

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

AGREED ORDER

Bryan Kolb and Kathleen Kolb, husband and wife.

No. DE 2953

TO: Bryan Kolb and Kathleen Kolb
2103 Harrison Avenue Northwest, #2-653
Olympia, WA 98502

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I. INTRODUCTION

The mutual objective of the Washington State Department of Ecology (Ecology) and Bryan Kolb and Kathleen Kolb (hereafter "Kolb") under this Agreed Order (Order) is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Order requires Kolb to develop a remedial investigation and potentially cleanup action process at a facility where there has been a release or threatened release of hazardous substances. This Order requires Kolb to complete Remedial Investigation of the facility, to prepare a Feasibility Study to document the cleanup performed to date, and if necessary, additional clean up alternatives addressing contaminants still in place, and if necessary a Cleanup Action Plan for contamination still in place. 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. Kolb agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter Bryan Kolb's responsibility under this Order. Bryan Kolb 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 Brumfield Twidwell Property and is generally located at 301 East Pioneer, 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 detailed Site diagram. The Site constitutes a Facility under RCW 70.105D.020(4) and is currently vacant land.
2. Parties: Refers to the Washington State Department of Ecology and Bryan and Kathleen Kolb.
3. Potentially Liable Party (PLP): Refers to Bryan Kolb and Kathleen Kolb.

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 Kolb:

(1) The Grays Harbor County Assessors Office records list Bryan M. and Kathleen R. Kolb as the owners of the property at the above address, Parcel #079000400100, and as described in the attached legal description, Exhibit B.

(2) Based on Ecology sampling of four monitoring wells and five push probe borings located at the Site, gasoline range petroleum hydrocarbons have been released to soils and groundwater at the Site prior to October, 2005. Kolb provided Ecology with additional sampling data on January 30, 2006 after approximately 2000 tons of contaminated soils were removed.

(3) Ecology completed a Site Hazard Assessment (SHA) of the site prior to the foregoing soil removal, resulting in a ranking of 2. Ranking ranges from 1 to 5, with 1 representing the highest relative risk and 5 the lowest relative risk. Pursuant to WAC 173-340-330(4) Ecology may re-rank the site based on Kolb's remediation to date. The ranking may change if additional, planned testing indicates that air or surface water impacts have occurred.

(4) During the foregoing soil removal, the release of contaminants as noted in (2), above, at various locations on the Brumfield Twidwell Property was confirmed.

(5) This type of contamination represents a threat to human health and the environment.

VI. ECOLOGY DETERMINATIONS

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

1. Kolb is an "owner or operator" as defined in RCW 70.105D.020(12), of a "facility" as defined in RCW 70.105D.020(4) because Kolb is the owner of record of property 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 a potentially liable person status letter to Kolb dated July 29, 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 Kolb is a potentially liable person (PLP) under RCW 70.105D.040 and notified Kolb of this determination by letter dated September 20, 2005.

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 actions 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 agreed that Kolb has taken certain remedial actions at the Site and that certain actions remain to be taken, all as set forth more specifically in this Order. It is further agreed that all such actions have or will be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein:

1. Remedial Investigation (RI)

Kolb has submitted a work plan (RI Work Plan) to perform remedial investigation necessary to determine the extent and nature of contamination present on the Site. The RI Work Plan is attached as Exhibit E. The work plan identifies the scope of activities that Kolb or his consultants have already performed and those activities that remain to be performed.

A. Scope of Work:

- (1) RI Work Plan: The RI Work Plan describes 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 remove underground storage tanks, buildings, and contaminated soils and shall include a schedule documenting or performing the following tasks.

- (2) Investigation: Data necessary to adequately characterize the nature and extent of soil and groundwater contamination has or will be collected, 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.
- (3) Schedule: Any remaining remedial investigation shall be performed no later than June 1, 2006.

