

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

Whitney's Chevrolet, Inc.
Caldwell Family Holdings, LLC
Wynoochee Lodge #43 F&AM

AGREED ORDER

No. DE 2951

TO: Stormy Glick
Whitney's Chevrolet, Inc.
123 W. Pioneer Avenue.
Montesano, WA 98563

Chuck Caldwell
Caldwell Family Holdings, LLC
c/o Price and Price Realty
120 W. Pioneer Avenue
Montesano, WA 98563

Wynooche Lodge #43, F & A M of Washington
c/o David Owen
47 St. Helens Avenue
Tacoma, WA 98402

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Exhibit A:	Site Diagram
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Exhibit D:	Applicable Permits and Substantive Requirements

I. INTRODUCTION

The mutual objective of the Washington State Department of Ecology (Ecology) and Whitney's Chevrolet, Inc., Caldwell Family Holdings LLC, and Wynoochee Lodge #43, F & A M (The PLPs) under this Agreed Order (Order) is to provide for remedial investigation at a facility where there has been a release or threatened release of hazardous substances. This Order requires The PLPs to complete a remedial investigation and feasibility study at a facility where there has been a release or threatened release of hazardous substances. This Order requires the The PLPs to complete Remedial Investigation of the facility and develop a Feasibility Study to

determine a preferred cleanup strategy. Ecology believes the actions required by this Order are in the public interest.

II. JURISDICTION

This Agreed Order is issued pursuant to the authority of the Model Toxics Control Act (MTCA), RCW 70.105D.050(1).

III. PARTIES BOUND

This Agreed Order shall apply to and be binding upon the Parties to this Order, their successors and assigns. The undersigned representative of each Party hereby certifies that he or she is fully authorized to enter into this Order and to execute and legally bind such Party to comply with the Order. The PLPs agree to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter The PLPs' responsibility under this Order. The PLPs 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 complies with this Order.

IV. DEFINITIONS

Unless otherwise specified herein, 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.

1. Site: The Site is referred to as Whitney's Chevrolet and is generally located at 123 West Pioneer Avenue, Montesano, WA. The Site is defined by the extent of contamination caused by the release of hazardous substances at the Site. Based upon factors currently known to Ecology, the Site is more particularly described in Exhibit A to this Order, which includes a Site diagram. The Site constitutes a Facility under RCW 70.105D.020(4).
2. Parties: Refers to the Washington State Department of Ecology and The PLPs.
3. Potentially Liable Parties (PLPs): Refers to Whitney's Chevrolet, Inc., Caldwell Family Holdings LLC, and Wynoochee Lodge #43, F & A M.
4. Agreed Order or Order: Refers to this Order and each of the exhibits to the Order. All exhibits are integral and enforceable parts of this Order. The terms "Agreed Order" or "Order" shall include all exhibits to the Order.

V. FINDINGS OF FACT

Ecology makes the following findings of fact, without any express or implied admissions of such facts by The PLPs:

- (1) Whitney's Chevrolet, Inc. is the operator of a business that formerly stored and sold gasoline to the public at 123 W. Pioneer Avenue., Montesano, WA 98563. An August 28, 1995 report by Fitt Environmental documents the closure by filling in-place of three underground gasoline storage tanks and subsequent sampling of

soils in the "tank pit". The soil samples exhibited elevated gasoline range petroleum hydrocarbons (as BTEX); no groundwater samples were obtained. The report notes that these tanks and the pump location for them were installed in 1946 and that another pump location installed along West Pioneer Avenue was used prior to the current arrangement. The newer tanks were located below the street and sidewalk on First Street, adjacent to West side of the facility. The location of earlier tanks was not ascertained. By letter dated 8/13/2003, Whitney's was instructed by Ecology to install groundwater monitoring wells to determine what impacts, if any, may have occurred to groundwater in this area. To date, this requirement has not been met.

During 2003, Ecology's Hazardous Waste Toxics Reduction Program investigated reports that a variety of waste solvents from vehicle painting and parts cleaning were being added to waste oil from vehicle servicing and put into two underground storage tanks (USTs) used to store fuel for the facility's heating system boiler. As a result of the investigation, the USTs were decommissioned and cleaned. Semi-quantitative analyses of the waste oil removed from the USTs, as well as ignitability tests indicated characteristics consistent with the presence of the type of solvents alleged to have been added to the USTs. Due to the nature of their construction, the USTs were not able to be tightness tested, nor were soil or groundwater samples taken to determine if the USTs had leaked. Subsequent sampling of wells located at the adjacent Sterling Savings Bank indicated the presence of Volatile Organic Compounds (VOCs).

In January 2006, Ecology conducted ground penetrating radar and electromagnetometer surveys of the Whitney's Chevrolet facility. Three locations (in addition to the tanks on First Street, discussed above) at the facility showed positive signs that additional underground storage tanks may exist below the facility.

