

**STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY**

|                                      |              |
|--------------------------------------|--------------|
| In the Matter of Remedial Action by: | AGREED ORDER |
| Whitney's Chevrolet, Inc.            | No. DE 11121 |

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

**TABLE OF CONTENTS**

|       |  |                                       |
|-------|--|---------------------------------------|
| I.    | INTRODUCTION.....                                  | 2                                     |
| II.   | JURISDICTION.....                                  | 2                                     |
| III.  | PARTIES BOUND.....                                 | 2                                     |
| IV.   | DEFINITIONS.....                                   | 2                                     |
| V.    | FINDINGS OF FACT.....                              | 3                                     |
| VI.   | ECOLOGY DETERMINATIONS.....                        | 5                                     |
| VII.  | WORK TO BE PERFORMED.....                          | 6                                     |
| VIII. | TERMS AND CONDITIONS.....                          | 8                                     |
|       | A. Remedial Action Costs.....                      | 8                                     |
|       | B. Designated Project Coordinators.....            | 9                                     |
|       | C. Performance.....                                | 10                                    |
|       | D. Access.....                                     | 11                                    |
|       | E. Sampling, Data Submittal, and Availability..... | 11                                    |
|       | F. Public Participation.....                       | 12                                    |
|       | G. Retention of Records.....                       | 13                                    |
|       | H. Resolution of Disputes.....                     | 14                                    |
|       | I. Extension of Schedule.....                      | 15                                    |
|       | J. Amendment of Order.....                         | 17                                    |
|       | K. Endangerment.....                               | 17                                    |
|       | L. Reservation of Rights.....                      | 18                                    |
|       | M. Transfer of Interest in Property.....           | 19                                    |
|       | N. Compliance with Applicable Laws.....            | 19                                    |
|       | O. Land Use Restrictions.....                      | 21                                    |
|       | P. Financial Assurances.....                       | 21                                    |
|       | Q. Periodic Review.....                            | 22                                    |
|       | R. Indemnification.....                            | 22                                    |
| IX.   | SATISFACTION OF ORDER.....                         | 23                                    |
| X.    | ENFORCEMENT.....                                   | 23                                    |
|       | EXHIBIT A  | Site Diagram                          |
|       | EXHIBIT B  | Legal Description                     |
|       | EXHIBIT C  | References                            |
|       | EXHIBIT D  | Figure 7 – Cleanup Action Plan Layout |
|       | EXHIBIT E  | Scope of Work and Schedules           |
|       | EXHIBIT F  | Cleanup Action Plan                   |

## **I. INTRODUCTION**

The mutual objective of the State of Washington, Department of Ecology (Ecology) and Whitney's Chevrolet, Inc. (Whitney's), Caldwell Family Holdings, LLC, and Wynoochee Lodge #43, F & AM (the PLPs) 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. In February of 2008 the three PLPs came to an agreement to the effect that Whitney's Chevrolet would continue to serve as the "Operating PLP", taking the responsibility for conducting the remedial actions required under the original Agreed Order No. DE 2951. This Order, No. DE 11121, requires Whitney's to implement the Cleanup Action Plan for Whitney's Chevrolet, issued by Ecology in January 2015. Ecology believes the actions required by this Order are in the public interest.

## **II. JURISDICTION**

This Agreed Order is issued pursuant to 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 this Order. Whitney's agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter Whitney's responsibility under this Order. Whitney's 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 RCW 70.105D and WAC 173-340 shall control the meanings of the terms in this Order.

A. Site: The Site is referred to as Whitney's Chevrolet and is generally located at 123 W. Pioneer Avenue, Montesano, WA. The Site is defined by the extent of contamination caused by the release of hazardous substances at the Site. The Site is generally described in the Site Diagram (Exhibit A). The Site constitutes a facility under RCW 70.105D.020(8).

B. Parties: Refers to the State of Washington, Department of Ecology and the PLP's, as designated above.

C. Potentially Liable Persons (PLPs): Refers to Whitney's Chevrolet, Inc., Caldwell Family Holdings, LLC, and Wynoochee Lodge #43, F & AM.

D. Agreed Order or Order: Refers to this Order and each of the exhibits to this Order. All exhibits are integral and enforceable parts of this Order. The terms "Agreed Order" or "Order" shall include all exhibits to this Order.

E. Whitney's: Refers to Whitney's Chevrolet, who, as a result of an agreement between the PLPs, continues to be the sole party responsible for carrying out the actions required by this Order.

#### V. FINDINGS OF FACT

Ecology makes the following findings of fact, without any express or implied admissions of such facts by Whitney's:

A. 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.

B. In May 2007 Ecology and the PLPs signed an Agreed Order No. DE 2951 for the PLPs to undertake remedial actions, as necessary to protect human health and the environment.

