



**FILE COPY**

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

4601 N Monroe Street • Spokane, Washington 99205-1295 • (509)329-3400

April 14, 2015

Mike Arnold  
ERM-West, Inc  
1218 3<sup>rd</sup> Ave, Suite 1412  
Seattle, WA 98101

**Re: Further Action at the following Site:**

- **Site Name:** Mountain Oil Inc Isaacs
- **Site Address:** 2285 East Isaacs Ave, Walla Walla, WA
- **Facility/Site No.:** 8187465
- **VCP Project No.:** EA0275

Dear Mr. Arnold:

The Washington State Department of Ecology (Ecology) received your request for an opinion on your independent cleanup of the Mountain Oil Inc Isaacs facility (Site). This letter provides our opinion. We are providing this opinion under the authority of the Model Toxics Control Act (MTCA), Chapter 70.105D RCW.

**Issue Presented and Opinion**

Is further remedial action necessary at the Site?

**YES. Ecology has determined further remedial action is necessary at the Site.**

This opinion is based on an analysis of whether the remedial action meets the substantive requirements of MTCA, Chapter 70.105D RCW, and its implementing regulations, Chapter 173-340 WAC (collectively "substantive requirements of MTCA"). The analysis is provided below.

**Description of the Site**

This opinion applies only to the Site described below. The Site is defined by the nature and extent of contamination associated with the following releases:

- Petroleum hydrocarbons into the Soil and Groundwater.

**Enclosure A** includes a detailed description and diagram of the Site, as currently known to Ecology.

Please note a parcel of real property can be affected by multiple sites. At this time, we have no information that the parcel(s) associated with this Site are affected by other sites.

### **Basis for the Opinion**

---

This opinion is based on the information contained in the following documents:

1. 2013 – 2014 Groundwater Monitoring and Groundwater Compliance Confirmation Report: ERM, December 17, 2014.

The document is kept in the Central Files of the Eastern Regional Office (ERO) of Ecology for review by appointment only. You can make an appointment by calling Kari Johnson at 509-329-3415.

This opinion is void if any of the information contained in those documents is materially false or misleading.

### **Analysis of the Cleanup**

---

Ecology has determined that additional actions are necessary to comply with cleanup standards at the Site.

- Since petroleum contaminated soil remains in the area between tanks #1 and #2, a cap must be placed over the impacted soil to prevent infiltration and mobilization of contamination.
- Since contamination remains on site, an Environmental Covenant on the property must be executed by the property owner and recorded with the register of deeds for the county in which the site is located.

To create an environmental covenant, do the following:

1. Draft the covenant using the boilerplate document available on the VCP web site: [www.ecy.wa.gov/programs/tcp/vcp/vcp2008/vcpRequirements.html](http://www.ecy.wa.gov/programs/tcp/vcp/vcp2008/vcpRequirements.html). Please note that any changes to the boilerplate language in the covenant must be approved by the Attorney General's Office. **A site-specific draft boilerplate is also enclosed for your use. An electronic copy is available upon request.**
2. Submit the draft covenant for review and comment to the appropriate land use planning authority in your jurisdiction. When requesting such review, please do the following:

- Send me a copy of your written request.
- Provide the authority with my contact information.
- Request that the authority send me a copy of any written response.

Ecology will not approve the covenant unless the authority has been adequately consulted.

3. Upon completing your consultations with the local land use planning authority, submit the draft covenant to Ecology for review and approval. Unless already submitted, also submit to Ecology any comments provided by the planning authority or, if none were provided, documentation of your consultation.
4. Upon Ecology approval, obtain the signatures of all grantors of the covenant and obtain subordination agreements with any persons holding an interest in the real property subject to the covenant who are not signing the covenant as a grantor.
5. Upon obtaining the signatures of the grantors and any necessary subordination agreements, submit the covenant to Ecology for its signature as the grantee.
6. Upon obtaining Ecology's signature, record the covenant in every county where the real property subject to the covenant is located. For detailed recording instructions, please refer to Chapter 65.04 RCW.
7. Upon recording, return the original signed and recorded covenant to Ecology and provide a copy of the recorded covenant to the following persons:
  - Each person that signed the covenant.
  - Each person holding a recorded interest in the real property subject to the covenant.
  - Each person in possession of the real property subject to the covenant at the time the covenant is executed.
  - Each municipality or other unit of local government in which real property subject to the covenant is located.
  - Any other persons Ecology requires.