- (2) The Grays Harbor County Assessors Office records list Caldwell Family Holdings LLC as the owner of property at the above address, Parcel #072000200500. The Grays Harbor County Assessors Office records list Wynoochee Lodge #43 A & F M as the owner of property at the above address, Parcel #072000201101. The above Parcels are described in the attached legal descriptions, Exhibit B.
- (3) Based on Ecology sampling of three monitoring wells and seven push probe borings located adjacent to the site, gasoline range petroleum hydrocarbons have been released to soils and groundwater at the Site. Additionally, a variety of VOCs are present in two of the monitoring wells. The data available do not yet establish a clear link between potential sources of release on the Whitney's facility and actual impacts on adjacent property. Assessing this link is an objective of the Remedial Investigation.
- (4) Ecology has completed a Site Hazard Assessment (SHA) of the site, resulting in a ranking of 3. Ranking ranges from 1 to 5, with 1 representing the highest relative

risk and 5 the lowest relative risk. The ranking may change if additional, planned testing indicates that air or surface water impacts have occurred.

- (5) This type of contamination represents a threat to human health and the environment. No completed exposure pathways have yet been identified.

VI. ECOLOGY DETERMINATIONS

Ecology makes the following determinations without any express or implied admissions by The PLPs.

1. The PLPs are "owners or operators" as defined in RCW 70.105D.020(12), of a "facility" as defined in RCW 70.105D.020(4) because they are the owners of record of property or an operator of a facility where there has been a release or threatened release of hazardous substances above cleanup standards established by the Model Toxics Control Act.

2. Based upon all factors known to Ecology, a "release" or "threatened release" of "hazardous substance(s)" as defined in RCW 70.105D.020(20) and RCW 70.105D.020(7), respectively, has occurred at the Site.

3. Based upon credible evidence, Ecology issued potentially liable person status letters to The PLPs dated September 20, 2005, pursuant to RCW 70.105D.040, -.020(16) and WAC 173-340-500. After providing for notice and opportunity for comment, reviewing any comments submitted, and concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that Whitney's Chevrolet, Caldwell Family Holdings LLC, and Wynoochee Lodge #43, F & A M are potentially liable persons (PLPs) under RCW

70.105D.040 and notified The PLPs of this determination by letter dated February 14, 2006. Ecology determined that Sterling Savings Bank is not considered a PLP at this time, and notified them of this determination by letter dated February 14, 2006

4. Pursuant to RCW 70.105D.030(1) and -.050(1), Ecology may require PLPs to investigate or conduct other remedial actions with respect to any release or threatened release of hazardous substances, whenever it believes such action to be in the public interest. Based on the foregoing facts, Ecology believes the remedial investigation and preparation of a feasibility study required by this Order are in the public interest.

VII. WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that The PLPs take the following remedial actions at the Site and that these actions be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein:

1. Determine If Underground Storage Tanks Still Exist On The Site

Due to the long and uncertain history of gasoline retailing at this facility, it is possible that additional underground storage tanks may still exist, whose integrity status is unknown. The tanks that were decommissioned in 1995 are not likely to be the same tanks used throughout the history of fuel retailing dating back to the 1920s. Propose a process to develop additional information regarding the possible existence (or history of closure) of tanks other than those known to have been in service below First Street in coordination with Ecology's efforts to determine if additional tanks are likely to be present.

2. Remedial Investigation (RI)

The PLPs shall prepare a work plan to perform remedial investigation necessary to determine the extent and nature of contamination present on the Site. The work plan shall include a site specific health and safety plan (HASP) and a sampling and analysis plan (SAP) in compliance with WAC 173-340-810 and 820, respectively.

A. Scope of Work:

(1) RI Work Plan: The RI Work Plan shall describe all activities to be taken to characterize both soils and groundwater at the site, in accordance with WAC 173-340-350 (7) including the results of work previously conducted at the site to decommission in place underground storage tanks located on First Street and under the building and determine if additional USTs exist on the site. This work shall include a proper site assessment for the tanks closed in place in 1995, that was not performed at that time. The plan shall include a schedule for performing the following tasks.

(2) Investigation: Collect data necessary to adequately characterize the nature and extent of soil and groundwater contamination, in accordance with WAC 173-340-350 (7), utilizing professionals qualified to perform the tasks required and, when applicable, in accordance with WAC 308-15-020. MTCA defines a facility or site as “..any site or area where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored disposed of, placed, or otherwise come to be located.” This definition of a site does not necessarily end at a property boundary, but continues beyond property boundaries to the extent that

the hazardous substances found at the property may extend beyond the property boundary.

(3) Schedule: A draft RI Work Plan shall be submitted to Ecology within 60 days of the date of this order. A final work plan shall be submitted to Ecology within 30 days of the receipt of Ecology's comments. The investigation shall be performed according to the schedule set forth in the approved RI Work Plan as noted above.

3. Remedial Investigation/Feasibility Study (RI/FS)

Based on the results of the remedial investigation, prepare a draft RI/FS report in accordance with WAC 173-340-350 that provides information adequately documenting the nature and extent of soil and groundwater contamination and presents potential options and a preferred option for the remediation of the contamination located at the Site, in accordance with WAC 173-340-360.

