

**FILED**  
OCT 15 2001

KIM M. EATON, YAKIMA COUNTY CLERK

STATE OF WASHINGTON  
YAKIMA COUNTY SUPERIOR COURT

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

FRANCIS MICHAEL LOVERING,  
individually,

Defendant.

NO. 01 2 02668 1  
CONSENT DECREE

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CONSENT DECREE

ATTORNEY GENERAL OF WASHINGTON  
Ecology Division  
PO Box 40117  
Olympia, WA 98504-0117  
FAX (360) 586-6760

ORIGINAL

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## I. INTRODUCTION

A. In entering into this de minimis Consent Decree (the "Decree"), the mutual objectives of the Washington State Department of Ecology ("Ecology") and Francis Michael Lovering ("Lovering") is to resolve the liability of Lovering and his successors relating to the release of a hazardous substance, tetrachloroethylene (PCE), from property previously owned by Lovering (now owned by Pleas J. Green and Paula J. Green, husband and wife) and operated by Goodyear Tire & Rubber Co., in the Yakima Railroad Area (YRRA) in Yakima, Washington. The map of the YRRA site is attached hereto as Exhibit 1 and incorporated herein by reference. Lovering formerly owned the subject site, the legal description of which is attached hereto as Exhibit 2. In April, 1995, Lovering conveyed title to the subject property to Mr. and Mrs. Pleas Green, however, Lovering was designated the potentially liable person (PLP) for the site in July, 1995. To accomplish a resolution of the liability issues relating to the release of hazardous substances, Lovering and Ecology consent to the actions required by this Decree.

B. A Complaint in this action is filed concurrent with this Decree and no answer has been filed. There has not been a trial on any issue of fact or law in this case. However, the parties wish to resolve the issues raised by the Complaint. In addition, the parties agree that settlement of these matters without litigation is reasonable and in the public interest, and that entry of this Decree is the most appropriate means of resolving these matters.

C. In signing this Decree, Lovering and Ecology agree to its entry and agree to be bound by its terms.

D. By entering into this Decree, the parties do not intend to discharge nonsettling parties from any liability they may have with respect to investigation and remedial activities at the Site. Except as set forth herein, Lovering and Ecology retain the right to seek reimbursement in whole or in part from any responsible entities for sums expended on

CONSENT DECREE

ATTORNEY GENERAL OF WASHINGTON  
Ecology Division  
PO Box 40117  
Olympia, WA 98504-0117  
FAX (360) 535-6760

1 investigation and remedial activities at the Site, and to seek any other costs that are legally  
2 recoverable.

3 E. By entering into this Decree, Lovering is not admitting any liability for facts  
4 alleged herein.

## 5 II. JURISDICTION AND VENUE

6 A. This Court has jurisdiction over the subject matter and over the parties pursuant  
7 to the Model Toxics Control Act (MTCA), Ch. 70.105D RCW. Venue is proper in Yakima  
8 County. RCW 70.105D.050(5)(b).

9 B. Authority is conferred upon the Washington State Attorney General by RCW  
10 70.105D.040(4)(a) to agree to a settlement with any potentially liable person if, after public  
11 notice and hearing, Ecology finds the proposed settlement would lead to a more expeditious  
12 cleanup of hazardous substances in compliance with cleanup standards under RCW  
13 70.105D.030(2)(d). RCW 70.105D.040(4)(b) requires that such a settlement be entered as a  
14 consent decree issued by a court of competent jurisdiction.

15 C. Ecology has given notice to Lovering as provided in RCW 70.105D.020(8), of  
16 Ecology's determination that Lovering is a potentially liable person for the YRRA Site and that  
17 there has been a release of hazardous substances at the Lovering property.

18 D. Ecology has determined that past activities at the Lovering property may have  
19 given rise to release of a hazardous substance, PCE. Lovering maintains that no such release  
20 has occurred.

21 E. By entering into this Decree, Lovering agrees not to challenge the jurisdiction  
22 of Ecology or the Court in any proceeding to enforce this Decree. Lovering has agreed to  
23 undertake the actions specified in this Decree and Lovering consents to the issuance of this  
24 Decree, pursuant to RCW 70.105D.

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### III. PARTIES BOUND

This Decree shall apply to and be binding upon the signatories of this Decree (parties), their successors and assigns. The undersigned representative of each party hereby certifies that he or she is fully authorized to enter into this Decree and to execute and legally bind such party to comply with the Decree. No change in ownership shall alter the responsibility of the parties under this Decree.

### IV. DEFINITIONS

Unless otherwise specified, the definitions set forth in the Model Toxics Control Act, Ch. 70.105D RCW, and Ch. 173-303 WAC shall control the meaning of the terms used in this Consent Decree.

### V. STATEMENT OF FACTS

The Lovering (Elliott/Goodyear Tire Center) Site history, attached to this Consent Decree as Exhibit 3 and incorporated herein, contains a statement of facts describing the Lovering property, its operational history, and the results of testing for hazardous substances, including PCE at the property. Based on the facts outlined in the site history, Ecology has determined that the release or potential release of hazardous substances at the Lovering property has been resolved, and that a settlement is appropriate. Lovering has undertaken an independent remedial action at the Site which was subject to Ecology guidance.

### VI. WORK TO BE PERFORMED

A. Lovering shall reimburse Ecology for its proportion of oversight and administration costs, which are \$1,336.50. Payment shall be made within thirty (30) days of the effective date of the Decree by certified or cashier's check payable to the Department of Ecology, Cashier's Section, P.O. Box 5128, Lacey, Washington, 98509-5128; with reference to: Lovering (Elliott/Goodyear Tire Center) site.

1 B. Lovering will assist in providing access to the site in accordance with Section  
2 VII of this Consent Decree, and otherwise will comply with all other provisions of this Consent  
3 Decree.

4 C. Lovering agrees not to seek reimbursement from the State of Washington, from  
5 state or local toxics accounts, or other YRRA Site potentially liable parties ("PLPs"), who have  
6 or will be named, other than prior owners, operators or generators of the property, for any costs  
7 incurred prior to the entry of this Decree, or expended to satisfy the terms of this Decree. This  
8 provision in no way limits Lovering's defenses provided for in the Model Toxics Cleanup Act.  
9 Lovering reserves the right to seek contribution from other liable parties as provided for in the  
10 MTCA, RCW 70.105D.080. By this Consent Decree Lovering settles his liability to the state  
11 and he shall not be liable for claims for contribution for matters addressed in this settlement as  
12 provided for in RCW 70.105D.040(4).

#### 13 VII. ACCESS

14 Lovering will assist in securing for Ecology or any Ecology authorized representative  
15 reasonable access to the property for purposes of inspections, conducting such tests or  
16 collecting samples as Ecology may deem necessary as part of its RI/FS or remedial action at  
17 the Yakima Railroad Area Site. In the event that Ecology wishes to conduct sampling,  
18 Ecology will, except in emergency situations, provide the record title owner and property  
19 occupant five (5) days' notice prior to entering the property. Upon request, Ecology will split  
20 any samples taken at the property with the record title holder. All parties with legal access to  
21 the property pursuant to this paragraph shall comply with reasonable health and safety  
22 requirements.

#### 23 VIII. RETENTION OF RECORDS

24 Lovering shall preserve for ten (10) years from the date of this Decree, all records,  
25 reports, documents, and underlying data in his possession relevant to the implementation of

1 this Decree. Upon request of Ecology, Lovering shall make all non-privileged records  
2 available to Ecology and allow access for review. Records shall be made available to Ecology  
3 within a reasonable period of time.

4 **IX. TRANSFER OF INTEREST IN PROPERTY**

5 Lovering shall serve this Decree and the attached Exhibits upon the current property  
6 title holders, Mr. and Mrs. Pleas Green.

7 **X. RESOLUTION OF DISPUTES**

8 If Lovering objects to any Ecology disapproval, proposed modification, or decision  
9 made pursuant to this Decree, he shall notify Ecology in writing of his objections within thirty  
10 (30) calendar days of receipt of such notice. Thereafter, the parties shall confer in an effort to  
11 resolve the dispute. If agreement cannot be reached on the dispute within thirty (30) calendar  
12 days after receipt by Ecology of such objection, Ecology shall promptly provide a written  
13 statement of its decision to Lovering.

14 If Ecology's final written decision is unacceptable to Lovering, he shall have the right  
15 to submit the dispute within thirty (30) days to the Court for resolution. The parties agree that  
16 one judge should retain jurisdiction over this case and shall, as necessary, resolve any dispute  
17 arising under this Decree. In the event Lovering presents an issue to the Court for review, the  
18 Court shall review the action or decision of Ecology on the basis of whether such action or  
19 decision was arbitrary and capricious and render a decision based on such standard of review.  
20 Ecology and Lovering agree to use the dispute resolution process in good faith and agree to  
21 expedite, to the extent possible, the dispute resolution process whenever it is used. Where  
22 either party uses dispute resolution in bad faith or for purposes of delay, the other party may  
23 seek sanctions. Implementation of these dispute resolution procedures shall not provide a basis  
24 for delay of any activities required in this Decree, unless Ecology agrees in writing to a  
25 schedule extension or the Court so orders.

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**XI. AMENDMENT TO CONSENT DECREE**

This Decree may only be amended by a written stipulation between the parties, entered by the Court, or by court order. Such amendment shall become effective upon entry by the Court. Agreement to amend shall not be unreasonably withheld by any party to the Decree. Lovering shall submit any request for an amendment to Ecology for approval. Ecology shall indicate its approval or disapproval within a reasonable time after the request for amendment is received. Reasons for the disapproval shall be stated in writing. If Ecology does not agree to any proposed amendment, the disagreement may be addressed through the dispute resolution procedures described in Section X of this Decree. No guidance, suggestions, or comments by Ecology will be construed as relieving Lovering of his obligation to obtain formal approval as may be required by this Decree. No verbal communication by Ecology shall relieve Lovering of the obligations specified herein. Ecology shall notify Lovering of any Ecology-requested amendment and, within thirty (30) working days of receipt of such a request, Lovering shall, in writing, indicate his agreement or disagreement and, if he disagrees, the rationale. If Lovering does not agree with any Ecology-proposed amendment, the disagreement may be addressed through the dispute resolution procedures described in Section X of this Decree.

**XII. OTHER ACTIONS**

Ecology reserves its right to institute remedial action(s) at the YRRA site and/or at the Lovering property, and subsequently pursue cost recovery, and to issue orders and/or penalties pursuant to available statutory authority, under the following circumstances:

1. Where Lovering failed to adhere to any requirement of this Decree;
2. In the event or upon the discovery of a release or threatened release at the property not addressed by this Decree;



- 1           3.     Upon Ecology's determination that action beyond the terms of this  
2           Decree is necessary to abate an emergency situation at the property  
3           which threatens the public health or welfare or the environment; or  
4           4.     Upon the occurrence or discovery of facts or conditions at the Lovering  
5           property beyond the scope of this Decree as to which Ecology would be  
6           empowered to perform any remedial action or to issue an order and/or  
7           penalty, or to take any other enforcement action under applicable laws.

8           Lovering reserves his rights to all defenses and procedures as authorized by Ch.  
9           70.105D RCW, should Ecology take other actions described herein.

### 10                                   XIII. CONTRIBUTION PROTECTION

11           With regard to claims for contribution against Lovering for matters addressed in this  
12           Consent Decree, the parties hereto agree that Lovering is entitled to contribution protection for  
13           any actions or claims pursuant to MTCA, RCW 70.105D.040 and CERCLA section 113(f)(2).  
14           Protection conferred in this section shall not be frustrated by the use of non-CERCLA or non-  
15           MTCA theories to seek relief in the nature of contribution or indemnification. For the  
16           purposes of this section, matters addressed in the Consent Decree shall mean the investigation  
17           and remediation of the Yakima Railroad Area and the Lovering property with respect to the  
18           release of PCE in soil or groundwater at the property, in the volume and toxicity described in  
19           Exhibit 3.

### 20                                   XIV. COVENANT NOT TO SUE

21           In consideration of Lovering's compliance with the terms and conditions of this Decree.  
22           Ecology agrees that compliance with this Decree shall stand in lieu of any and all  
23           administrative, legal, and equitable remedies and enforcement actions available to the state  
24           against Lovering or the current property owners, Mr. and Mrs. Pleas Green, for the release or  
25           threatened release of PCE, in the amounts and toxicity described in Exhibit 3.

1 This Covenant Not to Sue is strictly limited in its application to Lovering, the Greens,  
2 the property described in Exhibit 2, and to the volume and toxicity of hazardous substances  
3 described in Exhibit 3. This covenant is not applicable to any other hazardous substances or  
4 areas, and the state retains all of its authority relative to any other substances and areas.

5 A. Re-Openers: In the following circumstances the state of Washington may  
6 exercise its full legal authority to address releases of hazardous substances at the Lovering  
7 property, notwithstanding the Covenant Not to Sue set forth above:

- 8 1. In the event Lovering fails to comply with the terms and conditions of  
9 this Consent Decree, including all exhibits, and, after written notice of  
10 noncompliance, fails to come into compliance;
- 11 2. In the event information becomes available regarding factors previously  
12 unknown to Ecology, including the nature or quantity of hazardous  
13 substances at the Lovering property, and Ecology determines, in light of  
14 this information, that remedial action is necessary to address a release of  
15 hazardous substances at the Lovering property to protect human health  
16 and the environment.

17 B. Applicability: The Covenant Not to Sue set forth above shall have no  
18 applicability whatsoever to:

- 19 1. Criminal liability;
- 20 2. Liability for damages to natural resources;
- 21 3. Any Ecology action against potentially liable parties not a party to this  
22 Decree; and
- 23 4. "Other Actions" described in Section XII of this Decree.
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**XV. CLAIM AGAINST THE STATE**

Lovering hereby agrees that he will not seek to recover any costs incurred in implementing this Decree from the state of Washington or any of its agencies and, further, that Lovering will make no claim against the State Toxics Control Account or any local toxics control account for any costs incurred in implementing this Decree.