The copy must be legible and the recording number must be evident.

### **Limitations of the Opinion**

1. **Opinion does not settle liability with the state.**

Liabile persons are strictly liable, jointly and severally, for all remedial action costs and for all natural resource damages resulting from the release or releases of hazardous substances at the Site. This opinion **does not**:

- Resolve or alter a person's liability to the state.
- Protect liable persons from contribution claims by third parties.

To settle liability with the state and obtain protection from contribution claims, a person must enter into a consent decree with Ecology under RCW 70.105D.040(4).

**2. Opinion does not constitute a determination of substantial equivalence.**

To recover remedial action costs from other liable persons under MTCA, one must demonstrate the action is the substantial equivalent of an Ecology-conducted or Ecology-supervised action. This opinion does not determine whether the action you performed is substantially equivalent. Courts make that determination. *See* RCW 70.105D.080 and WAC 173-340-545.

**3. State is immune from liability.**

The state, Ecology, and its officers and employees are immune from all liability, and no cause of action of any nature may arise from any act or omission in providing this opinion. *See* RCW 70.105D.030(1)(i).

**Contact Information**

---

For more information about the VCP and the cleanup process, please visit our web site: [www.ecy.wa.gov/programs/tcp/vcp/vcpmain.htm](http://www.ecy.wa.gov/programs/tcp/vcp/vcpmain.htm). If you have any questions about this opinion, please contact me by phone at 509-329-3522 or e-mail at [paca461@ecy.wa.gov](mailto:paca461@ecy.wa.gov).

Sincerely,



Patti Carter  
ERO Toxics Cleanup Program

PC:mg

Enclosures (2): A – Site Description and Diagram of the Site  
B – Draft Environmental Covenant

cc: Robert Jackson, Mountain Oil

## **Enclosure A**

### **Description and Diagram of the Site**

## Site Description

Approximately 1,400 gallons of unleaded gasoline was spilled at the Site in 1993 due to overflow from a delivery truck.

Remedial actions included removal of contaminated soil, installation of soil borings and monitoring wells, free product removal, a pump-and-treat system, and soil vapor extraction.