A. Scope of Work:

(1) RI/FS: The RI/FS shall report the results of remedial investigation at the Site including vertical and lateral distribution of contaminants in soil and groundwater and concentrations of contaminants of concern in both media. The report shall include conclusions that can be reasonably drawn regarding potential off-site migration. Additionally, the report shall include an analysis of potential remedial alternatives and recommendations regarding a preferred remedial action to be implemented for soils and groundwater.

(2) Schedule: The draft RI/FS report shall be submitted within 120 days of

the finish of remedial investigation activities performed in accordance with the approved work plan as noted above. The PLPs shall submit a final RI/FS report within 30 days of the receipt of Ecology's comments.

If, at any time after the first exchange of comments on drafts, Ecology determines that insufficient progress is being made in the preparation of any of the deliverables required by this section, Ecology may complete and issue the final deliverable.

VIII. TERMS AND CONDITIONS OF ORDER

A. Public Notices

This Order has been the subject of public notice and comment pursuant to WAC 173-340-600.

B. Remedial Action Costs

The PLPs shall pay to Ecology costs incurred by Ecology pursuant to this Order and consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology or its contractors for, or on, the Site under Chapter 70.105D RCW, including remedial actions and Order preparation, negotiation, oversight, and administration. These costs shall include work performed subsequent to the issuance of the Order. The PLPs 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, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general description statement of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Pursuant to WAC

173-340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

C. Implementation of Remedial Action

Except where necessary to abate an emergency situation, The PLPs shall not perform any remedial actions at the Site outside those remedial actions required by this Order, unless Ecology concurs, in writing, with such additional remedial actions.

D. Designated Project Coordinators

The project coordinator for Ecology is:

Dom Reale, Site Manager
Department of Ecology
Toxics Cleanup Program
Southwest Regional Office
P.O. Box 47775
Olympia, WA 98504-7775
Tel.: (360) 407-6266
e-mail: drea461@ecy.wa.gov

The project coordinator for The PLPs is:

Thomas C. Morin, L.G.
Principal Geologist/Vice President
Environmental Partners, Inc.
295 NE Gilman Blvd., Suite 201
Issaquah, WA 98027
(425) 395-0030
email: thomm@epi-wa.com

The project coordinator(s) shall be responsible for overseeing the implementation of this Order. The Ecology project coordinator will be Ecology's designated representative for the Site.

To the maximum extent possible, communications between Ecology and The PLPs, 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).

Ecology and The PLPs may change their respective project coordinator, but must provide ten (10) days advance written notification of the change to the other party.

E. Performance

All work performed pursuant to this Order shall be under the direction and supervision, as necessary, of a licensed professional engineer or licensed hydrogeologist, or equivalent as approved by Ecology, with experience and expertise in hazardous waste site investigation and cleanup. The PLPs shall notify Ecology in writing of the identity of such engineer(s), or hydrogeologist(s), or others, 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.

Any construction work performed pursuant to the Order shall be under the supervision of a professional engineer or a qualified technician under the direct supervision of a professional engineer. The professional engineer must be registered in the State of Washington, except as provided in RCW 18.43.130.

F. Access

Ecology or any Ecology authorized representative shall have the full authority to enter and freely move about all property at the Site that The PLPs either own, control, or have access rights to 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 PLPs' progress in carrying out the terms of this Order; conducting such tests or collecting such samples as Ecology 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 PLPs. The PLPs shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by The PLPs where remedial activities or investigations will be performed pursuant to this Order. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Site property owned or controlled by The PLPs unless an emergency prevents such notice. All persons who access the Site pursuant to this paragraph shall comply with the approved health and safety plan, if any. Ecology employees and their representative shall not be required to sign any release or waiver as a condition of Site property access.

G. Sampling, Data Reporting, and Availability

With respect to the implementation of this Order, The PLPs shall make the results of all sampling, laboratory reports, and/or test results generated by it or on its behalf available to Ecology and shall submit these results in accordance with Section VII of this Order.

All sampling data shall be submitted to Ecology according to the requirements of WAC 173-340-840(5), in printed form and in electronic form capable of being transferred into the department's data management system. Electronic data submittal requirements are provided at <http://www.ecy.wa.gov/eim/>.

If requested by Ecology, The PLPs shall allow split or duplicate samples to be taken by Ecology and/or its authorized representative of any samples collected by The PLPs pursuant to implementation of this Order. The PLPs shall notify Ecology seven (7) days in advance of any

sample collection or work activity at the Site. Ecology shall, upon request, allow split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Order to be taken by The PLPs or their authorized representative provided it does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section VIII.F of this Order, Ecology shall notify The PLPs prior to any sample collection activity unless an emergency prevents such notice.

In accordance with WAC 173-340-830(2)(a), all hazardous substance analyses shall be conducted by a laboratory accredited under Chapter 173-50 WAC for the specific analyses to be conducted, unless otherwise approved by Ecology.

