040 after notice and opportunity for comment.

6. By letter dated August 29, 1991, Ecology notified Federated Service Insurance of its status as a "potentially liable person" under RCW 70 105D 040 after notice and opportunity for comment.

7. 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.

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 and Federated Service Insurance implement the remedial actions described in the attached Final Cleanup Action Plan (Exhibit A) as further described in the attached Scope of Work (Exhibit B). All actions are to be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein.

It is further ordered that Carroll Whitten and Federated Service Insurance provide for the proper abandonment of monitor wells in the following manner:

Monitor wells that are no longer relevant to the concerns at this site or have become damaged, or are otherwise unserviceable, shall be abandoned within sixty (60) days following the date of this Agreed Order. All well abandonments are to be conducted in a manner consistent with the requirements of WAC 173-160-560, and all other applicable sections of WAC 173-360, Minimum Standards for Construction and Maintenance of Wells. At this time MW-17 is considered to no longer be relevant to the concerns at this site and is subject to abandonment. All other monitor wells, MW-1 through MW-16, will be abandoned within sixty (60) days following Ecology's approval of the Draft Final Cleanup Report. The Final Cleanup Report will include documentation of the proper abandonment of all monitor wells.

The attached exhibits are incorporated by reference and are integral and enforceable elements of this Agreed Order. The attached exhibits consist of the Final Cleanup Action Plan (Exhibit A), the Scope of Work (Exhibit B), and the Restrictive Covenant Agreement (Exhibit C).

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 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.

Whitten and Federated Service Insurance 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 and support costs of direct activities as defined in WAC 173-340-550(2). Whitten and Federated Service Insurance 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 will result in interest charges

4. Designated Project Coordinators

The project coordinator for Ecology is:

Michael Boatsman
Department of Ecology
Eastern Regional Office
4601 N. Monroe
Spokane, WA 99205

The project coordinator for Whitten and Federated Service Insurance is:

Jeff Thompson
Summit Envirosolutions
1800 112th Avenue NE, Suite 312
Seattle, WA 98004

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

Except where necessary to abate an emergency situation, Whitten or Federated Service Insurance shall not perform any remedial actions at the former Whitty's Minimart site 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 Whitten or Federated Service Insurance. By signing this Agreed Order, Whitten and Federated Service Insurance agree that this Order constitutes reasonable notice of access, and agrees to allow access to the Site at all reasonable times for purposes of overseeing work performed under this Order. Ecology shall allow split or replicate samples to be taken by Whitten or Federated Service Insurance during an inspection unless doing

so interferes with Ecology's sampling Whitten and Federated Service Insurance 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.

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

8 Retention of Records.

Whitten and Federated Service Insurance 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 thereunder be undertaken through contractors or agents of Whitten or Federated Service Insurance, then Whitten and Federated Service Insurance agree to include in their contract with such contractors or agents a record retention requirement meeting the terms of this paragraph

9. Dispute Resolution.

Whitten and Federated Service Insurance may request Ecology to resolve 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), to this Order. Ecology resolution of the dispute shall be binding and final.

Whitten and Federated Service Insurance 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.

10 Reservation of Rights/No Settlement.

This Agreed Order is not a settlement under ch. 70 105D RCW. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any Ecology rights or authority. Ecology will not, however, bring an action against Whitten and Federated Service Insurance to recover remedial action costs paid to and received by Ecology under this Agreed Order. In addition, Ecology will not take additional enforcement actions against Whitten and Federated Service Insurance to require those remedial actions required by this Agreed Order, provided Whitten and Federated Service Insurance comply with this Agreed Order.

Ecology reserves the right, however, to require additional remedial actions at the Site should it deem such actions necessary.

Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the releases or threatened releases of hazardous substances from the former Whitty's Minimart Site.

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 Whitten and Federated Service Insurance 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 Whitten 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, Whitten and Federated Service Insurance may have in the site or any portions thereof, Whitten and Federated Service Insurance 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, Whitten and Federated Service Insurance shall notify Ecology of the contemplated transfer.

12. Compliance with Other Applicable Laws

A. All actions carried out by Whitten and Federated Service Insurance pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits, except as provided in paragraph B of this section.

B. Pursuant to RCW 70 105D 090(I), the substantive requirements of chapters 70 94, 70 95, 70 105, 75 20, 90 48, and 90 58 RCW and of any laws requiring or authorizing local government permits or approvals for the remedial action under this Order that are known to be applicable at the time of issuance of the Order have been included in the Cleanup Action Plan and the Scope of Work and are binding and enforceable requirements of the Order.