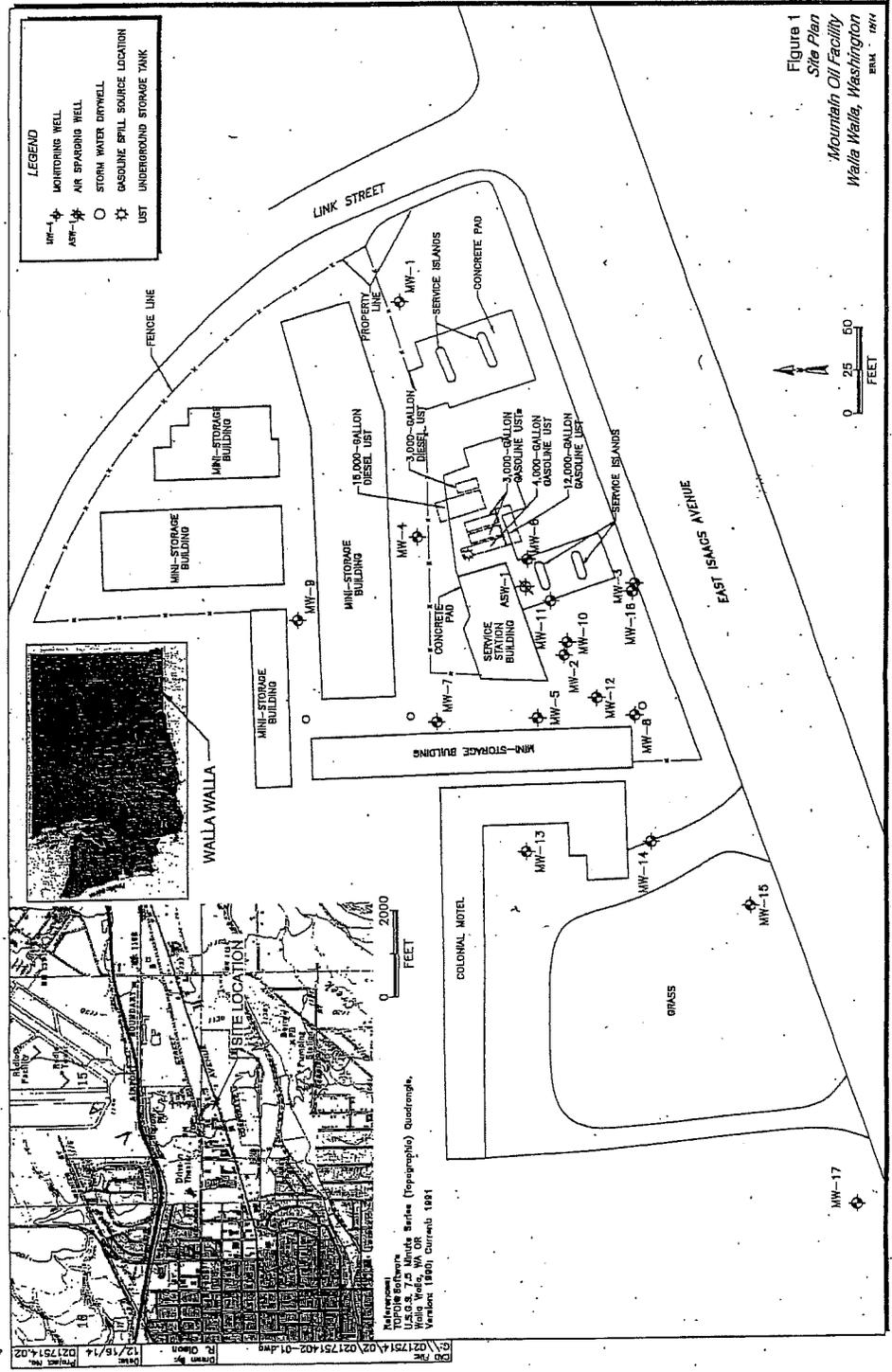
Gasoline recovery was estimated at between 1,200 and 1,500 gallons, based on soil excavation recovery, soil vapor extraction, groundwater treatment, and free product recovery.

Groundwater monitoring was conducted between 1993 and 2014. Results were below cleanup levels in 2013 and 2014.

Depth to groundwater is approximately 30 feet bgs. Site soils consist of sand and gravel with varying amounts of silt.

(Sources: Shannon Crowell, GeoEngineers, ERM)

# Site Diagram



## **Enclosure B**

**Text highlighted by yellow are instructions/comments and options.  
Questions about specific provisions should be directed to the Ecology Site Manager  
assigned to the site.**

After Recording Return  
Original Signed Covenant to: <sup>1</sup>  
**Patti Carter**  
Toxics Cleanup Program  
Department of Ecology  
4601 N. Monroe  
Spokane, WA 99205

**NOTE: This Covenant should not be recorded without Ecology's  
approval and signature.**

## Environmental Covenant

**Grantor:** Insert name of the land owner or other grantor <sup>2</sup>  
**Grantee:** State of Washington, Department of Ecology  
**Brief Legal Description:** Insert brief legal description  
**Tax Parcel Nos.:** Insert tax parcel numbers

