

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

Welch Foods Inc.

MODEL AGREED ORDER

No. DE 4781

**TO: Welch Foods Inc.
Charles R. Evans
South Lake Street
PO Box 471
North East, PA 16428-0471**

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Exhibit A: Site Diagram Welch's Kennewick (PBS, July 2006)
Exhibit B: Schedule of work to be completed
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Exhibit D: Policy 840 Data Submittal Requirements

I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology) and Welch Foods Inc. (Welch's) under this Agreed Order (Order) is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Order requires Welch's to conduct a detailed Remedial Investigation (RI) and Feasibility Study (FS), which will lead to development of a Cleanup Action Plan. Ecology believes the actions required by this Order are in the public interest.

II. JURISDICTION

This Agreed Order is issued pursuant to the authority of the Model Toxics Control Act (MTCA), RCW 70.105D.050(1).

III. PARTIES BOUND

This Agreed Order shall apply to and be binding upon the Parties to this Order, their successors and assigns. The undersigned representative of each Party hereby certifies that he or she is fully authorized to enter into this Order and to execute and legally bind such Party to comply with the Order. Welch's agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter Welch's responsibility under this Order. Welch's shall provide a copy of this Order to all agents, contractors, and subcontractors retained to perform work required by this Order, and shall ensure that all work undertaken by such agents, contractors, and subcontractors complies with this Order.

IV. DEFINITIONS

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

1. Site: The Site is referred to as Welch's Kennewick and is generally located at 10 East Bruneau Avenue, Kennewick, Washington. The Site is defined by the extent of contamination caused by the release of hazardous substances at the Site. Based upon factors currently known to Ecology, the Site is more particularly described in Exhibit A to this Order, which includes a detailed Site diagram. The Site constitutes a Facility under RCW 70.105D.020(4).
2. Parties: Refers to the State of Washington, Department of Ecology and Welch's.
3. PLP: Potentially liable person under RCW 70.105D.040.
4. Agreed Order or Order: Refers to this Order and each of the exhibits to the Order. All exhibits are integral and enforceable parts of this Order. The terms "Agreed Order" or "Order" shall include all exhibits to the Order.

V. FINDINGS OF FACT

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

1. The Site is located at 10 East Bruneau Avenue, Kennewick, WA, within the NW¼ of Section 6, Township 8 N, Range 30 E. W.M. The Benton County Assessor's parcel number for the property is #106802030001022. Approximate coordinates are Latitude N 46° 12' 38.2" and Longitude W 119° 7' 0.2". The Site is currently owned by Lieb Properties II, LLC.
2. Information available from the Benton County Assessor's Office indicates that Welch's has owned the property described above since 1953. Welch's transferred ownership of the property to Lieb Properties II, LLC on December 15, 2006.
3. The Underground Storage Tank (UST) Assessment Report completed by PBS Engineering and Environmental (PBS) on August 16, 2006, states that food production has occurred at the site since 1925.
4. According to the UST Assessment (PBS, 8/16/06) and the Soil Remedial Action Report (PBS, 8/24/06), fuel oil has been released to soil and groundwater from leaking underground storage tanks that were removed in the 1970s.
5. Analytical results of sampling performed by PBS during the UST assessment and the soil remedial action indicated petroleum hydrocarbons present in soil and groundwater at concentrations above the Model Toxics Control Act Method A cleanup levels.

