DOH Facility
Site # 01838
Site # 6773108
Project # 8723

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

In the Matter of Remedial Action by:	AGREED ORDER
Chevron U.S.A. Inc. **C. C. Cole and Sons, Inc.**	No. DE 3937

TO: Mr. Brett L. Hunter
Chevron Environmental Management Company
A Division of Chevron U.S.A. Inc.
P.O. Box 6004
6001 Bollinger Canyon Road, Room K2252
San Ramon, CA 94583-2324

Mr. Robert Cole
C. C. Cole and Sons, Inc., D.B.A. Evergreen Fuel Company
P.O. Box 536
Shelton, WA 98584-0536

TABLE OF CONTENTS

I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology) and Chevron U.S.A. Inc. ("Chevron") and C. C. Cole and Sons, Inc. d/b/a Evergreen Fuel Company ("C. C. Cole"), hereafter referred to as the Potentially Liable Persons (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. This Order requires the PLPs to implement the Cleanup Action Plan and Scope of Work attached hereto and incorporated herein as Exhibits B and C. 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. The PLPs agree to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter the PLP's responsibility under this Order. The PLPs shall provide a copy of this Order to all agents, contractors, and subcontractors retained to perform work required by this Order, and shall ensure that all work undertaken by such agents, contractors, and subcontractors complies with this Order.

IV. DEFINITIONS

Unless otherwise specified herein, the definitions set forth in Chapter 70.105D RCW and Chapter 173-340 WAC shall control the meanings of the terms in this Order.

A. Site: The Site is referred to as the Evergreen Fuels Site and is generally located at 661 East Pine Street, in Shelton, Washington. The Site is defined by the extent of contamination caused by the release of hazardous substances at the Site. The Site is more particularly described in the Site Diagram (Exhibit A). The Site constitutes a Facility under RCW 70.105D.020(4).

B. Parties: Refers to the State of Washington, Department of Ecology, and Chevron and C. C. Cole

C. Potentially Liable Persons (PLPs): Refers to Chevron and C. C. Cole

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.

V. FINDINGS OF FACT

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

A. The current C.C. Cole (the former Chevron bulk fuel facility) facility is located at 661 East Pine Street, Shelton, Washington 98584. The current bulk fuel facility is bounded to the north by State Route 3, to the east and south by Shelton Yacht Club and Oakland Bay, and to the west by Simpson Timber Company property.

B. On February 4, 2003, Ecology Water Quality Inspector, Marilou Pivirotto, conducted a site visit of the C. C. Cole Facility as requested by Ecology's Spill Response Program due to petroleum leaking into Oakland Bay from the site oil/water separator. Due to documented releases of petroleum to soils and waters-of-the-state Best Management Practices were recommended to Mr. Bob Cole.

C. On March 12, 2003, Ecology received a report (Ecology Environmental Report Tracking System number 532408) originating from the Washington State Patrol that 2500 to 6000

gallons of fuel were released and were entering Oakland Bay. On March 12, 2003, Ecology also received a National Response Center Flash Fax reporting a 100-gallon release of fuel oil into Oakland Bay.

D. On March 12, 2003, Ecology Spill Responder, John Hanson, arrived on scene at C. C. Cole to investigate the reported fuel oil spill to Oakland Bay. Hanson was briefed by Lt. Sobotka from Shelton Fire Department concerning the release. Hanson was informed that a fuel delivery truck owned by Covich-Williams Company, Inc., was off loading #2 diesel on March 12, 2003, to a 27,000 gallon above ground storage tank when the tank over-filled. The diesel spilled within the containment area (which has a porous soil floor/bottom) and also splashed over the containment wall and ran into waters of the state and down the side of the tank into the containment area. Lt. Sobotka estimated 50 to 70 gallons of number 2 diesel had been released to Oakland Bay and that a total of 300 to 400 gallons of fuel oil had been released to the environment.

E. Hanson was informed by C. C. Cole (Robert Cole) that the tank gauge was broken, that they used a measuring stick to find the quantity in the tanks, and that the tank was overfilled because they had measured the existing volume in the tank incorrectly.

F. On April 7, 2003, Ecology received a report (Ecology Environmental Report Tracking System number 532923) originating from Mason County reporting an unidentified sheen on Oakland Bay near the boat launch. Ecology Spill Responder, Mike Osweiler, responded to the incident and met with Kim Lincoln of Mason County at the boat haul-out adjacent to the

storage tank farm operated by C C. Cole . Osweiler observed a groundwater seep with a rainbow sheen flowing from beneath C. C. Cole's bulk fuel oil tank farm's concrete containment system and towards Oakland Bay. Osweiler noted a strong odor of diesel in the area of this seep, a rainbow sheen on top of the discharge, and a red stain (possibility iron oxide caused by the release of petroleum products to the environment generating a reducing environment) originating from the seep.

G. Osweiler then went to the Evergreen Fuel Company office and spoke with Ms. Buchanan and Mr. Robert Cole regarding this sheen. The spill that occurred on March 12, 2003, was discussed as the apparent cause of the sheen.

H. Ecology Spill Responder, Andrea Unger, responded to C. C. Cole on April 14, 2003, to again inspect the sheen originating from beneath C. C. Cole's bulk fuel oil tank farm's concrete containment system. Unger observed a continued release of a petroleum sheen originating from the containment system and flowing into Oakland Bay causing a visible sheen in the waterway.

I. On April 23, 2003, Osweiler returned to C. C. Cole with Ecology's Southwest Regional Office Toxics Cleanup Program Unit Manager, Robert Warren, to inspect the sheen originating from beneath C. C. Cole's bulk fuel oil tank farm's concrete containment system. Osweiler and Warren observed a continuing release of a petroleum sheen originating from the containment system and flowing into Oakland Bay.

J. On April 28, 2003, Ecology conducted an Initial Investigation Report at C. C. Cole - Parcel # P 320175102006, 661 East Pine Street Shelton, Washington 98584 documenting a release or threatened release of hazardous substances to site soils.

K. A 1998 Phase II Site Investigation Report written by Tom Langseth (registered and licensed with Washington State Department of Ecology to perform the site assessment of UST petroleum releases as required by WAC 173-360-600) for Evergreen Fuel Facility, located at 661 East Pine Shelton, Washington 98584, documents historical release(s) or threatened release of hazardous substances to site soils. A groundwater investigation was not conducted as part of this Site Investigation.

L. A 1923 Sanborn Map for Shelton, Mason County, Washington documents Standard Oil Company's (now Chevron) operation of the facility, including the use of the docks that extend over Oakland Bay, all which were located at the facility currently known as C. C. Cole, 661 East Pine Street Shelton, Washington 98584 ("C. C. Cole facility").

M. On July 9, 1973, Ecology conducted a Bulk Handling Facility Inspection at the C. C. Cole facility, documenting a release or threatened release of hazardous substances to site soils.

N. On March 11, 1975, Ecology conducted a Bulk Handling Facility Inspection at the C. C. Cole facility, documenting a release or threatened release of hazardous substances to site soils.

O. On September 24, 1976, Ecology conducted a Bulk Handling Facility Inspection at the C. C. Cole facility, documenting a release or threatened release of hazardous substances to site soils.

P. On January 18, 1978, Ecology conducted a Bulk Handling Facility Inspection at the C. C. Cole facility, documenting a release or threatened release of hazardous substances to site soils.

Q. On May 7, 2003, Ecology issued a "Notice of Potential Liability for the Release of Hazardous Substances under the Model Toxics Control Act" Chapter 173-340 WAC to (business owners Robert Cole) C. C. Cole. On June 6, 2003, Ecology received a letter from Mr. Ian Rodihan, legal counsel for C. C. Cole, accepting status for C. C. Cole as a Potentially Liable Person for the C. C. Cole facility. On June 19, 2003, Ecology issued a "Determination of Potential Liability for the Release of Hazardous Substances under the Model Toxics Control Act" to C. C. Cole.

R. In response to an Ecology inquiry regarding this site, Chevron conducted a review of their historical documentation available in their files. The information available in their files was reported to be limited to a ground plan dated December 1953 with subsequent revisions noted through May 1973. The ground plan shows the Chevron Facility occupying property at the east end of Pine Street adjacent to Oakland Cove with an associated pier and loading dock. A property schedule appearing on the ground plan indicated the property was purchased by Chevron's predecessor in 1913. The associated pier and loading dock were

leased from the City of Shelton in 1913. Also included in Chevron's historical files were the purchase and sales agreement and deed of trust documenting the sale of land and improvements from Chevron to C.C. Cole in May 1980.

S. The following Department of Transportation aerial photos include:

- A July 30, 1992, aerial photo documents the facility warehouse, office building, overhead tanker truck fueling station, dock facilities, three (3) above ground storage tanks on the west side of Highway 3 and five (5) above ground storage tanks (with sidewall containment) on the east side of Highway 3.

- An April 27, 1987, aerial photo documents the facility warehouse, office building, overhead tanker truck fueling station, dock facilities, three (3) above ground storage tanks on the west side of Highway 3 and four (4) above ground storage tanks (with sidewall containment) on the east side of Highway 3.

- An May 28, 1981, aerial photo documents the facility warehouse, office building, overhead tanker truck fueling station, dock facilities, three (3) above ground storage tanks on the west side of Highway 3 and four (4) above ground storage tanks (with sidewall containment) on the east side of Highway 3.
- A July 25, 1976, aerial photo documents the facility warehouse, office building, overhead tanker truck fueling station, dock facilities, seven (7) above ground storage tanks on the west side of Highway 3 and four (4) above ground storage tanks (with sidewall containment) on the east side of Highway 3.

- A November 22, 1965, aerial photo documents the facility warehouse, office building, overhead tanker truck fueling station, dock facilities, seven (7) above ground storage tanks on the west side of Highway 3 and four (4) above ground storage tanks on the east side of Highway 3.

- An August 5, 1955, aerial photo documents the facility warehouse, office building, overhead tanker truck fueling station, dock facilities, seven (7) above ground storage tanks on the west side of Highway 3 and four (4) above ground storage tanks on the east side of Highway 3.

T. On June 19, 2003, pursuant to WAC 173-340-500(5), Chevron waived their right to the thirty (30) day notice and comment period described in WAC 173-340-500(3) and accepted status as a Potentially Liable Person. By waiving this right, Chevron makes no admission of liability.

U. On April 2, 2004 the Parties entered into Ecology Agreed Order No. DE 03TCPSR-5707, which required, inter alia, preparation by the PLPs of Remedial Investigation and Feasibility Study Reports, as well as a draft Cleanup Action Plan, all pursuant to MTCA. As of July 18, 2006, the PLPs have submitted to Ecology all of the reports required by Agreed Order No. DE 03TCPSR-5707. Ecology acknowledges that the reports and other deliverables required under Agreed Order No. DE 03TCPSR-5707 have been approved and that all required work under that Agreed Order has been satisfactorily completed.

VI. ECOLOGY DETERMINATIONS

A. Chevron was an "owner or operator" as defined at RCW 70.105D.020(12) of a "facility" as defined in RCW 70.105D.020(4). C.C. Cole is the current "owner or operator" as defined at RCW

70.105D.020(12) of a "facility" as defined in RCW 70.105D.020(4). The factual bases for this determination are listed below.

B. Based upon all factors known to Ecology, including the findings of the Site Remedial Investigation Report, 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.

C. Based upon credible evidence, Ecology issued a PLP status letter to Chevron dated July 9, 2003, pursuant to RCW 70.105D.040, -.020(16) and WAC 173-340-500. By letter dated June 19, 2003 Chevron had already voluntarily waived its rights to notice and comment and accepted Ecology's determination that Chevron is a PLP under RCW 70.105D.040.

D. 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 C. C. Cole is a PLP under RCW 70.105D.040 and notified it of this determination by letter dated June 19, 2003.

E. Pursuant to RCW 70.105D.030(1) and -.050(1), Ecology may require the 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 ordered that the PLPs perform the remedial actions specified in detail in the Scope of Work and Schedule (Exhibit C) and the Cleanup Action Plan (Exhibit B). These exhibits are incorporated by reference and are an integral and enforceable part of this Agreed Order. These remedial actions shall be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein. A summary of the work program to be performed is as follows:

A. Submission of draft and final Engineering Design Reports;

B. Procurement of all required permits, easements, access agreements, etc. needed to perform the required work;

C. Remedial Action Construction Implementation;

D. Filing of Restrictive Covenant (Exhibit D);

E. Monitoring and reporting on remedial action.

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

VIII. TERMS AND CONDITIONS OF ORDER

A. Public Notice

RCW 70.105D.030(2)(a) requires that, at a minimum, this Order be subject to concurrent public notice. Ecology shall be responsible for providing such public notice and reserves the right to modify or withdraw any provisions of this Order should public comment disclose facts or

considerations which indicate to Ecology that this Order is inadequate or improper in any respect.

B. Remedial Action Costs

PLPs shall pay to Ecology costs incurred by Ecology pursuant to this Order and consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology or its contractors for, or on, the Site under Chapter 70.105D RCW, including remedial actions and Order preparation, negotiation, oversight, and administration. These costs shall include work performed 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). PLPs shall pay the required amount within ninety (90) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general 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.