### RECITALS <sup>3</sup>

- a. This document is an environmental (restrictive) covenant (hereafter "Covenant") executed pursuant to the Model Toxics Control Act ("MTCA"), chapter 70.105D RCW and Uniform Environmental Covenants Act ("UECA"), chapter 64.70 RCW.
- b. The Property that is the subject of this Covenant is part or all of a site commonly known as Mountain Oil Inc Isaacs. The Property is legally described in Exhibit A, and illustrated in Exhibit B, both of which are attached (hereafter "Property"). If there are differences between these two Exhibits, the legal description in Exhibit A shall prevail. <sup>4</sup>

<sup>1</sup> Some counties keep the original covenant, others don't. If the signed original is available, it must be sent to Ecology. If the signed original is not available, send a legible copy to Ecology.

<sup>2</sup> The Grantor of a covenant typically is the fee simple land owner of the property. The Grantor may also include holders of other property interests such as a holder of an easement, right of way, mineral right, lien, or mortgage.

<sup>3</sup> This section is primarily used to describe this document and its purpose. It should not be used for substantive binding provisions.

<sup>4</sup> Note that an environmental covenant applies to a specific Property, not the site (which may comprise several properties or "parcels"). A precise legal description of the Property (or Property interest such as an easement) is essential to know where the covenant applies. If there is any uncertainty, the Grantor must have the Property (or Property interest) surveyed and a legal description prepared by a licensed surveyor. If the contaminated area includes multiple parcels, each parcel must have the covenant recorded on the title. If contamination remains on only part of a larger Property, the restrictions may apply to just the smaller area, but the covenant must still be recorded on the title for all parcels encompassing the contaminated area.

c. The Property is the subject of remedial action under MTCA. This Covenant is required because residual contamination remains on the Property after completion of remedial actions. Specifically, the following principle contaminants remain on the Property: <sup>5</sup>

Medium	Principle Contaminants Present
Soil	Petroleum Hydrocarbons
Groundwater	NA
Surface Water/Sediment	NA

d. It is the purpose of this Covenant to restrict certain activities and uses of the Property to protect human health and the environment and the integrity of remedial actions conducted at the site. Records describing the extent of residual contamination and remedial actions conducted are available through the Washington State Department of Ecology. **[Optional--This includes the following documents: (list key documents such as RI/FS, Cleanup Action Plan, Voluntary Cleanup Report(s), As-built report)].**

e. This Covenant grants the Washington State Department of Ecology, as holder of this Covenant, certain rights specified in this Covenant. The right of the Washington State Department of Ecology as a holder is not an ownership interest under MTCA, Chapter 70.105D RCW or the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") 42 USC Chapter 103.

## COVENANT

**[Name of Land Owner or other Grantor]**, as Grantor <sup>6</sup> and **[fee simple, easement or other]** owner of the Property hereby grants to the Washington State Department of Ecology, and its successors and assignees, (hereafter "Ecology") the following covenants. Furthermore, it is the intent of the Grantor that such covenants shall run with the land and be binding on all current and future owners of any portion of, or interest in, the Property.

### Section 1. General Restrictions and Requirements.

The following general restrictions and requirements shall apply to the Property:

- a. **Interference with Remedial Action.** The Grantor shall not engage in any activity on the Property that may impact or interfere with the remedial action and any operation, maintenance, inspection or monitoring of that remedial action without prior written approval from Ecology.
- b. **Protection of Human Health and the Environment.** The Grantor shall not engage in any activity on the Property that may threaten continued protection of human health or the environment without prior written approval from Ecology. This includes, but is not limited to, any activity that results in the release of residual contamination that was contained as a part of the remedial action or that exacerbates or creates a new exposure to residual contamination remaining on the Property.

<sup>5</sup> List the contaminants for the associated media. If more than a few are present, list the top three to five for each medium.