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

Based on the results of remedial investigations, 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 considered or to be considered pursuant to WAC 173-340-350. In light of remedial action already taken at the Site, the RI/FS will document whether such action has met the minimum requirements for cleanup actions under WAC 173-340-360 and whether additional remedial action is deemed necessary.

A. Scope of Work:

- (1) RI/FS: The RI/FS shall report the results of remedial investigations 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 any conclusions that can be drawn regarding potential off-site contribution. 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 30 days of the finish of remedial investigation activities performed in accordance with the approved work plan as noted above. Ecology shall comment on the draft RI/FS Report within 30 days of receipt of the draft RI/FS Report. Kolb shall submit a final RI/FS report within 30 days of the receipt of Ecology's comments.

3. Cleanup Action Plan (CAP)

If the RI/FS Report demonstrates that no further remedial action is necessary at this Site, no clean up action plan shall be required. If the RI/FS Report indicates that further remedial action is necessary, Kolb shall prepare a Draft CAP documenting the remedial actions taken prior to the date of this Order and the remaining actions to be taken in accordance with WAC 173-340-380 to address the contamination present on the Site, and to address the expectations for cleanup alternatives, in accordance with WAC 173-340-370.

A. Scope of Work:

- (1) CAP: The Draft CAP shall include a general description of the proposed remedial action, cleanup standards from the RI/FS and a rationale regarding their selection, an implementation schedule, description of any institutional controls proposed, and a summary of applicable local and state laws pertinent to the proposed cleanup action.

- (2) Schedule: The Draft CAP shall be provided to Ecology for its review within 90 days of Ecology's review and acceptance of the final RI/FS.

If, at any time 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

RCW 70.105D.030(2)(a) requires that, at a minimum, this Order be subject to concurrent public notice. Ecology provided such public notice on February 2, 2006. Ecology shall provide additional public notice where appropriate 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.

B. Remedial Action Costs

Bryan Kolb 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. As of February 28, 2006 these costs amount to approximately \$5,860.00, and it is estimated that Ecology's future costs through July 31, 2006 will be \$4000.00 based on the Exhibit E work plan. This figure is the current estimate from Ecology's and may be subject to change based on actual costs incurred by Ecology. These costs shall include work performed subsequent to the issuance of the Order. Kolb shall pay such costs 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. Ecology shall prepare itemized statements quarterly. Pursuant to WAC 173-340-550(4), Kolb's failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in the imposition of interest charges on the unpaid balance at the rate of twelve percent (12%) per annum, compounded monthly.

C. Implementation of Remedial Action

Except where necessary to abate an emergency situation, Kolb 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:

Marv Coleman, Site Manager/Inspector
Department of Ecology
Toxics Cleanup Program
Southwest Regional Office
P.O. Box 47775
Olympia, WA 98504-7775
Tel.: (360) 407-6259
e-mail: mcol461@ecy.wa.gov

The project coordinator for Bryan Kolb is:

Bryan Kolb
2103 Harrison Avenue Northwest
#2-653
Olympia, WA 98502
Tel: (360) 584-4100

With copy of written correspondence sent to:

Clydia Cuykendall
Cushman Law Office
924 Capitol Way South
Olympia, WA 98501

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 Kolb, 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) and their counsel.

Ecology and Kolb 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, or ratified by express consent, by Ecology, with experience and expertise in hazardous waste site investigation and cleanup. After the date of this Order, Kolb 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 Kolb either owns, controls, or has 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 Kolb's 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 Kolb. Kolb shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by Kolb 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 Kolb 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 Submittal, and Availability

With respect to the implementation of this Order, Kolb shall make the results of all sampling, laboratory reports, and/or test results generated by it or on its behalf available to Ecology. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted to Ecology in both printed and electronic formats in accordance with Section VII (Work to be Performed),

Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any subsequent procedures specified by Ecology for data submittal.

