

Yakima

Crest Linen

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**SUPERIOR COURT, STATE OF WASHINGTON  
COUNTY OF YAKIMA**

STATE OF WASHINGTON )  
DEPARTMENT OF ECOLOGY, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
YAKIMA COUNTY, a political )  
subdivision of the State of )  
Washington )  
 )  
Defendant. )

**DE MINIMIS  
CONSENT DECREE**

**No. 92-2-02060-1**

This document was part of the official  
Administrative Record for the Yakima  
Railroad Area on October 31, 1996.  
Washington State  
Department of Ecology.

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INTRODUCTION

1  
2       A.    In entering into this De Minimis Consent Decree  
3 (Decree), the mutual objective of the Washington State  
4 Department of Ecology (Ecology) and Yakima County is to resolve  
5 the liability of Yakima County relating to the release of a  
6 hazardous substance, known as Perchloroethylene (PCE), from  
7 property owned by Yakima County, which is located within the  
8 Yakima Railroad Area in Yakima, Washington. The legal  
9 description of the Yakima Railroad area is attached hereto as  
10 Exhibit A and incorporated herein (the Site). The legal  
11 description of the property owned by Yakima County is attached  
12 hereto as Exhibit B and incorporated herein (the Yakima County  
13 Property). To accomplish these objectives and to resolve the  
14 matter constructively and without litigation, Yakima County and  
15 Ecology consent to the actions required by this Decree.

16       B.    A Complaint and Answer in this action have been filed.  
17 There has not been a trial on any issue of fact or law in this  
18 case. However, the parties wish to resolve the issues raised by  
19 the Complaint. In addition, the parties agree that settlement  
20 of these matters without litigation is reasonable and in the  
21 public interest and that entry of this Decree is the most  
22 appropriate means of resolving these matters.

23       C.    In signing this Decree, Yakima County and Ecology  
24 agree to its entry and agree to be bound by its terms.

25       D.    By entering into this Decree, the parties do not  
26 intend to discharge nonsettling parties from any liability they

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Olympia, WA 98504-0117  
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1 may have with respect to investigation and remedial activities  
2 at the Site. Except as set forth herein, Yakima County and  
3 Ecology retain the right to seek reimbursement in whole or in  
4 part from any responsible entities for sums expended on  
5 investigation and remedial activities at the Site, and to seek  
6 any other costs that are legally recoverable.

7 E. By entering into this Decree, Yakima County is not  
8 admitting any liability or facts alleged herein.

9 **I. JURISDICTION AND VENUE**

10 A. This Court has jurisdiction over the subject matter  
11 and over the parties pursuant to the Model Toxics Control Act  
12 (MTCA), which was passed by initiative (Initiative 97) and which  
13 took effect on March 1, 1989. The MTCA has been codified as  
14 ch. 70.105D RCW. Venue is properly laid in Yakima County  
15 pursuant to RCW 70.105D.050(5)(b).

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

24 C. Ecology has given notice to Yakima County as provided  
25 in RCW 70.105D.020(8), of Ecology's determination that Yakima  
26

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1 County is a potentially liable person for the Site and that  
2 there has been a release of hazardous substances at the Site.

3 D. Ecology has determined that past activities at the  
4 Yakima County Property have given rise to a release of hazardous  
5 substances.

6 E. By entering into this Decree, Yakima County agrees not  
7 to challenge the jurisdiction of Ecology or the Court in any  
8 proceeding to enforce this Decree. Yakima County has agreed to  
9 undertake the actions specified in this Decree and consents to  
10 the issuance of this Decree, pursuant to ch. 70.105D RCW.

11 **II. PARTIES BOUND**

12 This Decree shall apply to and be binding upon the  
13 signatories to this Decree (parties), their successors and  
14 assigns. The undersigned representative of each party hereby  
15 certifies that he or she is fully authorized to enter into this  
16 Decree and to execute and legally bind such party to comply with  
17 the Decree. No change in the membership of any governing body  
18 shall alter the responsibility of Yakima County under this  
19 Decree.

20 **III. DEFINITIONS**

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

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IV. STATEMENT OF FACTS

The Yakima County Property--Site History & Synopsis of PCE Contamination, attached to this Consent Decree as Exhibit C and incorporated herein, contains a statement of facts describing Yakima County, the Yakima County Property, and the results of testing for PCE contamination at the Yakima County Property. Based on the facts outlined in the Site History & Synopsis, Ecology has determined that the release or potential release of hazardous substances at the Yakima County Property has been resolved, and that a settlement with Plaintiff is appropriate. Yakima County has undertaken measures necessary to insure the protection of public health, welfare and the environment, by participating in a bottled water program pursuant to Department of Ecology Enforcement Order No. DE 92TC-C108.