**XVI. RESERVATION OF RIGHTS**

By agreeing to the entry of this Decree, Lovering and Ecology agree to abide by its terms. While the parties believe that the recitals contained in this Decree are accurate, the execution and performance of the Decree is not, however, an admission by Lovering or Ecology of any fact or liability for any purpose other than as a foundation for the entry of this Decree. Lovering's performance under this Decree is undertaken without waiver of or prejudice to any claims or defenses whatsoever that may be asserted in the event of further administrative proceedings or litigation not associated with, or related to, this Decree. Nor is the execution or the performance of the Decree an agreement by Lovering to take any action at the property or the Yakima Railroad Area site other than that described in this document.

**XVII. EFFECTIVE DATE**

The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court.

**XVIII. DURATION OF DECREE AND RETENTION OF JURISDICTION**

This Decree shall remain in effect and this Court shall retain jurisdiction over both the subject matter of this Consent Decree and the parties for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate to insure that obligations of the parties have been satisfied.


1 **XIX. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT**

2 This Decree has been the subject of public notice and comment under RCW  
3 70.105D.040(4)(a). If the Court withholds or withdraws its consent, this Decree shall be null  
4 and void at the option of any party. In such an event, no party shall be bound by the  
5 requirements of this Decree.

6 The undersigned parties enter into this de minimis Consent Decree on the dates  
7 specified below.

8 CHRISTINE O. GREGOIRE  
9 Attorney General

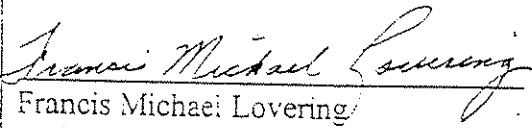
DEPARTMENT OF ECOLOGY

10   
11 STEVEN J. THIELE, WSBA #20275  
12 Assistant Attorney General  
13 Attorney for Plaintiff  
14 State of Washington  
15 Department of Ecology  
16 (360) 586-4619

By: 

Dated: 7/17/01

17 Dated: 9/24/01

18   
19 Francis Michael Lovering  
20 Defendant

Dated: 6/29/01

21  
22 So ordered this 15<sup>th</sup> day of October, 2001.

23 SUSAN L. HAHN  
24 JUDGE

25 JUDGE/COMMISSIONER  
Yakima County Superior Court



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OCT 15 2001

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**STATE OF WASHINGTON  
YAKIMA COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,  
  
Plaintiff,

NO. **01 2 02668 1**  
COMPLAINT

v.

FRANCIS MICHAEL LOVERING,  
individually,  
  
Defendant.

Plaintiff, State of Washington, Department of Ecology ("Ecology") alleges as follows:

**I. DESCRIPTION OF ACTION**

1. This action is brought on behalf of the State of Washington, Department of Ecology, to enter a settlement agreement, known as a Consent Decree ("Decree") for a remedial action at a facility where there have been releases and/or threatened releases of hazardous substances.

2. The Complaint and settlement are limited to the scope of the Decree. The facility, or Site, is referred to as the Elliott/Goodyear Tire Center property. The Site consists of the facility located at 1 East Lincoln Avenue, Yakima, Washington.

1 **II. JURISDICTION**

2 3. This Court has jurisdiction under RCW 70.105D, the Model Toxics Control Act  
3 (“MTCA”). This Court has jurisdiction over the subject matter and over the parties pursuant to  
4 the MTCA. Venue is proper in Yakima County, the location of the property at issue.

5 4. Authority is conferred upon the Washington State Attorney General by RCW  
6 70.105D.040(5)(a) to agree to a settlement with any person not currently liable for remedial  
7 action at a facility, who intends to purchase, redevelop or reuse a site if, after public notice,  
8 Ecology finds the proposed settlement would lead to a more expeditious cleanup of hazardous  
9 substances in compliance with cleanup standards under RCW 70.105D.030(2)(e). In addition,  
10 Ecology must also find that the proposed redevelopment or reuse is not likely to contribute to  
11 the existing releases or threatened releases or interfere with remedial actions that may be  
12 needed on the Site or increase health risks to persons at or in the vicinity of the Site. Lastly,  
13 the Attorney General must find that the settlement will yield substantial new resources to  
14 facilitate the cleanup and expedite remedial action consistent with the rules adopted under  
15 RCW 70.105D. Ecology and the Attorney General have made the required finding. Under  
16 RCW 70.105D.040(4)(b), such a settlement must be entered as a Consent Decree issued by a  
17 court of competent jurisdiction.

18 5. Ecology has determined that a release or threatened release of a hazardous  
19 substance has occurred at the Site.

20 6. Ecology has given notice to Francis Michael Lovering of Ecology's determination  
21 as provided in RCW 70.105D.020(12), that he is a potentially liable person as owner and/or  
22 operator (defined in 70.105D.020(12)) of the Site and notice that there has been a release  
23 and/or threatened release of hazardous substances at the Site.

1 **III. PARTIES**

2 7. Plaintiff Ecology is an agency of the State of Washington responsible for  
3 overseeing remedial action at Sites contaminated with hazardous substances under  
4 RCW 70.105D.

5 8. Defendants are Francis Michael Lovering.

6 **IV. FACTUAL ALLEGATIONS**

7 9. The Site is located at 1 East Lincoln Avenue, Yakima, Washington. It is bounded  
8 on the north by East "D" Street, on the west by North Front Street, on the south by East  
9 Lincoln Avenue, and on the east by an alley. A Site Diagram of the Site and a Legal  
10 Description are attached as Exhibits A and B.

11 10. The Site was used in part as a gas station in the 1930's and 40's. In the mid-1950's,  
12 the property was sold and the Site was used as a coal yard. By the 1960's, the Lovering family  
13 was leasing the property and constructed what is today the tire and service center.

14 11. Several environmental investigations have been conducted at the Site by third  
15 parties.

16 **V. CAUSES OF ACTION**

17 12. Plaintiff realleges paragraphs 1 through 11, above.

18 13. Ecology alleges that the Defendants will be responsible for remedial action at the  
19 facility pursuant to WAC 173-340.

20 14. Ecology and the Defendants have entered into a Decree requiring remedial actions  
21 at the facility. The Decree has been subject to public notice and comment under RCW  
22 70.105D.040(4)(a). No comments were received.

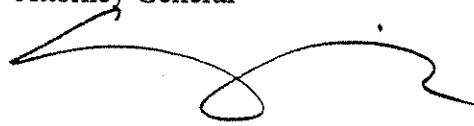
23 **VI. PRAYER FOR RELIEF**

24 WHEREAS Ecology and Defendants have voluntarily entered into a proposed Decree,  
25 Ecology requests that the Court, pursuant to RCW 70.105D.040, approve and order the entry of  
26

1 the proposed Decree. Ecology further requests that the Court retain jurisdiction to enforce the  
2 terms of the Decree.

3 DATED this 4<sup>th</sup> day of October, 2001.

4 CHRISTINE O. GREGOIRE  
5 Attorney General

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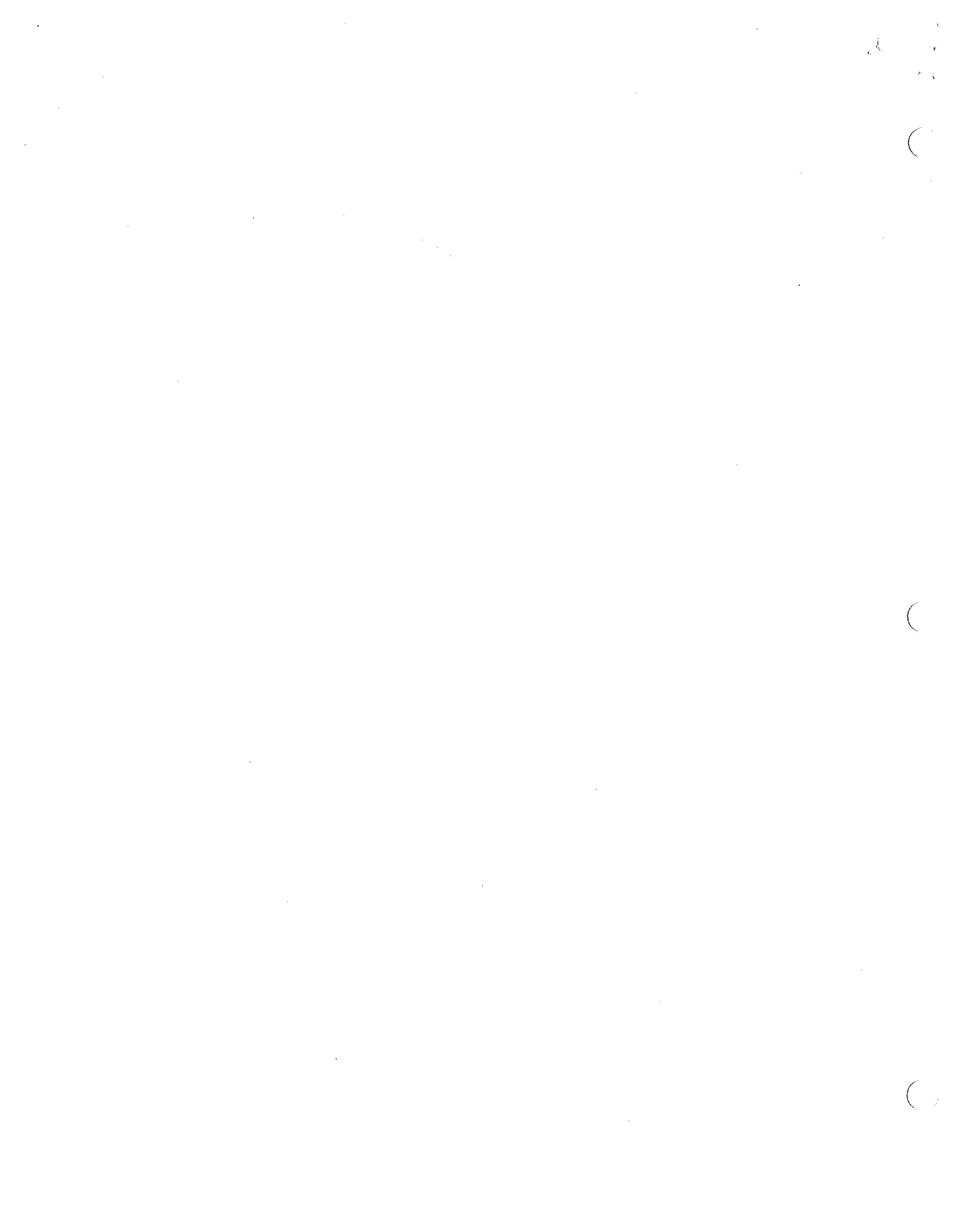
7 STEVEN J. THIELE, WSBA #20275  
8 Assistant Attorney General  
9 Attorney for Plaintiff  
10 State of Washington  
11 Department of Ecology  
12 (360) 586-4619

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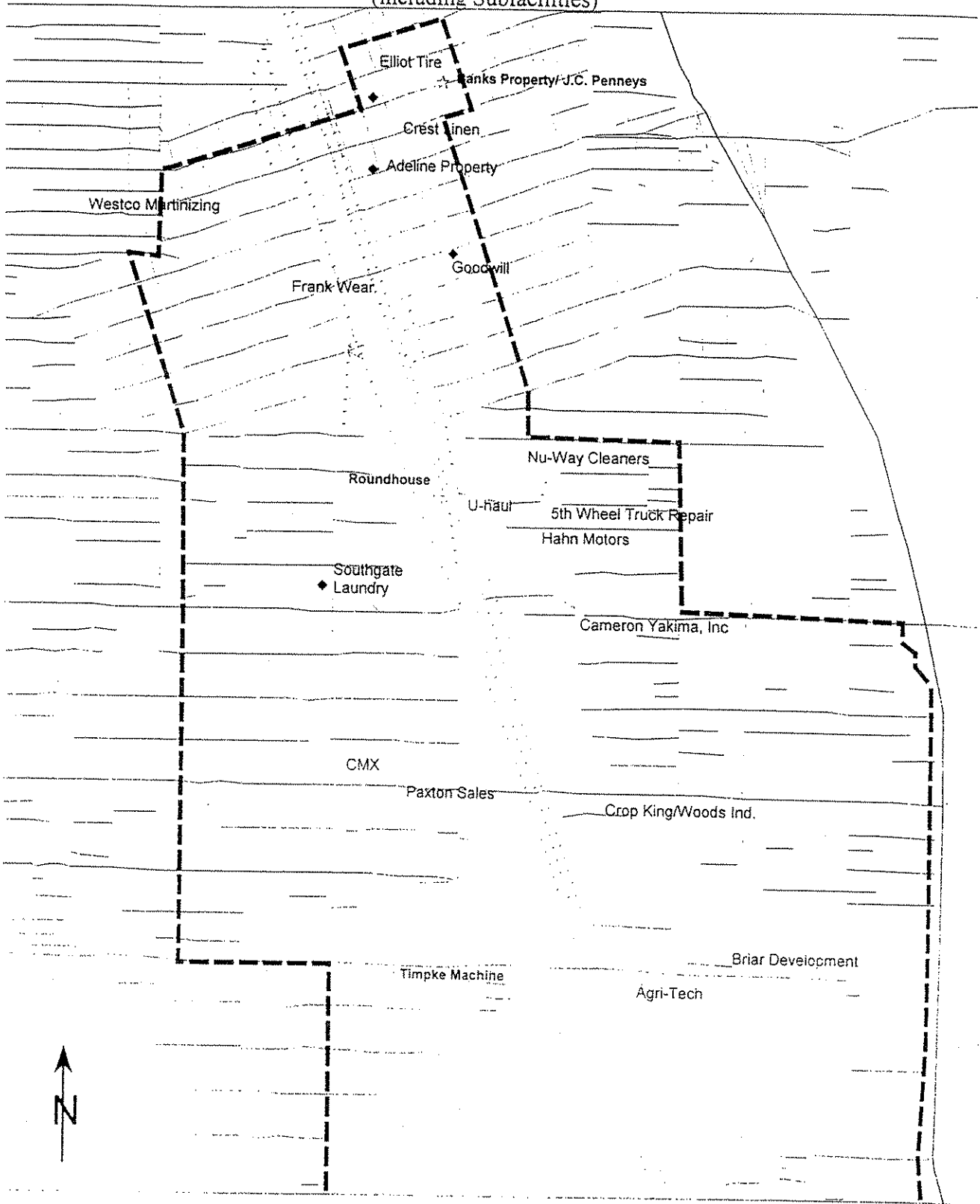


# **EXHIBIT A**

## **Map of Yakima Railroad Area**



# Yakima Railroad Area Site Diagram (including Subfacilities)



not to scale

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# **EXHIBIT B**

## **Legal Description of Property**

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## LEGAL DESCRIPTION

Lots 17-32, inclusive, Block 7, Town of North Yakima, now Yakima, Washington, per Plat recorded in Volume "E" of Plats, page 1, records of Yakima County, Washington.