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, Kolb shall allow split or duplicate samples to be taken by Ecology and/or its authorized representative of any samples collected by Kolb pursuant to implementation of this Order. Kolb shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon Kolb's request, allow split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Order to be taken by Kolb or his 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 Kolb 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 and is attached hereto as Exhibit C. Ecology shall review such public participation plan to determine its continued appropriateness and whether it requires amendment.

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

1. If agreed to by Ecology, develop appropriate mailing list, prepare drafts of public notices and fact sheets at important stages of the remedial action, such as the submission of 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 Kolb 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 Kolb that do not receive prior Ecology approval, Kolb 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, provided Kolb has reasonable advance notice of the time and place. 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 to deposit information 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, Kolb shall preserve all records, reports, documents, and underlying data delivered into his possession relevant to the implementation of this Order and shall insert a similar record retention requirement into all his contracts with project contractors and subcontractors working on the Site. Upon request by Ecology, Kolb shall make all such records available to Ecology and allow access for review within a reasonable time of such request.

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, or an itemized billing statement under Section VIII.B (Remedial Action Costs), the Parties shall utilize the dispute resolution procedure set forth below.

- (a) Upon receipt of the Ecology project coordinator's decision, or the itemized billing statement, Kolb has fourteen (14) days within which to notify Ecology's project coordinator of his objection to the decision or itemized statement.
- (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) Kolb may then request Ecology management to review the decision. This request shall be submitted in writing to the Southwest Region Toxics Cleanup Section Manager within seven (7) days of Kolb's receipt of Ecology's project coordinator's decision.
- (d) The Section Manager shall conduct a review of the dispute and shall issue a written decision regarding the dispute within sixty (60) days of Kolb's 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. Ecology shall grant an extension of schedule only when Kolb's 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 Kolb 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 Kolb 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 Kolb; 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 Kolb.

3. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give Kolb 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 Kolb. Kolb 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 Kolb to cease such activities for such period of time as it deems necessary to abate the danger. Bryan Kolb shall immediately comply with such direction.

If, for any reason, Kolb 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, Kolb may cease such activities. Kolb 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 Kolb shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with Kolb's cessation of activities, it may direct Kolb to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to this section, Kolb'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

This Order is not a settlement under Chapter 70.105D RCW. The Parties' signature on this Order in no way constitutes a covenant not to sue or a compromise of any Party's rights or authority. Ecology will not, however, bring an action against Kolb to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against Kolb regarding remedial actions required by this Order, provided Kolb complies 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 Kolb 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 Kolb's transfer of any interest in all or any portion of the Site, and during the effective period of this Order, Bryan Kolb shall provide a copy of this Order to any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least thirty (30) days prior to any transfer, Kolb shall notify Ecology of said transfer. Upon transfer of any interest, Kolb 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 Kolb 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. A list of the required permits known at the time of entry of this Order have been included in Exhibit D.

2. Pursuant to RCW 70.105D.090(1), Kolb is exempt from the procedural 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. However, Kolb shall comply with the substantive requirements of such permits or approvals. A list of such permits and/or the substantive requirements of those permits and approvals as they are known to be applicable at the time of entry of this Order, have been included in Exhibit D.

Kolb has 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 Kolb determines 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 Kolb shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, Kolb 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 Kolb and on how Kolb must meet those requirements. Ecology shall inform Kolb in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. Kolb 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 Kolb 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

Kolb agrees 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 negligent or intentional acts or omissions of Kolb, its officers, employees, agents, or contractors in entering into and implementing this Order. However, Kolb 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 or intentional acts or omissions of the State of Washington, or the employees or agents of the State, in implementing the activities pursuant to this Order.