V. WORK TO BE PERFORMED

1. Yakima County shall take measures to ensure the future preservation and accesability of the groundwater monitoring well located on the site.

2. Yakima County agrees to pay Ecology the sum of \$67,500.00 for remediation, investigation or other expenses incurred or to be incurred by Ecology in the Yakima Railroad Area. Ecology agrees that Yakima County may apply approximately \$20,000.00, or the actual amount expended at the time of entry of this decree, as a credit toward this amount representing expenditures made by Yakima County for the bottled water program

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1 under Ecology Enforcement Order No. DE 92TC-C108. The remaining  
2 balance of approximately \$47,500 shall be paid to Ecology.

3 3. Yakima County agrees that it will not seek  
4 reimbursement from the State of Washington, State or local  
5 toxics accounts, or other Yakima Railroad Area potentially  
6 liable parties (PLPs), who have or will be named, other than  
7 prior owners and operators of the Yakima County (Crest Linen)  
8 site, for any costs incurred prior to the entry of this Decree  
9 and pursuant or related to Enforcement Order DE 92TC-C108 or are  
10 expended to satisfy the terms of this Decree.

11 4. Within 20 business days after Yakima County, through  
12 its attorneys, receives notice of the entry of this Consent  
13 Decree by the Court, Yakima County shall make payment to Ecology  
14 of all amounts owing under this Consent Decree (after applying  
15 all credits allowed under paragraph V(1) above). Such payment  
16 shall be made payable to "Washington State Toxics Control  
17 Account," referencing the Yakima Railroad Area - Yakima County  
18 Property. Yakima County shall send such payment to:

19 Fiscal Cashier  
20 Department of Ecology  
21 P.O. Box 5128  
Lacey, WA 98503-0210

22 Yakima County shall provide to Ecology at the time of payment a  
23 summary of all credits applied pursuant to paragraph V(1) above.

24 5. Yakima County will provide access to the Yakima County  
25 Property in accordance with Section VI of this Consent Decree,  
26

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1 and otherwise will comply with all other provisions of this  
2 Consent Decree.

3  
4 **VI. ACCESS**

5 Yakima County will grant Ecology or any Ecology authorized  
6 representative reasonable access to the Yakima County Property  
7 for purposes of inspections, conducting such tests or collecting  
8 samples as Ecology may deem necessary as part of its RI/FS or  
9 remedial action at the Yakima Railroad Area Site. In the event  
10 that Ecology wishes to conduct sampling, Ecology will, except in  
11 emergency situations, provide Yakima County with five (5) days'  
12 notice prior to entering the Yakima County Property. Upon  
13 request, Ecology will split any samples taken at the Yakima  
14 County Property. All parties with access to the Yakima County  
15 Property pursuant to this paragraph shall comply with reasonable  
16 health and safety requirements.

17 **VII. RETENTION OF RECORDS**

18 Yakima County shall preserve for ten (10) years from the  
19 date of this Decree, all records, reports, documents, and  
20 underlying data in its possession relevant to the implementation  
21 of this Decree. Upon request of Ecology, Yakima County shall  
22 make all non-privileged, non-archived records available to  
23 Ecology and allow access for review. All non-privileged,  
24 archived records shall be made available to Ecology within a  
25 reasonable period of time.

26  
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VIII. TRANSFER OF INTEREST IN PROPERTY

Prior to transfer of any legal or equitable interest in all or any portion of the Yakima County Property, Yakima County shall serve a copy of this Decree and the attached Exhibits upon any purchaser, lessee, transferee, assignee, or other successor in interest of the property; and, at least thirty (30) days prior to any transfer, Yakima County shall notify Ecology of said transfer.

IX. RESOLUTION OF DISPUTES

If Yakima County objects to any Ecology disapproval, proposed modification, or decision made pursuant to this Decree, it shall notify Ecology in writing of its objections within fourteen (14) calendar days of receipt of such notice. Thereafter, the parties shall confer in an effort to resolve the dispute. If agreement cannot be reached on the dispute within fourteen (14) calendar days after receipt by Ecology of such objections, Ecology shall promptly provide a written statement of its decision to Yakima County.