Pursuant to RCW 70.105D.055, Ecology has authority to recover unreimbursed remedial action costs by filing a lien against real property subject to the remedial actions.

C. Implementation of Remedial Action

If Ecology determines that a PLP has failed without good cause to implement the remedial action, in whole or in part, Ecology may, after notice to the PLP, perform any or all portions of the remedial action that remain incomplete. If Ecology performs all or portions of the remedial action because of a PLP's failure to comply with its obligations under this Order, the PLP shall reimburse Ecology for the costs of doing such work in accordance with Section B.

(Remedial Action Costs), provided that a PLP is not obligated under this Section to reimburse Ecology for costs incurred for work inconsistent with or beyond the scope of this Order.

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

D. Designated Project Coordinators

The project coordinator for Ecology is:

Dom Reale, P.E.
Washington State Department of Ecology
Southwest Regional Office
300 Desmond Drive
Lacey, WA 98503
Telephone: 360-407-6266
Email: drea461@ecy.wa.gov

The project coordinator for the PLPs is:

Peter Jewett
Farallon Consulting, L.L.C.
975 5th Avenue Northwest
Issaquah, WA 98027
Telephone: 425.295.0800
Email: pjewett@farallonconsulting.com

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 the PLPs, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order shall be directed through the project

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 Decree.

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.

E. Performance

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

All engineering work performed pursuant to this Order shall be under the direct supervision of a professional engineer registered in 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 in 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 Chapter 18.220 RCW or RCW 18.43.130.

PLPs 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.

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 C. C. Cole 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 the PLPs' progress in carrying out the terms of this Order; conducting such tests or collecting such samples as Ecology may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by the PLPs. The PLPs shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by C. C. Cole 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 C. C. Cole 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.

G. Sampling, Data Submittal, and Availability

With respect to the implementation of this Order, the PLPs shall make the results of all sampling, laboratory reports, and/or test results generated by it or on its behalf available to Ecology. 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, the PLPs shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by the PLPs pursuant to implementation of this Order. The PLPs shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow the PLPs and/or their 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. Part F (Access), Ecology shall notify the PLPs prior to any sample collection activity unless an emergency prevents such notice.

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

H. Public Participation

A Public Participation Plan is required for this Site. Ecology shall review any existing Public Participation Plan to determine its continued appropriateness and whether it requires amendment, or if no plan exists, Ecology shall develop a Public Participation Plan alone or in conjunction with the PLPs.

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

1. If agreed to by Ecology, develop appropriate mailing 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 the preparation of all press releases and fact sheets, and before major meetings with the interested public and local governments. Likewise, Ecology shall notify the PLPs 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 the PLPs that do not receive prior Ecology approval, the PLPs 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. Shelton Library
710 West Alder Street
Shelton, WA 98584-2471

b. Ecology's Southwest Regional Office
300 Desmond Drive
Lacey, WA 98503

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

I. Retention of Records

During the pendency of this Order, and for ten (10) years from the date of completion of work performed pursuant to this Order, the PLPs shall preserve all records, reports, documents, and underlying data in 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, the PLPs shall make all records available to Ecology and allow access for review within a reasonable time.

J. Resolution of Disputes

1. In the event a dispute arises as to an approval, disapproval, proposed change, or other decision or action by Ecology's project coordinator, or an itemized billing statement under Section VIII. Part B (Remedial Action Costs), the Parties shall utilize the dispute resolution procedure set forth below.

a. Upon receipt of Ecology's project coordinator's written decision or the itemized billing statement, the PLPs have fourteen (14) days within which to notify Ecology's project coordinator in writing of its objection to the decision or itemized statement.

b. Upon written request of the PLPs (which may be via email), the Parties' project coordinators shall then confer in an effort to resolve the dispute. If the project coordinators cannot resolve the dispute within fourteen (14) days, Ecology's project coordinator shall issue a written decision.

c. The PLPs may then request regional management review of the decision. This request shall be submitted in writing to the Southwest Region Toxics Cleanup

Section Manager within seven (7) days of receipt of Ecology's project coordinator's written decision.

d. The Section Manager shall conduct a review of the dispute and shall endeavor to issue a written decision regarding the dispute within thirty (30) days of the PLPs' request for review. The Section Manager's decision shall be Ecology's final decision on the disputed matter.

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

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

K. Extension of Schedule

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

a. The deadline that is sought to be extended;

b. The length of the extension sought;

c. The reason(s) for the extension; and

d. Any related deadline or schedule that would be affected if the extension were granted.

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

a. Circumstances beyond the reasonable control and despite the due diligence of the PLPs including delays caused by unrelated third parties or Ecology, such as (but not limited to) delays by Ecology in reviewing, approving, or modifying documents submitted by the PLPs;

b. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty; or

c. Endangerment as described in Section VIII. Part M (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 the PLPs.

3. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give the PLPs 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. Part L (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. Part M (Endangerment).

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. Part N (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 the PLPs. The PLPs shall submit a written request for amendment to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a timely manner after the written request for amendment is received. If the amendment to 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. Part J (Resolution of Disputes).

M. Endangerment

In the event Ecology determines that any activity being performed at the Site is creating or has the potential to create a danger to human health or the environment on or surrounding the

Site, Ecology may direct the PLPs to cease such activities for such period of time as it deems necessary to abate the danger. The PLPs shall immediately comply with such direction.

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

If Ecology concurs with or orders a work stoppage pursuant to this Section, PLPs' 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. Part K (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.

N. Reservation of Rights

This Order is not a settlement under Chapter 70.105D RCW. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any of Ecology's rights or authority. Ecology will not, however, bring an action against the PLPs to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take

additional enforcement actions against the PLPs regarding remedial actions required by this Order, provided the PLPs comply with this Order.

Ecology nevertheless reserves its rights under Chapter 70.105D RCW, including the right to require additional or different remedial actions at the Site should it deem such actions necessary to protect human health and the environment, and to issue orders requiring such remedial actions. Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the release or threatened release of hazardous substances at the Site.

O. Transfer of Interest in Property

No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by the PLPs without provision for continued implementation of all requirements of this Order and implementation of any remedial actions found to be necessary as a result of this Order.

Prior to the PLPs' transfer of any interest in all or any portion of the Site, and during the effective period of this Order, the PLPs 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, the PLPs shall notify Ecology of said transfer. Upon transfer of any interest, the PLPs shall restrict uses and activities to those consistent with this Order and notify all transferees of the restrictions on the use of the property.

P. Compliance with Applicable Laws

1. All actions carried out by the PLPs pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to

obtain necessary permits, except as provided in RCW 70.105D.090. The permits or specific federal, state or local requirements that the agency has determined are applicable and that are known at the time of entry of this Order have been identified in Exhibit C.

2. Pursuant to RCW 70.105D.090(1), the PLPs are 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, the PLPs shall comply with the substantive requirements of such permits or approvals. The exempt permits or approvals and the applicable substantive requirements of those permits or approvals, as they are known at the time of entry of this Order, have been identified in Exhibit B.

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

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 the PLPs shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70.105D.090(1), including any requirements to obtain permits.

Q. Land Use Restrictions

The PLPs shall record a Restrictive Covenant (Exhibit D) with the office of the Mason County Auditor within ten (10) days of the completion of the remedial action. The Restrictive Covenant shall restrict future uses of the Site. The PLPs shall provide Ecology with a copy of the recorded Restrictive Covenant within thirty (30) days of the recording date.

R. 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, the PLPs 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.

S. Indemnification

The PLPs agree to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action for death or injuries to persons or for loss or damage to property to the extent arising from or on account of acts or omissions of the PLPs, their officers, employees, agents, or contractors in entering into and implementing this Order. However, the PLPs shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action 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 the PLPs' receipt of written notification from Ecology that the PLPs have completed the remedial activity required by this Order, as amended by any modifications, and that the PLPs have complied with all other provisions of this Agreed Order.

X. ENFORCEMENT

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

A. The Attorney General may bring an action to enforce this Order in a state or federal court.

B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the Site.

C. In the event the PLPs refuse, without sufficient cause, to comply with any term of this Order, the PLPs will be liable for:

a. Up to three (3) times the amount of any costs incurred by the State of Washington as a result of its refusal to comply; and

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

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

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

Effective date of this Order: Nov. 20, 2006

C. C. COLE & SONS, INC.
D/B/A EVERGREEN FUEL COMPANY

Robert Cole
President
C. C. Cole & Sons, Inc.
P.O. Box 536
Shelton, WA 98584-0536
Telephone: 206.525.2614

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY

Rebecca Lawson
Section Manager
Toxics Cleanup Program
Southwest Regional Office
Telephone: 360-407-6241

CHEVRON U.S.A. INC.

Curt Peck
Area Manager - RTBU
Chevron Environmental Management Company
6001 Bollinger Canyon Road, K2244
San Ramon, CA 94583
Telephone: 925-842-3561

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

Effective date of this Order: _____

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EXHIBIT A

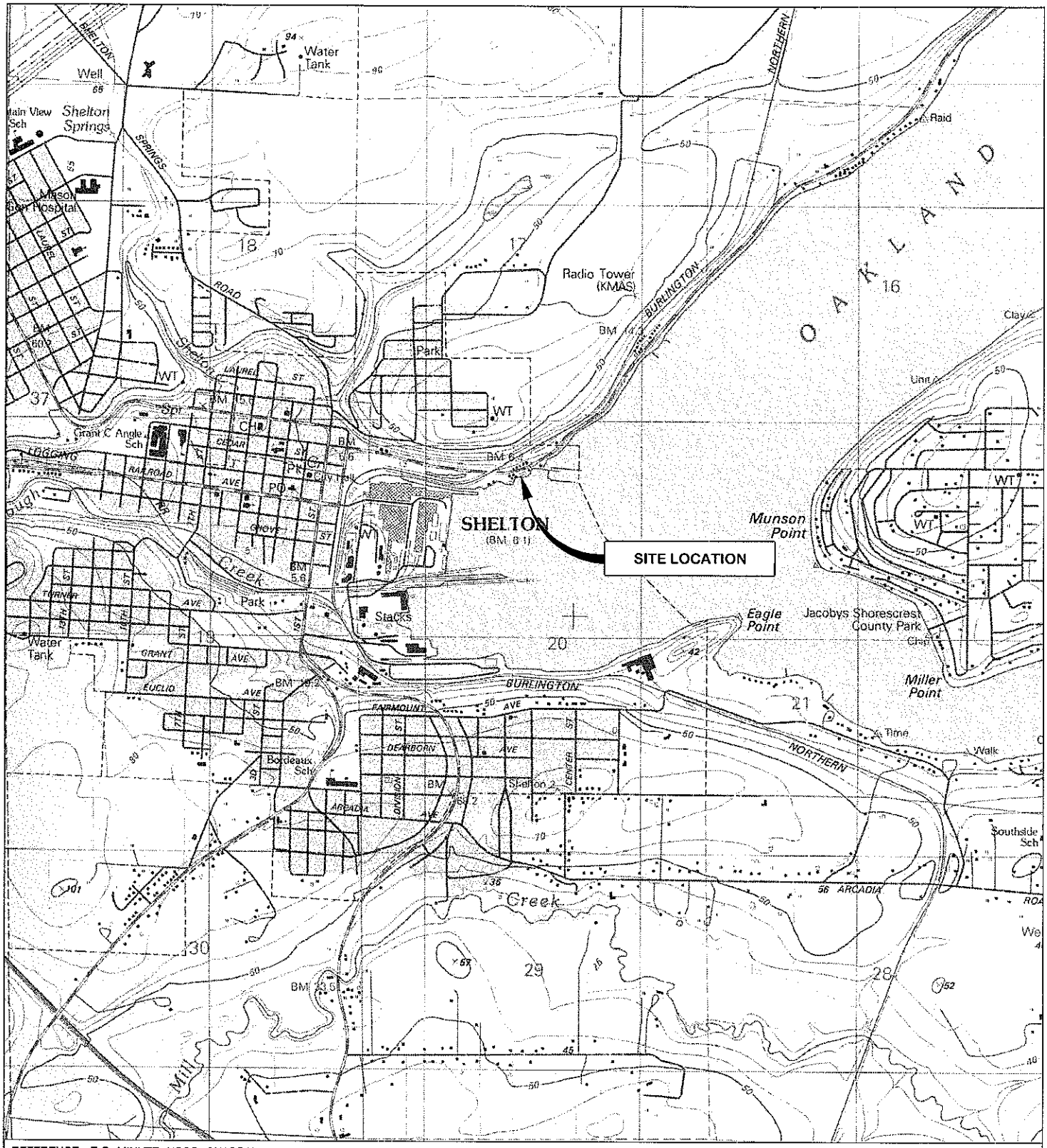
SITE DIAGRAM

The Site is located on the real property owned by C.C. Cole & Sons, Inc., located at 661 East Pine Street in Shelton, Washington, and legally described as follows:

All portions of Lots 2 and 3, Block 2, which lies southerly of the right of way line of secondary State Highway 14-A. All of lots 4, 5, 6, 7, Block 2, all of amended and corrected plat of the Town of Shelton, Mason County, Washington, as recorded in Volume 2 of Plats, page 19, records of Mason County, Washington. Lots 25 to 32, both inclusive, Map of Shelton Tide Lands, according to the official map thereof in the office of Commissioner of Public Lands in Olympia, Washington. A triangular tract of land situated in Government Lot 1, Section 20, Township 20 North, Range 3 West, Willamette Meridian."