IX. SATISFACTION OF ORDER

The provisions of this Order shall be deemed satisfied upon Kolb's receipt of written notification from Ecology that Kolb has completed the remedial activity required by this Order, as amended by any modifications, and that Kolb has 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 that are not reimbursed by Kolb pursuant to this Order.
3. In the event Kolb refuses, without sufficient cause, to comply with any term of this Order, Kolb 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

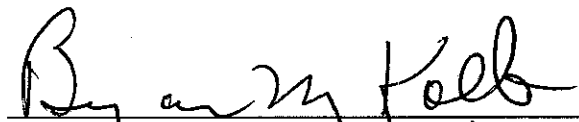
- (b) Civil penalties of up to \$25,000 per day for each day it refuses to comply.

- 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.

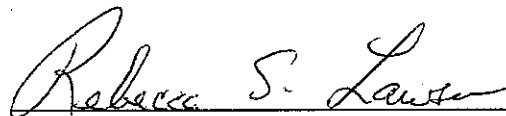
Effective date of this Order: March 27, 2006

KOLB

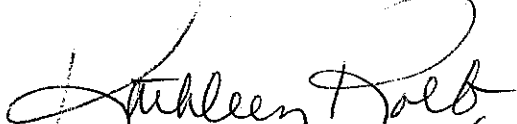
**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**



Brian Kolb 3-22-06 11:30 AM



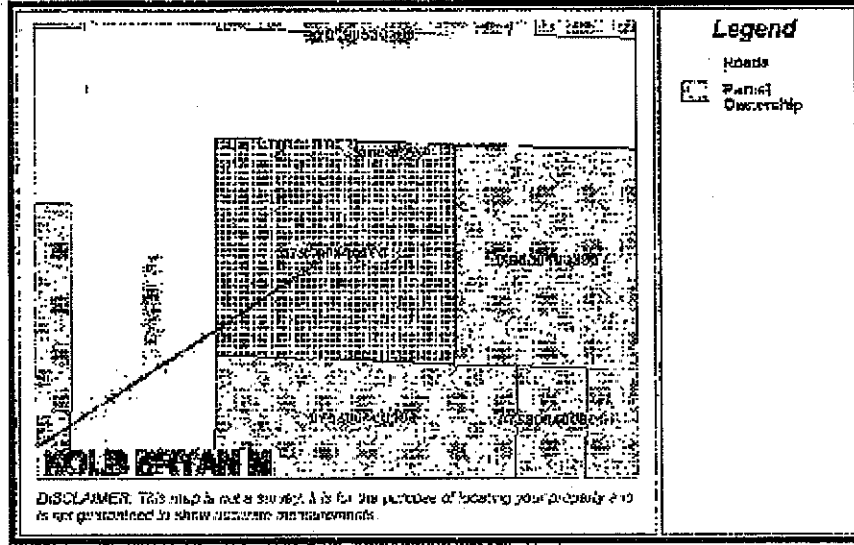
Rebecca S. Lawson, P.E.
Regional Section Manager
Toxics Cleanup Program
Southwest Regional Office
(360) 407-6241



Kathleen Kolb 3/22/06 11:30 AM
2103 Harrison Avenue Northwest
#2-653
Olympia, WA 98502
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EXHIBIT A
Site Diagram

Grays Harbor County GIS - Parcel Search



[Click here to Print]

EXHIBIT B

LEGAL DESCRIPTION

Zenor Carlile & Luarks Lots 1 & 2 LS E. 19.58' Blk. 4.

EXHIBIT C
Public Participation Plan

Brumfield Twidwell Site Public Participation Plan

*Prepared by:
Washington Department of Ecology
Southwest Regional Office, Toxics Cleanup Program
January 9, 2006*

Overview

The Brumfield Twidwell site is located at 301 East Pioneer Avenue, in downtown Montesano. The site was historically used for automobile sales and service stations. Recent use has included retail and auto repair shops. As a result of past activities on the site, soil and groundwater have been contaminated with chemical byproducts of gasoline. These byproducts pose a threat to human health and the environment.

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

What is a Public Participation Plan?