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**STATE OF WASHINGTON  
YAKIMA COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

FRANCIS MICHAEL LOVERING,  
individually,

Defendant.

NO.

SUMMONS 01 2 02668 1

TO: Francis Michael Lovering, and his attorney, Michael F. Shinn;

A lawsuit has been started against you in the above-entitled court by the State of Washington, Department of Ecology. Plaintiff's claim is stated in the written Complaint, a copy of which is served upon you with this Summons.

The parties have agreed to resolve this matter by entry of a Consent Decree, a copy of which is also attached. Accordingly, this Summons shall not require the filing of an answer.

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Further, all disputes arising under this cause shall be resolved under the terms of the Decree.

DATED this 4<sup>th</sup> day of October, 2001.

CHRISTINE O. GREGOIRE  
Attorney General



STEVEN J. THIELE, WSBA #20275  
Assistant Attorney General  
Attorneys for Plaintiff  
Department of Ecology  
(360) 586-4619

Elliott Tire  
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**STATE OF WASHINGTON  
YAKIMA COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,  
  
Plaintiff,  
  
v.  
  
FRANCIS MICHAEL LOVERING,  
individually,  
  
Defendant.

NO.           **01 2 02668 1**  
  
CONSENT DECREE

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CONSENT DECREE

i

ATTORNEY GENERAL OF WASHINGTON  
Ecology Division  
PO Box 40117  
Olympia, WA 98504-0117  
FAX (360) 586-6760

**ORIGINAL**

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1 I. INTRODUCTION

2 A. In entering into this de minimis Consent Decree (the "Decree"), the mutual  
3 objectives of the Washington State Department of Ecology ("Ecology") and Francis Michael  
4 Lovering ("Lovering") is to resolve the liability of Lovering and his successors relating to the  
5 release of a hazardous substance, tetrachloroethylene (PCE), from property previously owned  
6 by Lovering (now owned by Pleas J. Green and Paula J. Green, husband and wife) and  
7 operated by Goodyear Tire & Rubber Co., in the Yakima Railroad Area (YRRA) in Yakima,  
8 Washington. The map of the YRRA site is attached hereto as Exhibit 1 and incorporated  
9 herein by reference. Lovering formerly owned the subject site, the legal description of which  
10 is attached hereto as Exhibit 2. In April, 1995, Lovering conveyed title to the subject property  
11 to Mr. and Mrs. Pleas Green, however, Lovering was designated the potentially liable person  
12 (PLP) for the site in July, 1995. To accomplish a resolution of the liability issues relating to  
13 the release of hazardous substances, Lovering and Ecology consent to the actions required by  
14 this Decree.

15 B. A Complaint in this action is filed concurrent with this Decree and no answer  
16 has been filed. There has not been a trial on any issue of fact or law in this case. However, the  
17 parties wish to resolve the issues raised by the Complaint. In addition, the parties agree that  
18 settlement of these matters without litigation is reasonable and in the public interest, and that  
19 entry of this Decree is the most appropriate means of resolving these matters.

20 C. In signing this Decree, Lovering and Ecology agree to its entry and agree to be  
21 bound by its terms.

22 D. By entering into this Decree, the parties do not intend to discharge nonsettling  
23 parties from any liability they may have with respect to investigation and remedial activities at  
24 the Site. Except as set forth herein. Lovering and Ecology retain the right to seek  
25 reimbursement in whole or in part from any responsible entities for sums expended on

1 investigation and remedial activities at the Site, and to seek any other costs that are legally  
2 recoverable.

3 E. By entering into this Decree, Lovering is not admitting any liability for facts  
4 alleged herein.

## 5 II. JURISDICTION AND VENUE

6 A. This Court has jurisdiction over the subject matter and over the parties pursuant  
7 to the Model Toxics Control Act (MTCA), Ch. 70.105D RCW. Venue is proper in Yakima  
8 County. RCW 70.105D.050(5)(b).

9 B. Authority is conferred upon the Washington State Attorney General by RCW  
10 70.105D.040(4)(a) to agree to a settlement with any potentially liable person if, after public  
11 notice and hearing, Ecology finds the proposed settlement would lead to a more expeditious  
12 cleanup of hazardous substances in compliance with cleanup standards under RCW  
13 70.105D.030(2)(d). RCW 70.105D.040(4)(b) requires that such a settlement be entered as a  
14 consent decree issued by a court of competent jurisdiction.

15 C. Ecology has given notice to Lovering as provided in RCW 70.105D.020(8), of  
16 Ecology's determination that Lovering is a potentially liable person for the YRRA Site and that  
17 there has been a release of hazardous substances at the Lovering property.

18 D. Ecology has determined that past activities at the Lovering property may have  
19 given rise to release of a hazardous substance, PCE. Lovering maintains that no such release  
20 has occurred.

21 E. By entering into this Decree, Lovering agrees not to challenge the jurisdiction  
22 of Ecology or the Court in any proceeding to enforce this Decree. Lovering has agreed to  
23 undertake the actions specified in this Decree and Lovering consents to the issuance of this  
24 Decree, pursuant to RCW 70.105D.  
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### III. PARTIES BOUND

This Decree shall apply to and be binding upon the signatories of this Decree (parties), their successors and assigns. The undersigned representative of each party hereby certifies that he or she is fully authorized to enter into this Decree and to execute and legally bind such party to comply with the Decree. No change in ownership shall alter the responsibility of the parties under this Decree.

### IV. DEFINITIONS

Unless otherwise specified, the definitions set forth in the Model Toxics Control Act, Ch. 70.105D RCW, and Ch. 173-303 WAC shall control the meaning of the terms used in this Consent Decree.

### V. STATEMENT OF FACTS

The Lovering (Elliott/Goodyear Tire Center) Site history, attached to this Consent Decree as Exhibit 3 and incorporated herein, contains a statement of facts describing the Lovering property, its operational history, and the results of testing for hazardous substances, including PCE at the property. Based on the facts outlined in the site history, Ecology has determined that the release or potential release of hazardous substances at the Lovering property has been resolved, and that a settlement is appropriate. Lovering has undertaken an independent remedial action at the Site which was subject to Ecology guidance.

### VI. WORK TO BE PERFORMED

A. Lovering shall reimburse Ecology for its proportion of oversight and administration costs, which are \$1,336.50. Payment shall be made within thirty (30) days of the effective date of the Decree by certified or cashier's check payable to the Department of Ecology, Cashier's Section, P.O. Box 5128, Lacey, Washington, 98509-5128; with reference to: Lovering (Elliott/Goodyear Tire Center) site.

1 B. Lovering will assist in providing access to the site in accordance with Section  
2 VII of this Consent Decree, and otherwise will comply with all other provisions of this Consent  
3 Decree.

4 C. Lovering agrees not to seek reimbursement from the State of Washington, from  
5 state or local toxics accounts, or other YRRA Site potentially liable parties ("PLPs"), who have  
6 or will be named, other than prior owners, operators or generators of the property, for any costs  
7 incurred prior to the entry of this Decree, or expended to satisfy the terms of this Decree. This  
8 provision in no way limits Lovering's defenses provided for in the Model Toxics Cleanup Act.  
9 Lovering reserves the right to seek contribution from other liable parties as provided for in the  
10 MTCA, RCW 70.105D.080. By this Consent Decree Lovering settles his liability to the state  
11 and he shall not be liable for claims for contribution for matters addressed in this settlement as  
12 provided for in RCW 70.105D.040(4).

#### 13 VII. ACCESS

14 Lovering will assist in securing for Ecology or any Ecology authorized representative  
15 reasonable access to the property for purposes of inspections, conducting such tests or  
16 collecting samples as Ecology may deem necessary as part of its RI/FS or remedial action at  
17 the Yakima Railroad Area Site. In the event that Ecology wishes to conduct sampling,  
18 Ecology will, except in emergency situations, provide the record title owner and property  
19 occupant five (5) days' notice prior to entering the property. Upon request, Ecology will split  
20 any samples taken at the property with the record title holder. All parties with legal access to  
21 the property pursuant to this paragraph shall comply with reasonable health and safety  
22 requirements.

#### 23 VIII. RETENTION OF RECORDS

24 Lovering shall preserve for ten (10) years from the date of this Decree, all records,  
25 reports, documents, and underlying data in his possession relevant to the implementation of



1 this Decree. Upon request of Ecology, Lovering shall make all non-privileged records  
2 available to Ecology and allow access for review. Records shall be made available to Ecology  
3 within a reasonable period of time.

4 **IX. TRANSFER OF INTEREST IN PROPERTY**

5 Lovering shall serve this Decree and the attached Exhibits upon the current property  
6 title holders, Mr. and Mrs. Pleas Green.

7 **X. RESOLUTION OF DISPUTES**

8 If Lovering objects to any Ecology disapproval, proposed modification, or decision  
9 made pursuant to this Decree, he shall notify Ecology in writing of his objections within thirty  
10 (30) calendar days of receipt of such notice. Thereafter, the parties shall confer in an effort to  
11 resolve the dispute. If agreement cannot be reached on the dispute within thirty (30) calendar  
12 days after receipt by Ecology of such objection, Ecology shall promptly provide a written  
13 statement of its decision to Lovering.

14 If Ecology's final written decision is unacceptable to Lovering, he shall have the right  
15 to submit the dispute within thirty (30) days to the Court for resolution. The parties agree that  
16 one judge should retain jurisdiction over this case and shall, as necessary, resolve any dispute  
17 arising under this Decree. In the event Lovering presents an issue to the Court for review, the  
18 Court shall review the action or decision of Ecology on the basis of whether such action or  
19 decision was arbitrary and capricious and render a decision based on such standard of review.  
20 Ecology and Lovering agree to use the dispute resolution process in good faith and agree to  
21 expedite, to the extent possible, the dispute resolution process whenever it is used. Where  
22 either party uses dispute resolution in bad faith or for purposes of delay, the other party may  
23 seek sanctions. Implementation of these dispute resolution procedures shall not provide a basis  
24 for delay of any activities required in this Decree, unless Ecology agrees in writing to a  
25 schedule extension or the Court so orders.



1           3.     Upon Ecology's determination that action beyond the terms of this  
2           Decree is necessary to abate an emergency situation at the property  
3           which threatens the public health or welfare or the environment; or

4           4.     Upon the occurrence or discovery of facts or conditions at the Lovering  
5           property beyond the scope of this Decree as to which Ecology would be  
6           empowered to perform any remedial action or to issue an order and/or  
7           penalty, or to take any other enforcement action under applicable laws.

8           Lovering reserves his rights to all defenses and procedures as authorized by Ch.  
9           70.105D RCW, should Ecology take other actions described herein.

### 10                                           **XIII. CONTRIBUTION PROTECTION**

11           With regard to claims for contribution against Lovering for matters addressed in this  
12           Consent Decree, the parties hereto agree that Lovering is entitled to contribution protection for  
13           any actions or claims pursuant to MTCA, RCW 70.105D.040 and CERCLA section 113(f)(2).  
14           Protection conferred in this section shall not be frustrated by the use of non-CERCLA or non-  
15           MTCA theories to seek relief in the nature of contribution or indemnification. For the  
16           purposes of this section, matters addressed in the Consent Decree shall mean the investigation  
17           and remediation of the Yakima Railroad Area and the Lovering property with respect to the  
18           release of PCE in soil or groundwater at the property, in the volume and toxicity described in  
19           Exhibit 3.

### 20                                           **XIV. COVENANT NOT TO SUE**

21           In consideration of Lovering's compliance with the terms and conditions of this Decree,  
22           Ecology agrees that compliance with this Decree shall stand in lieu of any and all  
23           administrative, legal, and equitable remedies and enforcement actions available to the state  
24           against Lovering or the current property owners, Mr. and Mrs. Pleas Green, for the release or  
25           threatened release of PCE, in the amounts and toxicity described in Exhibit 3.

1 This Covenant Not to Sue is strictly limited in its application to Lovering, the Greens,  
2 the property described in Exhibit 2, and to the volume and toxicity of hazardous substances  
3 described in Exhibit 3. This covenant is not applicable to any other hazardous substances or  
4 areas, and the state retains all of its authority relative to any other substances and areas.

5 A. Re-Openers: In the following circumstances the state of Washington may  
6 exercise its full legal authority to address releases of hazardous substances at the Lovering  
7 property, notwithstanding the Covenant Not to Sue set forth above:

- 8 1. In the event Lovering fails to comply with the terms and conditions of  
9 this Consent Decree, including all exhibits, and, after written notice of  
10 noncompliance, fails to come into compliance;
- 11 2. In the event information becomes available regarding factors previously  
12 unknown to Ecology, including the nature or quantity of hazardous  
13 substances at the Lovering property, and Ecology determines, in light of  
14 this information, that remedial action is necessary to address a release of  
15 hazardous substances at the Lovering property to protect human health  
16 and the environment.