The Site is defined as the areas where contiguous concentrations of constituents of concern (COCs) were detected exceeding the Washington State Department of Ecology Model Toxics Control Act Cleanup Regulation (MTCA) cleanup levels established for the Remedial Investigation. The physical boundaries of the Site are defined by the detected concentrations of COCs based on the results documented in the Final RI Report, and are depicted on Figures 2 and 3. The property owned by C.C. Cole and Sons, Inc. includes areas that are not part of the Site. Additionally, a portion of the City of Shelton Pine Street right-of-way is included in the Site, based on the detected concentrations of COCs in soil, and groundwater discharging as surface water at this location (Figures 2 and 3).

Figure 1 Site Vicinity Map
Figure 2 Site Vicinity Detail Map
Figure 3 Site Plan



REFERENCE: 7 5 MINUTE USGS QUADRANGLE SHELTON WASHINGTON DATED 1981

FARALLON CONSULTING
975 5th Avenue NW
Issaquah WA 98027

FIGURE 1

SITE VICINITY MAP
EVERGREEN FUEL FACILITY
661 EAST PINE STREET
SHELTON, WASHINGTON

FARALLON PN: 863-001

Drawn By: DEW	Checked By: CB	Date:10/04/06	Disk Reference: 863001

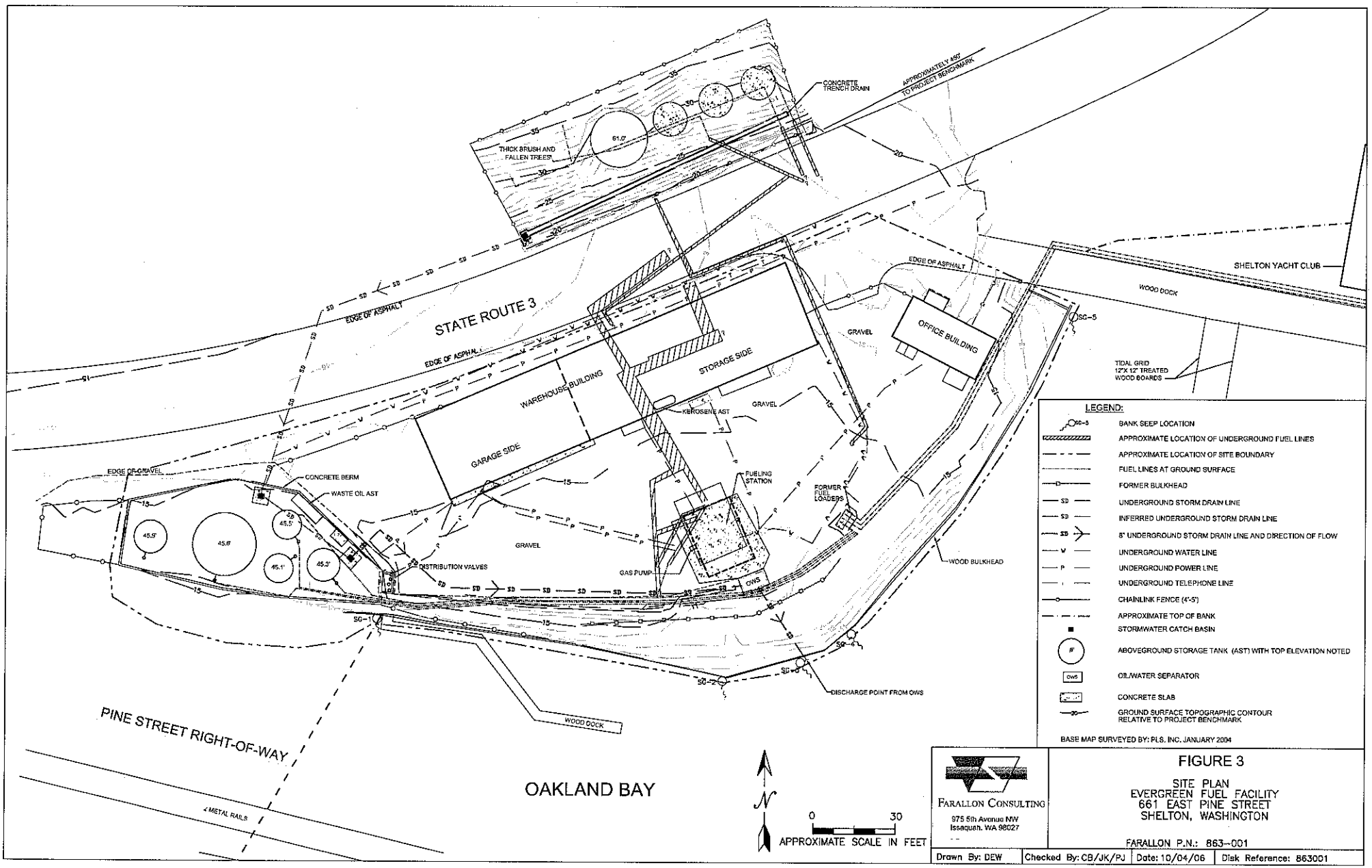
FARALLON CONSULTING
975 5th Avenue NW
Issaquah, WA 98027

FIGURE 2

SITE VICINITY DETAIL MAP
EVERGREEN FUEL FACILITY
661 EAST PINE STREET
SHELTON, WASHINGTON

FARALLON PN: 863-001

Drawn By:DEW	Checked By:CB	Date:10/04/06	Disk Reference:8630010LD



FARALLON CONSULTING
975 5th Avenue NW
Issaquah, WA 98027

FIGURE 3

SITE PLAN
EVERGREEN FUEL FACILITY
661 EAST PINE STREET
SHELTON, WASHINGTON

FARALLON P.N.: 863-001

Drawn By: DEW	Checked By: CB/JK/PJ	Date: 10/04/06	Disk Reference: 863001

EXHIBIT B

DRAFT CLEANUP ACTION PLAN

EVERGREEN FUEL FACILITY
661 EAST PINE STREET
SHELTON, WASHINGTON

Washington State Department of Ecology
300 Desmond Drive
Lacey, Washington 98503

November, 2006

TABLE OF CONTENTS

FIGURES

ACRONYMS AND ABBREVIATIONS

ARARs	applicable or relevant and appropriate requirements
ASTs	aboveground storage tanks
bgs	below ground surface
BTEX	benzene, toluene, ethylbenzene, and xylenes
COCs	constituents of concern
DCAP	Draft Cleanup Action Plan
DRO	diesel-range organics
Ecology	Washington State Department of Ecology
Farallon	Farallon Consulting, L.L.C.
Final FS Report	Final Feasibility Study Report
Final RI Report	Final Remedial Investigation Report
GRO	gasoline-range organics
mg/kg	milligrams per kilogram
µg/l	micrograms per liter
MTCA	Washington State Model Toxics Control Act Cleanup Regulation
ORO	oil-range organics
PAHs	polycyclic aromatic hydrocarbons
PLPs	potentially liable parties
PQL	practical quantitation limit
RCW	Revised Code of Washington
RI	Remedial Investigation
Site	Areas of the Evergreen Fuels Facility where constituents of concern (COCs) were detected exceeding the appropriate MTCA cleanup levels, as

	well as any areas outside of the facility where concentrations of COCs exceeding the appropriate MTCA cleanup levels may exist which are contiguous with facility contamination. Non-contiguous off-facility contamination (if any had existed) may also have been considered as part of the Site, or otherwise may have been considered as a separate site.
SVOCs	semivolatile organic compounds
TPH	total petroleum hydrocarbons
USTs	underground storage tanks
VOCs	volatile organic compounds
WAC	Washington Administrative Code

1.0 INTRODUCTION

This Draft Cleanup Action Plan (DCAP) has been prepared for the Evergreen Fuel Facility located at 661 East Pine Street in Shelton, Washington (herein referred to as the Site) (Figure 1). The DCAP has been prepared in accordance with the requirements of Agreed Order No. DE 03TCPSR-5707 issued by the Washington State Department of Ecology (Ecology) pursuant to the authority of Chapter 70.105D.050(1) of the Revised Code of Washington (RCW 70.105D.050[1]), and entered into by the potentially liable persons (PLPs), C.C. Cole and Sons, Inc. and Chevron USA Products Company, to meet the requirements of the Washington State Model Toxics Control Act Cleanup Regulation (MTCA), as established in Chapter 173-340 of the Washington Administrative Code (WAC 173-340). The DCAP describes the Site, the nature and extent of contamination, the cleanup action alternatives considered, and the proposed cleanup action for soil, groundwater, and surface water with concentrations of petroleum hydrocarbon compounds, collectively referred to as constituents of concern (COCs), above the applicable MTCA cleanup levels. The DCAP will be implemented pursuant to a Consent Decree or an Agreed Order between the PLPs and Ecology.

Previous work conducted at the Site to meet the requirements of Agreed Order No. DE 03TCPSR-5707 included a Remedial Investigation (RI), the results of which are presented in the Final Remedial Investigation Report dated December 2, 2005, prepared by Farallon Consulting, L.L.C. (Farallon) (Final RI Report), and a Feasibility Study, the results of which are presented in the Final Feasibility Study Report dated July 10, 2006, also prepared by Farallon (Final FS Report). The Site is defined as areas where contiguous concentrations of one or more of the COCs were detected exceeding the MTCA cleanup levels defined in the Final FS Report.

1.1 PURPOSE

The DCAP has been prepared in accordance with WAC 173-340-380 to present the proposed cleanup action and to specify cleanup standards and other requirements for the cleanup action. The cleanup action will meet the threshold requirements of WAC 173-340-360 to protect human health and the environment, comply with cleanup standards, comply with applicable state and federal laws, and provide for compliance monitoring. The cleanup action proposed by Ecology in this DCAP includes:

- Excavation of soil with concentrations of one or more of the COCs that exceed MTCA cleanup levels, within the limits of practicability, for off-Site disposal; and
- Implementation of enhanced aerobic bioremediation to treat groundwater, including groundwater discharging as surface water, that may contain residual concentrations of one or more of the COCs that exceed MTCA cleanup levels after removal of contaminated soils.

1.2 CLEANUP ACTION PLAN ORGANIZATION

The DCAP has been organized into the following sections:

- **Section 1 – Introduction:** This section provides the purpose and scope of the DCAP.
- **Section 2 – Site Description and Background:** This section provides a description of the Site, Site history, and surrounding properties.
- **Section 3 – Remedial Investigation:** This section presents a summary of the results of the RI and a description of the conceptual site model.
- **Section 4 – Cleanup Standards:** Section 4 presents a description of the technical elements for the proposed cleanup action, including the applicable laws and regulations, COCs, media of concern, cleanup standards, and the terrestrial ecological evaluation.
- **Section 5 - Evaluation and Selection of Cleanup Action Alternatives:** This section presents a summary of the evaluation of technically feasible cleanup action alternatives for the Site.
- **Section 6 – Proposed Cleanup Action:** This section provides a discussion of the proposed cleanup action alternative and monitoring requirements.
- **Section 7 – Additional Requirements:** This section describes the documentation to be provided for the proposed cleanup action, including an Engineering Design Report, construction plans and specifications, and a Compliance Monitoring Plan.
- **Section 8 – References:** Section 8 lists the documents cited in the DCAP.

2.0 SITE DESCRIPTION AND BACKGROUND

This section presents a description of the Site, a summary of the Site history, and a discussion of surrounding property use. Additional details regarding the Site setting and historical activities are provided in the Final RI Report.

2.1 SITE DESCRIPTION

The Site is located adjacent to State Route 3 in Shelton, Mason County, Washington, in the northeast quarter of the northwest quarter of Section 20, Township 20 North, Range 3 East (Figure 1). The Site is defined as the areas of the Evergreen Fuels Facility where constituents of concern (COCs) were detected exceeding the appropriate MTCA cleanup levels, as well as any areas outside of the facility where concentrations of COCs exceeding the appropriate MTCA cleanup levels may exist which are contiguous with facility contamination. Non-contiguous off-facility contamination (if any had existed) may also have been considered as part of the Site, or otherwise may have been considered as a separate site. The physical boundaries of the Site are defined by the detected concentrations of COCs based on the results documented in the Final RI Report, and are depicted on Figure 2. The property owned by C.C. Cole and Sons, Inc. includes areas that are not part of the Site. Additionally, a portion of the City of Shelton Pine Street right-of-way is included in the Site, based on the detected concentrations of COCs in soil, and groundwater discharging as surface water at this location (Figure 2).