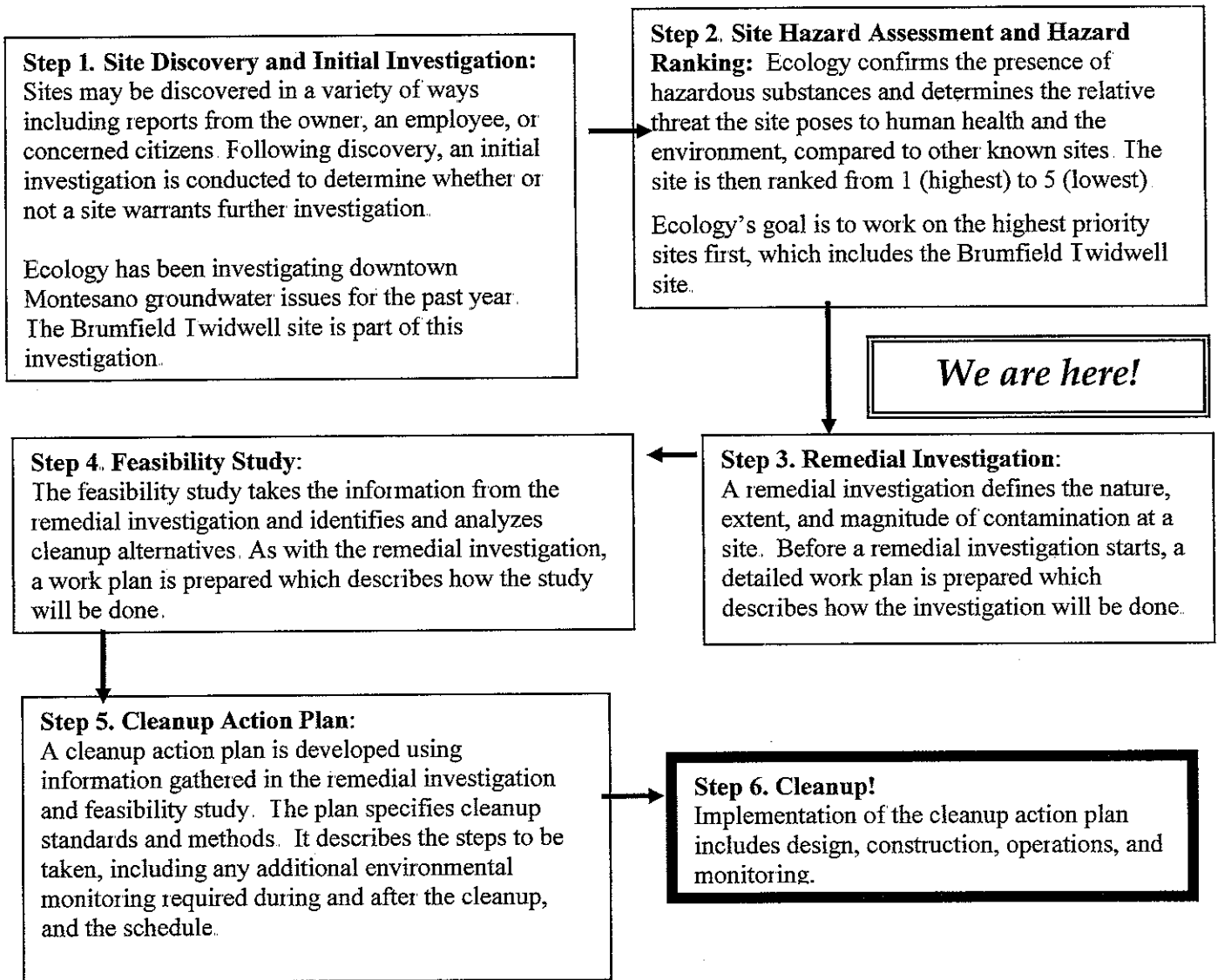
Under Washington's Model Toxics Control Act (MICA, Chapter 70.15D RCW), the public is guaranteed meaningful opportunities to learn about and provide input on important cleanup decisions before they are made. Ecology's goal is to encourage public understanding of and participation in the investigation and cleanup of the Brumfield Twidwell site through a variety of activities. This public participation plan summarizes those activities and may be modified as the cleanup progresses. If significant changes are made to this plan, the public will be invited to review and comment on those changes.