If Ecology's final written decision is unacceptable to Yakima County, Yakima County has the right to submit the dispute within twenty (20) days to the Court for resolution. The parties agree that one judge should retain jurisdiction over this case and shall, as necessary, resolve any dispute arising under this Decree. In the event Yakima County presents an issue to the Court for review, the Court shall review the action or decision of Ecology on the basis of whether such action or

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1 decision was arbitrary and capricious and render a decision  
2 based on such standard of review. Ecology and Yakima County  
3 agree to only utilize the dispute resolution process in good  
4 faith and agree to expedite, to the extent possible, the dispute  
5 resolution process whenever it is used. Where either party  
6 utilizes the dispute resolution in bad faith or for purposes of  
7 delay, the other party may seek sanctions. Implementation of  
8 these dispute resolution procedures shall not provide a basis  
9 for delay of any activities required in this Decree, unless  
10 Ecology agrees in writing to a schedule extension or the Court  
11 so orders.

12 **X. AMENDMENT OF CONSENT DECREE**

13 This Decree may only be amended by a written stipulation  
14 between the parties, entered by the Court, or by court order.  
15 Such amendment shall become effective upon entry by the Court.  
16 Agreement to amend shall not be unreasonably withheld by any  
17 party to the Decree. Yakima County shall submit any request for  
18 an amendment to Ecology for approval. Ecology shall indicate  
19 its approval or disapproval within a reasonable time after the  
20 request for amendment is received. Reasons for the disapproval  
21 shall be stated in writing. If Ecology does not agree to any  
22 proposed amendment, the disagreement may be addressed through  
23 the dispute resolution procedures described in Section IX of  
24 this Decree. No guidance, suggestions, or comments by Ecology  
25 will be construed as relieving Yakima County of its obligation  
26 to obtain formal approval as may be required by this Decree. No

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1 verbal communication by Ecology shall relieve Yakima County of  
2 the obligations specified herein. Ecology shall notify Yakima  
3 County of any Ecology requested amendment and, within fifteen  
4 (15) working days of receipt of such a request, Yakima County  
5 shall, in writing, indicate its agreement or disagreement and,  
6 if it disagrees, the rationale. If Yakima County does not agree  
7 with any Ecology proposed amendment, the disagreement may be  
8 addressed through the dispute resolution procedures described in  
9 Section IX of this Decree.

10 **XI. OTHER ACTIONS**

11 Ecology reserves its rights to institute remedial action(s)  
12 at the Site and/or the Yakima County Property, and subsequently  
13 pursue cost recovery, and to issue orders and/or penalties  
14 pursuant to available statutory authority, under the following  
15 circumstances:

16 1. Where Yakima County fails to adhere to any requirement  
17 of this Decree;

18 2. In the event or upon the discovery of a release or  
19 threatened release at the Yakima County Property not addressed  
20 by this Decree;

21 3. Upon Ecology's determination that action beyond the  
22 terms of this Decree is necessary to abate an emergency  
23 situation at the Yakima County Property which threatens the  
24 public health or welfare or the environment; or

25 4. Upon the occurrence or discovery of facts or  
26 conditions at the Yakima County Property beyond the scope of

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1 this Decree as to which Ecology would be empowered to perform  
2 any remedial action or to issue an order and/or penalty, or to  
3 take any other enforcement action under applicable laws.

4 Yakima County reserves its rights to all defenses and  
5 procedures as authorized by ch. 70.105D RCW, should Ecology take  
6 other actions described herein.

7 **XII. CONTRIBUTION PROTECTION**

8 With regard to claims for contribution against Yakima  
9 County for matters addressed in this Consent Decree, the parties  
10 hereto agree that Yakima County is entitled to such protection  
11 from contribution as provided by law. For the purposes of this  
12 section, matters addressed shall mean the investigation and  
13 remediation of the Yakima Railroad Area and the Yakima County  
14 Property with respect to the release or threatened release of  
15 PCE in soil or groundwater at the Yakima County Property, in the  
16 volume and toxicity described in Exhibit C.