C. Since that time, interim actions to abate conditions created by leaking underground storage tanks, remedial investigations, remediation pilot testing, and a feasibility study have been performed by Whitney's, to wit:

- UST decommissioning activities and a limited environmental site assessment conducted by Fitt Environmental, Inc. during 1995 (Fitt 1995).
- Area-wide groundwater investigations in Montesano conducted by Ecology, with assistance from GeoEngineers, Inc., during 2004 and 2005 (GeoEngineers 2005). Ecology continued to monitor groundwater quality throughout Montesano on a routine basis through 2009 (Ecology 2006, 2009).
- A Phase I environmental site assessment conducted by EPI during 2007 (EPI 2007).
- Remedial investigation activities conducted by EPI during 2008 and 2009 (EPI 2010).
- Interim actions and a data gaps investigation conducted by EPI during 2011 (EPI 2012a). The interim actions included removal of USTs and excavation of impacted soil from the Site. The data gaps investigation was performed to complete the remedial investigation.
- Four quarters of performance groundwater monitoring conducted by EPI during 2011 (EPI 2012a) and 2012 (EPI 2012b, 2012c, 2013a).
- A feasibility study performed by EPI during 2012 to evaluate remedial alternatives for the Site (EPI 2013a).
- Remedial pilot testing and associated studies conducted by EPI during 2013 (EPI 2014c). Testing was performed to address uncertainties regarding the selected remedial alternative and complete the remedy selection process within the FS.
- Quarterly groundwater compliance monitoring performed by EPI. Groundwater compliance monitoring was established at the Site to provide protection

monitoring under the requirements of MTCA (WAC 173-340-410) until active remediation can be implemented. The rationale and procedures for implementing the program were presented in the *Ground Water Compliance Monitoring Plan* (GCMP), dated May 3, 2013 (EPI 2013c). To date, EPI has performed four quarterly groundwater monitoring events in accordance with the GCMP during August and November 2013 (EPI 2013d, 2014a) and February and May 2014 (EPI 2014b, 2014d).

D. References listing the remedial actions taken, to date, are found in Exhibit C, References.

## VI. ECOLOGY DETERMINATIONS

Ecology makes the following determinations, without any express or implied admissions of such determinations (and underlying facts) by Whitney's.

A. Whitney's is an "owner or operator" as defined in RCW 70.105D.020(22) of a "facility" as defined in RCW 70.105D.020(8).

B. Based upon all factors known to Ecology, a "release" or "threatened release" of "hazardous substance(s)" as defined in RCW 70.105D.020(32) and (13), respectively, has occurred at the Site.

C. 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.

D. 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.

E. Under WAC 173-340-430, an interim action is a remedial action that is technically necessary to reduce a threat to human health or the environment by eliminating or substantially reducing one or more pathways for exposure to a hazardous substance, that corrects a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed, or that is needed to provide for completion of a site hazard assessment, remedial investigation/feasibility study, or design of a cleanup action plan. Either party may propose an interim action under this Order. If the Parties are in agreement concerning the interim action, the Parties will follow the process in Section VII.E. If the Parties are not in agreement, Ecology reserves its authority to require interim action(s) under a separate order or other enforcement action under RCW 70.105D, or to undertake the interim action itself.

## **VII. WORK TO BE PERFORMED**

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

A. In the Feasibility Study and Cleanup Action Plan, a Cost - Benefit Analysis revealed that three remedial technologies provided the best alternatives for successful cleanup, while providing the best return on investment. The selected remedies include:

- LNAPL recovery and proper disposal.
- Air Sparging (AS) – injection of air into Site groundwater.
- Soil Vapor Extraction (SVE) – vacuum extraction of soil vapors and dissolved phase contamination in groundwater and treatment of vapors prior to release to air.
- These active remedial technologies will be followed by Monitored Natural Attenuation (MNA) monitoring of Site groundwater and institutional controls in the form of capping by buildings and pavement. Both during and after active remediation, vapor intrusion

monitoring will be performed to determine if the remedial actions are resulting in the abatement of indoor contaminants of concern (COCs).

Whitney's will perform remediation in accordance with the Cleanup Action Plan (CAP) and Engineering Design Report (EDR).

B. a. An EDR shall be provided within 120 days of the effective date of this Agreed Order. Commencement of work will begin in accordance with a schedule to be provided in the EDR and approved by Ecology. The EDR shall include a QA/QC Assurance Plan (QAAP) and a Health & Safety Plan (HASP).

b. Following completion of active remediation, in accordance with criteria set forth in the EDR and CAP and approved by Ecology, begin compliance monitoring of groundwater and soil. Groundwater compliance monitoring will be performed on a quarterly basis for a minimum of eight (8) quarters. Once groundwater monitoring has been completed, soil samples will be collected, in accordance with criteria set forth in the EDR and approved by Ecology, to determine if LNAPL removal and AS/SVE have resulted in a reduction of residual COCs in Site soils.