VI. ECOLOGY DETERMINATIONS

1. Welch's is an "owner or operator" as defined in RCW 70.105D.020(12), of a "facility" as defined in RCW 70.105D.020(4) because Welch's owned and operated a food processing plant at this location from 1953 until December of 2006.
2. Based upon all factors known to Ecology, a "release" or "threatened release" of "hazardous substance(s)" as defined in RCW 70.105D.020(20) and RCW 70.105D.020(7), respectively, has occurred at the Site. Fuel oil was released to soil and groundwater from leaking underground storage tanks, which were removed in the 1970s while Welch's was the owner of the facility.
3. Based upon credible evidence, Ecology issued a PLP status letter to Welch's dated October 10, 2006, pursuant to RCW 70.105D.040, -.020(16) and WAC 173-340-500. By letter dated October 18, 2006, Welch's voluntarily waived its rights to notice and comment and accepted Ecology's determination that Welch's is a PLP under RCW 70.105D.040. Concurrent with this Agreed Order, Lieb Properties will be similarly designated as a PLP and will enter into an agreement (Exhibit C) with Welch's and Ecology to provide for access to the property and notification of transfer of ownership during the cleanup process.
4. Pursuant to RCW 70.105D.030(1) and -.050(1), Ecology may require PLPs to investigate or conduct other remedial actions with respect to any release or threatened release of hazardous substances, whenever it believes such action to be in the public interest. Based on the

foregoing facts, Ecology believes the remedial actions required by this Order are in the public interest.

VII. WORK TO BE PERFORMED

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

1. Welch's shall conduct a remedial investigation/feasibility study (RI/FS) of the Site in accordance with WAC 173-340-350 through 390. The RI shall be phased according to the timeframes specified in Exhibit B. The RI will be designed to fully characterize the lateral and vertical extent of the hazardous substances at the Site in both soil and groundwater.
2. The RI shall include soil sampling and the installation of groundwater monitoring wells to determine groundwater gradient, confirm both upgradient and downgradient groundwater conditions, and fully determine the nature and extent of soil and groundwater contamination at the site. The RI may integrate previous investigations and sampling and analysis results.
3. Prior to any work at the Site, Welch's shall prepare a Sampling and Analysis Plan (SAP) in accordance with WAC 173-340-820 and Ecology's Guidelines for Preparing Quality Assurance Project Plans for Environmental Studies (February 2001) for Ecology review and approval. The SAP shall contain site maps with the proposed number and locations of test pits and groundwater monitoring wells as well as the other requirements of WAC 173-340-820. Sampling will be designed to determine whether the following hazardous substances have been released at the Site: petroleum products, benzene, toluene, ethyl benzene, xylene, carcinogenic polycyclic aromatic hydrocarbons (PAHs), and naphthalenes. No sampling may be conducted prior to Ecology approval of the SAP.
4. A site Health and Safety Plan shall be submitted to Ecology. The Health and Safety Plan will address potential exposure pathways for those conducting the investigation in accordance with WAC 173-340-810.
5. Following completion of RI work at the Site, including the first round of groundwater sampling, Welch's shall prepare a Remedial Investigations Report. In accordance with WAC 173-340-130(6), after Ecology's review of the findings presented in the Remedial Investigations Report and the first round of on-site groundwater monitoring presented in the report, Ecology shall determine whether additional investigation is necessary to fully characterize the Site.
6. If additional investigation is determined by Ecology to be necessary, Welch's shall follow the same procedures as outlined above for the additional investigations and shall issue an addendum to the Remedial Investigations Report for Ecology's approval.
7. Based upon the data collected during the remedial investigation and submitted in the Approved Remedial Investigations Report, Welch's will conduct a feasibility study (FS) to determine and

develop cleanup action alternatives for the site. A FS report will be generated in accordance with the requirements of WAC 173-340-350(8). At a minimum, the FS must identify cleanup action alternatives that protect human health and the environment, including terrestrial ecological receptors, cleanup levels or remediation levels, and points of compliance. In accordance with WAC 173-340-140(7) and WAC 173-340-350-(8)(a), Ecology shall select the cleanup action.