17 **XIII. COVENANT NOT TO SUE**

18 In consideration of Yakima County's compliance with the  
19 terms and conditions of this Decree, Ecology agrees that  
20 compliance with this Decree shall stand in lieu of any and all  
21 administrative, legal, and equitable remedies and enforcement  
22 actions available to the State against Yakima County for the  
23 release or threatened release of a hazardous substance, known as  
24 PCE, in the amount and toxicity described in Exhibit C.  
25 Consistent with this Covenant Not to Sue, Yakima County is  
26

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1 released from further liability under Enforcement Order  
2 DE 92TC-C108.

3 This Covenant Not to Sue is strictly limited in its  
4 application to the Yakima County Property specifically defined  
5 in Exhibit B, and to the volume and toxicity of PCE described in  
6 Exhibit C. This covenant is not applicable to any other  
7 hazardous substance or area, and the State retains all of its  
8 authority relative to any other substances and areas.

9 A. Reopeners: In the following circumstances the State  
10 of Washington may exercise its full legal authority to address  
11 releases of hazardous substances at the Yakima County Property,  
12 notwithstanding the Covenant Not to Sue set forth above:

- 13 1. In the event Yakima County fails to comply with the  
14 terms and conditions of this Consent Decree, including  
15 all exhibits, and, after written notice of  
16 noncompliance, fails to come into compliance;
- 17 2. In the event information becomes available regarding  
18 factors previously unknown to Ecology, including the  
19 nature or quantity of hazardous substances at the  
20 Yakima County Property, and Ecology determines, in  
21 light of this information, that remedial action is  
22 necessary to address a release of hazardous substances  
23 at the Yakima County Property to protect human health  
24 or the environment.

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

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- 1 1. Criminal liability;
- 2 2. Liability for damages to natural resources;
- 3 3. Any Ecology action against potentially liable parties
- 4 not a party to this Decree; and
- 5 4. "Other Actions" described in Section XI of this
- 6 Decree.

7 **XIV. CLAIM AGAINST THE STATE**

8 Yakima County hereby agrees that it will not seek to  
9 recover any costs accrued in implementing this Decree or  
10 Enforcement Order DE 92TC-C108 from the State of Washington or  
11 any of its agencies and, further, that Yakima County will make  
12 no claim against the state toxics control account or any local  
13 toxics control account for any costs incurred in implementing  
14 this Decree or Enforcement Order DE 92TC-C108.

15 **XV. RESERVATION OF RIGHTS**

16 By agreeing to the entry of this Decree, Yakima County and  
17 Ecology agree to abide by its terms. While the parties believe  
18 that the recitals contained in this Decree are accurate, the  
19 execution and performance of the Decree is not, however, an  
20 admission by Yakima County or Ecology of any fact or liability  
21 for any purpose other than as a foundation for the entry of this  
22 Decree. Yakima County's performance under the Decree is  
23 undertaken without waiver of or prejudice to any claims or  
24 defenses whatsoever that may be asserted in the event of further  
25 administrative proceedings or litigation not associated with, or  
26 related to, this Decree. Nor is the execution or the

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CONSENT DECREE

1 performance of the Decree an agreement by Yakima County to take  
2 any action at the Yakima County Property or the Site other than  
3 that described in this document.

4  
5 **XVI. EFFECTIVE DATE**

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

8 **XVII. DURATION OF DECREE AND RETENTION OF JURISDICTION**

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

17 **XVIII. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT**

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

23  
24 This document was part of the official  
25 Administrative Record for the Yakima  
26 Railroad Area on October 31, 1996,  
Washington State  
Department of Ecology.

1 The undersigned parties enter into this De Minimis Consent  
2 Decree on the dates specified below.

3 DEPARTMENT OF ECOLOGY

YAKIMA COUNTY

4  
5 By Carol Kraege  
6 Carol P. Kraege  
7 Toxics Cleanup Program  
8 Manager

By Charles J. Kvarich  
Charles J. Kvarich, Chairman  
BOARD OF YAKIMA COUNTY COMMIS.