<sup>6</sup> If there is more than one Grantor, use the term "Grantors" here and throughout this document.

c. **Continued Compliance Required.** Grantor shall not convey any interest in any portion of the Property without providing for the continued adequate and complete operation, maintenance and monitoring of remedial actions and continued compliance with this Covenant.

d. **Leases.** Grantor shall restrict any lease for any portion of the Property to uses and activities consistent with this Covenant and notify all lessees of the restrictions on the use of the Property.

e. **Amendment to the Covenant.** Grantor must notify and obtain approval from Ecology at least sixty (60) days in advance of any proposed activity or use of the Property in a manner that is inconsistent with this Covenant.<sup>7</sup> Before approving any proposal, Ecology must issue a public notice and provide an opportunity for the public to comment on the proposal. If Ecology approves the proposal, the Covenant will be amended to reflect the change.

## Section 2. Specific Prohibitions and Requirements.

In addition to the general restrictions in Section 1 of this Covenant, the following additional specific restrictions and requirements shall apply to the Property.

### a. **Containment of Soil/Waste Materials.**<sup>8</sup>

The remedial action for the Property is based on containing contaminated soil under a cap consisting of **[Insert a description of the cap]**<sup>9</sup> and located as illustrated in **[Exhibit B/C]**<sup>10</sup>. The primary purpose of this cap is to minimize leaching of contaminants to groundwater and prevent runoff from contacting contaminated soil.<sup>11</sup> As such, the following restrictions shall apply within the area illustrated in **[Exhibit B/C]**<sup>12</sup>:

Any activity on the Property that will compromise the integrity of the cap including: drilling; digging; piercing the cap with sampling device, post, stake or similar device; grading; excavation; installation of underground utilities; removal of the cap; or, application of loads in excess of the cap load bearing capacity, is prohibited without prior written approval by Ecology. The Grantor shall report to Ecology within forty-eight (48) hours of the discovery of any damage to the cap. Unless an alternative plan has been approved by Ecology in writing, the Grantor shall promptly repair the damage and submit a report documenting this work to Ecology within thirty (30) days of completing the repairs.

Access.

---

<sup>7</sup> Examples of inconsistent uses are: using the Property for a use not allowed under the covenant (for example, mixed residential and commercial use on a property that is restricted to industrial uses); OR, drilling a water supply well when use of the groundwater for water supply is prohibited by the covenant.

<sup>8</sup> Waste materials means solid wastes as defined in Chapter 70.95 RCW or hazardous wastes as defined in Chapter 70.105 RCW and the rules promulgated under these statutes.

<sup>9</sup> Such as: an X foot thick layer of clean soil; an engineered cap consisting of X inches of clean soil overlying a X mil thick geomembrane and/or clay layer; asphalt pavement; an X square foot building, etc.]

<sup>10</sup> Be very clear in describing or diagramming where the contamination is located relative to a legally defined benchmark such as a property line or survey monument; or use a legal description.

<sup>11</sup> Such as: minimize the potential for contact with contaminated soil; minimize leaching of contaminants to groundwater and surface water; prevent runoff from contacting contaminated soil; minimize airborne contaminants. A cap may have multiple purposes.

<sup>12</sup> NOTE: More than one exhibit may be necessary to illustrate the area restricted by this and other limitations.

- a. The Grantor shall maintain clear access to all remedial action components necessary to construct, operate, inspect, monitor and maintain the remedial action.
- b. The Grantor freely and voluntarily grants Ecology and its authorized representatives, upon reasonable notice, the right to enter the Property at reasonable times to evaluate the effectiveness of this Covenant and associated remedial actions, and enforce compliance with this Covenant and those actions, including the right to take samples, inspect any remedial actions conducted on the Property, and to inspect related records.
- c. No right of access or use by a third party to any portion of the Property is conveyed by this instrument.