H. Public Participation

A public participation plan is required for this Site. Ecology shall review any existing public participation plan to determine its continued appropriateness and whether it requires amendment, and since no plan exists, Ecology has developed a public participation plan in conjunction with The PLPs. See Exhibit C.

Ecology shall maintain the responsibility for public participation at the Site. However, The PLPs shall cooperate with Ecology, and shall:

1. If agreed to by Ecology, develop appropriate mailing lists, prepare drafts of public notices and fact sheets at important stages of the remedial action, such as the submission of the work plans, remedial investigation/feasibility study reports, cleanup action plans, and engineering design reports. As appropriate, Ecology will edit, finalize, and distribute such fact sheets and prepare and distribute public notices of Ecology's presentations and meetings;

2. Notify Ecology's project coordinator prior to any of the following: the issuance of all press releases; distribution of fact sheets; performance of other outreach activities; meetings with the interested public and/or local governments. Likewise, Ecology shall notify The PLPs prior to the issuance of all press releases and fact sheets, and before meetings with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by The PLPs that do not receive prior Ecology approval, The PLPs shall clearly indicate to the audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology;

3. When requested by Ecology, participate in public presentations on the progress of the remedial action at the Site. Participation may be through attendance at public meetings to assist in answering questions, or as a presenter;

4. When requested by Ecology, arrange and/or continue information repositories to be located at the following locations:

- (a) Montesano City Hall
125 North Main Street
Montesano, WA 98563

- (b) W.H. Abel Memorial Library
112 North Main Street
Montesano, WA 98563

- (c) Ecology's Southwest Regional Office
300 Desmond Drive
Lacey, WA 98503

At a minimum, copies of all public notices, fact sheets, and press releases; all quality assured monitoring data; remedial action plans and reports, supplemental remedial planning documents, and all other similar documents relating to performance of the remedial action required by this Order shall be promptly placed in these repositories.

I. Retention of Records

During the pendency of this Order and for ten (10) years from the date of completion of work performed pursuant to this Order, The PLPs shall preserve all records, reports, documents, and underlying data in his possession relevant to the implementation of this Order and shall insert a similar record retention requirement into all contracts with project contractors and subcontractors. Upon request by Ecology, The PLPs shall make all records available to Ecology and allow access for review within a reasonable time.

J. Resolution of Disputes

1. In the event a dispute arises as to an approval, disapproval, proposed change, or other decision or action by Ecology's project coordinator, the Parties shall utilize the dispute resolution procedure set forth below.

- (a) Upon receipt of the Ecology project coordinator's decision, The PLPs have fourteen (14) days within which to notify Ecology's project coordinator of their objection to the decision.
- (b) The Parties' project coordinators shall then confer in an effort to resolve the dispute. If the project coordinators cannot resolve the dispute within

fourteen (14) days, Ecology's project coordinator shall issue a written decision.

- (c) The PLPs may then request Ecology management review of the decision. This request shall be submitted in writing to the Southwest Region Toxics Cleanup Section Manager within seven (7) days of receipt of Ecology's project coordinator's decision.
- (d) The Section Manager shall conduct a review of the dispute and shall endeavor to issue a written decision regarding the dispute within sixty (60) days of The PLPs' request for review. The Section Manager's decision shall be Ecology's final decision on the disputed matter.

2. The Parties agree to only utilize the dispute resolution process in good faith and agree to expedite, to the extent possible, the dispute resolution process whenever it is used.

3. Implementation of these dispute resolution procedures shall not provide a basis for delay of any activities required in this Order, unless Ecology agrees in writing to a schedule extension.

K. Extension of Schedule

1. An extension of schedule shall be granted only when a request for an extension is submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the deadline for which the extension is requested, and good cause exists for granting the extension. All extensions shall be requested in writing. The request shall specify the reason(s) the extension is needed. The request shall specify:

- (a) The deadline that is sought to be extended;
- (b) The length of the extension sought;
- (c) The reason(s) for the extension; and
- (d) Any related deadline or schedule that would be affected if the extension were granted.

2. The burden shall be on The PLPs to demonstrate to the satisfaction of Ecology that the request for such extension has been submitted in a timely fashion and that good cause exists for granting the extension. Good cause includes, but is not limited to:

- (a) Circumstances beyond the reasonable control and despite the due diligence of The PLPs including delays caused by unrelated third parties or Ecology, such as (but not limited to) delays by Ecology in reviewing, approving, or modifying documents submitted by The PLPs; or
- (b) Acts of God, including fire, flood, earthquake, blizzard, extreme temperatures, storm, or other unavoidable casualty; or
- (c) Endangerment as described in Section VIII.M of this Order.
However, neither increased costs of performance of the terms of this Order nor changed economic circumstances shall be considered circumstances beyond the reasonable control of The PLPs.

3. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give The PLPs written notification in a timely fashion of any extensions granted

pursuant to the Order. A requested extension shall not be effective until approved by Ecology. Unless the extension is a substantial change, it shall not be necessary to amend this Order pursuant to Section VIII.L when a schedule extension is granted.