Whitten and Federated Service Insurance have a continuing obligation to determine whether additional permits or approvals addressed in RCW 70 105D 090(I) would otherwise be required for the remedial action under this Order. In the event Whitten and Federated Service

Insurance determine that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order, it shall promptly notify Ecology of this determination. Ecology shall determine whether Ecology or Whitten and Federated Service Insurance shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, Whitten and Federated Service Insurance shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the remedial action. Ecology shall make the final determination on the additional substantive requirements that must be met by Whitten and Federated Service Insurance and on how Whitten and Federated Service Insurance must meet those requirements. Ecology shall inform Whitten and Federated Service Insurance in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. Whitten or Federated Service Insurance shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

Ecology shall ensure that notice and opportunity for comment is provided to the public and appropriate agencies prior to establishing the substantive requirements under this section

C. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70.105D.090(1) would result in the loss of approval from a federal agency which is necessary for the State to administer any federal law, the exemption shall not apply and Whitten and Federated Service Insurance shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70.105D.090(1), including any requirements to obtain permits

VI.

Satisfaction of this Order

The provisions of this Order shall be deemed satisfied upon the receipt by Whitten and Federated Service Insurance of written notification from Ecology that Whitten and Federated Service Insurance have completed the remedial activity required by this Order, as amended by any modifications, and that all other provisions of this Agreed 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 Whitten and Federated Service Insurance refuse, without sufficient cause, to comply with any term of this Order, Whitten and Federated Service Insurance 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: **March 28, 1997**

CARROLL WHITTEN

By Carroll Whitten

STATE OF WASHINGTON

FEDERATED SERVICE INSURANCE COMPANY

DEPARTMENT OF ECOLOGY

By Jim Roach

By Laura J. Hardesty

Exhibit C

SAMPLE

RESTRICTIVE COVENANT

The property that is the subject of this Restrictive Covenant has been the subject of remedial actions conducted under Chapter 70.105D RCW, and described in the Final Cleanup Action Plan which is an attachment to the Agreed Order. This restrictive covenant is required under the Department of Ecology's (Ecology) rule WAC 173-340-440 due to the fact that such controls are necessary to assure the continued protection of human health and the environment and the integrity of the cleanup action. Petroleum contaminated soils remain at the Site at concentrations that exceed the Method A cleanup levels for soil established under WAC 173-340-740. This contamination is of specific concern due to the potential for direct human contact. Contaminated soils are now covered by asphalt and concrete which serves to minimize the potential for direct human contact.

The undersigned, Mr. Carroll Jeffrey Whitten (Jeffrey) and Denise Whitten, are the fee owners of real property located at 485 South Main Street (Hwy. 395) in the City of Colville in Stevens County, State of Washington, hereafter referred to as the "Site" and described as follows:

South 111 feet of SW 1/4 of Block 25, including Tax #1 in Colville Original Plat, within the SE 1/4 SW 1/4 of Section 9, Township 35 N., Range 39 E.W.M. (Stevens County Assessors Parcel No. 20900)

Jeffrey and Denise Whitten make the following declaration as to limitations, restrictions, and uses to which the Site may be put, and specify that such declarations shall constitute covenants to run with the land, as provided by law, and shall be binding on all parties and all persons claiming under them, including all current and future owners of any portion of or interest in the Site.

Section 1. The property designated in the above legal description and illustrated on the attached map (Exhibit A) contains petroleum contaminated soil at the time of the recording of this covenant. In the event that site activities cause these soils to be exposed or disturbed, the affected soil shall be removed and treated or other appropriate actions taken to provide adequate protection for human health and the environment. Ecology shall be advised of any such planned activities.

Section 2. The owners or successor owner of the Site must provide written notice to Ecology, or to any successor agency, of the owner's intent to convey any interest in the Site, and shall, prior to conveyance of title, easement, lease or other interest in the Site, provide to the new owner or lessee of any interest in the Site a copy of the Final Cleanup Action Plan, dated _____ 199X.

Section 3. The owners or successor owner must notify and obtain approval from Ecology, or any successor agency, prior to any use of the Site that is inconsistent with the terms of this restrictive covenant. Ecology or it's successor agency may approve such use only after public notice and comment.

Section 4. The owners or successor owner shall grant Ecology, or it's successor agency, and it's designated representatives the right to enter the site at reasonable times for the purpose of carrying out it's duties under Chapter 70.105D RCW, including the right to take samples, to inspect any remedial actions taken at the Site, and to inspect records.

Section 5. The owners of the Site and any successor owners reserve the right under WAC 173-340-740 and WAC 173-340-440 to record an instrument which provides that this Restrictive Covenant shall no longer limit use of the Site or be of any further force or effect. However, such an instrument may be recorded only with the consent of Ecology, or of a successor agency. Ecology, or it's successor agency, may consent to the recording of such an instrument only after public notice and comment, and only if a restrictive covenant is no longer required by law at the Site.

Executed this _____ day of _____, 1997.

Carroll Jeffrey Whitten / Denise Whitten

Printed Name (s)

Colville Original Plat