8. Exhibit B, Work Schedule, is hereby incorporated by reference and is an integral and enforceable part of this Order.
9. Deliverables for satisfactory completion of this Order consists of an approvable Remedial Investigation Report(s), a Sampling and Analysis Plan, Health and Safety Plan, and Quality Assurance Plans, and a Feasibility Study Report. Ecology shall approve the appropriate plans prior to their implementation. Once approved by Ecology, these deliverables become an integral and enforceable part of this Order.
10. Soil and groundwater sampling data shall be submitted in hard copy and entered electronically into Ecology's Environmental Information Management System (EIM). EIM information can be located on Ecology's web page at http://www.ecy.wa.gov/programs/tcp/data_submittal/Data_Requirements.htm
11. If, at any time after the first exchange of comments on drafts, Ecology determines that insufficient progress is being made in the preparation of any of the deliverables required by this section, Ecology may complete and issue the final deliverable.

VIII. TERMS AND CONDITIONS OF ORDER

A. Public Notices

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

B. Remedial Action Costs

Welch's shall pay to Ecology costs incurred by Ecology pursuant to this Order and consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology or its contractors for, or on, the Site under Chapter 70.105D RCW, including remedial actions and Order preparation, negotiation, oversight, and administration. These costs shall include work performed both prior to and subsequent to the issuance of the Order. Welch's shall pay the required amount within ninety (90) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general description statement of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within

ninety (90) days of receipt of the itemized statement of costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

C. Implementation of Remedial Action

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

D. Designated Project Coordinators

The project coordinator for Ecology is:

Mark Dunbar
Central Regional Office
15 W Yakima Ave, Ste 200
Yakima, WA 98902-3452

The project coordinator for Welch's is:

Keith Naughton
504 Birch Street
P.O. Box 38
Grandview, WA 98930

The project coordinator(s) shall be responsible for overseeing the implementation of this Order. The Ecology project coordinator will be Ecology's designated representative for the Site. To the maximum extent possible, communications between Ecology and Welch's, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order shall be directed through the project coordinator(s).

Ecology and Welch's may change their respective project coordinator, but must provide ten (10) days advance written notification of the change to the other party.

E. Performance

All work performed pursuant to this Order shall be under the direction and supervision, as necessary, of a licensed professional engineer or licensed hydrogeologist, or equivalent as approved by Ecology, with experience and expertise in hazardous waste site investigation and cleanup. Welch's shall notify Ecology in writing of the identity of such engineer(s), or hydrogeologist(s), or others, and of any contractors and subcontractors to be used in carrying out the terms of this Order, in advance of their involvement at the Site.

Any construction work performed pursuant to the Order shall be under the supervision of a professional engineer or a qualified technician under the direct supervision of a professional engineer. The professional engineer must be registered in the State of Washington, except as provided in RCW 18.43.130.

F. Sampling, Data Submittal, and Availability

With respect to the implementation of this Order, Welch's shall make the results of all sampling, laboratory reports, and/or test results generated by it or on its behalf available to Ecology. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted to Ecology in both printed and electronic formats in accordance with Section VII (Work to be Performed), Ecology's Toxics Cleanup Program Policy 840 (Exhibit D, Data Submittal Requirements), and/or any subsequent procedures specified by Ecology for data submittal.

If requested by Ecology, Welch's shall allow split or duplicate samples to be taken by Ecology and/or its authorized representative of any samples collected by Welch's pursuant to implementation of this Order. Welch's shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Order to be taken by Welch's or its authorized representative provided it does not interfere with Ecology's sampling. Without limitation on Ecology's right to access the property under WAC 173-340-800, Ecology shall notify Welch's prior to any sample collection activity unless an emergency prevents such notice.

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

G. Public Participation

A public participation plan is not required for this Site because the Site has not received a hazard ranking score. However, public notice and comment are still required.

H. Retention of Records

During the pendency of this Order and for ten (10) years from the date of completion of work performed pursuant to this Order, Welch's shall preserve all records, reports, documents, and underlying data in its possession relevant to the implementation of this Order and shall insert a similar record retention requirement into all contracts with project contractors and subcontractors. Upon request of Ecology, Welch's shall make all records available to Ecology and allow access for review within a reasonable time.