C. a. Results from sampling events shall be documented in status reports, which will be provided as technical memoranda and will include figures, data tables, and laboratory analytical data, as applicable, for the previous sampling event. Technical memorandum status reports will be submitted to Ecology within 60 days of each sampling event.

b. Progress reports shall be provided monthly during the period in which systems are being installed. Once operational, progress reports shall be provided every 60 days. The progress reports will document field activities that have taken place during the reporting period, problems encountered, schedule changes anticipated, and expected activities for the next reporting period. These progress reports can include information, as noted above, regarding project status.

c. Upon completion of the cleanup action and follow-up confirmation sampling, a draft remedial action completion report shall be prepared for submittal to Ecology documenting

the results and performance of the cleanup action, summarizing performance sampling, monitoring results, and results of confirmation sampling. This report shall be provided within 120 days from the completion of the cleanup action and confirmation sampling, as agreed to between Whitney's and Ecology.

D. All plans or other deliverables submitted by Whitney's for Ecology's review and approval under the Scope of Work and Schedule (Exhibit E) shall, upon Ecology's approval, become integral and enforceable parts of this Order.

E. If the Parties agree on an interim action under Section VI.E, Whitney's shall prepare and submit to Ecology an Interim Action Work Plan, including a scope of work and schedule, by the date determined by Ecology. Ecology will provide public notice and opportunity to comment on the Interim Action Work Plan in accordance with WAC 173-340-600(16). Whitney's shall not conduct the interim action until Ecology approves the Interim Action Work Plan. Upon approval by Ecology, the Interim Action Work Plan becomes an integral and enforceable part of this Order, and Whitney's is required to conduct the interim action in accordance with the approved Interim Action Work Plan.

F. If Ecology determines that Whitney's has failed to make sufficient progress or failed to implement the remedial action, in whole or in part, Ecology may, after notice to Whitney's, perform any or all portions of the remedial action or at Ecology's discretion allow Whitney's opportunity to correct. Whitney's shall reimburse Ecology for the costs of doing such work in accordance with Section VII.A (Remedial Action Costs). Ecology reserves the right to enforce requirements of this Order under Section X (Enforcement).

G. Except where necessary to abate an emergency situation, Whitney's 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.

## **VIII. TERMS AND CONDITIONS**

### **A. Remedial Action Costs**

Whitney's 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 RCW 70.105D, including remedial actions and Order preparation, negotiation, oversight, and administration. These costs shall include work performed both prior to and subsequent to the issuance of this Order. Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). For all costs incurred subsequent to the signing of this order, Whitney's 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 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.

In addition to other available relief, pursuant to RCW 19.16.500, Ecology may utilize a collection agency and/or, pursuant to RCW 70.105D.055, file a lien against real property subject to the remedial actions to recover unreimbursed remedial action costs.

### **B. Designated Project Coordinators**

The project coordinator for Ecology is:

Marv Coleman, Cleanup Project Manager/Inspector  
Department of Ecology, Toxics Cleanup Program, SWRO  
P.O. Box 47775  
Olympia, WA 98504-7775  
Tel: 360-407-6259  
Email: [mcol461@ecy.wa.gov](mailto:mcol461@ecy.wa.gov)

The project coordinator for Whitney's is:

Thomas C. Morin, L.G., Principal Geologist/Vice President  
Environmental Partners, Inc.  
295 NE Gilman Blvd., Suite 201  
Issaquah, WA 98207  
Tel: 425-395-0030  
Email: [thomm@epi-wa.co](mailto:thomm@epi-wa.co)

Each project coordinator shall be responsible for overseeing the implementation of this Order. Ecology's project coordinator will be Ecology's designated representative for the Site. To the maximum extent possible, communications between Ecology and Whitney's, 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 coordinators. The project coordinators may designate, in writing, working level staff contacts for all or portions of the implementation of the work to be performed required by this Order.

Any party may change its respective project coordinator. Written notification shall be given to the other party at least ten (10) calendar days prior to the change.

**C. Performance**

All geologic and hydrogeologic work performed pursuant to this Order shall be under the supervision and direction of a geologist or hydrogeologist licensed by the State of Washington or under the direct supervision of a professional engineer registered by the State of Washington, except as otherwise provided for by RCW 18.43 and 18.220.

All engineering work performed pursuant to this Order shall be under the direct supervision of a professional engineer registered by the State of Washington, except as otherwise provided for by RCW 18.43.130.