9 Date: June 20, 1994

Date: May 31, 1994

10 ATTORNEY GENERAL'S OFFICE

YAKIMA COUNTY PROSECUTING  
ATTORNEY

11 By Steven J. Thiele  
12 Steven J. Thiele  
13 WSBA #20275  
14 Assistant Attorney General

By Terry P. Austin  
Terry P. Austin  
WSBA #6708  
Deputy Prosecuting Attorney

15 Date: 6-15-94

Date: May 31, 1994

16 yakco3.cad

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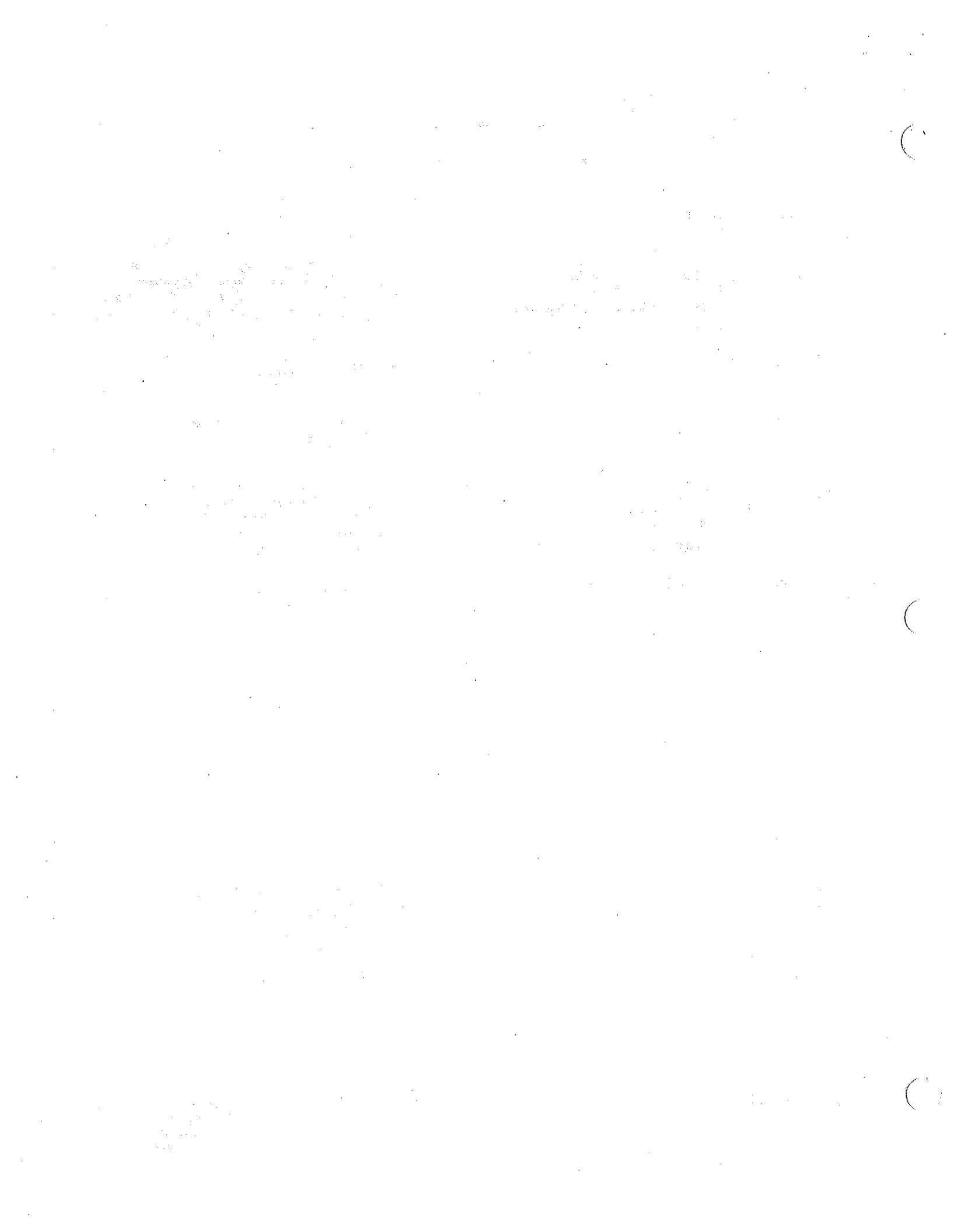




EXHIBIT A

Site Description of Yakima Railroad Area

That area bound northerly by Lincoln Avenue; easterly by the irregular trace of 4th Street to Pacific Ave., 10th Street to Nob Hill Boulevard, Rudkin Road to Valley Mall Boulevard, a line running due south from the southern end of Rudkin Road to the point it intersects a line running due east from the eastern end of Ahtanum Road; southerly by Ahtanum Road and the line extending due east from the eastern end of Ahtanum Road; and westerly by the irregular trace of 3rd Avenue to West Washington Avenue, 8th Avenue to Summitview Avenue, then Pierce Street to Lincoln Avenue, the northern boundary.