I. Resolution of Disputes

1. In the event a dispute arises as to an approval, disapproval, proposed change, or other decision or action by Ecology's project coordinator, or an itemized billing statement under Section VIII B (Remedial Action Costs), the Parties shall utilize the dispute resolution procedure set forth below.
 - a. Upon receipt of the Ecology project coordinator's decision or the itemized billing statement, Welch's has fourteen (14) days within which to notify Ecology's project coordinator of its objection to the decision or itemized statement.
 - b. The Parties' project coordinators shall then confer in an effort to resolve the dispute. If the project coordinators cannot resolve the dispute within fourteen (14) days, Ecology's project coordinator shall issue a written decision.

- c. Welch's may then request Ecology management review of the decision. This request shall be submitted in writing to the Central Region Toxics Cleanup Section Manager within seven (7) days of receipt of Ecology's project coordinator's decision.
 - d. The Section Manager shall conduct a review of the dispute and shall endeavor to issue a written decision regarding the dispute within sixty (60) days of Welch's request for review. The Section Manager's decision shall be Ecology's final decision on the disputed matter.
2. The Parties agree to only utilize the dispute resolution process in good faith and agree to expedite, to the extent possible, the dispute resolution process whenever it is used.
 3. Implementation of these dispute resolution procedures shall not provide a basis for delay of any activities required in this Order, unless Ecology agrees in writing to a schedule extension.

J. Extension of Schedule

1. An extension of schedule shall be granted only when a request for an extension is submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the deadline for which the extension is requested, and good cause exists for granting the extension. All extensions shall be requested in writing. The request shall specify the reason(s) the extension is needed. The request shall specify:
 - a. The deadline that is sought to be extended;
 - b. The length of the extension sought;
 - c. The reason(s) for the extension; and
 - d. Any related deadline or schedule that would be affected if the extension were granted.
2. The burden shall be on Welch's to demonstrate to the satisfaction of Ecology that the request for such extension has been submitted in a timely fashion and that good cause exists for granting the extension. Good cause includes, but is not limited to:
 - a. Circumstances beyond the reasonable control and despite the due diligence of Welch's including delays caused by unrelated third parties or Ecology, such as (but not limited to) delays by Ecology in reviewing, approving, or modifying documents submitted by Welch's; or
 - b. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty; or
 - c. Endangerment as described in Section VIII L. of this Order.

However, neither increased costs of performance of the terms of this Order nor changed economic circumstances shall be considered circumstances beyond the reasonable control of Welch's.

3. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give Welch's written notification in a timely fashion of any extensions granted pursuant to the Order. A requested extension shall not be effective until approved by

Ecology. Unless the extension is a substantial change, it shall not be necessary to amend this Order pursuant to Section VIII.K when a schedule extension is granted.

4. An extension shall only be granted for such period of time as Ecology determines is reasonable under the circumstances. Ecology may grant schedule extensions exceeding ninety (90) days only as a result of:
 - a. Delays in the issuance of a necessary permit which was applied for in a timely manner;
 - b. Other circumstances deemed exceptional or extraordinary by Ecology; or
 - c. Endangerment as described in Section VIII.L of this Order.

K. Amendment of Order

The project coordinators may verbally agree to minor changes to the work to be performed without formally amending this Order. Minor changes will be documented in writing by Ecology within seven (7) days of verbal agreement.

Except as provided in Section VIII.M of this Order, substantial changes to the work to be performed shall require formal amendment of this Order. This Order may only be formally amended by the written consent of both Ecology and Welch's. Welch's shall submit a written request for amendment to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a timely manner after the written request for amendment is received. If the amendment to the Order represents a substantial change, Ecology will provide additional public notice and opportunity to comment. If Ecology does not agree to a proposed amendment, the disagreement may be addressed through the dispute resolution procedures described in Section VIII.I. of this Order.