The Site is located on flat land at the base of a steep, vegetated hillside on Oakland Bay, an embayment of Puget Sound. The current features on the Site include an office building, a warehouse, a top-loading fueling station, and six aboveground storage tanks (ASTs) (Figure 2). The areas of the Site that are not covered by buildings or structures are covered by gravel or vegetation. The Site was previously used for the storage, distribution, and sale of gasoline, diesel, heating oil, kerosene, and other petroleum products. These operations have been discontinued, and the Site currently is not in use. Demolition of the existing Site structures may occur prior to the cleanup action.

2.2 SITE HISTORY

The Site was used as a bulk fuel storage and sales facility from the early 1900s (Langseth Environmental Services, Inc. 1998). The Site was owned and operated by the Standard Oil Company from the early 1900s until the 1930s, when C.C. Cole and Sons, Inc. began operating the Evergreen Fuel Facility under the Standard Oil Company brand. In May 1980, C.C. Cole and Sons, Inc. purchased the Site from Chevron Products Company (formerly the Standard Oil Company), and operated the bulk fuel facility continuously from that time until operations were discontinued in late 2005. ASTs and aboveground piping were used for bulk fuel storage and transfer at the Site. Underground storage tanks (USTs) are not reported to have been used at the Site. Four fuel loaders were located east of the existing fueling station on the property (Figure 2).

As documented in the Final RI Report, a variety of additional products were stored on the upland portion of the property (Farallon 2005). These products included aviation fuel, motor oil, solvents, white gas, paint thinner, roof coatings, floor hardeners, wood preservatives, and creosote. These compounds were delivered to the property on pallets in containers ranging from 1- to 55-gallon capacity, stored in the warehouse, and distributed directly to customers. These compounds were not used on the property or transferred out of their containers.

The property located on the northern side of State Route 3 was owned by Chevron Products Company, who leased the property to C.C. Cole and Sons, Inc. In 1973, the property on the northern side of State Route 3 was purchased by C.C. Cole and Sons, Inc. Five ASTs ranging from 8,000- to 16,000-gallon capacity and used for storage of diesel fuel and gasoline were located on the northern property. The ASTs were filled through aboveground piping that extended from a barge off-loading area formerly located on the dock, through underground piping that extended from the eastern end of the dock at the Shelton Marina, beneath State Route 3, to the ASTs. Diesel fuel and gasoline from the ASTs were distributed through underground piping beneath State Route 3 and through aboveground piping on the property. Although the property on the northern side of State Route 3 was abandoned in favor of the current location on the western portion of the property, the timing and details regarding abandonment and/or removal of the former ASTs are not known.

The results of the RI did not detect concentrations of COCs in soil on the property located on the northern side of State Route 3; therefore, the cleanup action for the Site addresses only the portion of the property on the southern side of State Route 3, where concentrations of COCs were detected in soil and groundwater.

Bulk diesel fuel and gasoline were delivered to the property via barges from 1913 until approximately 1967. An off-loading area that was located on the dock at the Shelton Marina conveyed diesel fuel and gasoline to the property via piping that extended along the underside of the dock. According to Port of Shelton documents, the Shelton Marina has been owned and operated by the Port of Shelton since 1951 (Port of Shelton 2005). It is not known whether barge off-loading occurred at the current dock, or whether another dock(s) was formerly located at the Marina.

Environmental investigations by Ecology were initiated at the Site in response to a release of diesel into the surface water of Oakland Bay reported by the Washington State Patrol. The Ecology spill responder identified that the spill occurred by the overfilling of one of the ASTs on the Site (Farallon 2005). According to the follow-up report completed by Ecology on March 13, 2003, a lieutenant with the Shelton Fire Department estimated that 50 to 70 gallons of diesel fuel had been released to Oakland Bay, and that a total of 300 to 400 gallons of diesel fuel had been released to the environment.

Spill response personnel from Foss Environmental placed 500 feet of absorbent boom along the southern waterfront, and sorbent material inside the tank-containment area. On March 13 and 14, 2003, Foss removed the absorbent boom from the waterfront, and removed approximately 1 ton of debris and material from inside and adjacent to the tank-containment area.

The analytical results of soil samples collected by Ecology from within the tank containment area detected concentrations of total petroleum hydrocarbons (TPH) as diesel-range organics (DRO) at concentrations ranging from 2,500 to 21,900 milligrams per kilogram (mg/kg), which exceed the MTCA Method A cleanup level of 2,000 mg/kg (Farallon 2004). In April 2003, an anonymous party reported an unidentified sheen on the surface water of Oakland Bay. The Ecology spill responder observed a groundwater seep with a "rainbow sheen" and a strong diesel odor flowing from beneath the AST concrete containment system (Farallon 2004). Ecology collected two soil samples from near the bulkhead south of the Site. Analytical results of one of the samples collected from soil located in the Pine Street right-of-way detected a concentration of 450 mg/kg of TPH as gasoline-range organics (GRO) identified as weathered gasoline, and coal tar creosote. The analytical results of the other soil sample, collected adjacent to the boat cradle with launching rails on the Simpson Timber Company property, detected a concentration of 10,700 mg/kg of DRO identified as #2 fuel oil or #2 diesel.

2.3 SURROUNDING PROPERTIES

The Shelton Yacht Club and the Shelton Marina are located to the east-northeast of the Site. The City of Shelton Pine Street right-of-way is south-adjacent to the Site, beyond which is land owned by the Simpson Timber Company. Railroad tracks and property owned and operated by BNSF Railway Company are located to the northwest and west of the property. The water of Oakland Bay is located to the east and south of the Site (Figure 2).

The Shelton Yacht Club, located east-northeast-adjacent to the Site, leases the yacht club property from the Port of Shelton. The Shelton Marina, also located east-northeast-adjacent to the Site, is owned and operated by the Port of Shelton. The Shelton Marina includes docks and boathouses that extend over tidelands owned by C.C. Cole and Sons, Inc. and the Washington State Department of Natural Resources. Features at the Shelton Yacht Club and the Shelton Marina include a tidal grid, timber docks, covered and uncovered slips for moorage of marine vessels, a single-story wood-framed building supported by pilings, and a gravel parking area. Historical documentation on file with Ecology indicates that the Port of Shelton formerly owned and operated two USTs for fueling marine vessels at the docks. The exact location of the USTs, associated product piping, and fuel dispensers is not known.

The Pine Street right-of-way is located southwest-adjacent to the Site (Figure 2). Features of the right-of-way include a short abandoned dock, a tidal grid, upland soil, and tidal sediment. The operational history of the dock and tidal grid located in the Pine Street right-of-way is not known; however, the dock and tidal grid were not known to have been used by Chevron Products Company or C.C. Cole and Sons, Inc. at any time in the past. Historical information provided by C.C. Cole and Sons, Inc. indicates that an abandoned sanitary sewer outflow pipe, still located in the Pine Street right-of-way, formerly discharged sewage directly into Oakland Bay.

Located beyond the Pine Street right-of-way to the southwest is property owned by the Simpson Timber Company. The Simpson Timber Company facility includes a vacant single-story wood-frame and sheet metal-sided building supported by pilings, a small shed, and a boat cradle with launching rails that extend from the building to the water of Oakland Bay. The Simpson Timber Company facility operates as a sandblasting facility to clean log-boom boat bottoms.

Aboveground storage tanks were located between the facility building and State Route 3. This area has been evaluated by Ecology under a separate investigation.

3.0 REMEDIAL INVESTIGATION

This section presents a summary of the results of the RI and a description of the conceptual site model that was developed to assist in the evaluation and selection of feasible cleanup action alternatives. A more detailed discussion is presented in the RI Report (Farallon 2005).

3.1 REMEDIAL INVESTIGATION RESULTS

The RI field investigation encountered fill material consisting of silty, sandy gravels and silty sand across the upland portion of the Site from the ground surface to a depth of approximately 7 feet below ground surface (bgs). A flat-lying, laterally continuous 1- to 1.5-foot thick layer of fill consisting of silty sand and sandy silt was encountered across the upland portion of the Site at a depth of approximately 5 feet bgs. On the eastern side of the upland portion of the Site, a layer of silt is underlain by well-graded sand. The subsurface soils observed on the eastern side of the upland portion of the Site beneath the fill material include seaward-sloping stratified silty sand, gravel, and silt. The soils observed on the western side of the upland portion of the Site beneath the fill material consist of poorly graded sands and gravels to the total depth explored of 26.5 feet bgs.

The RI identified two water-bearing zones at the Site. A shallow water-bearing zone was encountered at a depth of approximately 7 feet bgs, with static water levels rising to approximately 3 to 5 feet bgs in monitoring wells screened in the shallow water-bearing zone. The groundwater flow direction in the shallow water-bearing zone is to the southeast, toward Oakland Bay. The results of a tidal study conducted as part of the RI indicated that the shallow water-bearing zone is not tidally influenced. However, there is groundwater exchange in one location at the Site, in which groundwater in the shallow water-bearing zone discharges directly to the surface soil through a surface seep.

A deeper water-bearing zone at the Site was encountered at a depth of approximately 26.5 feet bgs, with the static water level rising to approximately 7 to 11 feet bgs. The laboratory analytical results of groundwater samples collected from the deeper water-bearing zone indicates that groundwater in the deeper water-bearing zone has not been impacted by releases of contaminants at the Site. The results of the tidal study indicated a direct hydraulic connection between groundwater in the deeper water-bearing zone and the saline water of Oakland Bay. The groundwater flow direction in the deeper water-bearing zone likely fluctuates with tidal fluctuations.

The laboratory analytical results of soil samples and groundwater samples collected from the shallow water-bearing zone detected concentrations of GRO; DRO; and TPH as oil-range organics (ORO); benzene, toluene, ethylbenzene, and xylenes (BTEX); volatile organic compounds (VOCs); semivolatile organic compounds (SVOCs); and polycyclic aromatic hydrocarbons (PAHs) exceeding the screening levels established for the RI. Concentrations of GRO, DRO, and benzene exceeding the screening levels were detected in groundwater at a location where groundwater discharges to the surface waters of Oakland Bay.

A sample of sandy gravel was collected from the ground surface in an area located above the ordinary high tide elevation beneath seep sample location SG-1, where reddish-brown staining was observed. The laboratory analytical results indicated that the groundwater discharging at seep sample location SG-1 is resulting in concentrations of GRO and benzene exceeding the MTCA Method A cleanup levels for soil.

The results of sediment sampling and analysis conducted as part of the RI indicated that surface sediment quality is in compliance with WAC 173-204-310 under the designation procedures, does not constitute a station cluster of potential concern as defined under WAC 173-204-510, and does not require a hazard assessment (including confirmatory biological testing); therefore, no further cleanup action determinations were found to be necessary.

3.2 CONCEPTUAL SITE MODEL

The concentrations of GRO, DRO, and associated petroleum compounds detected in soil and groundwater are attributed to releases associated with the long-term operation of the bulk fuel storage and distribution facility at the property. The suspected sources of COCs to soil and groundwater at the Site appear to be surface releases from ASTs, aboveground piping, and fueling stations that infiltrated soil to groundwater. These sources include:

- Spills, overfills, drips, and fugitive leaks from the ASTs on the western portion of the Site;
- Spills, drips, and joint leaks from aboveground product piping;
- Spills, drips, and leaks from the former fuel loaders; and
- Spills, drips, and leaks at the fueling station.

The bulkhead and dock timbers have been treated with creosote. It is likely that PAHs have leached from the treated timbers and are the source of PAHs detected in soil and groundwater. The effect of leaching to the groundwater and/or surface water seem to be limited to the immediate vicinity of the timbers.

The concentrations of GRO, DRO, and BTEX exceeding the screening levels that were detected in soil are located in shallow soil on the western portion of the Site. The vertical distribution of concentrations of GRO and BTEX in soil exceeding the screening levels extends from the surface to depths of 4 to 8 feet bgs. The vertical distribution of concentrations of DRO in soil exceeding the screening levels extends from the surface to depths of 5 to 12 feet bgs. Concentrations of VOCs exceeding the screening levels were detected in soil in the same area where concentrations of GRO and/or BTEX were detected. The concentrations of PAHs detected in soil exceeding the screening levels occurred in the same area where low concentrations of DRO were detected.

The results of the RI detected concentrations of GRO, DRO, BTEX, and ORO in groundwater in the shallow water-bearing zone exceeding the screening levels. The detected concentrations of GRO, DRO, and BTEX in groundwater seem to be attributable to minor surface and shallow subsurface releases, and subsequent transport by gravity and surface water infiltration through

the vadose zone. Based on the detection of concentrations of TPH in a seep water sample, groundwater in the shallow water-bearing zone discharges directly to the surface in at least one area of the Site. The concentrations of TPH in seep water exceed the surface water screening levels established for the RI.

Surface releases of TPH from ASTs, aboveground piping, the fueling station, and the former fuel loaders have infiltrated through the ground surface to affect shallow subsurface soil from a depth of 4 feet bgs to the top of the shallow water-bearing zone at 6 to 8 feet bgs. The concentrations of GRO, BTEX, and associated VOCs exceeding the screening levels detected in soil on the western side of the Site can be attributed to spills and releases from the ASTs and aboveground piping. The concentrations of GRO and/or BTEX exceeding the screening levels in soil near the fueling station are attributable to transport through, and leakage from, the stormwater drain line from the AST area, preferential migration in the pipe bedding, and surface spills or leaks from the former fuel loaders. The concentrations of DRO and associated PAHs detected in soil exceeding the screening levels in the area surrounding the fueling station can be attributed to surface spills and releases from the fueling station, the former fuel loaders, and/or aboveground piping.