17 B. Applicability: The Covenant Not to Sue set forth above shall have no  
18 applicability whatsoever to:

- 19 1. Criminal liability;
  - 20 2. Liability for damages to natural resources;
  - 21 3. Any Ecology action against potentially liable parties not a party to this  
22 Decree; and
  - 23 4. "Other Actions" described in Section XII of this Decree.
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**XV. CLAIM AGAINST THE STATE**

Lovering hereby agrees that he will not seek to recover any costs incurred in implementing this Decree from the state of Washington or any of its agencies and, further, that Lovering will make no claim against the State Toxics Control Account or any local toxics control account for any costs incurred in implementing this Decree.

**XVI. RESERVATION OF RIGHTS**

By agreeing to the entry of this Decree, Lovering and Ecology agree to abide by its terms. While the parties believe that the recitals contained in this Decree are accurate, the execution and performance of the Decree is not, however, an admission by Lovering or Ecology of any fact or liability for any purpose other than as a foundation for the entry of this Decree. Lovering's performance under this Decree is undertaken without waiver of or prejudice to any claims or defenses whatsoever that may be asserted in the event of further administrative proceedings or litigation not associated with, or related to, this Decree. Nor is the execution or the performance of the Decree an agreement by Lovering to take any action at the property or the Yakima Railroad Area site other than that described in this document.

**XVII. EFFECTIVE DATE**

The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court.

**XVIII. DURATION OF DECREE AND RETENTION OF JURISDICTION**

This Decree shall remain in effect and this Court shall retain jurisdiction over both the subject matter of this Consent Decree and the parties for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate to insure that obligations of the parties have been satisfied.

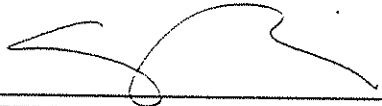
1 **XIX. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT**

2 This Decree has been the subject of public notice and comment under RCW  
3 70.105D.040(4)(a). If the Court withholds or withdraws its consent, this Decree shall be null  
4 and void at the option of any party. In such an event, no party shall be bound by the  
5 requirements of this Decree.

6 The undersigned parties enter into this de minimis Consent Decree on the dates  
7 specified below.

8 CHRISTINE O. GREGOIRE  
9 Attorney General

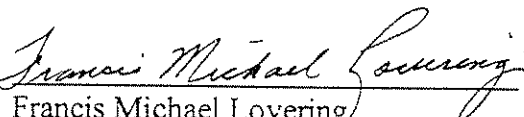
DEPARTMENT OF ECOLOGY

10   
11 STEVEN J. THIELE, WSBA #20275  
12 Assistant Attorney General  
13 Attorney for Plaintiff  
14 State of Washington  
15 Department of Ecology  
16 (360) 586-4619

  
By: \_\_\_\_\_

Dated: 7/17/01

15 Dated: 9/24/01

17   
18 Francis Michael Lovering  
19 Defendant

20 Dated: 6/29/01

21  
22 So ordered this 15<sup>th</sup> day of October, 2001.

23 **SUSAN L. HAHN**  
24 **JUDGE**

25 \_\_\_\_\_  
JUDGE/COMMISSIONER  
Yakima County Superior Court

# **EXHIBIT A**

## **Map of Yakima Railroad Area**

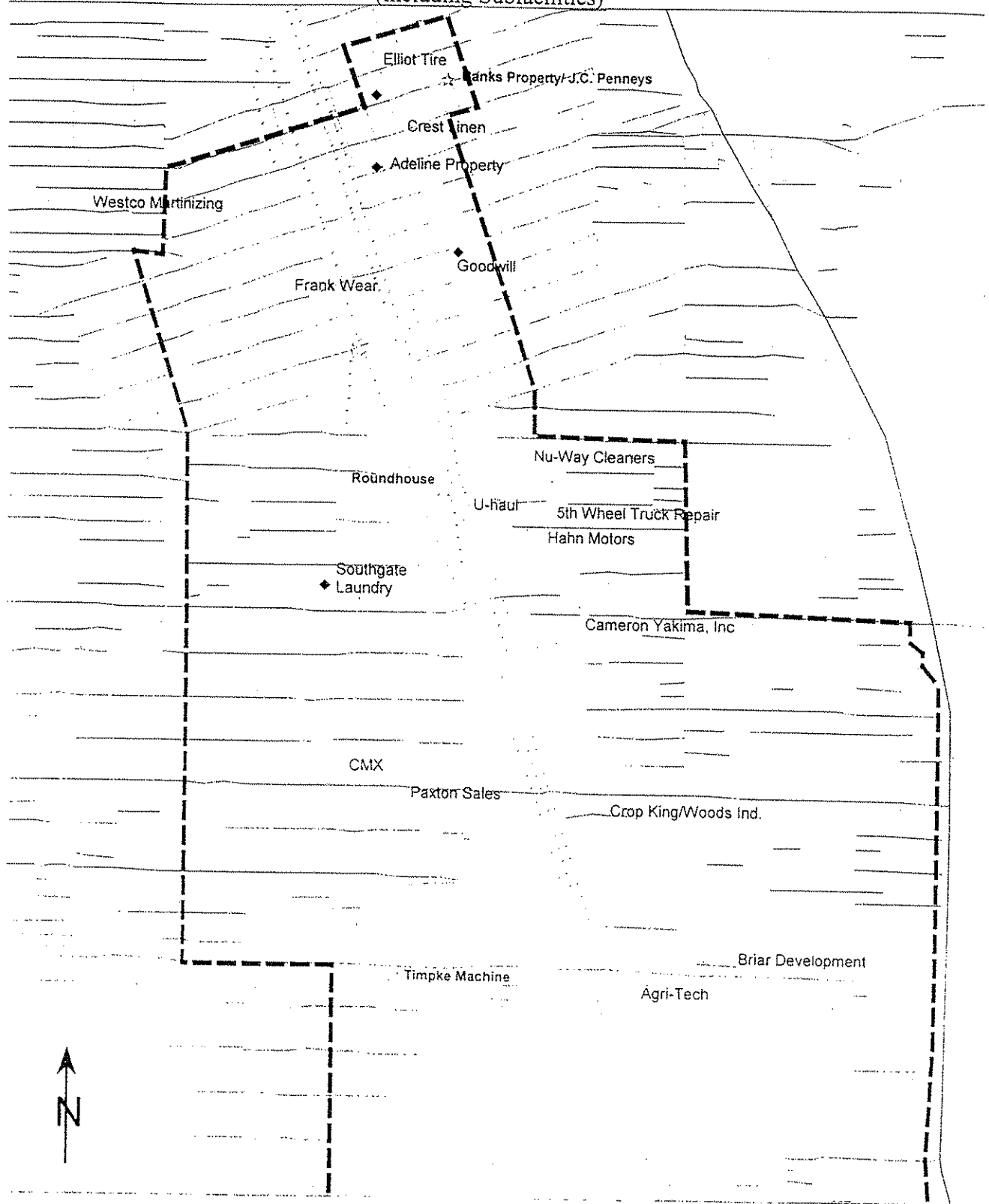
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# Yakima Railroad Area Site Diagram (including Subfacilities)



not to scale

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# **EXHIBIT B**

## **Legal Description of Property**

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## LEGAL DESCRIPTION

Lots 17-32, inclusive, Block 7, Town of North Yakima, now Yakima, Washington, per Plat recorded in Volume "E" of Plats, page 1, records of Yakima County, Washington.

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## **EXHIBIT C**

### **Elliott (Goodyear) Tire Center Site History**

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**Elliott (Goodyear) Tire Center Site History**  
**1 East Lincoln Avenue, Yakima, WA**

The property referred to as the Goodyear (Elliott) Tire Center at 1 East Lincoln Avenue, Yakima, Washington covers approximately one-half block (Block 7, Lots 17-32) in Yakima, Washington. The site is bounded on the North by East "D" Street, on the West by North Front Street, on the South by East Lincoln Avenue and on the East by an alley. (A site plan prepared by Environmental Associates, Inc. in December, 1994 is attached as Exhibit "A.") The property is improved with a one-story concrete building, which takes up approximately 19,200 square feet (built in approximately 1961), and a concrete warehouse structure of approximately 11,300 square feet (built in approximately 1972).

In the 1930's and 40's, the Economy Fuel Company, and Thomas R. Smiley, owned the property which was used, in part, for a gas station. In about the mid-1950's, Economy Fuel Company moved its operation from the property to an adjacent site and Mr. Nels Haddix acquired the property and operated the subject site as a coal yard with an office and weight scales located there. By the 1960's, the Lovering family of Yakima was leasing the property from Haddix and constructed what is the present-day tire and service center building. In July of 1983, Pearl H. Lovering was deeded the property from Nels Haddix. Pearl Lovering passed away on May 13, 1992 and by Personal Representative's Deed dated December 6, 1993, Mike Lovering, the son of Pearl H. Lovering, was deeded title. Mike Lovering owned the property for less than two years. In April, 1995, Mr. Lovering conveyed title to Mr. and Mrs. Pleas Green. The property is still used for a retail tire and service center business. The property is, and has for a number of years, been leased to the Goodyear Tire & Rubber Company of Akron, Ohio. (Elliott Tire & Service Co., a Washington corporation, has been a sublessee of the property, hence the site name used above.)

In preparation for the transfer to the Greens in 1995, Mike Lovering commissioned a Phase I Environmental Audit of the property by Environmental Associates, Inc., from Bellevue, Washington which was completed in the winter of 1994-95. Environmental Associates initial Phase I Audit concluded that the property was apparently free from potentially hazardous, dangerous, or toxic materials, but acknowledged that there were unevaluated possible impacts from the former on-site gas/oil station. Therefore, as part of a Supplemental Environmental Study begun in February, 1995, Environmental Associates, Inc. retained GeoRecon International of Seattle, Washington to conduct geophysical exploration for underground storage tanks. According to Environmental Associates, Inc. those analyses conducted on, or about, February 9, 1995, "revealed that no large hyperbolic or flat line reflectors were detected nor were any large scale magnetic anomalies present. In short, no underground storage tanks were identified in the area searched."

In order to determine whether any contamination had occurred as a result of the gasoline service station businesses, two (2) borings were drilled on the subject property. The first boring was taken at the location of the former gas station building; the second was taken up gradient from the first. Both borings, drilled to a depth of twenty (20) feet, were sampled to a depth 21.5 feet. Analyses of the soil and water samples taken contained the following results:

**Boring No. 1:**

<u>Analyte</u>	<u>Soil Sample</u>	<u>Ground Water Sample</u>
TPH (gasoline)	360 ppb	8400 ppb
Benzene	0.13 ppb	6.3 ppb
Toluene	0.68 ppb	2.7 ppb
Ethyl Benzene	0.39 ppb	14.0 ppb
Xylenes	0.85 ppb	67.0 ppb
TPH (diesel)	19 ppb	6900 ppb
TPH (oil range)	N.D.	N.D.
Lead (total):	Not tested	66.0 ppb

**Boring No. 2:**

<u>Analyte</u>	<u>Soil Sample</u>	<u>Ground Water Sample</u>
TPH (gasoline)	N.D.	N.D.
Benzene	N.D.	N.D.
Toluene	N.D.	N.D.
Ethyl Benzene	N.D.	N.D.
Xylenes	N.D.	N.D.
TPH (diesel)	N.D.	360 ppb
TPH (oil range)	N.D.	N.D.
Lead (total):	Not tested	Not tested

During the course of the ground penetrating radar survey commissioned by Environmental Associates, Inc. to determine if there were any underground storage tanks present, one of the environmental engineers observed one of the property lessee's employees emptying 5-gallon buckets into a catch basin in the business' parking area of fluids vacuumed from the floor inside the building. That information along with the environmental survey results were reported on April 4, 1995 to Mary Riveland, Director for the Department of Ecology in Olympia, Washington. (See counsel's letter attached hereto as Exhibit "B".)

Because of those observations, Mr. Lovering commissioned three (3) monitoring wells to be drilled on the property and caused the sediment in the catch basin/drywell to be tested. Laboratory analysis of the soil samples from the three (3) monitoring wells did not detect the presence of any of the analytes with the exception of TPH (gasoline) and Xylenes, which were present in monitoring well #3 at the respective levels of 30 ppb and 0.73 ppb. The results of the water samples did not detect a presence of any of the analytes with the exception that Xylenes were found in monitoring well #1 at the level of 1.1 ppb and TPH (gas), Ethyl Benzene, and Xylenes were found in monitoring well #3 at the following levels: 2500 ppb, 9.9 ppb, and 16 ppb, respectively.

The sediment samples from the drywell showed the presence of only one analyte that exceeded the Method A cleanup levels for soil. Tetrachloroethene was present at 2.3 ppb. (A sample of

the ground water from monitoring well #1, which is down gradient from the drywell, showed the presence of tetrachloroethene at 0.64 ppb, below the Method A cleanup level.)

Thereafter, on May 16, 1995, the Department of Ecology notified Mr. Lovering that the Department of Ecology proposed to find him to be a PLP under RCW 70.105D.020(8) and RCW 70.105D.040(1)(c) and that the site was deemed part of the Yakima Railroad area.

On June 9, 1995, Mr. Lovering responded to the Department of Ecology not contesting the designation as a PLP with regard to the property, but pointing out that the maps depicting the location of the Yakima Railroad Area made available to him showed the northernmost boundary of the Yakima Railroad Area to be Lincoln Avenue. (The Yakima Railroad Area boundary with the Lovering property highlighted in blue is attached hereto as Exhibit "C".) Mr. Lovering's property lies North of that boundary. Nevertheless, the Department of Ecology designated the site with a PLP listing in the Yakima Railroad Area on July 28, 1995, and notified Mr. Lovering of a site hazard assessment in January, 1996.

Mr. Lovering hired Maxim Technologies, Inc. for remediation and cleanup work related to TCE and the lessee's employee's use of the catch basin disclosed by Lovering in April, 1995. Maxim Technologies also sampled the three (3) ground water monitoring wells drilled by Environmental Associates, Inc. and took additional soil samples. Gasoline and BTEX contamination were measured in monitoring well #3, but otherwise laboratory analysis for volatile organic compounds and petroleum hydrocarbons reported concentrations at below detection limits or MTCA cleanup levels. During Maxim Technologies soil-sampling, discovery was also made of some petroleum contaminated soil under the concrete slab floor of the building, consisting of approximately 100 cubic yards. (A copy of the building area detail, with sampling results is attached hereto as Exhibit "D".) As a result of these findings, through Maxim Technologies, Inc., Lovering instituted an Independent Remedial Action Program under the Model Toxics Control Act.