L. Endangerment

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

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

If Ecology concurs with or orders a work stoppage pursuant to this section, Welch's obligations with respect to the ceased activities shall be suspended until Ecology determines the danger is abated, and the time for performance of such activities, as well as the time for any other work dependent upon such activities, shall be extended for such period of time as Ecology determines is reasonable under the circumstances.

Nothing in this Order shall limit the authority of Ecology, its employees, agents, or contractors to take or require appropriate action in the event of an emergency.

M. Reservation of Rights

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

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

N. Compliance with Applicable Laws

1. All actions carried out by Welch's pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits, except as provided in RCW 70.105D.090.
2. Pursuant to RCW 70.105D.090(1), Defendant is exempt from the procedural requirements of Chapters 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 RCW and of any laws requiring or authorizing local government permits or approvals. However, Defendant shall comply with the substantive requirements of such permits or approvals.

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

Ecology shall ensure that notice and opportunity for comment is provided to the public and appropriate agencies prior to establishing the substantive requirements under this section.

3. Pursuant to RCW 70.105D.090(2) in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70.105D.090(1) would result in the loss of approval from a federal agency which is necessary for the state to administer any federal law, the exemption shall not apply and Welch's shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70.105D.090(1), including any requirements to obtain permits.

O. Indemnification

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

IX. SATISFACTION OF ORDER

The provisions of this Order shall be deemed satisfied upon Welch's receipt of written notification from Ecology that Welch's has completed the remedial activity required by this Order, as amended by any modifications, and that the Welch's has complied with all other provisions of this Agreed Order.

X. ENFORCEMENT

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

1. The Attorney General may bring an action to enforce this Order in a state or federal court.
2. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for remedial actions and orders related to the Site.
3. In the event Welch's refuses, without sufficient cause, to comply with any term of this Order, Welch's will be liable for:
 - a. Up to three (3) times the amount of any costs incurred by the State of Washington as a result of its refusal to comply; and
 - b. Civil penalties of up to \$25,000 per day for each day it refuses to comply.
4. This Order is not appealable to the Washington Pollution Control Hearings Board. This Order may be reviewed only as provided under RCW 70.105D.060.

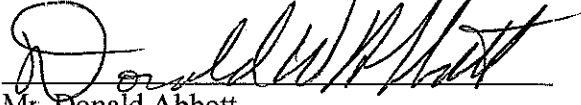
Effective date of this Order: September 26, 2007

Welch Foods Inc.



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**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**



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Exhibit A Site Map Welch's Kennewick