### Section 3. Notice Requirements.

a. **Conveyance of Any Interest.** The Grantor, when conveying any interest [in any part of the Property] OR [within the area of the Property described/illustrated in Exhibit B/C], including but not limited to title, easement, leases, and security or other interests, must:

- i. Notify Ecology at least thirty (30) days in advance of the conveyance.<sup>13</sup>
- ii. Include in the conveying document a notice in substantially the following form, as well as a complete copy of this Covenant:

**NOTICE: THIS PROPERTY IS SUBJECT TO AN ENVIRONMENTAL COVENANT GRANTED TO THE WASHINGTON STATE DEPARTMENT OF ECOLOGY ON [DATE] AND RECORDED WITH THE [COUNTY] COUNTY AUDITOR UNDER RECORDING NUMBER [RECORDING NUMBER]. USES AND ACTIVITIES ON THIS PROPERTY MUST COMPLY WITH THAT COVENANT, A COMPLETE COPY OF WHICH IS ATTACHED TO THIS DOCUMENT.**

- iii. Unless otherwise agreed to in writing by Ecology, provide Ecology with a complete copy of the executed document within thirty (30) days of the date of execution of such document.

b. **Reporting Violations.** Should the Grantor become aware of any violation of this Covenant, Grantor shall promptly report such violation to Ecology.

c. **Emergencies.** For any emergency or significant change in site conditions due to Acts of Nature (for example, flood, fire) resulting in a violation of this Covenant, the Grantor is authorized to respond to such an event in accordance with state and federal law. The Grantor must notify Ecology of the event and response actions planned or taken as soon as practical but no later than within 24 hours of the discovery of the event.

---

<sup>13</sup> Ecology may waive this notice provision for some units at a Property where the anticipated use is a multi-tenant/owner building where some owners or tenants are unlikely to be exposed to residual contamination. For example: upper story apartments or condominiums, or commercial tenants in a strip mall, with limited rights to use the grounds under and around the building (such as for parking).

If Ecology agrees to such a waiver, the circumstances of the waiver will be detailed in paragraph 4.a.i. In addition to the specific circumstances, this provision must include the following statement: "Waiver of this advance notice to Ecology for these transactions does not constitute waiver of this notice for the entire Property nor a waiver of the requirement in Section 4.a.ii. to include this notice in any document conveying interest in the Property."

d. Any required written notice, approval, or communication shall be personally delivered or sent by first class mail to the following persons. Any change in this contact information shall be submitted in writing to all parties to this Covenant.

<b>Pete Kmet</b>	Environmental Covenants Coordinator Washington State Department of Ecology Toxics Cleanup Program
Phone contact	P.O. Box 47600 Olympia, WA 98504 – 7600 (360) 407-6000

As an alternative to providing written notice and change in contact information by mail, these documents may be provided electronically in an agreed upon format at the time of submittal.

#### **Section 4. Modification or Termination.**

a. If the conditions at the site requiring a Covenant have changed or no longer exist, then the Grantor may submit a request to Ecology that this Covenant be amended or terminated. Any amendment or termination of this Covenant must follow the procedures in Chapter 64.70 RCW and Chapter 70.105D RCW and any rules promulgated under these chapters.

b. **[Optional]** By signing this agreement, per RCW 64.70.100, the original signatories to this agreement, other than Ecology, agree to waive all rights to sign amendments to and termination of this Covenant.<sup>14</sup>

#### **Section 5. Enforcement and Construction.**

a. This Covenant is being freely and voluntarily granted by the Grantor.

b. Grantor shall provide Ecology with an original signed Covenant and proof of recording within ten (10) days of execution of this Covenant.

c. Ecology shall be entitled to enforce the terms of this Covenant by resort to specific performance or legal process. All remedies available in this Covenant shall be in addition to any and all remedies at law or in equity, including Chapter 70.105D RCW and Chapter 64.70 RCW. Enforcement of the terms of this Covenant shall be at the discretion of Ecology, and any forbearance, delay or omission to exercise its rights under this Covenant in the event of a breach of any term of this Covenant is not a waiver by Ecology of that term or of any subsequent breach of that term, or any other term in this Covenant, or of any rights of Ecology under this Covenant.

d. The Grantor, upon request by Ecology, shall be obligated to pay for Ecology's costs to process a request for any modification or termination of this Covenant and any approval required by this Covenant.

e. This Covenant shall be liberally construed to meet the intent of the Model Toxics Control Act, chapter 70.105D RCW and Uniform Environmental Covenants Act, chapter 64.70 RCW.