On August 29, 1996, Maxim Technologies submitted its Independent Remedial Action Program Report of its Phase III Investigation and Remediation efforts for the site to the Department of Ecology for review.

The IRAP included summarization of all remedial activities and samplings of soils and ground water. The Report concluded that the site was impacted at one point with elevated concentrations of petroleum hydrocarbons. Minor tetrachloroethene (PCE) contamination was detected in the soil, from the interior bay area of the building in two samples at concentrations of 0.29 mg/kg and 0.12 mg/kg, respectively. Analytical results of soil and sludge samples produced one sludge sample at a concentration of 2.0 mg/kg which confirmed the PCE concentration of 2.3 mg/kg detected in the 1995 sample by Environmental Associates for the Phase II ESA. Detectable limits of PCE were not reported in any of the soil samples collected beneath the sumps, and confirmational sampling of soil following excavation of the sumps also found no detectable concentrations of PCE. (Maxim Technologies identified the contamination sources and contaminated soil, a new dry well (sump) was installed after review and approval by the City of Yakima Engineering Division, and the contaminated soil was successfully remediated pursuant to the IRAP.) The contamination sources were identified through extensive soil

sampling plans both in the interior and the exterior of the Tire Center building. The exterior was sampled by excavating numerous test pits and the interior was sampled through core holes drilled beneath the concrete slabs. Except for petroleum contamination left beneath the interior, all contamination sources were successfully removed. Five (5) ground water sampling rounds were completed as of the date of the August, 1996 report. The maximum concentrations of PCE measured in ground water samples collected from the sampling rounds was 1 ppb, well below the United States EPA drinking water standards of 5 ppb.

Of approximately ninety (90) soil samples collected at the site and analyzed for PCE, only the two (2) small isolated areas in the interior bay reported low, detectable concentrations of PCE at the 0.29 and 0.12 mg/kg levels. The PCE contamination found was successfully removed. (The sludge sample from the drywell (sump) containing PCE at a concentration of 2.0 mg/kg and the sump were also removed, as noted above.) Results from all of the fifty-four (54) soil samples collected from beneath the parking lot and around the building reported PCE concentrations below the detectable limits, of 0.05 mg/kg, as shown in the IRAP report.

Two (2) abandoned gasoline underground storage tanks (UST's) were discovered by Maxim Technologies while sampling. These tanks which were missed by Environmental Associates, Inc. in the course of their radar detection analysis were excavated and removed during remediation efforts organized by Maxim Technologies.

Two (2) contaminated drywells found at the site and adjacent soils were excavated and removed. The PCE and petroleum contaminated sludge from the drywells, along with the PCE from the interior, were contained in drums at the site, and transported for disposal by Phillips Environmental.

Petroleum contamination present beneath the concrete floor of the building was measured as limited to the top two (2) feet. That contaminated soil was not removed.

During the five (5) rounds of ground water sampling, Petroleum contamination was present in one (1) of the three (3) ground water monitoring wells adjacent to the old gas station and the drywells. Ground water was, therefore, recommended to be assessed for PCE and petroleum hydrocarbon concentrations on a quarterly basis for two (2) years in accordance with IRAP guidelines.

Based upon the results of Maxim Technologies IRAP and a proposed restrictive covenant with regard to remediation of the contaminated soil underneath the building when the building was demolished or replaced in the future, and based upon the long-term monitoring plan proposed, the Department of Ecology on November 13, 1996 determined the site did not pose a threat to human health or the environment as a result of the release of tetrachloroethene and petroleum hydrocarbons to soils addressed in the Independent Remedial Action Report. Therefore, on November 13, 1996, the Department of Ecology issued a determination that no further action was necessary for contaminated soils at the site. (A copy of that letter is attached hereto as Exhibit "E".) (The restrictive covenant has not been executed yet by the current landowners, Mr. and Mrs. Pleas Green.)

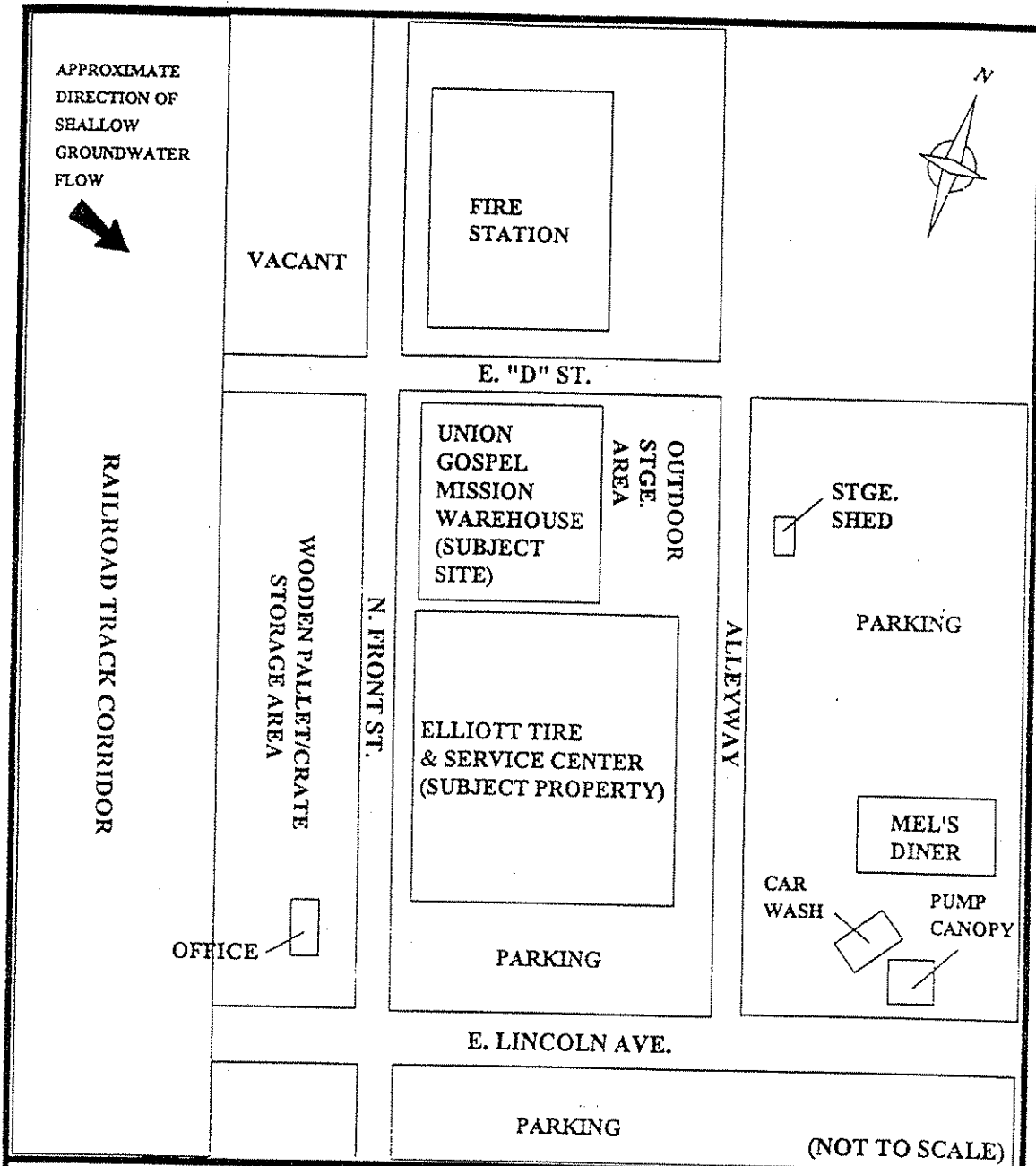
Ground water sampling had been ongoing since the Spring of 1996, and in October, 1997, Maxim Technologies prepared a ground water monitoring report. By the time of that report Maxim Technologies had conducted nine (9) ground water sampling events showing that ground water underlying the site had been remediated. According to the October, 1997 Quarterly Groundwater Monitoring Report:

The nine groundwater sampling rounds reported PCE concentration at a maximum level of 2.6 ppb, well below the U.S. EPA drinking water standard of 5 ppb.

Petroleum hydrocarbon contamination was present Monitoring Well 3 (MW-3), one of the three monitoring wells at the site. MW-3 was installed adjacent to the old gas station and the dry well. The petroleum contamination reported in MW-3 was present only during water table lows occurring in the winter (February 1995-prior to remediation and February 1996 subsequent to remediation). Laboratory analysis results from the February 1997 groundwater sampling round reported petroleum hydrocarbon concentrations below detection limits (ND). Based on groundwater data collected to date, as of September 1997, the groundwater beneath the site appears clean [to contain no hydrocarbon contamination]. The two year quarterly groundwater monitoring program implemented at this site fulfills Ecology's requirements and concludes the IRAP.

On June 3, 1999, the Department of Ecology acknowledged that there was no longer a need to continue ground water monitoring at the Elliott Tire Center (the subject location) based upon the groundwater sampling results. (A copy of that letter is attached hereto as Exhibit "F".)





(NOT TO SCALE)

**ENVIRONMENTAL ASSOCIATES, INC.**

2122 - 112th Avenue N.E., Ste. B-100  
Bellevue, Washington 98004



**SITE PLAN**

Elliott Tire/Warehouse Property  
NEC - E. Lincoln Ave. & N. Front St.  
Yakima, Washington

<i>Job Number:</i> JN 4339	<i>Date:</i> Dec. 1994	<i>Plate:</i> 2
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Brad L. Englund

LAW OFFICES OF  
**HALVERSON & APPLGATE, P.S.**  
311 NORTH FOURTH STREET  
MAILING ADDRESS P. O. BOX 22730  
YAKIMA, WASHINGTON 98907-2715

TELEPHONE  
509-575-6611

FAX  
509-457-2419

April 4, 1995

Mary Riveland, Director  
Department of Ecology  
P. O. Box 47600  
Olympia, WA 98504-7600

Re: Site Discovery Report

Dear Ms. Riveland:

We represent Mike Lovering. Mr. Lovering is the owner of the following-described real property:

Lots 29 to 32, inclusive, Block 7, Town of North Yakima, now Yakima, Washington, according to the Plat thereof recorded in Volume A of Plats, page 10, and re-recorded in Volume E of Plats, page 1, records of Yakima County, Washington.

As required by WAC §173-340-300(2), Mr. Lovering hereby reports a release of hazardous substances at the above-described property ("subject property").

An environmental survey was conducted on the subject property and other property in December 1994. During the course of that investigation it was discovered that a gasoline service station had been located on the subject property some time prior to 1961. In order to determine whether contamination had occurred as a result of that business, two borings were drilled on the subject property. The first boring was taken at the location of the gas station building. The second was taken up gradient from the first boring. Both borings were drilled to a depth of 20 feet and sampled to the depth of 21.5 feet. An analysis of the soil and water samples taken from the first boring contain the following results:

<u>Analyte</u>	<u>Soil Sample</u>	<u>Ground Water Sample</u>
TPH (gasoline)	360 ppm	8400 ppb
Benzene	0.13 ppm	6.3 ppb
Toluene	0.68 ppm	2.7 ppb

Mary Riveland, Director  
Department of Ecology  
April 4, 1995  
Page 2

Ethyl Benzene	0.39 ppm	14.0 ppb
Xylenes	0.85 ppm	67.0 ppb
TPH (diesel)	19 ppm	6900 ppb
TPH (oil range)	N.D.	N.D.
Lead (total):	Not tested	66.0 ppb

An analysis of the soil and water samples taken from the second boring contain the following results:

<u>Analyte</u>	<u>Soil Sample</u>	<u>Ground Water Sample</u>
TPH (gasoline)	N.D.	N.D.
Benzene	N.D.	N.D.
Toluene	N.D.	N.D.
Ethyl Benzene	N.D.	N.D.
Xylenes	N.D.	N.D.
TPH (diesel)	N.D.	360 ppb
TPH (oil range)	N.D.	N.D.
Lead (total):	Not tested	Not tested

After receiving these test results, Mr. Lovering commissioned a company to perform a ground penetrating radar survey and an electromagnetic survey of the subject property to determine if there were any underground storage tanks present. The results of the survey show that no underground storage tanks are present on the subject property.

During the course of the ground penetrating radar survey, the environmental engineer observed personnel from the business which presently leases the property emptying several 5-gallon buckets into a catch basin in the parking area of the subject area. The fluid in the buckets had been vacuumed from the floor inside the lessee's building and was yellowish-green in color.

In February Mr. Lovering commissioned three monitoring wells to be drilled on the property and caused the sediment in the catch basin/dry well to be tested. The laboratory analysis of the soil samples from the three monitoring wells did not detect the presence of any of the analytes (note lead was not tested) with the exception of TPH (gasoline) and Xylenes, which were present in monitoring well #3 at the respective levels of 30 ppb and 0.73 ppb. The results of the water samples also did not detect the presence of any of the analytes (lead was not tested) with the

Mary Riveland, Director  
Department of Ecology  
April 4, 1995  
Page 3

exception that Xylenes were found in monitoring well #1 at the level of 1.1 ppb and TPH (gas), Ethyl Benzene, and Xylenes were found in monitoring well #3 at the following levels: 2500 ppb, 9.9 ppb and 16 ppb, respectively.

The sediment samples from the dry well showed the presence of only one analyte that exceeded the Method A cleanup levels for soil. Tetrachloroethene was present at 2.3 ppb. (Note that a sample of the ground water from monitoring well #1, which is down gradient from the dry well, showed the presence of tetrachloroethene at 0.64 ppb. This level is below the Method A cleanup level.)