This area is shown on the map that constitutes Appendix 1 to Enforcement Order No. DE-92TC-C108.

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EXHIBIT B

Legal Description of Yakima County Property

The legal description for the Yakima County property is as follows:

Lots 1 through 6, Block 8, Town of North Yakima, now Yakima, recorded in volume "A" of plats, Page 10, re-recorded in Volume "E" of Plats, page 1, records of Yakima County, Washington (Yakima County Assessor's Parcel No. 191319-22407).

TOGETHER with all water rights thereunto belonging; SUBJECT to easements, exceptions, reservations, restrictions, and rights of way appearing of record and existing over and across said premises.

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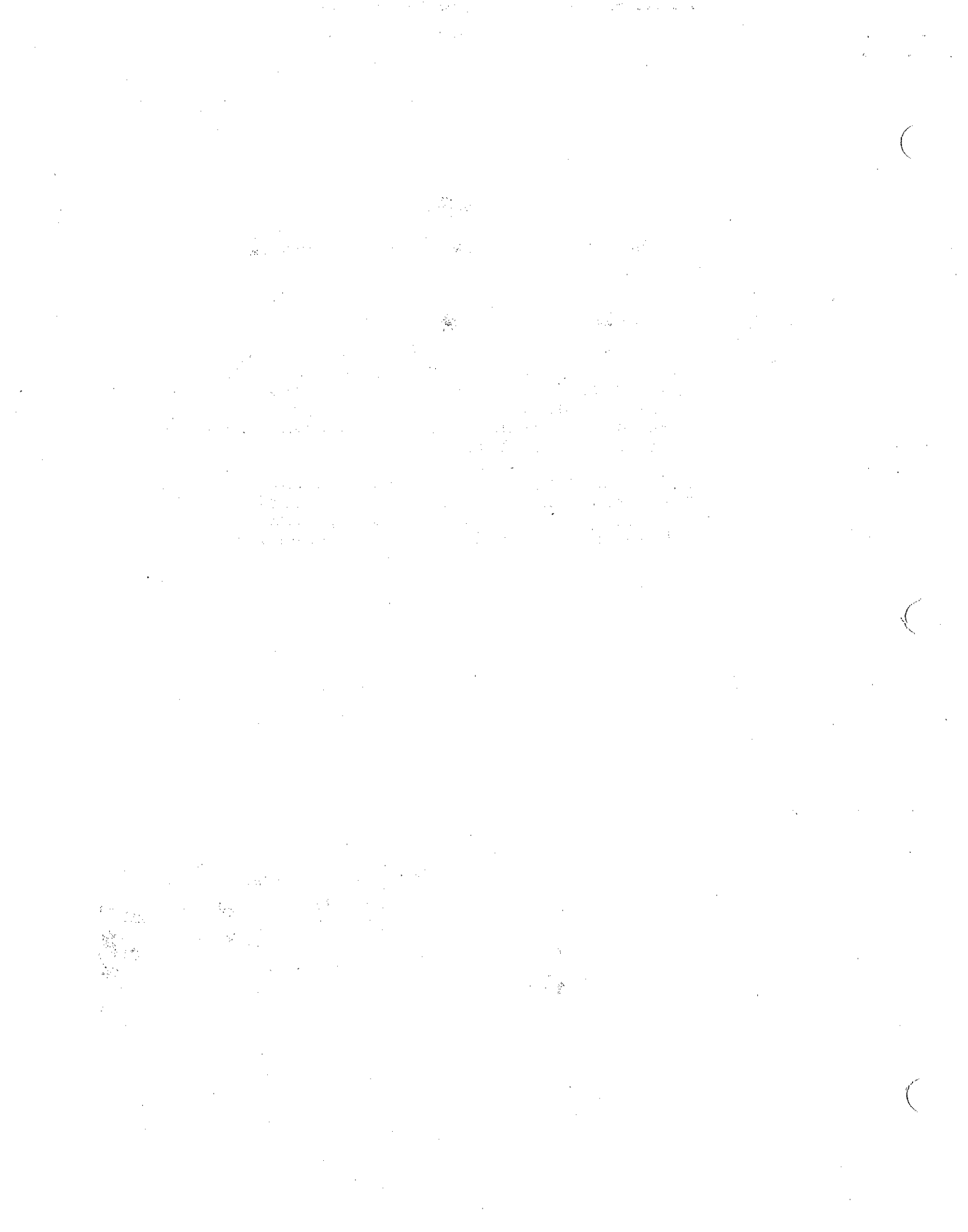


EXHIBIT C

**Yakima County (Crest Linen) Site - Site History  
and Synopsis of PCE Contamination**

**I. Historical Use of the Property**

Defendant Yakima County purchased the Crest Linen Site in March of 1987 for the purpose of developing a jail facility. Defendant paid full market value for the property. Prior to 1991, Defendant never knew of any PCE contamination on the site. Further, Defendant never introduced or released any PCE on the site.