---

<sup>14</sup> As time passes, the original grantor and other signers of the covenant may no longer exist as viable entities. This is intended to allow future amendments or termination of the covenant without Ecology having to seek court authorization, as provided by RCW 64.70.100.

f. The provisions of this Covenant shall be severable. If any provision in this Covenant or its application to any person or circumstance is held invalid, the remainder of this Covenant or its application to any person or circumstance is not affected and shall continue in full force and effect as though such void provision had not been contained herein.

g. A heading used at the beginning of any section or paragraph or exhibit of this Covenant may be used to aid in the interpretation of that section or paragraph or exhibit but does not override the specific requirements in that section or paragraph.

The undersigned Grantor warrants he/she holds the title to the Property and has authority to execute this Covenant.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**[NAME OF GRANTOR]**

**[SIGNATURE]**

**[TITLE]**

Dated: \_\_\_\_\_

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

**SECTION MANAGER SIGNATURE**

**[TITLE]**

Dated: \_\_\_\_\_

**GRANTOR INDIVIDUAL ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, I certify that \_\_\_\_\_ personally appeared before me, and acknowledged that **he/she** is the individual described herein and who executed the within and foregoing instrument and signed the same at **his/her** free and voluntary act and deed for the uses and purposes therein mentioned.

\_\_\_\_\_  
Notary Public in and for the State of  
Washington, residing at \_\_\_\_\_.  
My appointment expires \_\_\_\_\_.

**GRANTOR CORPORATE ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, I certify that \_\_\_\_\_ personally appeared before me, acknowledged that **he/she** is the \_\_\_\_\_ of the corporation that executed the within and foregoing instrument, and signed said instrument by free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that **he/she** was authorized to execute said instrument for said corporation.

\_\_\_\_\_  
Notary Public in and for the State of  
Washington, residing at \_\_\_\_\_.  
My appointment expires \_\_\_\_\_.

**Exhibit A**

**LEGAL DESCRIPTION**

**(Required)**

**Exhibit B**

**PROPERTY MAP**

**(Required)**

## Exhibit C

### MAP ILLUSTRATING LOCATION OF RESTRICTIONS

While a map illustrating the location of the restrictions is required, the grantor has the option of creating a separate map or including this information in Exhibit B.

More than one map may be necessary to illustrate the area subject to restrictions. For example, the area encompassing a soil cap may be different than the area where vapor or groundwater contamination is a concern.

The area subject to the restrictions, if less than the entire property, should be a contiguous area with even boundaries that follow physical features on the site so the boundary can be easily discerned in the field.

**Exhibit D**

**SUBORDINATION AGREEMENT**

KNOW ALL PERSONS, That \_\_\_\_\_, the owner and holder of that certain \_\_\_\_\_ (Instrument) bearing the date the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, executed by \_\_\_\_\_, \_\_\_\_\_, and recorded in the office of the County Auditor of \_\_\_\_\_ County, State of Washington, on the \_\_\_\_\_, 20\_\_\_\_, under Auditor's File Number \_\_\_\_\_, does hereby agree that said Instrument shall be subordinate to the interest of the State of Washington, Department of Ecology, under the environmental (restrictive) covenant dated \_\_\_\_\_, 20\_\_\_\_, executed by \_\_\_\_\_, and recorded in \_\_\_\_\_ County, Washington under Auditor's File Number \_\_\_\_\_.

Dated \_\_\_\_\_, 20\_\_\_\_.

NAME

\_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, I certify that \_\_\_\_\_ personally appeared before me, and acknowledged that **he/she** is the individual described herein and who executed the within and foregoing instrument and signed the same at **his/her** free and voluntary act and deed for the uses and purposes therein mentioned.

\_\_\_\_\_  
Notary Public in and for the State of  
Washington, residing at \_\_\_\_\_.  
My appointment expires \_\_\_\_\_.