All construction work performed pursuant to this Order shall be under the direct supervision of a professional engineer or a qualified technician under the direct supervision of a

professional engineer. The professional engineer must be registered by the State of Washington, except as otherwise provided for by RCW 18.43.130.

Any documents submitted containing geologic, hydrologic, or engineering work shall be under the seal of an appropriately licensed professional as required by RCW 18.43 and 18.220.

Whitney's shall notify Ecology in writing of the identity of any engineer(s) and geologist(s), contractor(s) and subcontractor(s), and others to be used in carrying out the terms of this Order, in advance of their involvement at the Site.

**D. Access**

Ecology or any Ecology authorized representative shall have access to enter and freely move about all property at the Site that Whitney's 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 Whitney'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 Whitney's. Whitney's shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by Whitney's 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 Whitney's unless an emergency prevents such notice. All persons who access the Site pursuant to this section shall comply with any applicable health and safety plan(s). Ecology employees and their representatives shall not be required to sign any liability release or waiver as a condition of Site property access.

**E. Sampling, Data Submittal, and Availability**

With respect to the implementation of this Order, Whitney's 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.

If requested by Ecology, Whitney's shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by Whitney's pursuant to implementation of this Order. Whitney's shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow Whitney's and/or its authorized representative to take split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Order, provided that doing so does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section VIII.E (Access), Ecology shall notify Whitney's 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 WAC 173-50 for the specific analyses to be conducted, unless otherwise approved by Ecology.

#### **F. 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, or if no plan exists, Ecology shall develop a Public Participation Plan alone or in conjunction with Whitney's.

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

1. If agreed to by Ecology, develop appropriate mailing lists and 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 the preparation of all press releases and fact sheets, and before major meetings with the interested public and local governments. Likewise, Ecology shall notify Whitney's prior to the issuance of all press releases and fact sheets, and before major meetings with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by Whitney's that do not receive prior Ecology approval, Whitney's shall clearly indicate to its 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 documents relating to public comment periods shall be promptly placed in these repositories. A copy of all documents related

to this Site shall be maintained in the repository at Ecology's Southwest Regional Office in Lacey, Washington.

**G. 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, Whitney's shall preserve all records, reports, documents, and underlying data in its 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 of Ecology, Whitney's shall make all records available to Ecology and allow access for review within a reasonable time.

Nothing in this Order is intended to waive any right Whitney's may have under applicable law to limit disclosure of documents protected by the attorney work-product privilege and/or the attorney-client privilege. If Whitney's withholds any requested records based on an assertion of privilege, Whitney's shall provide Ecology with a privilege log specifying the records withheld and the applicable privilege. No Site-related data collected pursuant to this Order shall be considered privileged.

**H. Resolution of Disputes**

1. In the event that Whitney's elects to invoke dispute resolution Whitney's must utilize the procedure set forth below.

a. Upon the triggering event (receipt of Ecology's project coordinator's written decision or an itemized billing statement), Whitney's has fourteen (14) calendar days within which to notify Ecology's project coordinator in writing of its dispute ("Informal Dispute Notice").

b. The Parties' project coordinators shall then confer in an effort to resolve the dispute informally. The parties shall informally confer for up to fourteen (14) calendar days from receipt of the Informal Dispute Notice. If the project coordinators cannot resolve the dispute within those 14 calendar days, then within seven (7) calendar days Ecology's project coordinator shall issue a written decision ("Informal Dispute

Decision”) stating: the nature of the dispute; Whitney’s position with regards to the dispute; Ecology’s position with regards to the dispute; and the extent of resolution reached by informal discussion.

c. Whitney’s may then request regional management review of the dispute. This request (“Formal Dispute Notice”) must be submitted in writing to the Southwest Region Toxics Cleanup Section Manager within seven (7) calendar days of receipt of Ecology’s Informal Dispute Decision. The Formal Dispute Notice shall include a written statement of dispute setting forth: the nature of the dispute; the disputing Party’s position with respect to the dispute; and the information relied upon to support its position.

d. The Section Manager shall conduct a review of the dispute and shall issue a written decision regarding the dispute (“Decision on Dispute”) within thirty (30) calendar days of receipt of the Formal Dispute Notice. The Decision on Dispute 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.

4. In case of a dispute, failure to either proceed with the work required by this Order or timely invoke dispute resolution may result in Ecology’s determination that insufficient progress is being made in preparation of a deliverable, and may result in Ecology undertaking the work under Section VII.E (Work to be Performed) or initiating enforcement under Section X (Enforcement).

#### **I. 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:

- 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 Whitney's 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 may include, but may not be limited to:

- a. Circumstances beyond the reasonable control and despite the due diligence of Whitney's 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 Whitney's;
- b. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty; or
- c. Endangerment as described in Section VIII.L (Endangerment).