The distribution of concentrations of DRO in soil in the vicinity of monitoring wells MW-1 and MW-2 indicates that there may have been a surface spill from the ASTs located on the northern side of State Route 3 that impacted soil quality in this vicinity (Figure 2). A surface spill in this area may have been captured by the stormwater drain system, resulting in transport of fuel through the underground stormwater drain line to the AST area on the western side of the Site. The stormwater drain line may have leaked fuel and/or a fuel-water mixture following the spill, resulting in the concentrations of DRO detected in soil in the vicinity of monitoring wells MW-1 and MW-2.

The releases of TPH to soil have migrated through the vadose zone by a combination of gravity and infiltration of precipitation to impact the shallow groundwater-bearing zone. The groundwater flow direction of the shallow water-bearing zone is to the southeast, toward Oakland Bay. Groundwater with concentrations of TPH has migrated laterally with groundwater flow to the south-southeast as dissolved-phase TPH. The analytical data of water collected from seeps located along the base of the bulkhead indicate that groundwater in the shallow water-bearing zone containing concentrations of TPH exceeding the screening levels is discharged to the surface soil in one location.

4.0 CLEANUP STANDARDS

This section presents the cleanup standards for the cleanup action. Described below are the applicable laws and regulations, constituents of concern, media of concern, and standards for the cleanup action, including the definition of the cleanup levels and points of compliance. This section also presents a discussion of the terrestrial ecological evaluation.

4.1 APPLICABLE LAWS AND REGULATIONS

The applicable laws and regulations provide the framework for the cleanup action. WAC 173-340-360(2) and 173-340-710(1)(a) require that cleanup actions conducted under MTCA comply with applicable federal and state laws. Applicable laws are defined as those requirements that are legally applicable, as well as those that Ecology determines to be both relevant and appropriate. The applicable laws and regulations for the cleanup action likely will include the following:

- MTCA (RCW 70.105D);
- MTCA Cleanup Regulations (WAC 173-340);
- Sediment Management Standards (WAC 173-204);
- The State Environmental Policy Act (RCW 43.21);
- Substantive requirements of the City of Shelton Filling and Grading/Erosion Control permit requirements, and Shoreline Management Master Development permit requirements, as applicable; and
- Ecology's stormwater regulations, as described in the *Stormwater Management Manual for Western Washington* (revised 2005).

A comprehensive discussion of applicable laws and regulations is provided in the Final FS Report.

4.2 CONSTITUENTS OF CONCERN

The COCs for the cleanup action are those compounds that were detected in soil, groundwater, and surface water exceeding the cleanup levels defined in Section 4.4.1 below, and include:

- GRO for soil, groundwater, and surface water;
- DRO for soil, groundwater, and surface water;
- ORO for soil and groundwater;
- BTEX for soil, groundwater, and surface water;
- cPAHs for soil; and
- Naphthalenes for soil.

The laboratory practical quantitation limit (PQL) was used for the RI as a screening level for compounds with no published MTCA cleanup levels. The compounds detected exceeding the PQL screening level during the RI included the following VOCs and SVOCs:

- n-propylbenzene;
- 1,2,4-trimethylbenzene;
- 1,3,5-trimethylbenzene;
- sec-butylbenzene;
- n-butylbenzene;
- tert-butylbenzene;
- p-isopropyltoluene;
- acenaphthylene;
- benzo(g,h,i)perylene; and
- phenanthrene.

These compounds typically are associated with TPH, and are addressed in the consideration of GRO, DRO, and ORO as COCs for the cleanup action. The compounds with no published MTCA cleanup levels that were detected exceeding the laboratory PQL by the RI are not listed as COCs for the cleanup action, since their presence will correlate with the selected COCs.

4.3 MEDIA OF CONCERN

Soil, groundwater, and surface water are the media of concern for the cleanup action. The results of the RI indicated that concentrations of some of the COCs above the screening levels were detected in water at the point of groundwater exchange where shallow groundwater discharges to the surface soil at seep sample location SG-1. The elevation of seep SG-1 soil is the same as other Site surface soils, therefore the seep soils are herein considered to be soils, rather than sediments. The cleanup action objectives for groundwater will mitigate the risks to human health and the environment posed through direct contact with surface water at the point of discharge at seep sample location SG-1.

4.4 CLEANUP STANDARDS

As defined in WAC 173-340-700, cleanup standards for the Site include establishing cleanup levels and the points of compliance at which those cleanup levels will be attained. The cleanup standards for the Site have been established in accordance with WAC 173-340-700 through 173-340-760, are protective of human health and the environment, and comply with the applicable or relevant and appropriate requirements (ARARs) defined for the Site in the Final FS Report.

4.4.1 Cleanup Levels

Cleanup levels are the concentrations of the COCs that will be met for the media of concern at the points of compliance defined for the Site to meet the requirements of MTCA. The soil, groundwater, and surface water cleanup levels for the COCs are presented in the following subsections.

4.4.1.1 Soil

The cleanup levels for soil are the MTCA Method A Soil Cleanup Levels for Unrestricted Land Uses, as defined in Table 740-1 of WAC 173-340-900. The MTCA Method A cleanup level for each COC is identified below:

- GRO = 30 mg/kg;
- DRO = 2,000 mg/kg;
- ORO = 2,000 mg/kg;
- Benzene = 0.03 mg/kg;
- Toluene = 7 mg/kg;
- Ethylbenzene = 6 mg/kg;
- Xylenes = 9 mg/kg;
- cPAHs = 0.1 mg/kg; and
- Naphthalenes = 5 mg/kg.

The total for cPAHs is calculated by multiplying the concentration of each cPAH compound by the toxicity equivalency factor, and summing them for a total cPAH concentration for comparison to the MTCA Method A cleanup levels for benzo(a)pyrene.

4.4.1.2 Groundwater

The cleanup levels for groundwater are the MTCA Method A Cleanup Levels for Ground Water, as defined in Table 720-1 of WAC 173-340-900. The MTCA Method A cleanup level for each COC is identified below:

- GRO = 800 micrograms per liter (µg/l);
- DRO = 500 µg/l;
- ORO = 500 µg/l;
- Benzene = 5 µg/l;
- Toluene = 1,000 µg/l;
- Ethylbenzene = 700 µg/l; and
- Xylenes = 1,000 µg/l.

4.4.1.3 Surface Water

MTCA 173-340-730(3)(iii)[C] allows for the use of MTCA Method A groundwater cleanup levels as an alternative to calculating a total petroleum hydrocarbon cleanup level for surface water. The MTCA Method A cleanup levels for groundwater will be used as the surface water cleanup levels for the COCs at the Site.

4.4.2 Points of Compliance

The points of compliance are defined in WAC 173-340-200 as the locations where the cleanup levels established in accordance with WAC 173-340-720 through 173-340-760 will be attained to meet the requirements of MTCA. If the cleanup levels for groundwater cannot be met within a reasonable restoration time frame, conditional points of compliance can be defined in accordance with WAC 173-340-720(8)(c), and an institutional control that precludes the use of groundwater in the shallow water-bearing zone as a potable water source would be implemented at the Site. Once the cleanup levels have been maintained at the defined points of compliance, the Site is no longer considered to be a threat to human health or the environment. The points of compliance for the cleanup action for soil and groundwater are provided in the following subsections.

4.4.2.1 Soil

The point of compliance for soil is defined WAC 173-340-740(6)(b) as being throughout the Site. In the proposed remedial action, the point of compliance for soil will be the depth and areal extent of the excavation required to remove all Site soil with concentrations of COCs exceeding the MTCA Method A cleanup levels. Such excavation can only occur to the extent that it is within the limits of practicability. If it is impracticable to remove all Site soils exceeding Site cleanup levels, then institutional controls, in addition to the proposed groundwater cleanup will be used to mitigate the effects of the residual contamination.

4.4.2.2 Groundwater

The point of compliance for groundwater is groundwater within the shallow water-bearing zone throughout the Site.

4.4.2.3 Surface Water

The point of compliance for surface water is where groundwater discharges to surface soil at seep sample location SG-1, and any other known or observed seep areas.

4.5 TERRESTRIAL ECOLOGICAL EVALUATION

WAC 173-340-7490 requires consideration of a terrestrial ecological evaluation when soil has been impacted by the release of a hazardous substance. The goal of the terrestrial ecological evaluation process is to protect terrestrial ecological receptors from exposure to contaminated soil with the potential to cause significant adverse effects (WAC 173-340-7490[3]). The results of the terrestrial ecological evaluation must be considered when developing and evaluating cleanup action alternatives and selecting a cleanup action. The proposed cleanup action alternative will remove soil with concentrations of COCs above the MTCA Method A cleanup level, and place clean soil in the biologically active zone. This will be protective of terrestrial ecological receptors. The risks to terrestrial ecological receptors will be eliminated by the cleanup action.

5.0 EVALUATION AND SELECTION OF CLEANUP ACTION ALTERNATIVES

As documented in the Final FS Report, the technically feasible cleanup action alternatives that were considered in the screening of alternatives for soil and groundwater at the Site included:

- Institutional controls and monitoring;
- In-situ treatment;
- Ex-situ treatment;
- Source removal and off-Site disposal; and
- Enhanced aerobic bioremediation.

The cleanup action alternative appropriate for each medium of concern was screened against the MTCA threshold criteria for selection of cleanup actions (WAC 173-340-360), which include protection of human health and the environment, compliance with cleanup standards, compliance with applicable state and federal laws, and provision for compliance monitoring. The evaluation of cleanup action alternatives also considered the future development plans for the Site and the potential adverse impact on the adjacent marine environment.

5.1 INSTITUTIONAL CONTROLS AND MONITORING

The sole use of institutional controls and monitoring as a cleanup action alternative for soil at the Site will not protect human health or the environment, comply with cleanup standards or applicable state and federal laws, and will restrict future development of the property. Institutional controls and monitoring, by themselves, are not a feasible cleanup action alternative.

5.2 IN-SITU TREATMENT

The effectiveness of in-situ treatment of soil and groundwater is limited by the subsurface conditions at the Site and the types of COCs requiring treatment. In-situ physical treatments have not been shown in the Feasibility Study to comply with the cleanup standards or applicable state and federal laws within a reasonable time frame. Use of in-situ chemical treatment for groundwater is not feasible as a sole remedial alternative because of the potential impact to the surface water and tidelands located adjacent to the Site. In-situ treatment cleanup action alternatives, without additional measures, are not feasible as Site remedies.

5.3 EX-SITU TREATMENT

The effectiveness of ex-situ treatment of groundwater is limited by the subsurface conditions at the Site and the types of COCs requiring treatment. Ex-situ treatmentsthis have not been shown in the Feasibility Study to comply with the cleanup standards or applicable state and federal laws within a reasonable time frame. Ex-situ treatment of groundwater is not a feasible cleanup action alternative for the Site.

5.4 SOURCE REMOVAL AND OFF-SITE DISPOSAL

The proposed cleanup action alternative for soil at the Site includes source removal by excavation and off-Site disposal for soil with concentrations of one or more of the COCs above MTCA cleanup levels. The proposed cleanup action alternative will protect human health and the environment and comply with cleanup standards and applicable state and federal laws within a reasonable time frame. The proposed cleanup action alternative will remove soil within practicable excavation limits with concentrations of COCs that present a risk to human health and the environment. The removal of soil containing COCs will eliminate the source of concentrations of COCs to groundwater. The proposed cleanup action alternative also will provide a permanent solution to the maximum extent practicable, will provide for future development of the property, and is technically appropriate and implementable given the nature and extent of the contamination, the physical Site soil and groundwater conditions, and the adjacent sensitive marine tideland environment.

5.5 ENHANCED AEROBIC BIOREMEDIATION

The cleanup action alternative proposed for groundwater consists of enhanced aerobic bioremediation following the source removal activities. Enhanced aerobic bioremediation consists of application of a substance to add oxygen to the soil and/or groundwater to increase the number and vitality of indigenous microorganisms performing biodegradation. Enhanced aerobic bioremediation coupled with the removal of the source of the contamination (soil) will provide an effective cleanup action alternative for groundwater. The proposed cleanup action alternative is designed to protect human health and the environment, comply with cleanup standards, and comply with applicable laws by resulting in permanent elimination of COCs in groundwater.

6.0 PROPOSED CLEANUP ACTION

This section presents a description of the proposed cleanup action and a discussion of cleanup action monitoring. The proposed cleanup action meets the threshold criteria of MTCA (WAC 173-340-360) as presented in Section 5, Evaluation and Selection of Cleanup Action Alternatives.

6.1 CLEANUP ACTION DESCRIPTION

The cleanup action will consist of the following activities:

- Removal of all aboveground and underground structures and remnant equipment at the Site, as necessary to provide access to soil with concentrations of one or more of the COCs exceeding the applicable MTCA cleanup level;
- Implementation of erosion control and Site security measures;
- Excavation of soil from the cleanup action target areas and transport for disposal at an appropriate off-Site disposal facility;
- Management of groundwater during the excavation activities;
- Collection of soil samples for laboratory analysis; and
- Backfilling the excavation with a mixture of soil and Regenesis ORC Advanced or equivalent compound to enhance aerobic bioremediation.