Public Participation Grants Available

Grants from Ecology's Solid Waste and Financial Assistance Program may be available to groups of residents, neighborhood committees, etc. living 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, contact Kathy Seel at (360) 407-6061 or ksee461@ecy.wa.gov, or visit Ecology's website: www.ecy.wa.gov/programs/swfa/grants.html.

Steps in the Cleanup Process

MTCA defines each step of the cleanup process to ensure protection of human health and the environment. The chart below describes each step.



Some steps described in the chart are accompanied by "Agreed Orders" or "Consent Decrees", which are agreements between Ecology and the parties responsible for cleanup of the contamination. In addition to the steps in the chart, "interim actions" may be taken during the investigation (during steps 1 through 5) to reduce or eliminate contamination that poses an immediate threat to human health or the environment.

The cleanup process is complex and issues often arise that require additional 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 such changes.

Milestones and Public Involvement Opportunities

Key actions and related public participation opportunities expected for the Brumfield Twidwell site are summarized below.

Milestones and Public Involvement Opportunities for the Brumfield Twidwell Site	
MILESTONE	ESTIMATED DATE
Initial interim actions to remove contaminated soils.	Fall – December 2005
Draft Agreed Order and Work Plan for Remedial Investigation, Feasibility Study, and Interim Actions	January 2006
Public Comment Requested: Public notice provided by Fact Sheet, Site Register Notice, Legal Ad	January 2006
Final Agreed Order and Work Plan for Remedial Investigation, Feasibility Study, and Interim Actions	February 2006
Draft Remedial Investigation Report	March 2006
Public Comment Requested: Public notice provided by Fact Sheet, Site Register Notice, Legal Ad (Open House optional)	March - April 2006
Final Remedial Investigation Report	April - May 2006
Draft Feasibility Study	April - May 2006
Public Comment Requested: Public notice provided by Fact Sheet, Site Register Notice, Legal Ad (Open House optional)	April - May 2006
Final Feasibility Study	June 2006
Draft Cleanup Action Plan	June 2006
Public Comment Requested: Public notice provided by Fact Sheet, Site Register Notice, Legal Ad (Open House optional)	June - July 2006
Final Cleanup Action Plan	July 2006
Regular community updates on cleanup/monitoring	Ongoing

Public Participation Tools to Be Used

Ecology and Brumfield Twidwell will use a variety of tools to involve the public in the investigation and cleanup of the site. The tools to be used are described below. This list of tools is subject to modification as more is learned about the site.

Formal Public Comment Period: Written comments will be the primary tool used to gain public input 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 Brumfield Twidwell site, page 3), and will have at least 30 days to provide comment.

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: Ecology may hold public meetings 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 Vidette*, 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 specific to downtown Montesano and related cleanup sites. Ecology will update the list as needed. Please contact Cedar Bouta at (360) 407-6245 (phone) or Cebo461@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:
www/ecy.wa.gov/programs/tcp/sites/brumfield/brumfield_hp.htm.

Notices: Legal or display ads announcing each public comment period or meeting will be placed in *The Vidette* and *The Aberdeen Daily News*. 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 manager for the MTA cleanup:

Marv Coleman, SWRO Toxics Cleanup Program

PO Box 47775, Olympia, WA 98504-4775

Phone: (360) 407-6259 (voice)

For TTY, please call 711 or 1-800-833-6388

E-mail: Mcol461@ecy.wa.gov

For public participation questions or mailing list changes, contact Ecology's public involvement coordinator for the Brumfield Twidwell cleanup:

Cedar Bouta SWRO Toxics Cleanup Program

Phone: (360) 407-6245

E-mail: Cebo461@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