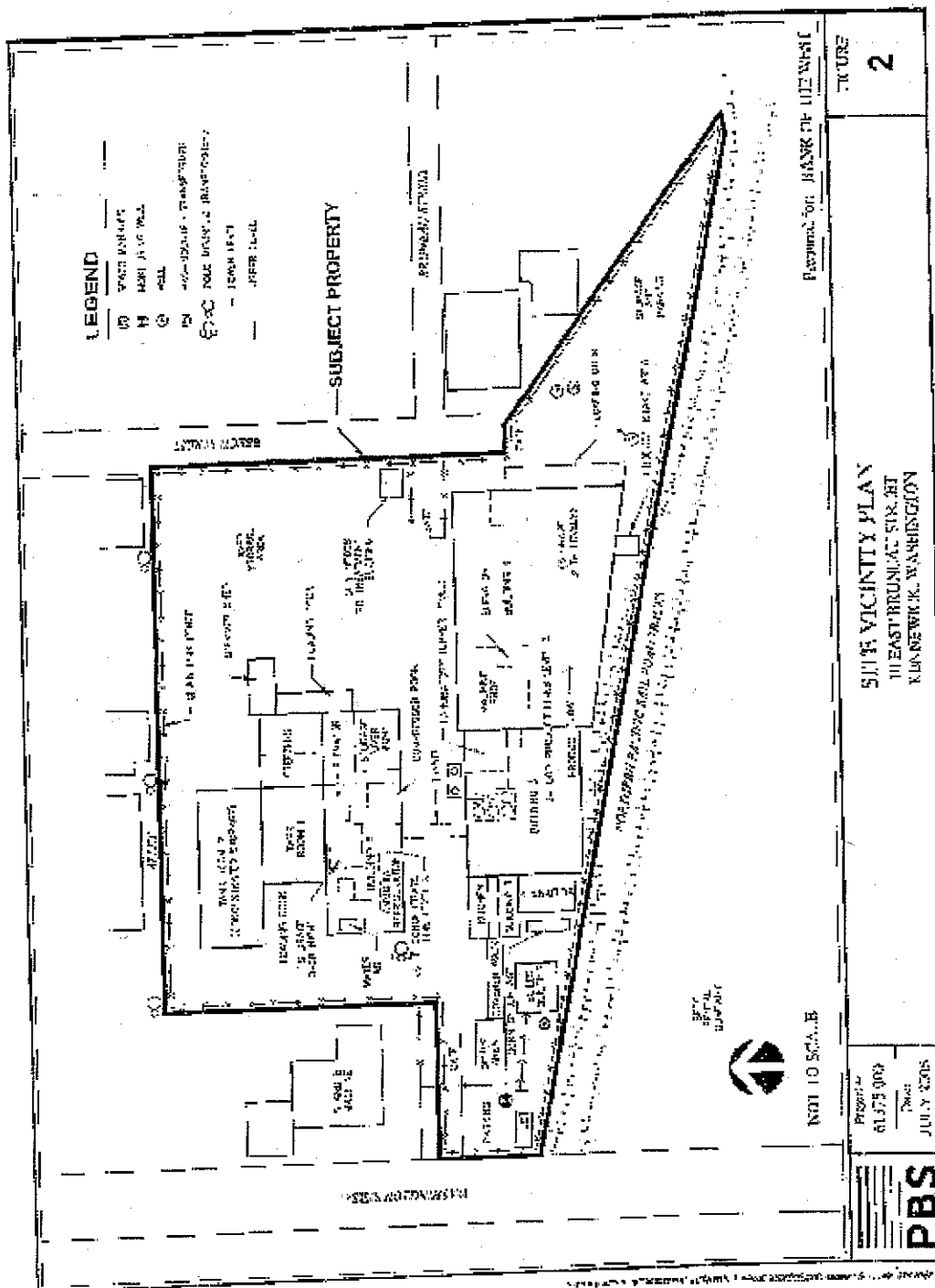


Exhibit B
Schedule for Work
Welch's Kennewick

<u>TASK</u>	<u>COMPLETION</u> <u>(expressed after the Agreed Order signing date [Week 0])</u>
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Draft RI Sampling and Analysis Plan (SAP) to Ecology	Week 2
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Site Health and Safety Plan to Ecology	Week 3
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Ecology Comments on Draft SAP	Week 4
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Final RI Sampling and Analysis Plan to Ecology	Week 6
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The following completion deadlines shall be modified if weather or site conditions do not permit field work

Soil sampling and Monitoring Well Installation field work done	Week 11
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1st Quarter Well Monitoring	Week 12
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Draft RI Report to Ecology	Week 19
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Ecology Comments on Draft RI Report	Week 21
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Final RI Report to Ecology	Week 23
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Note: All work subsequent to submittal of the final RI report is dependent on the findings of the RI. Each task below is therefore to be read "if required".

Draft SAP for Additional Work to Ecology	to be determined
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Ecology Comments on Draft SAP	to be determined
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Conduct Additional RI Work	to be determined
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Draft RI Report Addendum to Ecology	to be determined
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Ecology Comments on Draft RI Report Addendum	to be determined
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Final RI Report Addendum to Ecology	to be determined
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Conduct Feasibility Study	to be determined
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Draft Feasibility Study Report to Ecology	to be determined
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Ecology Comments on Draft FS Report	to be determined
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Final FS Report to Ecology	to be determined
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