Because a yellowish-green fluid was seen being poured into the dry well, a sediment sample collected from the dry well was analyzed for the presence of Ethylene Glycol. Ethylene Glycol was not detected above the method detection limit.

Enclosed herewith is a map showing the location of the borings and monitoring wells. The map contains a summary of the lab results for the borings and monitoring wells.

No remedial actions have been decided upon. Mr. Lovering is in the process of determining the most cost effective method of removing the hazardous substances.

Other than the dumping of the fluid into the catch basin/dry well, the circumstances of the release of the hazardous substances is not known.

If you need any further information, please contact me.

Very truly yours,

Brad L Englund

BLE/pm

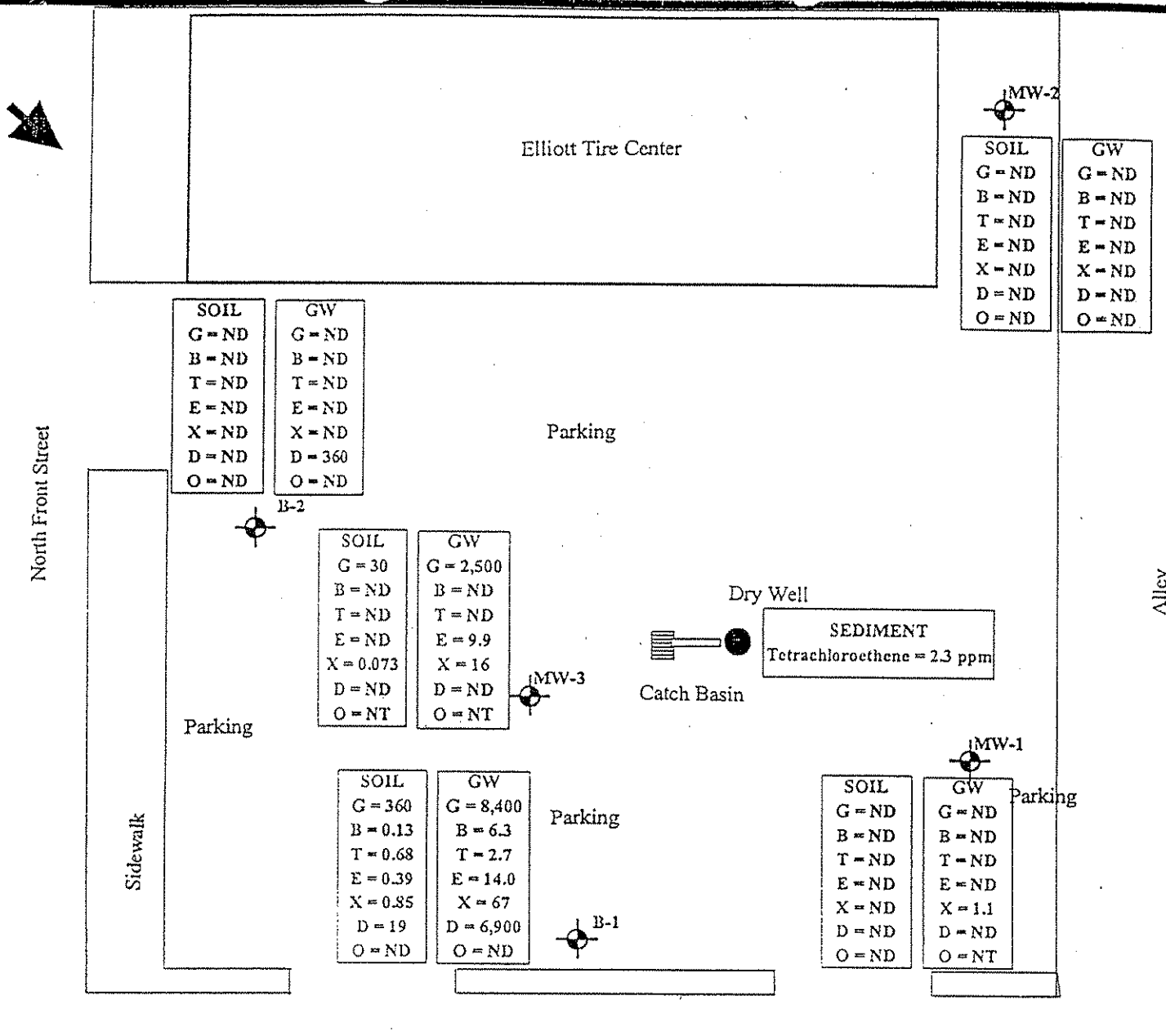
Encl.

cc: Mike Lovering *w/enc.*  
DOE Central Regional Office, *w/enc.*  
Toxics Cleanup Group

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North Front Street

Alley

East Lincoln Avenue

B-1 EAI Boring  
(December, 1994)

MW-1 EAI Boring/Monitoring Well  
(February, 1995)

Probable direction of shallow-seated groundwater flow

APPROXIMATE SCALE



G = Gasoline  
B = Benzene  
T = Toluene  
E = Ethylbenzene  
X = Xylenes  
D = Diesel  
O = Oil  
ND = Not Detected  
NT = Not Tested  
Soil Results in ppm  
GW Results in ppb

**ENVIRONMENTAL ASSOCIATES, INC.**

2122 - 112th Avenue N.E., Ste. B-100  
Bellevue, Washington 98004

**SITE EXPLORATION MAP**

Elliott Tire Center  
NEC East Lincoln Ave. & North Front Street  
Yakima, Washington

Job Number: JN 4339-2	Date: March 1995	Plate: 4
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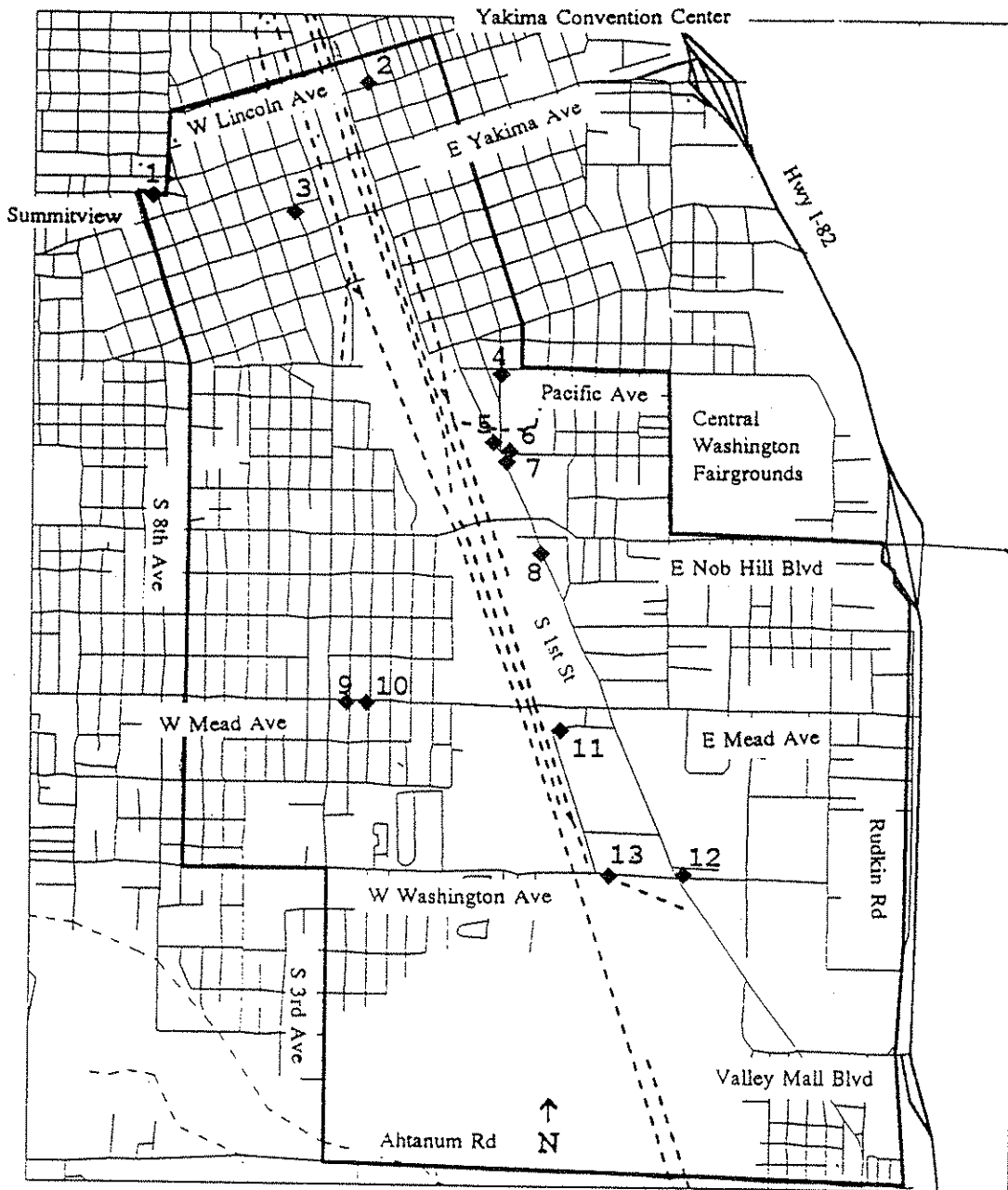


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# Yakima Railroad Area



## Subfacilities within the Yakima Railroad Area

- |                                        |                                        |
|----------------------------------------|----------------------------------------|
| 1: Westco Martinizing                  | 8: Cameron-Yakima, Inc.                |
| 2: Yakima County (Crest Linen)*        | 9: CMX Corporation *                   |
| 3: Frank Wear Cleaners                 | 10: Paxton Sales                       |
| 4: Nu-Way Cleaners                     | 11: Crop King/Woods Ind. (BNRR)        |
| 5: Yakima Valley Spray <i>(w/Head)</i> | 12: Briar Development *                |
| 6: 5th Wheel Truck Repair              | 13: Agri-Tech/Yakima Steel Fabricators |
| 7: Hahn Motor Company                  |                                        |

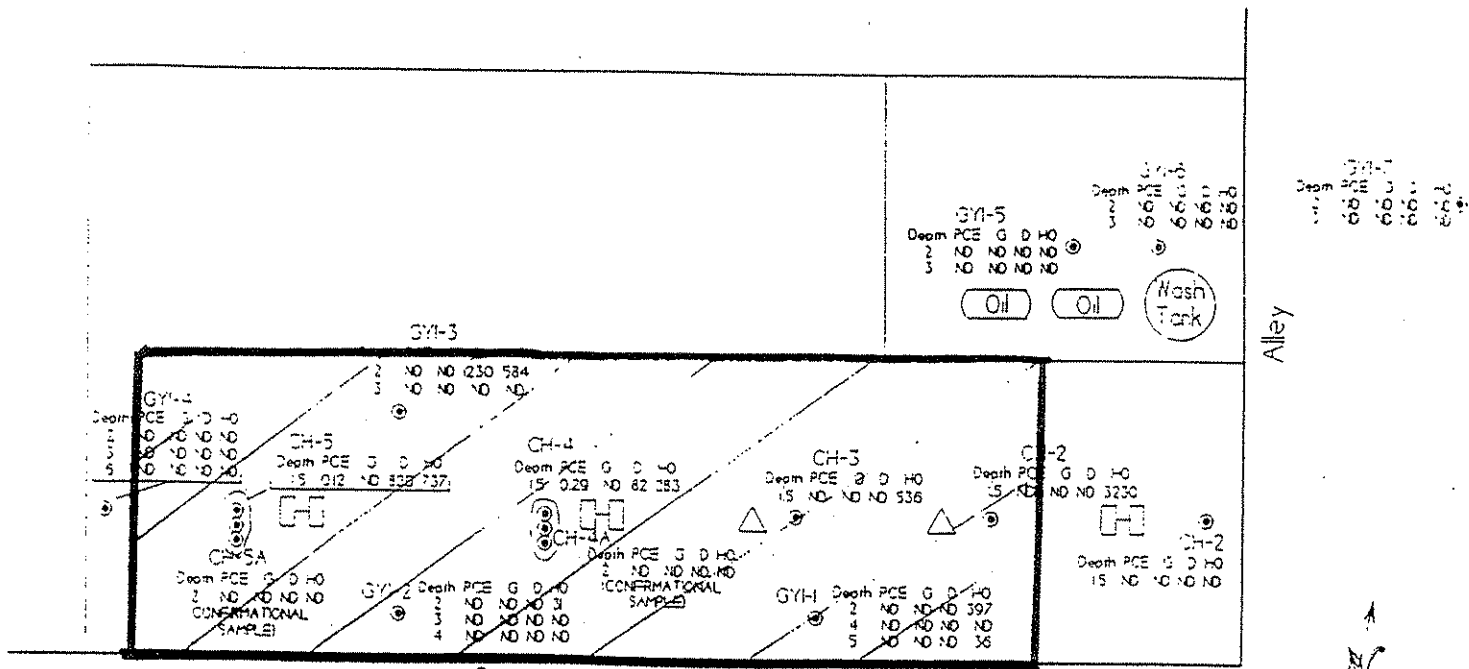
\* = These sites have completed Deminimus Settlements

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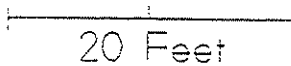
Petroleum Contaminated Soil:

Parking Lot

Area: 1300 cubic feet.

Maximum depth: 2.0 feet beneath the concrete slab.

Volume: 100 cubic yards.



- Depth = Sample Depth (feet)
- PCE = Tetrachloroethene (mg/kg)
- G = Gasoline (mg/kg)
- D = Diesel (mg/kg)
- HO = Heavy Oil (mg/kg)

- Core Hole
- ⌈⌋ Jack
- △ Hoist
- Outline of Excavation

Bay Area Detail  
 Elliot Tire (Goodyear) Remediation  
 N. Front St. & E. Lincoln Ave.  
 Yakima, WA

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ATTACHMENT #2

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

15 West Yakima, Suite 200 • Yakima, Washington 98902-3401 • (509) 575-2490

November 13, 1996

Mr. Michael Lovering  
4620-C 200th St. SW  
Lynnwood, WA 98036

Dear Mr. Lovering;

RE: Elliot (Goodyear) Tire Center, 1 East Lincoln Avenue, Yakima, Washington

Thank you for submitting the results of your independent remedial actions for Ecology's review. Ecology appreciates your initiative in pursuing this administrative option under the Model Toxics Control Act.