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 Whitney's.

3. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give Whitney's written notification of any extensions granted pursuant to this 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.K (Amendment of Order) 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.L (Endangerment).

**J. 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.M (Reservation of Rights), 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 Whitney's. Whitney's 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 this Order represents a substantial change, Ecology will provide public notice and opportunity to comment. Reasons for the disapproval of a proposed amendment to this Order shall be stated in writing. If Ecology does not agree to a proposed amendment, the disagreement may be addressed through the dispute resolution procedures described in Section VIII.I (Resolution of Disputes).

**K. Endangerment**

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

In the event Whitney's determines that any activity being performed at the Site under this Order is creating or has the potential to create a danger to human health or the environment, Whitney's may cease such activities. Whitney's 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, Whitney's shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with Whitney's cessation of activities, it may direct Whitney's to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to this section, Whitney'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 in accordance with Section VIII.J (Extension of Schedule) 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.

**L. Reservation of Rights**

This Order is not a settlement under RCW 70.105D. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any of Ecology's rights or authority. Ecology will not, however, bring an action against Whitney's to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against Whitney's regarding remedial actions required by this Order, provided Whitney's complies with this Order.

Ecology nevertheless reserves its rights under RCW 70.105D, 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.

By entering into this Order, Whitney's does not admit to any liability for the Site. Although Whitney's is committing to conducting the work required by this Order under the terms of this Order, Whitney's expressly reserves all rights available under law, including but not limited to the right to seek cost recovery or contribution against third parties, and the right to assert any defenses to liability in the event of enforcement.

**M. Transfer of Interest in Property**

No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by Whitney's 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 Whitney's transfer of any interest in all or any portion of the Site, and during the effective period of this Order, Whitney's 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, Whitney's shall notify Ecology of said transfer. Upon transfer of any interest, Whitney's shall notify all transferees of the restrictions on the activities and uses of the property under this Order and incorporate any such use restrictions into the transfer documents.

**N. Compliance with Applicable Laws**

The cleanup action for Whitney's Chevrolet Site will be conducted under the Agreed Order and, therefore, is exempt from the procedural requirements of certain state laws and local permits (WAC 173-340-710[9]), but must comply with the substantive requirements of these laws and permits. The exemption from procedural requirements applies to the following:

- Washington State Clean Air Act (70.94 RCW);
- Solid Waste Management Act (70.95 RCW);
- Hazardous Waste Management Act (70.105 RCW);
- Construction Projects in State Waters (75.20 RCW);
- Shoreline Management Act (90.58 RCW); and
- Any laws requiring or authorizing local government permits or approvals.

The exemption is not applicable if Ecology determines that the exemption would result in the loss of approval from a federal agency that may be necessary for the state to administer any federal law.

The cleanup action selected for the Site is expected to fully comply with all applicable state, and local laws and regulations.

1. All actions carried out by Whitney's 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. The permits or specific state, or local requirements that the agency has determined are applicable and that are known at the time of the execution of this Order have been identified above.

2. Pursuant to RCW 70.105D.090(1), Whitney's is exempt from the procedural requirements of RCW 70.94, 70.95, 70.105, 77.55, and 90.58 and of any laws requiring or authorizing local government permits or approvals. However, Whitney's shall comply with the substantive requirements of such permits or approvals.

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

Order. Whitney's shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

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 that is necessary for the state to administer any federal law, the exemption shall not apply and Whitney's 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.

**O. Land Use Restrictions**

In consultation with the PLPs, Ecology will prepare a draft Environmental (Restrictive) Covenant consistent with WAC 173-340-440 and RCW 64.70. Whitney's will prepare a final Environmental Covenant and secure the signatures of the property owners. After approval by Ecology, the PLPs shall record the Environmental (Restrictive) Covenant with the office of the Grays Harbor County Auditor within forty five (45) days of the implementation of the Cleanup Action Plan. The Environmental (Restrictive) Covenant shall restrict future activities and uses of the Site as agreed to by Ecology and the PLPs. The PLPs shall provide Ecology with the original recorded Environmental (Restrictive) Covenant within thirty (30) days of the recording date.

**P. Financial Assurances**

Pursuant to WAC 173-340-440(11), Whitney's shall maintain sufficient and adequate financial assurance mechanisms to cover all costs associated with the operation and maintenance of the remedial action at the Site, including institutional controls, compliance monitoring, and corrective measures.

Within one hundred twenty (120) days of the effective date of this Order, Whitney's shall submit to Ecology for review and approval an estimate of the costs that it will incur in carrying out the terms of this Order, including operation and maintenance, and compliance monitoring. Within sixty (60) days after Ecology approves the aforementioned cost estimate, Whitney's shall

provide proof of financial assurances sufficient to cover all such costs in a form acceptable to Ecology.