4. An extension shall only be granted for such period of time as Ecology determines is reasonable under the circumstances. Ecology may grant schedule extensions exceeding ninety (90) days only as a result of:

- (a) Delays in the issuance of a necessary permit which was applied for in a timely manner;
- (b) Other circumstances deemed exceptional or extraordinary by Ecology; or
- (c) Endangerment as described in Section VIII.M. of this Order.

L. Amendment of Order

The project coordinators may verbally agree to minor changes to the work to be performed without formally amending this Order. Minor changes will be documented in writing by Ecology within seven (7) days of verbal agreement.

Except as provided in Section VIII.N of this Order, substantial changes to the work to be performed shall require formal amendment of this Order. This Order may only be formally amended by the written consent of both Ecology and The PLPs. The PLPs shall submit a written request for amendment to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a timely manner after the written request for amendment is received. If the amendment to the Order represents a substantial change, Ecology will provide additional public notice and opportunity to comment. If Ecology does not agree to a proposed

amendment, the disagreement may be addressed through the dispute resolution procedures described in Section VIII.J of this Order.

M. Endangerment

In the event Ecology determines that any activity being performed at the Site is creating or has the potential to create a danger to human health or the environment on or surrounding the Site, Ecology may direct The PLPs to cease such activities for such period of time as it deems necessary to abate the danger. The PLPs shall immediately comply with such direction.

If, for any reason, The PLPs determine that any activity being performed at the Site is creating or has the potential to create a danger to human health or the environment, The PLPs may cease such activities. The PLPs shall notify Ecology's project coordinator as soon as possible, but no later than twenty-four (24) hours after making such determination or ceasing such activities. Upon Ecology's direction The PLPs shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with The PLPs's cessation of activities, it may direct The PLPs to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to this section, The PLPs's obligations with respect to the ceased activities shall be suspended until Ecology determines the danger is abated, and the time for performance of such activities, as well as the time for any other work dependent upon such activities, shall be extended for such period of time as Ecology determines is reasonable under the circumstances.

Nothing in this Order shall limit the authority of Ecology, its employees, agents, or contractors to take or require appropriate action in the event of an emergency.

N. Reservation of Rights/No Settlement

This Order is not a settlement under Chapter 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 The PLPs to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against The PLPs regarding remedial actions required by this Order, provided The PLPs comply with this Order.

Ecology nevertheless reserves its rights under Chapter 70.105D RCW, including the right to require additional or different remedial actions at the Site should it deem such actions necessary to protect human health and the environment, and to issue orders requiring such remedial actions. 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 at the Site.

O. Transfer of Interest in Site

No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by The PLPs 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 The PLPs's transfer of any interest in all or any portion of the Site, and during the effective period of this Order, The PLPs shall serve a copy of this Order upon any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least thirty (30) days prior to any transfer, The PLPs shall notify Ecology of said transfer. Upon

transfer of any interest, The PLPs shall restrict uses and activities to those consistent with this Order and notify all transferees of the restrictions on the use of the Site.

P. Compliance with Applicable Laws

1. All actions carried out by The PLPs 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 RCW 70.105D.090.

2. Pursuant to RCW 70.105D.090(1), the substantive requirements of Chapters 70.94, 70.95, 70.105, 77.55, 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 and that are known to be applicable at the time this Order becomes effective are binding and enforceable requirements of this Order.

The PLPs have a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order. In the event either Ecology or The PLPs 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 the other party of its determination. Ecology shall determine whether Ecology or The PLPs shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, The PLPs 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 The PLPs and on how The PLPs must meet those requirements. Ecology shall inform The PLPs in writing of these requirements. Once

established by Ecology, the additional requirements shall be enforceable requirements of this Order. The PLPs 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.

3. 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 The PLPs 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.

Q. Indemnification

The PLPs agree to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action for death or injuries to persons or for loss or damage to property arising from or on account of acts or omissions of The PLPs, their officers, employees, agents, or contractors in entering into and implementing this Order. However, The PLPs shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action arising out of the negligent acts or omissions of the State of Washington, or the employees or agents of the State, in implementing the activities pursuant to this Order.

R. Addition of Other Potentially Liable Parties

Ecology and The PLPs acknowledge that other Potentially Liable Parties may be uncovered at a later time. Accordingly, the Parties may agree to add such Potentially Liable Parties to this Agreed Order using the appropriate process under WAC 173-340-500 and 173-340-530.

IX. SATISFACTION OF ORDER

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

X. ENFORCEMENT

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

1. The Attorney General may bring an action to enforce this Order in a state or federal court.
2. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for remedial actions and orders related to the Site.
3. In the event The PLPs refuse, without sufficient cause, to comply with any term of this Order, The PLPs will be liable for:

- (a) Up to three (3) times the amount of any costs incurred by the State of Washington as a result of its refusal to comply; and
 - (b) Civil penalties of up to \$25,000 per day for each day it refuses to comply.
4. The terms of this Order are not appealable to the Washington Pollution Control Hearings Board. The terms of this Order may be reviewed only as provided under RCW 70.105D.060.