Point of compliance groundwater monitoring wells will be installed after removal of the contaminated soil. Site groundwater monitoring wells will be monitored to confirm that the cleanup levels for groundwater have been met at the point of compliance monitoring wells. The cleanup action will be documented following completion of the source removal activities, periodically during groundwater compliance monitoring, and once the groundwater cleanup levels have been met at the points of compliance.

6.2 CLEANUP ACTION COMPONENTS

The following subsections provide a summary of the proposed cleanup action alternative. A more detailed description of the construction specifications will be provided in the Engineering Design Report (see Section 7.1).

6.2.1 Excavation and Source Removal

Soil with concentrations of one or more of the COCs above the MTCA Method A cleanup levels will be excavated from the Site within practicable excavation limits, and transported off the Site for disposal. It is estimated that the total volume of soil to be excavated will range from 3,000 to 6,000 tons, of which a total of approximately 1,500 to 3,750 tons of soil will require disposal as petroleum-contaminated soil at an appropriate treatment and disposal facility. Clean overburden will be stockpiled on the Site and used for backfill, where suitable. In addition to the

petroleum-contaminated soil, an estimated total of 1,200 tons of debris suspected to be present behind the bulkhead will be excavated and transported off the Site for disposal.

6.2.2 Enhanced Aerobic Bioremediation

Groundwater with concentrations of one or more of the COCs above the MTCA Method A cleanup levels will be treated through enhanced aerobic bioremediation following the excavation and source removal of soil. Enhanced aerobic bioremediation will be facilitated using an oxygen-release compound such as Regenesis ORC Advanced to aerobically degrade petroleum-based hydrocarbon contamination in the subsurface. An estimated 1,150 pounds of ORC Advanced will be mixed with the excavation backfill material within the shallow water-bearing zone.

The performance monitoring program to confirm that source removal and enhanced aerobic bioremediation have resulted in the elimination of COCs in groundwater will consist of the following:

- Monitoring groundwater quality at the point of compliance monitoring wells and surface water discharge to assess the combined effects of the source removal and enhanced aerobic bioremediation processes in reducing concentrations of COCs in groundwater; and
- Verifying that the cleanup levels in groundwater have been met at the points of compliance for the Site.

6.3 MONITORING

Monitoring of the cleanup action will be performed in accordance with the requirements of WAC 173-340-410, and will include protection, performance, and confirmation monitoring. Specific requirements for monitoring the cleanup action will be provided in the Compliance Monitoring Plan (see Section 7.3). The monitoring requirements for the cleanup action are presented in the following subsections.

6.3.1 Protection Monitoring

Protection monitoring, which will include monitoring soil, ambient air, and surface water quality, will be conducted during the cleanup action to confirm that human health and the environment are protected. The frequency, scope, and duration of the monitoring and sampling will be detailed in the Compliance Monitoring Plan (see Section 7.3).

6.3.2 Performance Monitoring

Soil monitoring and sampling will be conducted to evaluate the performance of the cleanup action during the excavation. Performance groundwater and surface water monitoring and sampling will be conducted to provide baseline data for the progress of the groundwater cleanup via enhanced aerobic bioremediation. The frequency, scope, and duration of the monitoring and sampling will be detailed in the Compliance Monitoring Plan (See Section 7.3). The performance monitoring results will be used to assess when the cleanup objectives have been met, and when confirmation monitoring of the affected media can begin.

6.3.3 Confirmation Monitoring

Following completion of the excavation activities, confirmation soil, groundwater, and surface water monitoring and sampling will be performed to evaluate the effectiveness of the cleanup action. The frequency, scope, and duration of the monitoring and sampling will be detailed in the Compliance Monitoring Plan (see Section 7.3). The confirmation monitoring and sampling results will be used to assess when the cleanup levels have been met at the defined points of compliance.

7.0 ADDITIONAL REQUIREMENTS

This section discusses the documentation to be provided for the cleanup action, including an Engineering Design Report, construction plans and specifications, and a Compliance Monitoring Plan.

7.1 ENGINEERING DESIGN REPORT

An Engineering Design Report will include sufficient information for the development and review of construction plans and specifications to document engineering concepts and design criteria used for the design of the cleanup action. The information required under WAC 173-340-400(4)(a)(i) through 173-340-400(4)(a)(xx) will be included in the Engineering Design Report.

7.2 CONSTRUCTION PLANS AND SPECIFICATIONS

The Construction Plans and Specifications will detail the cleanup action to be performed. As required by WAC 173-340-400(4)(b), the documents will include the following information, as applicable:

- A description of the work to be performed, and a summary of the engineering design criteria from the Engineering Design Report;
- A site location map and a map of existing conditions;
- A copy of applicable permit applications and approvals;
- Detailed plans, procedures, and specifications necessary for the cleanup action;
- Specific quality control tests to be performed to document the construction, including specifications for testing or reference to specific testing methods, frequency of testing, acceptable results, and other documentation methods; and
- Provisions to ensure that the health and safety requirements of WAC 173-340-810 are met.

All aspects of construction will be performed and documented in accordance with WAC 173-340-400(6). These aspects include approval of all of the plans listed above prior to commencement of work, oversight of construction by a Professional Engineer licensed in the state of Washington, and submittal of a Construction Completion Report that documents all aspects of the cleanup and includes an opinion of the engineer as to whether the cleanup was conducted in substantial compliance with the DCAP, the Engineering Design Report, and the construction plans and specifications.

7.3 COMPLIANCE MONITORING PLAN

The Compliance Monitoring Plan, prepared in accordance with WAC 173-340-410, will describe the monitoring to be performed during the cleanup action, and will include a Sampling and Analysis Plan prepared in accordance with WAC 173-340-820 that will specify the procedures to be followed to ensure that sample collection, handling, and analysis will result in data of sufficient quality to plan and evaluate the cleanup action at the Site. The Compliance Monitoring Plan will include the purpose and objective of data collection, the rationale for the sampling approach, and the responsibilities for the sampling and analysis activities. The Compliance Monitoring Plan will describe specifications for sample identifiers; the type, number, and location of the samples to be collected; the analyses to be performed; the documentation of samples; the sample containers, collection, and handling; and the sampling schedule.

7.4 RESTRICTIVE COVENANT

A Restricted Covenant, as approved by Ecology, is to be filed with Mason County until Site owners have received written confirmation from Ecology that Site cleanup goals have been permanently attained.

7.5 PERMITS/REQUIREMENTS

The Cleanup Action at the Evergreen Fuel Facility will be conducted under an Agreed Order (Pending) with the Washington State Department of Ecology (Ecology); therefore, the Cleanup Action is exempt from the procedural requirements of certain laws and all local permits (WAC 173-340-710(9)(a)) but must comply with the substantive requirements of these laws and permits. The exemption from procedural requirements applies to the:

- Washington Clean Air Act (RCW 70.94);
- Solid Waste Management Act (RCW 70.95);
- Hazardous Waste Management Act (RCW 70.105);
- Construction Projects in State Waters (RCW 75.20);
- Water Pollution Control Act (RCW 90.48); the Shoreline Management Act (RCW 90.58); 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 applicable and non-applicable permit requirements are provided in the following sections.

7.5.1 APPLICABLE PERMIT REQUIREMENTS

The Cleanup Action will meet the substantive requirements of the following permits:

- State Environmental Policy Act, Ecology;
- Grading Permit, City of Shelton;
- Right-of -Way Permit, City of Shelton; and
- Shoreline Substantial Development Permit, City of Shelton.

The documents required for each of these permits will be included as an Appendix to the Engineering Design Report (Pending), which will be submitted to Ecology for review and approval, as a requirement of the Agreed Order. A description of each applicable permit and the substantive requirements is provided below.

State Environmental Policy Act, Ecology. The Washington State Environmental Policy Act (SEPA) provides a way to identify possible environmental impacts that may result from governmental decisions. These decisions may be related to issuing permits for private projects, constructing public facilities, or adopting regulations, policies or plans. Information provided during the SEPA review process helps agency decision-makers, applicants, and the public understand how a proposal will affect the environment. Any proposal that requires a state or local agency decision to license, fund, or undertake a project, or the proposed adoption of a policy, plan, or program can trigger environmental review under SEPA. (See WAC 197-11-704 for a complete definition of agency action).

SEPA review is applicable to the Cleanup Action as part of the local requirements for grading and development activities adjacent to the shoreline. The SEPA review consists of completion of a SEPA checklist, which will be submitted to Ecology as part of the Engineering Design Report. Ecology is the lead agency for the cleanup action and may allow the cleanup action to commence prior to the end of the public comment period. The public comment period for the SEPA review will be conducted concurrently with the public comment period for the Agreed Order.

Grading Permit, City of Shelton. The Grading Permit is required for any subsurface excavation and/or fill work. A Grading Permit is applicable to the Cleanup Action based on the excavation for the removal of contaminated soil and backfill. The Grading Permit requires a completed Fill & Grade Permit/Erosion Control Application. The Fill & Grade Permit/Erosion Control Application will be completed and submitted to Ecology as part of the Engineering Design Report.

Right-of-Way Permit, City of Shelton. The Right-of-Way Permit is required for any work in the City of Shelton right-of-way. A Right-of-Way permit is applicable to the Cleanup Action based on the excavation of contaminated soil in the Pine Street right-of-way. The Right-of-Way Permit requires a completed Right-of-Way Permit Application form, plot plan, and project specifications, which will be submitted to Ecology as part of the Engineering Design Report.

Shoreline Substantial Development Permit, City of Shelton. The Shoreline Substantial Development Permit is a written permit issued by local government for development located within 200 feet of the shoreline and is required for all non-exempt developments and uses exceeding a fair market value of $5,000 ($2,500 for private residential docks in salt water; $10,000 in fresh water) as defined in RCW 90.58.030(3) and WAC 173-27-030(8). After completion of the local process, the permits are sent to Ecology for filing; however, Ecology does not have authority to approve or deny the permit.

This permit is applicable to the Cleanup Action based on the excavation and backfilling to be conducted within 200 feet of the shoreline. The Shoreline Substantial Development Permit requires a completed Shoreline Permit Application form, a SEPA checklist, a Joint Aquatic Resource Permits Application form, a Site plan map and a topographic map. All required documents will be completed and submitted to Ecology as part of the Engineering Design Report.

7.5.2 NON-APPLICABLE PERMITS

Federal and state permits that are not applicable to the Cleanup Action are summarized below.

Discharge of Dredge or Fill Material into Water (Section 404 Permit), U.S. Army Corps of Engineers. This permit is required if a project will result in a planned discharge of dredged or fill material into the waters of the United States.

This permit is not applicable to the Cleanup Action because dredged or fill material will not be placed into the waters of the United States.

401 Water Quality Certification, Ecology Shoreline and Environmental Assistance. This permit is required to conduct any activity that might result in a discharge of dredge or fill material into water or non-isolated wetlands or excavation in water or non-isolated wetlands. Applicants receiving a Section 404 permit from the U.S. Army Corp of Engineers, a Coast Guard permit, or license from the Federal Energy Regulatory Commission (FERC) are required to obtain a Section 401 Water Quality Certification (401 Certification) from Ecology. Issuance of a 401 Certification means that Ecology anticipates that the applicant's project will comply with state water quality standards and other aquatic resource protection requirements under Ecology's authority. The 401 Certification can cover both the construction and operation of the proposed project. Conditions of the 401 Certification become conditions of the Federal permit or license.

This permit is not applicable to the Cleanup Action because dredge or fill material will not be discharged into water or a non-isolated wetland, excavation in water will not be conducted, and there are no applicable federal permits for which this permit would be required.

Hydraulic Project Approval, from the Washington State Department of Fish and Wildlife. Activities that require a Hydraulic Project Approval (HPA) include any work that uses, diverts, obstructs, or changes the natural flow or bed of any of the salt or fresh waters of the state.

An HPA is not applicable to the Cleanup Action because there will be no use, diversion, obstruction, or changes to the salt waters of the state adjacent to the Site.

NPDES Construction Stormwater General Permit, Ecology Water Quality. An NPDES permit is required for all soil-disturbing activities, including grading, stump removal, and demolition, where one or more acres will be disturbed, and where stormwater will be discharged directly to a receiving water such as wetlands, creeks, unnamed creeks, rivers, marine waters, ditches, or estuaries, or to storm drains that discharge to a receiving water. Construction site operators must apply for a permit 60 days prior to discharging stormwater.

This permit is not applicable to the Cleanup Action because the soil-disturbing activities planned for the Cleanup Action are less than one acre in size.

8.0 REFERENCES

Farallon Consulting, L.L.C. (Farallon). 2004. *Final Remedial Investigation Work Plan, Evergreen Fuel Facility, 661 East Pine Street, Shelton, Washington.* September 20.

———. 2005. *Final Remedial Investigation Report, Evergreen Fuel Facility, 661 East Pine Street, Shelton, Washington.* Prepared for C.C. Cole and Sons, Inc. and Chevron Products Co. December 2.