Whitney's shall adjust the financial assurance coverage and provide Ecology's project coordinator with documentation of the updated financial assurance for:

1. Inflation, annually, within thirty (30) days of the anniversary date of the entry of this Order; or if applicable, the modified anniversary date established in accordance with this section, or if applicable, ninety (90) days after the close of Whitney's fiscal year if the financial test or corporate guarantee is used.

2. Changes in cost estimates, within thirty (30) days of issuance of Ecology's approval of a modification or revision to the cleanup action plan (CAP) that result in increases to the cost or expected duration of remedial actions. Any adjustments for inflation since the most recent preceding anniversary date shall be made concurrent with adjustments for changes in cost estimates. The issuance of Ecology's approval of a revised or modified CAP will revise the anniversary date established under this section to become the date of issuance of such revised or modified CAP.

**Q. Periodic Review**

As remedial action, including groundwater monitoring, continues at the Site, the Parties agree to review the progress of remedial action at the Site, and to review the data accumulated as a result of monitoring the Site as often as is necessary and appropriate under the circumstances. At least every five (5) years after the initiation of cleanup action at the Site the Parties shall meet to discuss the status of the Site and the need, if any, for further remedial action at the Site. At least ninety (90) days prior to each periodic review, Whitney's shall submit a report to Ecology that documents whether human health and the environment are being protected based on the factors set forth in WAC 173-340-420(4). Ecology reserves the right to require further remedial action at the Site under appropriate circumstances. This provision shall remain in effect for the duration of this Order.

**R. Indemnification**

Whitney's 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 (1) for death or injuries to persons, or (2) for loss or damage to property, to the extent arising from or on account of acts or omissions of Whitney's, its officers, employees, agents, or contractors in entering into and implementing this Order. However, Whitney's shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action to the extent arising out of the negligent acts or omissions of the State of Washington, or the employees or agents of the State, in entering into or implementing this Order.

**IX. SATISFACTION OF ORDER**

The provisions of this Order shall be deemed satisfied upon Whitney's receipt of written notification from Ecology that Whitney's has completed the remedial activity required by this Order, as amended by any modifications, and that Whitney's 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:

- A. The Attorney General may bring an action to enforce this Order in a state or federal court.
- B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the Site.
- C. A liable party who refuses, without sufficient cause, to comply with any term of this Order will be liable for:
  - 1. Up to three (3) times the amount of any costs incurred by the State of Washington as a result of its refusal to comply.
  - 2. Civil penalties of up to twenty-five thousand dollars (\$25,000) per day for each day it refuses to comply.

APR 15 2015

Agreed Order No. DE 11121  
Page 24 of 34

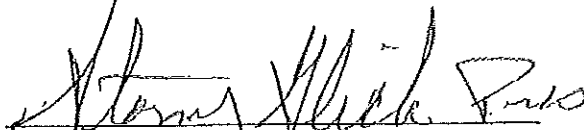
WA State Department  
of Ecology (SWRO)

D. This Order is not appealable to the Washington Pollution Control Hearings Board.

This Order may be reviewed only as provided under RCW 70.105D.060.

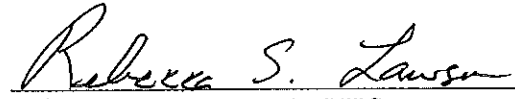
Effective date of this Order: June 25, 2015