Effective date of this Order: May 30th, 2007

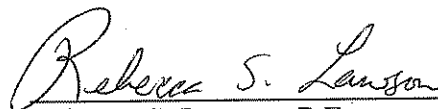
THE PLPS

Whitney's Chevrolet, Inc.
123 W. Pioneer Avenue
Montesano, WA 98563

Caldwell Family Holdings, LLC
c/o Price and Price Realty
120 W. Pioneer Avenue
Montesano, WA 98563

Wynoochee Lodge #43, F & A M of Washington
c/o David Owen
47 St. Helens Avenue
Tacoma, WA 98402

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**



Rebecca S. Lawson, P.E.
Regional Section Manager
Toxics Cleanup Program
Southwest Regional Office
(360) 407-6241

THE PLPS

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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Whitney's Chevrolet, Inc.
123 W. Pioneer Avenue
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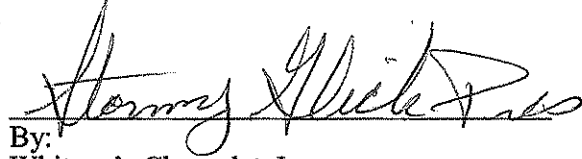
Rebecca S. Lawson, P.E
Regional Section Manager
Toxics Cleanup Program
Southwest Regional Office
(360) 407-6241

Charles W. Caldwell

By:
Caldwell Family Holdings, LLC
c/o Price and Price Realty
120 W. Pioneer Avenue
Montesano, WA 98563

By:
Wynoochee Lodge #43, F & A M of Washington
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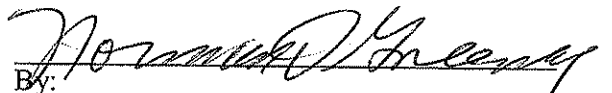
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WHITNEY OLDSMOBILE

Soil Samples

Soil Augering depths and sample collection depths were 15 feet Below Ground Surface

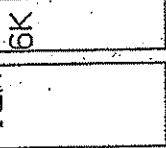
#6

WEST PIONEER AVENUE

#1

#4

12K



PUD pole

#2

#5

#3

WHITNEY CHEVROLET

KEY BANK



FIGURE 2

SITE & AREA PLAN

WHITNEY CHEVROLET

123 W. Pioneer Avenue
Montesano Washington

Date: 06/28/95 Job#95-06241 DWG NAME: WFA/whitney

EXHIBIT B

LEGAL DESCRIPTIONS

123 West Pioneer, Parcel #072000200500: C N BYLES S $\frac{1}{2}$ OF LOT 4 LS 10' FOR ST; LOTS 5-9 INC LS ST; LOT 10 & E 72' OF LOTS 11 & 12 BLK 2. (Caldwell Family Holdings LLC)

123 West Pioneer, Parcel #072000201101: C N BYLES W 48' OF LOTS 11 & 12 BLK 2.
(Wynoochee Lodge #43 A & F M)

Whitney's Chevrolet Site Public Participation Plan

*Prepared by:
Washington Department of Ecology
Southwest Regional Office, Toxics Cleanup Program
April 10, 2007*

Introduction

The Whitney's Chevrolet site is located at 123 West Pioneer Street, in downtown Montesano. As a result of activities on the site, soil and groundwater have been polluted with chemical byproducts of gasoline. These byproducts pose a threat to human health and the environment.

Under Washington's Model Toxics Control Act (MTCA, Chapter 70.15D RCW), past or current property owners and those directly responsible for the pollution problem, are also responsible for fixing the problem. Parties potentially liable for the Whitney's Chevrolet site include Whitney's Chevrolet, Inc.; Caldwell Family Holdings, LLC; and Wynoochee Lodge #43 F & AM.

For more information about the site's history and pollution, please read the attached Agreed Order (No. DE 2953) for the Remedial Investigation/Feasibility Study (RI/FS).

What is a Public Participation Plan?

Under Washington's Model Toxics Control Act (MTCA, Chapter 70.15D RCW), the public is guaranteed opportunities to learn about and provide input on important cleanup decisions.