The Washington State Department of Ecology's Toxics Cleanup Program has reviewed the following information regarding the Elliot (Goodyear) Tire Center facility located at 1 East Lincoln Avenue, Yakima, Washington.

1. Independent remedial action report by Maxim Technologies Inc., dated August 1996 and submitted to Ecology August 29, 1996.
2. Draft restrictive covenant and long term monitoring plan, submitted to Ecology November 8, 1996.

Based upon the above information Ecology has determined that, at this time, the site does not pose a threat to human health or the environment as a result of the release of tetrachloroethene and petroleum hydrocarbons to soils addressed in the independent remedial action report.

Therefore, Ecology is issuing this determination that no further action is necessary for contaminated soils at this site under the Model Toxics Control Act (MTCA), Ch. 70.105D RCW. However, please note that because your actions were not conducted under a consent decree with Ecology, this letter is not a settlement by the state under RCW 70.105D.040(4).

This determination is made only with respect to the releases identified in the independent remedial action report dated August 29, 1996 and with the exception of your compliance with the following actions: attachment of the restrictive covenant, received by Ecology November 8, 1996, to the deed documents and execution of the site monitoring plan attached to the submitted deed restrictions. Please send written confirmation to the Yakima office of the Department of Ecology when the restrictive covenant has been attached to the property deed.

This no further action determination applies only to the soils on this property affected by the releases identified in the report. It does not apply to existing groundwater contamination under

Mr. Mike Lovering  
November 13, 1996  
Page 2

the property, nor any other release or potential release at the property not documented in the August 1996 report by Maxim Technologies, Inc.

This release in no way absolves the past or present owners of any responsibilities associated with the Yakima Railroad Area groundwater cleanup. Ecology reserves the right to require the Potential Liable Persons to undertake additional groundwater investigation and/or remediation activities. This determination does not apply to any other release or potential release at the property, any other areas on the property, nor any other properties owned or operated by Mr. Michael Lovering or Mr. Pleas Green. This no further action determination does not apply to remedial actions determined necessary as a result of monitoring conducted according to the submitted sampling plan.

Ecology does not assume any liability for any release, threatened release or other conditions at the site, or for any actions taken or omitted by any person or his/her agents or employees with regard to the release, threatened release, or other conditions at the site.

Ecology will update its database to reflect this "No Further Action" determination. Your site will not appear in future publications of the Confirmed & Suspected Contaminated Sites Report (previously know as the Affected Media and Contaminants Report.)

If you have any questions, please contact me at (509) 454-7840.

Sincerely,



Mark Peterschmidt  
IRAP Review Coordinator

cc: Rachel Tauman, Maxim Technologies Inc.  
Pleas Green  
Tony Grover  
Rick Roeder



STATE OF WASHINGTON

DEPARTMENT OF ECOLOGY

15 West Yakima, Suite 200 • Yakima, Washington 98902-3401 • (509) 575-2490

June 29, 1998

Mr. Pleas J. Green  
4812 119<sup>th</sup> Place N.E.  
Kirkland, WA 98033



Rec'd 7/1/98

This document is part of the official  
Administrative Record for the  
Yakima Railroad Area.  
Washington State  
Department of Ecology

RE: Elliot (Goodyear) Tire Center  
1 East Lincoln Avenue, Yakima, Washington, 98901

Dear Mr. Green:

In response to your inquiry into the current status of the Elliot (Goodyear) Tire Center, 1 East Lincoln Avenue in Yakima, Washington, I would like to provide you the following information. The latest correspondence in Ecology's files is the "No Further Action" letter from Ecology dated November 13, 1996.

The "No Further Action" letter for the Elliot (Goodyear) Tire Center was contingent on a restrictive covenant being recorded on the property deed and execution of a site monitoring plan supplied to the Washington State Department of Ecology (Ecology) November 8, 1996. As of this date, Ecology has not received confirmation that the restrictive covenant has been recorded on the deed and Ecology has not received any of the scheduled monitoring reports designated in the groundwater monitoring program. Ecology required these actions in the "No Further Action" letter due to the reported cleanup leaving contamination under the structure of the building, a fact included in the opening page of the proposed restrictive covenant provided to Ecology as part of the cleanup review process.

The Elliot (Goodyear) Tire Center is considered part of the Yakima Railroad Area due to the discovery of perchloroethylene (a volatile organic compound) in the soil and groundwater during the independent cleanup. Monitoring for perchloroethylene in the groundwater is included in the groundwater monitoring plan. The contamination information that was to be developed through the monitoring of groundwater was to be used to determine additional actions and provide the opportunity for settlement of the remaining issues, such as the inclusion of the Elliot (Goodyear) Tire Center site in the Yakima Railroad Area.

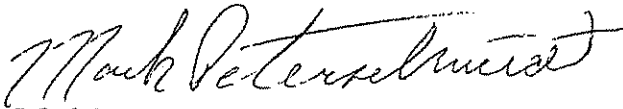
The independent cleanup at the Elliot (Goodyear) Tire Center may have cleaned up the perchloroethylene groundwater contamination at the site, but without the necessary monitoring information this possibility cannot be evaluated. No timeline has been set for additional Ecology actions against this site. Ecology will take additional actions at this site as resources and project priority allow. Any actions Ecology would take, outside of the review of additional independent

Mr. Pleas J. Green  
June 29, 1998  
Page 2

cleanup actions, will include the parties associated with the site that potentially qualify as liable persons under chapter 70.105D.040 RCW.

For the Elliot (Goodyear) Tire Center to comply with the Model Toxics Control Act, Chapter 173-340 RCW, the actions the "No Further Action" letter was contingent on need to be fulfilled. The restrictions on the property assure that uses of the property are consistent with the contamination being present on the facility, while the monitoring is needed to determine what actions, if any, are needed to address groundwater contamination at the site.

Sincerely,



Mark Peterschmidt  
IRAP/VCP Coordinator  
Toxics Cleanup Program

cc: Rick Roeder, WDOE

This document is part of the official  
Administrative Record for the  
Yakima Railroad Area.  
Washington State  
Department of Ecology



STATE OF WASHINGTON

DEPARTMENT OF ECOLOGY

15 West Yakima Avenue, Suite 200 • Yakima, Washington 98902-3452 • (509) 575-2490

September 26, 2001

Mr. Michael Shinn  
Halverson Applegate, P.S.  
PO Box 22730  
Yakima WA 98907-2715

RE: Elliot (Goodyear) Tire Center Site

Dear Mr. Shinn:

I am writing to thank you for submitting the completed Restrictive Covenant for the Elliot Tire Center Site.

As you are aware, Ecology first requested this Covenant in correspondence dated November 13, 1996. In this correspondence it was stated that the Elliot Tire Center Site (1 East Lincoln Avenue, Yakima, WA) was eligible for a No Further Action (NFA) contingent upon receipt of the Restrictive Covenant. Your recent letter dated September 21, 2001 provided this Covenant and fulfills this contingency. Please consider this letter to constitute a NFA for petroleum at the Elliot Tire Site. (Perchloroethylene is being addressed separately under a consent decree).

Sincerely,

Rick Roeder  
Site Manager  
Toxics Cleanup Program

cc: Steve Thiele, AAG



## RESTRICTIVE COVENANT

The property subject to this Restrictive Covenant ("site" herein) was the subject of an Independent Remedial Action Program ("IRAP") undertaken by Maxim Technologies, Inc. on property known as the Goodyear Tire Center, 1 East Lincoln Avenue, Yakima, Washington, legally described as follows:

Lots 17-32, inclusive, Block 7, TOWN OF NORTH YAKIMA, now Yakima, Washington, per Plat recorded in Volume E of Plats, page 1, records of Yakima County, Washington. (See attached site map, Exhibit A.)

The remedial action taken to clean up the site is described in the IRAP Report dated August 1996, and the IRAP Quarterly Groundwater Monitoring Report dated October 1997, submitted to the Washington State Department of Ecology ("DOE") at its Yakima, Washington Central Regional Office. The clean up action did not remediate approximately 1,300 square feet of petroleum contamination located up to a depth of two feet below the concrete slab floor of the existing building on the site. See attached Exhibit B. As that petroleum contamination does not result in any groundwater contamination, however, and as the other potential sources of groundwater contamination have been successfully removed from the site, it has been recommended that the under slab contamination be left in place until the existing building and slab are demolished, with remediation to be required at that point in time. The DOE is requesting this Restrictive Covenant to that effect, pursuant to WAC 173-340-440. Accordingly:





The undersigned owners of the site hereby make the following declaration which shall constitute a covenant to run with the land, as provided by law, and which shall be binding on all parties and all persons claiming under them, including all current and future owners of any portion of or any interest in the site, to-wit:

1. At such time as the improvements and slab on the site are demolished or removed, remediation, pursuant to then applicable standards, of any remaining petroleum contamination located under the slab shall be required.

2. Corrective measures to prevent accidental spills in the newly installed dry well on the site and under the floors of the improvements on the site have been implemented. Absorbents presently installed and in the dry well should be regularly maintained and replaced to minimize the potential for new releases of contaminants to groundwater.

3. Any transferee of an interest in the site shall give DOE written notice of its acquisition of an interest within 30 days of the date of conveyance.

4. The owner or any successor owner of the site shall allow authorized representatives of DOE, or any successor agency, the right to enter the site at reasonable times for the purposes of evaluating compliance with the IRAP Reports and this Restrictive Covenant, including the right to take samples, inspect any remedial action taken at the site, and to inspect records that are related thereto, as long as it does not damage the property or interfere with the reasonable continuation of business operations on the premises in doing so.



5. The owner and successor owners of the site reserve the right under WAC 173-340-440 to record an instrument which provides that this Restrictive Covenant shall no longer be of any further force or effect. This Restrictive Covenant, however, shall be removed only if DOE, after public notice and opportunity for comment, concurs.

DATED this 12 day of July, 2001.

Pleas J. Green

Pleas J. Green

Paula J. Green

Paula J. Green

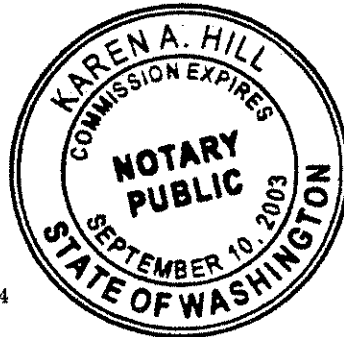
STATE OF WASHINGTON )

County of YAKIMA ) ss:

On this day personally appeared before me PLEAS J. GREEN and PAULA J. GREEN, husband and wife, to me known to be the individuals described in and who executed the within and foregoing instrument, and acknowledged that they signed

the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this 12 day of July, 2001.