In 1990, Yakima County contracted with Chen-Northern, Incorporated to conduct a Phase I Environmental Site Assessment of the Crest Linen Site. The Phase I assessment lead to a Phase II Environmental Site Assessment, which was performed in late 1990 and early 1991. A single building was located on the property when it was acquired by Yakima County in 1987 and remained standing at the time of the Phase I investigation. It was razed before the soil borings of the Phase II investigation. That building had been erected about 1959-1960 by the Noel Corporation, or one or more private persons including John Noel, to be leased to a laundry and dry cleaning business known as City Peerless Laundry operated by two or more people including Dewey and William Frame. In 1966, City-Peerless sold its business and

equipment, including a Permac 125 PCE solvent dry cleaning machine, to a uniform rental, laundry and dry cleaning business known first as Yakima Laundry, then as Crest Company Laundry and finally as Crest Linen Rental. Throughout these name changes the business was owned by the brothers William Smith and Todd Smith. As part of the Smiths' business, dry cleaning operations involving the Permac 125 PCE solvent dry cleaning machine, were conducted on the premises until about 1974 or 1975. Uniform rental and laundry operations continued on the premises until 1985.

The building was unoccupied after Crest Linen's departure in 1985 until it was purchased by Yakima County at the end of March, 1987. It was then used by the Yakima Sheriff's Office to store stolen property and impounded motor vehicles until the building was demolished in 1990.

## II. Enforcement Background

By letter dated September 30, 1991, Ecology provided notice of Defendant's potential liability under RCW 70.105D, the Model Toxics Control Act (MTCA) based on Ecology's determination that there had been a "release" of a PCE in "ascertainable" quantities at the Crest Linen site. By letter dated October 28, 1991, Defendant objected to Ecology's notice of potential liability on grounds that credible evidence did not support Defendant's potential liability and on the grounds that Defendant was an RCW 70.105D.040(3)(d) innocent purchaser of the property. Ecology

issued a "Determination of Potentially Liable Person Status" on November 6, 1991. Ecology issued Enforcement Order DE 92TC-C108, effective February 11, 1992, directing Defendant and other respondents to organize and finance an "interim remedial action" to provide bottled water to designated households dependent on domestic water wells where Ecology deemed groundwater to be potentially contaminated by PCE.

In its enforcement order, Ecology listed real estate parcel 19131922407 as numbered by the Yakima County Assessor as the portion of the Yakima Railroad Study Area "facility" owned by Defendant that was subject to the provisions of MTCA.

### III. Scientific Evidence of PCE Release

Chen-Northern, Inc. completed a Phase II Environmental Assessment of Defendant's property in February, 1991. This assessment involved three soil borings on the Crest Linen Site and one north or upgradient of the site. Tetrachloroethylene, also known as Perchloroethylene (PCE), was detected at a concentration of 1 part per billion (ppb) in soil in one soil sample from one of three soil borings on the site. PCE was also detected in the ground-water samples from two of the borings at concentrations of 7.8 ppb in one sample and 1.1 parts per billion in the other.

After Defendant was notified by Ecology of its status as a PLP under MTCA, Ecology obtained one soil and one groundwater sample from the site in November, 1992. Trace levels (less than

1 ppb) of PCE were identified in the groundwater sample and no PCE was detected in the soil sample.

Defendant is not aware of any other technical data regarding PCE contamination at Defendant's property.

Based on the above, and Defendant's contention that its conduct met the applicable legal requirements, it is Defendant's position that Defendant is an innocent purchaser of the Crest Linen Site under MTCA. Ecology disagrees with this position.

TS/Yakima/Bhh&C

This document was part of the official  
Administrative Record for the Yakima  
Railroad Area on October 31, 1996.  
Washington State  
Department of Ecology.