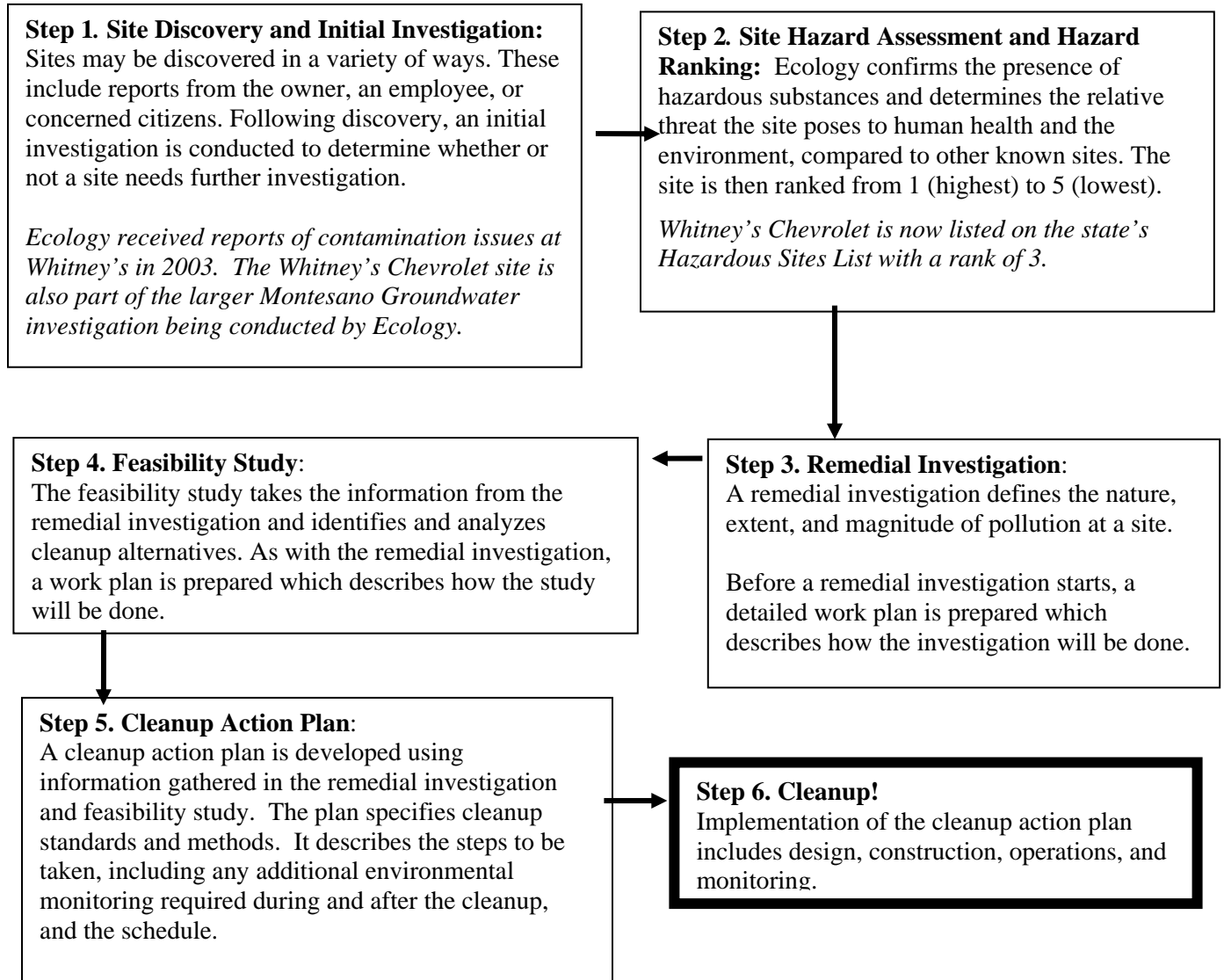
Ecology's goal is to encourage public understanding of and participation in the investigation and cleanup of the Whitney's Chevrolet site. This plan describes how the public will be kept informed and involved. This plan may need to change as the investigation and cleanup moves forward. If big changes are made to this plan, the public will be invited to review and comment on the changes.

Public Participation Grants Available

Grants may be available to neighborhood committees, non-profits, and other groups near the site. These funds may be used to provide additional public involvement, to receive technical assistance, and/or enhance the public's understanding of the cleanup process. For more information, please contact Kathy Seel at (360) 407-6061 or Ksee461@ecy.wa.gov, or visit Ecology's Solid Waste and Financial Assistance Program website: www.ecy.wa.gov/programs/swfa/grants.html

Steps in the Cleanup Process

The Model Toxics Control Act (MTCA) defines each step of the cleanup process to protect human health and the environment. The chart below describes each step.



Some steps described in the chart include “agreed orders” or “consent decrees”. These are agreements between Ecology and the parties responsible for cleanup of the pollution. In addition to the steps in the chart, “interim actions” may be taken during steps 1 through 5 (the investigation) to reduce or eliminate pollution that poses an immediate threat to human health or the environment.

The cleanup process is complex. Issues often arise that require more attention or evaluation, and may lead to changes in the steps or schedule. Every effort will be made to keep the public well-informed of changes.

Milestones and Public Involvement Opportunities

Key actions and public participation opportunities expected for the Whitney's Chevrolet site are listed below.