WHITNEY'S CHEVROLET



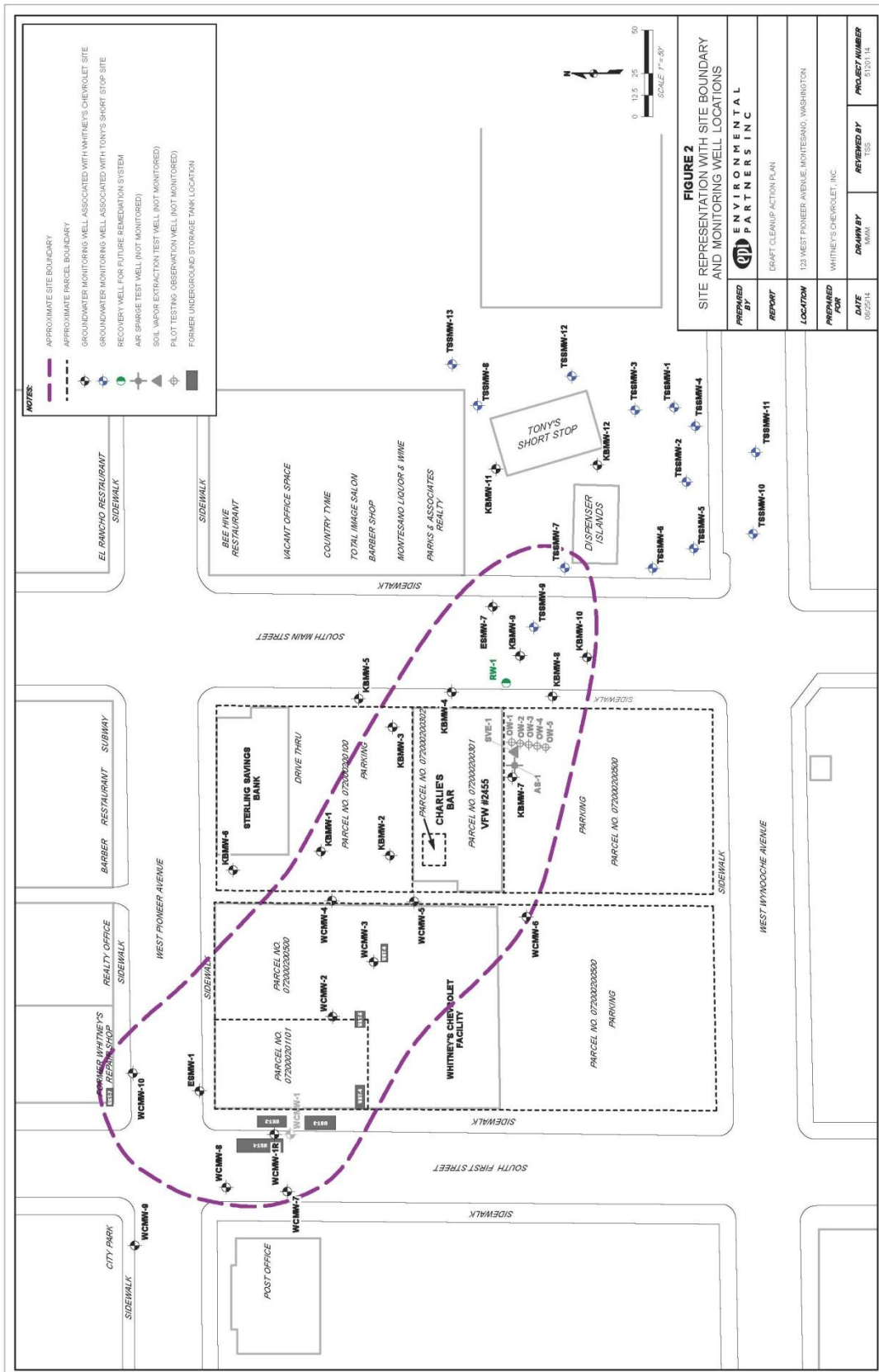
Whitney's Chevrolet, Inc.  
Title: Sales  
123 W. Pioneer Avenue  
Montesano, WA 98563  
360-249-4431

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY



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

**EXHIBIT A**  
**SITE DIAGRAM**



**EXHIBIT B**  
**LEGAL DESCRIPTIONS**

123 West Pioneer, Parcel #072000200500: C N BYLES S ½ 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)

## **EXHIBIT C**

### **REFERENCES**

- Ecology 2006. *Montesano Groundwater Investigation of Leaking Underground Storage Tanks, October 2004 and March 2005*. Washington State Department of Ecology. January.
- Ecology 2009. *Montesano Groundwater Investigation of Leaking Underground Storage Tanks, September 2008 and April 2009*. November.
- EPI 2007. *Phase I Environmental Site Assessment and Supplemental Historical Review, Whitney's Chevrolet, 123 West Pioneer Avenue, Montesano, Washington, Parcel No. 07200020-1101 and Parcel No. 07200020-0050*. Environmental Partners, Inc. February 14.
- EPI 2010. *Draft Remedial Investigation Report, Whitney's Chevrolet, Inc., 123 West Pioneer Avenue, Montesano, Washington 98563*. March 24.
- EPI 2012a. *Interim Action and Data Gap Investigation Report, Whitney's Chevrolet, Inc., 123 Pioneer Avenue, Montesano, Washington 98563*. February 23.
- EPI 2012b. Letter Report: *Quarterly Ground Water Monitoring Report – February 2012, Whitney's Chevrolet, Inc., Agreed Order No. DE 2951, 123 West Pioneer Avenue, Montesano, Washington*. August 2.
- EPI 2012c. Letter Report: *Quarterly Ground Water Monitoring Report – May 2012, Whitney's Washington*. August 17.
- EPI 2013a. *Final Feasibility Study, Whitney's Chevrolet, Inc., 123 Pioneer Avenue, Montesano, Washington 98563*. Environmental Partners, Inc. January 9.
- EPI 2013b. *Pilot Testing Work Plan, Whitney's Chevrolet, Inc., 123 Pioneer Avenue, Montesano, Washington 98563*. Environmental Partners, Inc. May 3.
- EPI 2013c. *Ground Water Compliance Monitoring Plan, Agreed Order No. 2951, Whitney's Chevrolet, Inc., 123 West Pioneer Avenue, Montesano, Washington*. Environmental Partners, Inc. May 3.
- EPI 2013d. Letter Report: *Quarterly Ground Water Monitoring Report – August 2013, Whitney's Chevrolet, Inc., Agreed Order No. DE 2951, 123 West Pioneer Avenue, Montesano, Washington*. October 28.
- EPI 2014a. Letter Report: *Quarterly Groundwater Monitoring Report – November 2013, Whitney's Chevrolet, Inc., Agreed Order No. DE 2951, 123 West Pioneer Avenue, Montesano, Washington*. January 29.
- EPI 2014b. Letter Report: *Quarterly Groundwater Monitoring Report – February 2014, Whitney's Chevrolet, Inc., Agreed Order No. DE 2951, 123 West Pioneer Avenue, Montesano, Washington*. April 22.
- EPI 2014c. *Pilot Study Results and Feasibility Study Addendum, Whitney's Chevrolet, Inc., 123 Pioneer Avenue, Montesano, Washington 98563*. Environmental Partners, Inc. May 22.