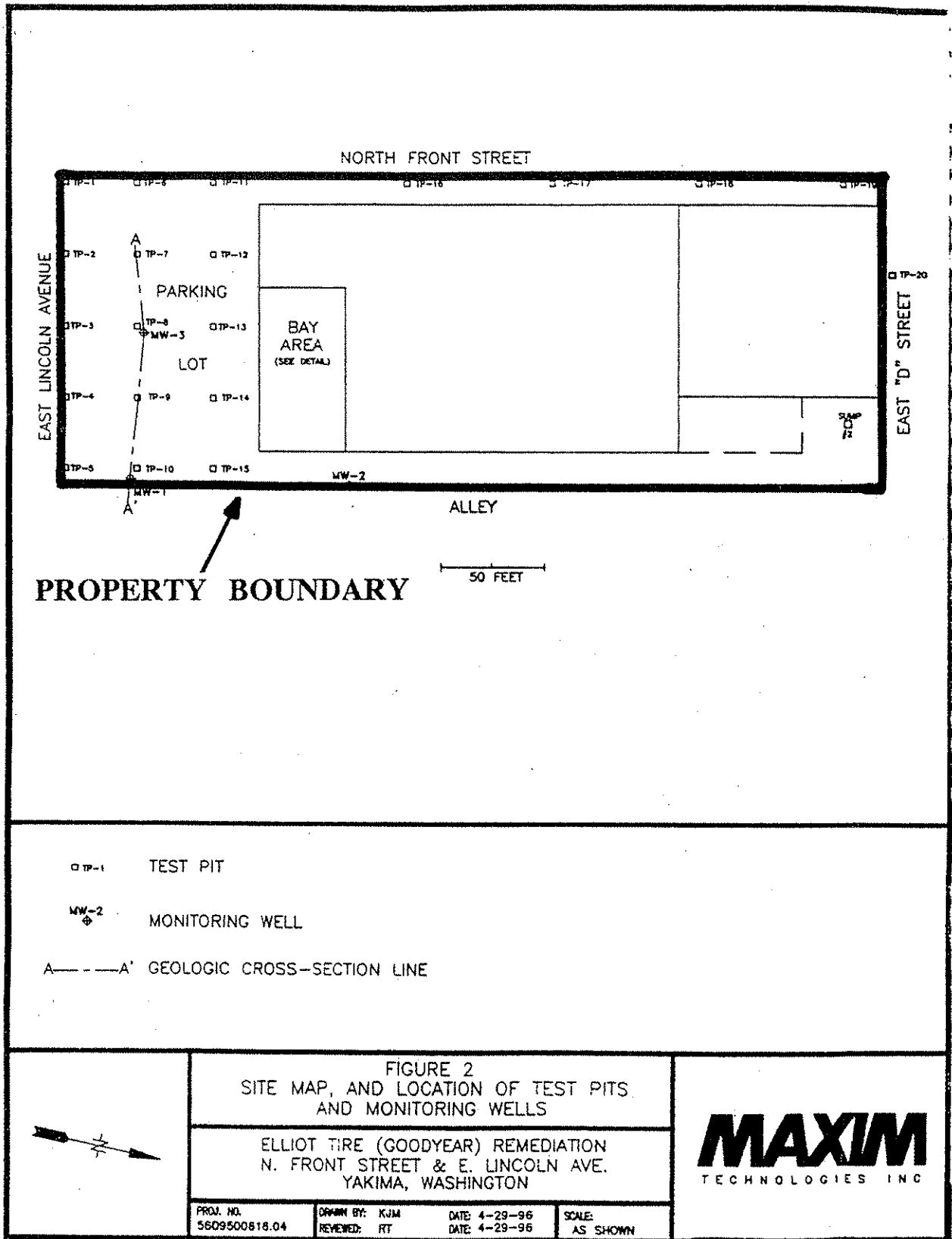


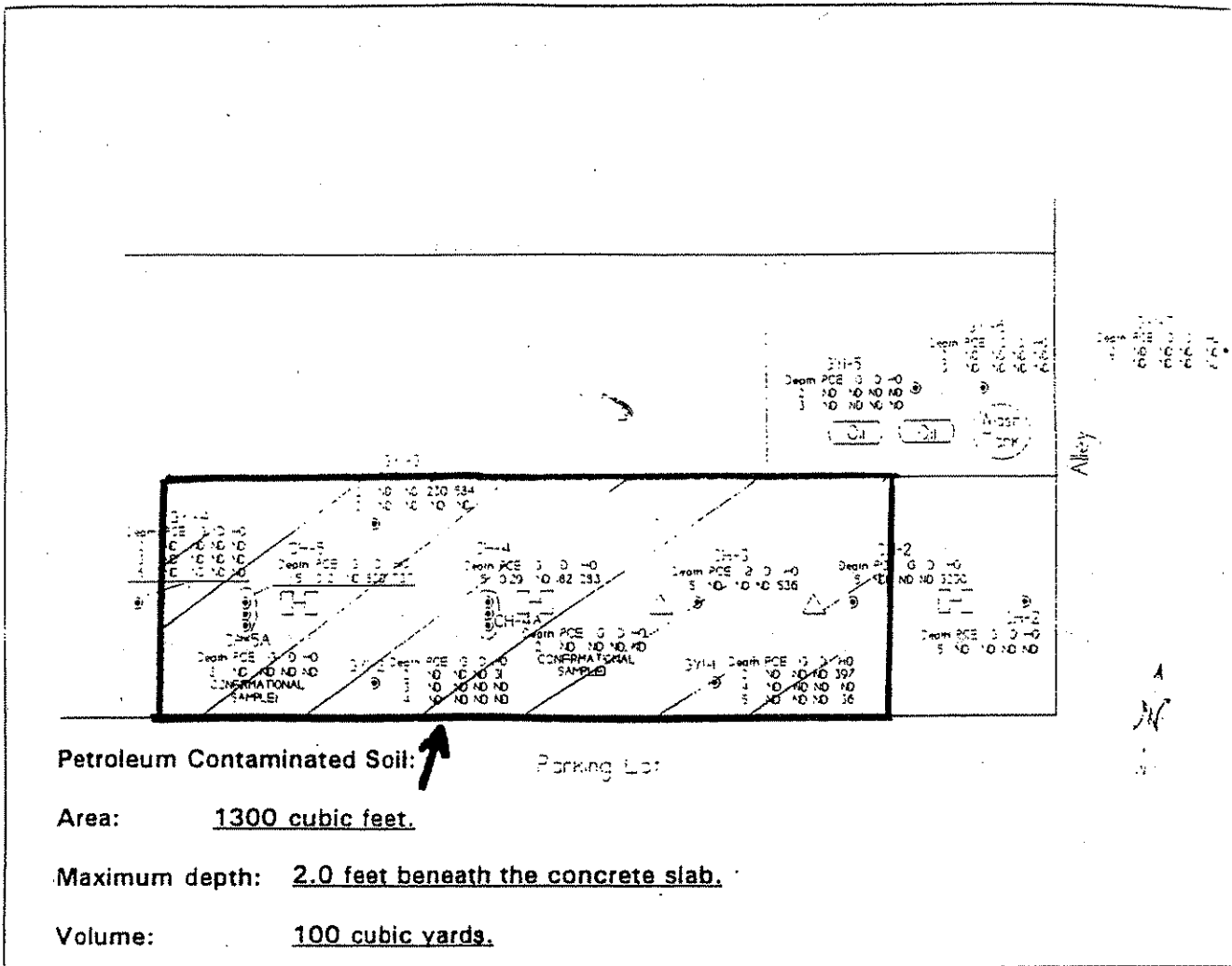
Karen A. Hill  
NOTARY PUBLIC in and for the  
State of Washington,

Residing at Yakima  
My commission expires: 9-10-03

tbg\loving\restric.co4  
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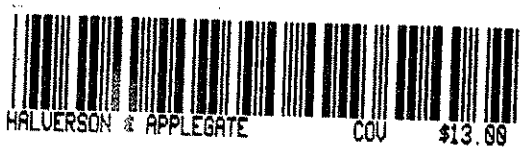




□ Depth & Sample Depth (feet)  
 □ Depth & Sample Depth (feet)  
 □ Depth & Sample Depth (feet)  
 □ Depth & Sample Depth (feet)

● Core Hole  
 □ Jack  
 □ Hole  
 □ Outline of Excavation

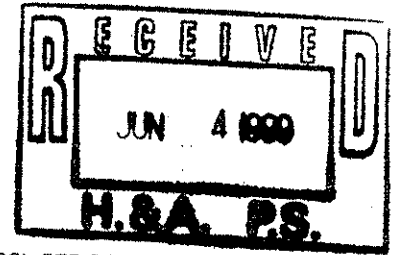
**EXHIBIT B**





STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

15 West Yakima, Suite 200 • Yakima, Washington 98902-3401 • (509) 575-2490



June 3, 1999

CERTIFIED MAIL

P 148 982 141

Mr. Thomas B. Grahn  
Halverson & Applegate Law Office  
PO Box 22730  
Yakima, WA 98907

Re: Elliott (Goodyear) Tire Center  
1 East Lincoln Avenue, Yakima, Washington 98901

Dear Mr. Grahn:

This letter is in response to your request that the groundwater monitoring requirements for the above-noted facility be cancelled. Based on the groundwater sampling results, the Department of Ecology (Ecology) agrees that there is no longer a need to continue groundwater monitoring at the Elliott Tire Center.

There are currently two other separate issues facing Elliott Tire. The first is the independent cleanup action taken at the facility to address contamination of groundwater and soils. The second is the inclusion of the Elliott Tire Center within the Yakima Railroad Area (YRRA) boundaries. I would like to provide you with the following information concerning these issues.

On November 13, 1996, Mark Peterschmidt with the Department of Ecology issued a "No Further Action" (NFA) letter with contingencies. Besides requiring that groundwater monitoring be conducted, this NFA determination was also contingent upon a restrictive covenant being recorded on the property deed. The purpose of the restrictive covenant is to assure that future uses of the property protect human health and the environment. To date, Ecology has not received confirmation that the covenant has been recorded. Without the restrictive covenant recorded on the property deed, the November 13, 1996 NFA determination is not valid and Elliott Tire is not in compliance with the Model Toxics Control Act, Chapter 173-340 WAC.

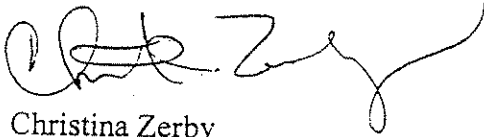
The Elliott Tire Center is considered part of the Yakima Railroad Area due to the discovery of perchloroethylene in the soil and groundwater during the independent cleanup actions taken at the facility. You have requested that the Elliott Tire Center be removed from the YRRA list of potentially liable parties. To have a name removed from this list requires a Consent Decree. At

Mr. Thomas B. Grahn  
June 3, 1999  
Page 2

this time, Attorney General support for most of Ecology's sites is minimal. Ecology hopes to have addition support from the Attorney General's office in the very near future. To speed up this process, please submit a written request per WAC 173-340-520.

Feel free to call me at (509) 454-7833 with any questions you may have.

Sincerely,



Christina Zerby  
Site Manager  
Toxic Cleanup Program

cc: Mike Lovering  
Mark Peterschmidt, WDOE  
Rick Roeder, WDOE



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STATE OF WASHINGTON  
YAKIMA COUNTY SUPERIOR COURT

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STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

FRANCIS MICHAEL LOVERING,  
individually,

Defendant.

NO.

JOINT MOTION FOR ENTRY OF  
CONSENT DECREE

**I. INTRODUCTION**

Plaintiff, State of Washington, Department of Ecology ("Ecology"), and Defendant, Francis Michael Lovering ("Lovering") bring this motion seeking entry of the attached Consent Decree ("Decree"). This motion is based upon the pleadings filed in this matter.

**II. RELIEF REQUESTED**

The Parties request that the Court approve and enter the attached Decree. The Decree fully disposes of all issues in this matter. See attached Affidavit of Steven J. Thiele.

**III. FACTS**

The Decree between the Defendant and Ecology resolves the potential liability of Defendant for known and suspected contamination at the Elliot/Goodyear Tire Center property

ORIGINAL

1 (the "Site") arising from a release or threatened release of hazardous substances, promotes the  
2 public interest by expediting cleanup activities at the Site, and facilitates the cleanup and  
3 redevelopment of contaminated industrial properties in Seattle, Washington.

4 **IV. AUTHORITY**

5 RCW 70.94.331(1) and 70.94.141(3) authorize Ecology to issue such orders as may be  
6 necessary to effectuate the purposes of RCW 70.94 and enforce such orders through judicial  
7 proceedings. RCW 70.94.431 and 43.21B.300 authorize Ecology to issue civil penalties and  
8 collect unpaid civil penalties in superior court. In addition, RCW 70.94.425 authorizes  
9 Ecology to petition the superior court of the county where a violation is alleged to have  
10 occurred for an appropriate order, including injunctive relief.


11 Ecology believes it is appropriate for the Court to exercise its judicial discretion and  
12 approve the attached Decree.

13 **V. CONCLUSION**

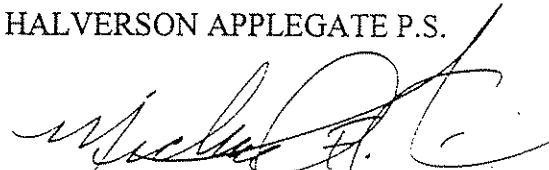
14 The parties request that the Court approve and enter the attached Decree in full  
15 resolution of the matters involved in this action. The parties also request that the Court retain  
16 jurisdiction over this action until the work required by the Consent Decree is completed, at  
17 which time the parties anticipate seeking dismissal of this action.

18 DATED this 4<sup>th</sup> day of October, 2001.

19 CHRISTINE O. GREGOIRE  
20 Attorney General

21   
22 STEVEN J. THIELE, WSBA #20275  
23 Assistant Attorney General  
24 Attorneys for Plaintiff  
25 Department of Ecology  
26 (360) 586-4619

HALVERSON APPLGATE P.S.

  
MICHAEL F. SHINN, WSBA #14679  
Attorney for Defendant  
Francis Michael Lovering  
(509) 575-6611





**FILED**  
OCT 15 2001

KIM M. EATON, YAKIMA COUNTY CLERK

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STATE OF WASHINGTON  
YAKIMA COUNTY SUPERIOR COURT 01 2 02668 1

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

FRANCIS MICHAEL LOVERING,  
individually,

Defendant.

NO.

ORDER ENTERING CONSENT  
DECREE

Having reviewed the Joint Motion for Entry of the Consent Decree, it is hereby  
ORDERED AND ADJUDGED that the Consent Decree in this matter is Entered and that the  
Court shall retain jurisdiction over the Consent Decree to enforce its terms.

DATED this 15<sup>th</sup> day of October, 2001.

SUSAN L. HAHN  
JUDGE

JUDGE/COMMISSIONER  
Yakima County

1 Presented by:

2 HALVERSON APPELATE P.S.

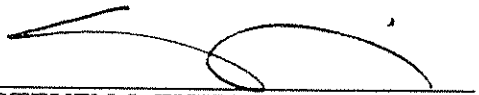
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4 MICHAEL F. SHINN, WSBA #14679  
5 Attorney for Defendant  
6 Francis Michael Lovering  
7 (509) 575-6611

8 Dated: 10-15-01

9 Approved as to form.  
10 notice of presentation waived:

11 CHRISTINE O. GREGOIRE  
12 Attorney General

13   
14 STEVEN J. THIELE, WSBA #20275  
15 Assistant Attorney General  
16 Attorneys for Plaintiff  
17 Department of Ecology  
18 (360) 586-4619

19 Dated: 10-11-07

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**FILED**  
OCT 15 2001

KIM M. EATON, YAKIMA COUNTY CLERK

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**STATE OF WASHINGTON  
YAKIMA COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,  
  
Plaintiff,

NO.           **01 2 02668 1**  
  
DECLARATION OF  
STEVEN J. THIELE

v.

FRANCIS MICHAEL LOVERING,  
individually,  
  
Defendant.

I, STEVEN J. THIELE, declare under penalty of perjury under the laws of the state of Washington that the following is true and correct

1. I am over eighteen years of age and am competent to testify herein. The facts set forth in this Affidavit are from my own personal knowledge.

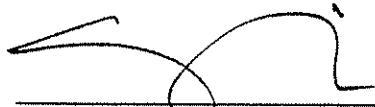
2. I am an Assistant Attorney General assigned to the State of Washington, Ecology Division of the Attorney General's Office. I have represented the Department of Ecology in negotiations that led to the Consent Decree ("Decree") being presented to the Court. These negotiations lasted for several months.

**ORIGINAL**

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3. The Decree was the subject of public notice as required by RCW 70.105D.040(4)(a) and WAC 173-340-600, however no comments were received.

DATED this 15<sup>th</sup> day of October, 2001.

  
\_\_\_\_\_  
STEVEN J. THIELE