Milestones and Public Involvement Opportunities for the Whitney's Chevrolet Site	
MILESTONE	ESTIMATED DATE
Draft Agreed Order and Work Plan for Remedial Investigation and Feasibility Study	May 2007
Public Comment Requested: Public notice provided by Fact Sheet, Site Register Notice, Legal Ad	May 30 – June 29, 2007
Community Open House: To provide more information and accept public comment.	Summer, 2007
Work Plan for Remedial Investigation	September 2007
Draft Remedial Investigation / Feasibility Study Report	April 2008
Public Comment Requested: Public notice provided by Fact Sheet, Site Register Notice, Legal Ad	April – May 2008
Final Remedial Investigation / Feasibility Study Report	June 2008
Regular community updates on cleanup/monitoring	Ongoing

Public Participation Tools to Be Used

Ecology and the potentially liable parties for the site will use a variety of tools to involve the public in investigation and cleanup of the site. The tools to be used are described below. This list of tools may change as more is learned about the site.

Formal Public Comment Period: The public will be asked to provide comment on key decisions and actions related to the site. The public will be invited to comment at specific points during the investigation and cleanup (see Milestones and Public Involvement Opportunities for the Whitney's Chevrolet site, page 3), and will have at least 30 days to provide comment. Comments will need to be provided in writing (by letter e-mail), or by phone.

Responsiveness Summary: After every public comment period, Ecology will review all comments received and may respond in a written responsiveness summary. The summary would then be made available to the public at the information repositories listed below.

Information Repositories: Documents and other printed materials will be made available to the public at two convenient locations near the site. Printed materials will be placed at the repositories listed below during comment periods and will remain there for the duration of the cleanup process. Ecology also can provide copies of documents upon request for a small fee.

- **W. H. Abel Library**, 7125 Main Street South, Montesano, (360) 249-4211
- **Montesano City Hall**, 112 North Main, Montesano, (360) 249-3939
- **Washington State Department of Ecology**, SW Regional Office, Toxics Cleanup Program 300 Desmond Drive, Olympia, (360) 407-6365

Site Register and Public Events Calendar: Ecology's Toxics Cleanup Program will use its bimonthly *Site Register* and web-based *Public Involvement Calendar* to announce all public meetings and comment periods related to the investigation and cleanup of the site. To receive a copy of the *Site Register*, please contact Linda Thompson at (360) 407-6069 or Ltho461@ecy.wa.gov. Copies also are available on the Ecology website at www.ecy.wa.gov/biblio/site_reg.html. Ecology's *Public Involvement Calendar* may be found at www.ecy.gov.

Public Meetings: Public meetings may be held to share information or hear public comment when an issue is complex or there is a high level of interest in the community. Fliers, articles or display ads in the *Aberdeen Daily World*, and other methods will be used to well-publicize the event if a public meeting is scheduled.

Mailing List: Ecology's Toxics Cleanup Program has developed a mailing list for downtown Montesano and related cleanup sites. Ecology will update the list as needed. Please contact Hannah Aoyagi at (360) 407-6790 (phone) or Haoy461@ecy.wa.gov (e-mail) to be added to or removed from the mailing list.

Fact and Focus Sheets: Fact and focus sheets for the site may be used to inform the public of meetings, comment opportunities on key decisions and actions, and other important activities. These brief fliers will be:

- mailed to key stakeholders, including property owners and residents within downtown Montesano;
 - made available at the repositories listed above; and
- posted on Ecology's website:
http://www.ecy.wa.gov/programs/tcp/sites/whitneys/whitneys_hp.htm.

Notices: Legal or display ads announcing each public comment period or meeting will be placed in the *Aberdeen Daily World*. Each notice will be published before the comment period begins or a meeting is held.

News Releases: Ecology may issue news releases to the media on major milestones, significant events, and accomplishments related to the site.

Contacts

For project-related questions, please contact Ecology's site manager:

Dom Reale, SWRO Toxics Cleanup Program
PO Box 47775
Olympia, WA 98504-4775
Phone: (360) 407-6266 (voice)
For TTY, please call 711 or 1-800-833-6388
E-mail: Drea461@ecy.wa.gov

For public participation questions or mailing list changes, contact Ecology's public involvement coordinator:

Hannah Aoyagi, SWRO Toxics Cleanup Program
Phone: (360) 407-6790
E-mail: Haoy461@ecy.wa.gov

EXHIBIT D

Applicable Permits and Substantive Requirements

- Chapter 70.105D RCW (Model Toxics Control Act), and Chapter 173-340 WAC (MTCA Regulations);
- Chapter 70.105 RCW (Washington State Hazardous Waste Management Act), and Chapter 173-303 WAC (State Dangerous Waste Regulations);
- Chapter 90.48 RCW (State Water Pollution Control Act);
- Chapter 70.95 RCW (Solid Waste Management – Reduction and Recycling);
- Chapter 70.94 RCW (Washington Clean Air Act);
- Chapter 173-160 RCW (Minimum Standards for Construction and Maintenance of Wells);
- Chapter 43.21C RCW (State Environmental Policy Act), and Chapter 197-11 WAC (State Environmental Policy Act Rules);
- Washington Industrial Safety and Health Act (WISHA);
- Olympic Region Clean Air Agency – Regulation I;
- City of Montesano Building Codes