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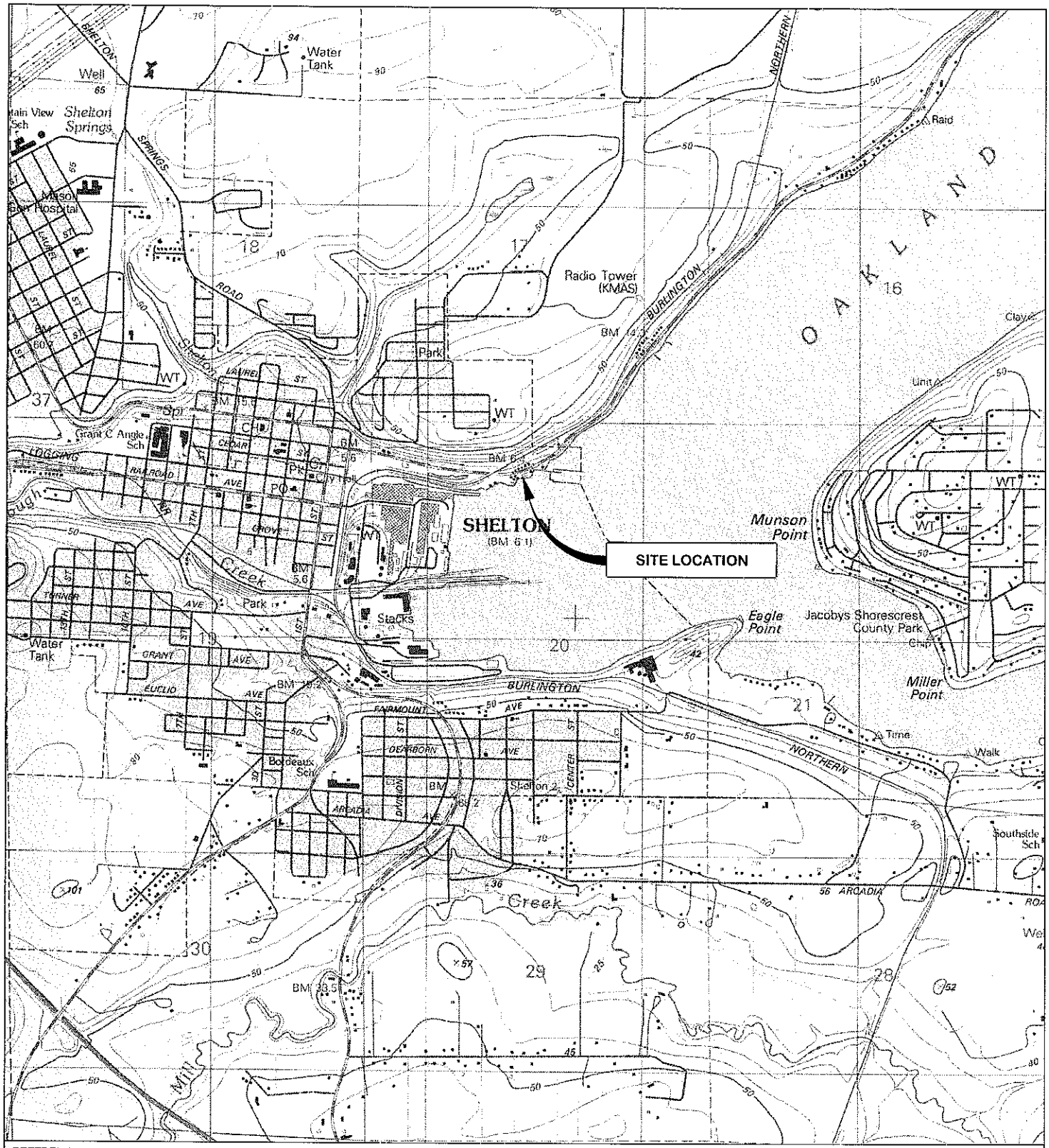
Langseth Environmental Services, Inc. 1998. *Phase II Site Investigation Report, Evergreen Fuel Facility.* February 24.

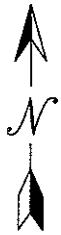
Port of Shelton. "Brief Historical Background of the Port." No date. <http://www.portofshelton.com/about_the_port.html>. (May 23, 2005.)

FIGURES

DRAFT CLEANUP ACTION PLAN
Evergreen Fuel Facility
661 East Pine Street
Shelton, Washington



REFERENCE: 7 5 MINUTE USGS QUADRANGLE SHELTON WASHINGTON DATED 1981



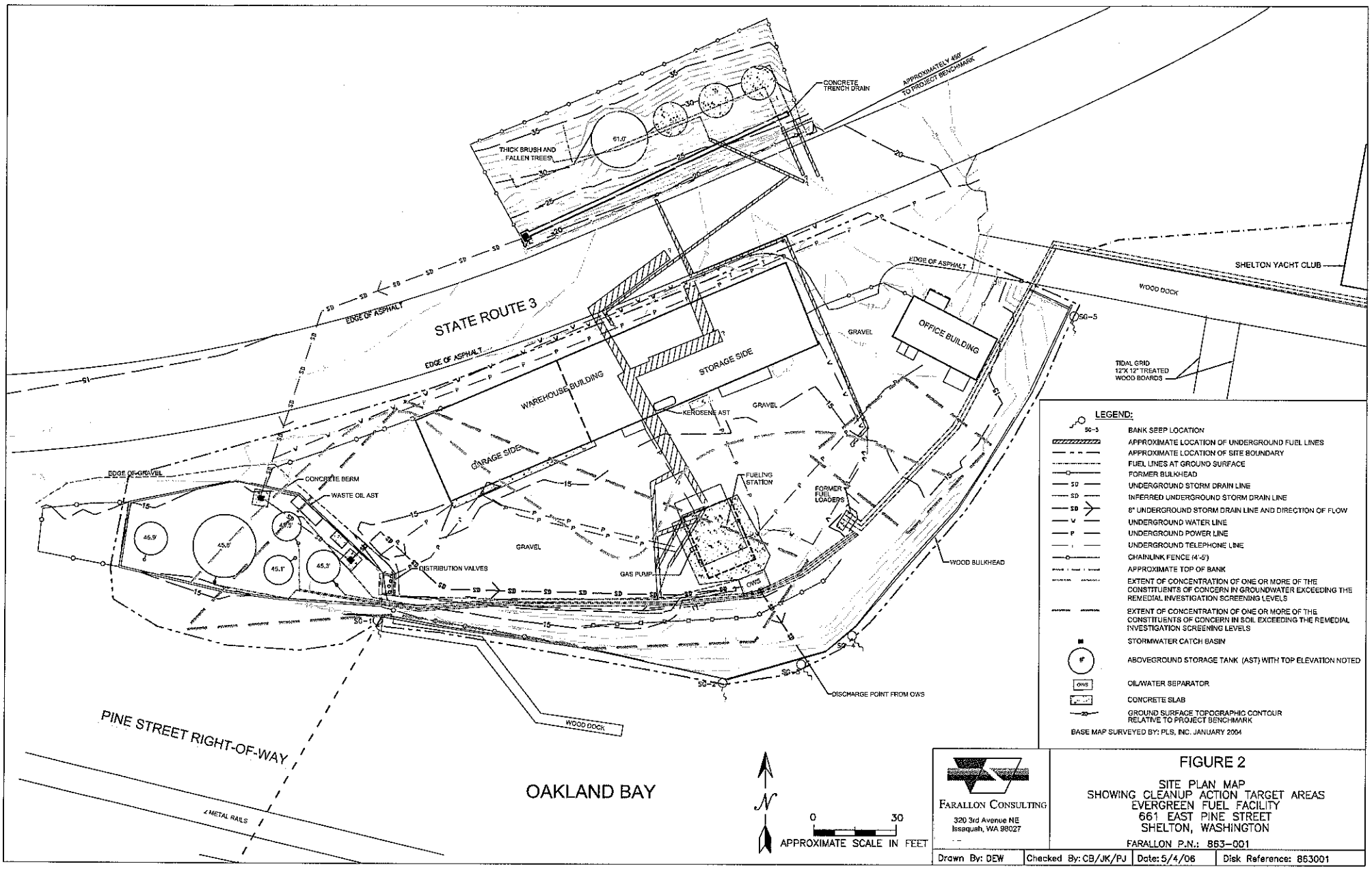
FARALLON CONSULTING
320 3rd Avenue NE
Issaquah WA 98027

FIGURE 1

SITE LOCATION MAP
EVERGREEN FUEL FACILITY
661 EAST PINE STREET
SHELTON, WASHINGTON

FARALLON PN: 863-001

Drawn By: DEW	Checked By: CB	Date:5/4/06	Disk Reference: 863001



FARALLON CONSULTING
320 3rd Avenue NE
Issaquah, WA 98027

FIGURE 2

SITE PLAN MAP
SHOWING CLEANUP ACTION TARGET AREAS
EVERGREEN FUEL FACILITY
661 EAST PINE STREET
SHELTON, WASHINGTON

FARALLON P.N.: 863-001

Drawn By: DEW	Checked By: CB/JK/PJ	Date: 5/4/06	Disk Reference: 863001

EXHIBIT C

SCOPE OF WORK

AND SCHEDULE

EXHIBIT C

SCOPE OF WORK AND SCHEDULE

This Scope of Work, which is an enforceable part of the Agreed Order, contains a program designed to protect public health, welfare, and the environment from the known release, or threatened release, of hazardous substances or contaminants at, on, or from the Evergreen Fuels (Site). Based on the facts and determinations found in the Agreed Order, it is hereby Ordered that the Potentially Liable Persons (PLP's) take the following remedial actions:

1) The PLP's shall carry out the provisions of the Workplan in a manner and time frame as described herein. The term "Workplan" is defined to consist of this Exhibit (Scope of Work and Schedule).

2) The PLP's shall implement the tasks detailed in the Workplan in accordance therewith and within the due dates specified, including, but not limited to, the following deliverables:

WORKPLAN DELIVERABLES:

Task 1 – Draft Engineering Design Report

Due Date: Three (3) Months from Effective Date of Agreed Order

The report shall be prepared by or under the direct supervision of a registered professional engineer and shall be submitted in accordance with WAC 173-340, Sections 400 and 410, including:

a) Goals of the cleanup action, including specific cleanup or performance requirements;

b) General information on the Site, including a summary of information in the remedial investigation/feasibility study updated as necessary to reflect the current conditions;

c) Identification of whom will own, operate, and maintain the Site during and following construction:

d) Facility maps, or minimum dimensions two feet square, showing existing Site conditions and proposed location, including surface water drainage features and storm water conveyances;

e) Location of materials, if any, to be treated or otherwise managed;

f) A schedule for construction of the remedial action and monitoring systems, including a critical timing chart for accomplishment of major milestones. Remedial action construction shall begin in accordance with the Ecology-approved schedule within the Engineering Design Report.

g) A description and conceptual plan of the remaining final cleanup action per the Final Cleanup Action Plan (Exhibit B). The Conceptual Design shall include:

g-1) Description of areas where soil removal is to occur.

g-2) Description of locations within the soil removal area where excavation to 12 feet bgs may be infeasible.

g-3) Description of excavated soil staging, (if applicable) testing and separation, off-Site transport and disposal plans.

g-4) Description of the methodology for placement of ORC.

h) Engineering justification for design parameters, including: design criteria, assumptions, and calculations for all components of the cleanup action; demonstration that the cleanup action will achieve compliance with cleanup requirements.

i) Design features for control of hazardous materials spills and accidental discharge (for example, containment structures, leak detection devices, run-on and run-off controls):

j) Design features to assure long-term safety of workers and local residences as applicable (for example: hazardous substances monitoring devices, wind speed/direction monitors);

k) A discussion of methods for management or disposal of any treatment residue and other waste materials containing hazardous substances generated as a result of the cleanup action;

l) Facility specific characteristics which may affect design, construction, or operation of the selected cleanup action, including: Relationship of the proposed cleanup action to existing area and facility operations, probability of flooding, temperature extremes, planned post-remedial site uses/activities, local planning and development issues;

m) Any information not provided in the remedial investigation/feasibility study needed to fulfill all applicable requirements of the State Environmental Policy Act (Chapter 43.21C RCW), and any additional information needed to address the applicable state, federal, and local requirements;

n) A copy of any required permits;

o) Detailed final construction plans and procedural material specifications necessary for construction of the cleanup system prepared in conformance with currently accepted engineering practices and techniques. This shall include mapping of all new and existing Site wells, remedial action piping and treatment system components, design details of groundwater/petroleum product extraction wells and product-only wells;

p) Specific quality control (QC) tests to be preformed to document the construction as applicable, including specifications for the testing or reference to specific testing methods, frequency of testing, acceptable results, and other documentation methods.

q) A Compliance Monitoring Plan prepared under WAC 173-340-410 describing monitoring to be performed during construction and operation, as applicable, and a sampling and analysis plan meeting the requirements of WAC 173-340-820.

q-1) This section shall include a Protection Monitoring Plan, per WAC 173-340-410(1)(a), to confirm that human health and the environment are protected during cleanup action construction, including monitoring and plans to minimize waste inhalation, skin contact, mud and dust generation, surface water run-off, and waste spillage during construction.

q-2) This section shall also include a Confirmational Monitoring Plan, per WAC 173-340-410(1)(c). This plan will be designed to confirm the long-term effectiveness of the cleanup action. This plan will also include a proposed groundwater monitoring system, including Site groundwater monitoring wells and Site perimeter Point of Compliance wells, per the final cleanup action plan (Exhibit B). This system shall be designed to ensure that compliance with Site groundwater cleanup standards are maintained both within the Site and at the perimeter Points of Compliance. Groundwater monitoring and reporting will occur semi-annually following substantial completion of construction. Semi-annual monitoring and reporting will continue until Site cleanup standards have been attained and maintained for 1 year. The plan shall include proposed or existing well locations and depths, construction, sampling

and analysis methodology and plan per WAC 173-340-820, and sampling frequency. The Confirmation Monitoring Plan will also include a methodology to be used to determine whether an exceedence of groundwater standards has occurred based on Site perimeter points of compliance. The methodology will also identify when or whether a contingency groundwater cleanup action (Task 6 of this Workplan) is needed.

r) Safety and Health Plan per WAC 173-340-810.