EPI 2014d. Letter Report: *Quarterly Groundwater Monitoring Report – May 2014, Whitney’s Chevrolet, Inc., Agreed Order No. DE 2951, 123 West Pioneer Avenue, Montesano, Washington.* July 7.

Fitt 1995. *Underground Storage Tank Decommissioning at 123 West Pioneer Avenue, Montesano, Washington.* Fitt Environmental, Inc. August 28.

GeoEngineers 2005. *Ground water Investigation, Downtown Montesano.* GeoEngineers, Inc. August 5.

**EXHIBIT D**

**FIGURE 7 – CLEANUP ACTION PLAN LAYOUT**





## **EXHIBIT E**

### **SCOPE OF WORK AND SCHEDULES**

A. In the Feasibility Study and Cleanup Action Plan, a Cost - Benefit Analysis revealed that three remedial technologies provided the best alternatives for successful cleanup, while provide the best return on investment. The selected remedies include:

- LNAPL recovery and proper disposal.
- Air Sparging (AS) – injection of air into Site groundwater.
- Soil Vapor Extraction – vacuum extraction of soil vapors and dissolved phase contamination in groundwater and treatment of vapors prior to release to air.
- These active remedial technologies will be followed by Monitored Natural Attenuation Monitoring of Site groundwater and institutional controls in the form of capping by buildings and pavement. Both during and after active remediation, vapor intrusion monitoring will be performed to determine if the remedial actions are resulting in the abatement of indoor contaminants of concern (COCs).

Whitney's will perform remediation in accordance with the Cleanup Action Plan (CAP) and Engineering Design Report (EDR).

B. a. An EDR shall be provided within 120 days of the effective date of the Agreed Order. Commencement of work will begin in accordance with a schedule to be provided in the EDR and approved by Ecology. The EDR shall include a QA/QC Assurance Plan (QAAP) and a Health & Safety Plan (HASP).

b. Following completion of active remediation, in accordance with criteria set in the EDR and CAP and approved by Ecology, compliance monitoring of groundwater and soil shall be performed. Groundwater compliance monitoring will be performed on a quarterly basis for a minimum of eight (8) quarters. Once groundwater monitoring has been completed,

soil samples will be collected, in accordance with criteria set in the EDR and approved by Ecology, to determine if LNAPL removal and AS/SVE have resulted in a reduction of residual COCs in Site soils.

C. a. Results from sampling events shall be documented in status reports, which will be provided as technical memoranda and will include figures, data tables, and laboratory analytical data, as applicable, for the previous sampling event. Technical memorandum status reports will be submitted to Ecology within 60 days of each sampling event.

b. Progress reports shall be provided monthly during the period in which the treatment equipment is being installed. Once installation is complete and the treatment system is activated, progress reports shall be provided every 60 days. The progress reports will document field activities that have taken place during the reporting period, problems encountered, schedule changes anticipated, and expected activities for the next reporting period. These progress reports can include information, as noted above, regarding project status.

c. Upon completion of the cleanup action and follow-up confirmation sampling, a draft remedial action completion report shall be prepared for submittal to Ecology documenting the results and performance of the cleanup action, summarizing performance sampling, monitoring results, and results of confirmation sampling. This report shall be provided within 120 days from the completion of the cleanup action and confirmation sampling, as agreed to between Whitney's and Ecology.

**EXHIBIT F**  
**CLEANUP ACTION PLAN**