Task 2 – Final Engineering Design Report

Due Date: Three (3) weeks after issuance of Ecology's comments on the draft report.

The PLPs shall submit a final Engineering Design Report which amends the draft Engineering Design Report to satisfy all written comments submitted by Ecology regarding the draft report.

Task 3 – Construction of Remedial Action

Due Date: Substantial completion of construction by three (3) months from Ecology's approval of the Final Engineering Design Report.

Construction shall be performed in accordance with, and shall execute the requirements of, the Ecology-approved Engineering Design Report and Construction Plans and Specifications.

All aspects of construction shall be performed under the supervision of a professional engineer registered in the State of Washington or a qualified technician, under the direct supervision of a professional engineer registered in the State of Washington. During construction, detailed records shall be kept of all aspects of the work performed, including construction techniques and materials used, items installed, tests, and measurements performed.

Photographic documentation of all major and critical construction phases shall be performed by the PLP's. An *extra copy of the photos* shall be submitted to Ecology along with the project record drawings.

Task 4 – Confirmational Monitoring and Reporting

Due Date: Reports are due one (1) month after each January-June and July-December monitoring period.

Confirmational monitoring shall be performed in accordance with the Ecology approved Confirmational Monitoring Plan. Reports shall be due semi-annually, until Ecology affirms in writing that Site groundwater monitoring wells and Site perimeter Point of Compliance monitoring wells maintain compliance with Site Clean-up levels. Reports shall include conformational monitoring results of the last monitoring period; a tabular presentation of benzene and gasoline and diesel range organics concentrations and product thickness (if any) for each well for all past monitoring periods; a map showing benzene, gasoline and diesel range organics concentrations and product thickness for each well; data showing whether the remedial action has complied with the requirements of this Agreed Order.

Task 5 – Project Record Drawings

Due Date: Two (2) months after completion of cleanup action construction.

At the completion of construction of the product removal and groundwater remediation systems, the engineer responsible for the supervision of construction shall prepare Project Record Drawings and a report documenting all aspects of Site construction work, including those portions of the final remedial action which had been constructed prior to the issuance of this decree. With respect to those portions of the final remedial action which were constructed prior

to the issuance of this Agreed Order, schematic drawings of generally as-built conditions, using the best information reasonably available, may be utilized upon written approval from Ecology.

The report shall also contain an opinion from the project manager and the engineer, based on the testing results and inspections, as to whether the cleanup action has been completed in substantial compliance with the project record drawings and related documents.

Task 6 – Contingency Groundwater Cleanup/Containment Action Plan

Due Date: Within two (2) months of the discovery of an exceedence of groundwater standards at perimeter Point of Compliance wells, using the decision methodology in the Confirmational Monitoring Plan.

This plan shall describe how and when the PLPs shall design and implement, with Ecology oversight and approval, a contingency groundwater cleanup/containment action in the event that an exceedence of surface water cleanup standards is discovered via the decision methodology included in the Confirmational Monitoring Plan. The Contingency groundwater Cleanup Action Plan shall include a listing of potential contingency groundwater cleanup technologies feasible for most foreseeable exceedences along with a listing of applicabilities and limitations for each technology.

Task 7 - Implementation of Contingency Groundwater Cleanup/Containment Action Plan

Due Date: Within one (1) month of issuance Ecology approval of the draft plan.

The PLPs shall implement the Contingency Groundwater Cleanup Action Plan as modified and approved by Ecology. Disagreements relating to any Ecology plan modifications shall be settled in accordance with the consent decree "Resolution of Disputes" Section (Section XIV).

Task 8 – Declaration of Restrictive Covenants

Due Date: Within one (1) month of the effective date of this decree.

1) The Declaration of Restrictive Covenants, Exhibit D, shall be signed by the PLPs, and filed with the property deed within twenty (20) days of completion of the final remedial action, and the PLPs shall provide Ecology notice of this filing within two (2) weeks of filing.

3) The PLPs agree not to perform any remedial actions outside the scope of this Agreed Order unless the parties agree to amend the scope of work to cover these actions. All work conducted under this Agreed Order shall be done in accordance with Ch. 173-340 WAC unless otherwise provided herein.

EXHIBIT D

C.C. Cole and Sons, Inc.
P.O. Box 536
Shelton, WA 98584-0536

RESTRICTIVE COVENANT

This declaration of Restrictive Covenant is made pursuant to RCW 70.105D.030(1)(f and g), and WAC 173-340-440 by C.C. Cole and Sons, Inc., its successors and assigns, and the Washington State Department of Ecology, its successors and assigns.

Property Name: (Former) Evergreen Fuels Site

Street Address: 661 East Pine Street, Shelton, Washington

Legal Description: See Attachment 1 for a full legal description, Site area map and Site diagram.

Tax Parcel I.D. #: # P 320175102006

EXHIBIT D

RESTRICTIVE COVENANT

C.C. COLE AND SONS, INC. – FORMER EVERGREEN FUELS SITE

This Declaration of Restrictive Covenant is made pursuant to RCW 70.105D.030(1)(f) and (g) and WAC 173-340-440 by C.C. Cole and Sons, Inc., its successors and assigns, and the State of Washington Department of Ecology, its successors and assigns (hereafter "Ecology").

A Remedial Action is planned to occur at the property that is the subject of this Restrictive Covenant. The Remedial Action conducted at the property is described in Ecology Agreed Order No. DE 3937 (the Agreed Order); of which this Restrictive Covenant forms Exhibit D. This document is on file at Ecology's Southwest Regional Office.

This Restrictive Covenant is required as long as hazardous substances remain at the site at concentrations that exceed MTCA Method A cleanup levels. Four quarterly groundwater monitoring reports will be required. Upon demonstration that residual concentrations of Gasoline and Diesel Range Organics which exceed the Model Toxics Control Act Method A Cleanup Level(s) for groundwater or soil established under WAC 173-340, and listed in the Agreed Order, do not persist at the Site after completion of the Remedial Action specified in the Agreed Order, the owner of the property may proceed under Section 8 of this covenant, pending Ecology's written concurrence.

The undersigned, C.C. Cole and Sons, Inc , is the fee owner of real property (hereafter "Property") in the County of Mason, State of Washington, that is subject to this Restrictive Covenant. The Property is legally described in Attachment A of this Restrictive Covenant, which is made a part hereof by reference.

C.C. Cole and Sons, Inc. make the following declaration as to limitations, restrictions, and uses to which the Property may be put and specifies that such declarations shall constitute covenants to run with the land, as provided by law and shall be binding on all parties and all persons claiming under them, including all current and future owners of any portion of or interest in the Property (hereafter "Owner").

Section 1.

1. No groundwater may be taken for any use from the Property, with the exception of routine monitoring required by the Agreed Order.

2. The Owner shall not alter, modify, or remove the existing land in any manner that may result in the release or exposure to the environment of contaminated groundwater or soil, or create a new exposure pathway to groundwater or soil borne contamination without prior written approval from Ecology.

3. Any activity on the Property that may result in the release or exposure to the environment of contaminated groundwater or soil that remains in areas of the Site after Site soil has been excavated as part of the Remedial Action, or that creates a new exposure pathway, is prohibited. Some examples of activities that are prohibited in Site contaminated areas include: drilling, digging, bulldozing or earthwork beneath the depth to which clean fill material has been placed.

Section 2. Any activity on the Property that may interfere with the integrity of the Remedial Action and continued protection of human health and the environment is prohibited.

Section 3. Any activity on the Property that may result in the release or exposure to the environment of a hazardous substance that remains on the Property after implementation of the Remedial Action, or creation of a new exposure pathway, is prohibited without prior written approval from Ecology.

Section 4. The Owner of the property must give thirty (30) days advance written notice to Ecology of the Owner's intent to convey any interest in the Property. No conveyance of title, easement, lease, or other interest in the Property shall be consummated by the Owner without adequate and complete provision for continued monitoring, operation, and maintenance of the Remedial Action.

Section 5. The Owner must restrict leases to uses and activities consistent with the Restrictive Covenant and notify all lessees of the restrictions on the use of the Property.

Section 6. The Owner must notify and obtain approval from Ecology prior to any use of the Property that is inconsistent with the terms of this Restrictive Covenant. Ecology may approve any inconsistent use only after public notice and comment.

Section 7. The Owner shall allow authorized representatives of Ecology the right to enter the Property at reasonable times for the purpose of evaluating the Remedial Action; to take samples, to inspect remedial actions conducted at the property, and to inspect records that are related to the Remedial Action.

Section 8. The Owner of the Property reserves the right under WAC 173-340-440 to record an instrument that provides that this Restrictive Covenant shall no longer limit use of the Property or be of any further force or effect. However, such an instrument may be recorded only if it has been demonstrated to Ecology that compliance has been maintained with respect to both soil and groundwater cleanup levels specified in the Agreed Order, and if Ecology has so indicated in writing to the Owner.

Section 9.

(1) The following uses and activities on the Property shall be deemed consistent with the terms of this Restrictive Covenant, and are hereby approved as permissible uses and activities, provided the conditions and limitations stated in Section 9(2) below are satisfied. Subject to those conditions and limitations, (a) the Property may be used as a parking lot, with associated features for management of surface water, associated landscaping, trees, shrubs, and grassy areas, and a walkway along the waterfront edge of the uplands; (b) underground utilities may be installed on or through the Property; (c) a new bulkhead may be built on the Property, including related excavation, and removal of existing creosote timber bulkhead; and (d) construction and maintenance activities necessary or incidental to these uses may be undertaken on the Property. Subject to Section 9(2) below, the uses and activities herein described may proceed at any time after the removal and backfill of soil and monitoring well installation portions of the Cleanup Action Plan have been completed.

(2) Such uses and activities, and any construction and maintenance activities relating thereto, must not involve any excavation of soil at depths greater than eight feet below the existing ground surface, without prior written approval from Ecology. Such uses and activities, and any construction and maintenance activities relating thereto, must comply with all applicable laws, rules, and regulations, including but not limited to those requiring permits for such uses and activities and/or those governing health, safety, and protection of the environment. This Section 9 shall not be construed as granting any exemption from, or any waiver of, any permitting or other requirements that may apply to such uses and activities under applicable laws, rules, and regulations.

(3) During the period of the restrictive covenant, any other uses different from the uses and related uses described in Section 9 (1), may be proposed by the Owner and proceed following approval by Ecology.

_____

C.C. COLE & SONS, INC.

By: _____
Its: _____
Date: _____

STATE OF WASHINGTON)
:ss.
COUNTY OF _____)

On this day personally appeared before me Robert C Cole, known to me to be the _____ of C C Cole & Sons, Inc., , who in my presence signed this instrument and acknowledged it to his free and voluntary act for the uses and purposes mentioned in this instrument.

_____ /_____
NOTARY PUBLIC in and for the State of Washington, residing at _____ Date
My appointment expires _____

(Seal or Stamp)

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY

By: _____
Rebecca Lawson
Section Manager
Toxics Cleanup Program
Southwest Regional Office

ATTACHMENT 1

LEGAL DESCRIPTION, SITE AREA MAP AND SITE DIAGRAM

This Restrictive Covenant relates to the real property owned by C.C. Cole & Sons, Inc., located at 661 East Pine Street in Shelton, Washington, and legally described as follows:

All portions of Lots 2 and 3, Block 2, which lies southerly of the right of way line of secondary State Highway 14-A. All of lots 4, 5, 6, 7, Block 2, all of amended and corrected plat of the Town of Shelton, Mason County, Washington, as recorded in Volume 2 of Plats, page 19, records of Mason County, Washington. Lots 25 to 32, both inclusive, Map of Shelton Tide Lands, according to the official map thereof in the office of Commissioner of Public Lands in Olympia, Washington. A triangular tract of land situated in Government Lot 1, Section 20, Township 20 North, Range 3 West, Willamette Meridian.