

6.4 Environmental Covenant

AFTER RECORDING RETURN TO:

Andrew L. Symons
Inslee, Best, Doezie & Ryder
Rainier Plaza, Suite 1900
777 108th Avenue N.E.
P.O. Box C-90016
Bellevue, WA 98009-9016

CONFORMED COPY
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06-15-2004 10:30am \$26.00
SNOHOMISH COUNTY, WASHINGTON

Amended
RESTRICTIVE COVENANT
[Replacing Document dated April 29, 2004,
Filed under Recording No. 200405060072]

F & H Petroleum, LLC – Former Kirstein Oil Property
1120 North Avenue D
Snohomish, Washington

Grantor: F & H Petroleum, LLC

Grantee: Department of Ecology, State of Washington

Short Legal Description: Ptn of Lot 8, Lake Addit. to Snohomish, S.7, Twsp.28N.,
R.6E., WM, plat rec. Vol.5, P.10, Snohomish County
[Complete legal description in text of document]

Assessor's Property Tax
Parcel/Account Number(s): 004877 000 008 01

Reference Number(s) of
Documents Assigned
or Released: Replaces Restrictive Covenant dated April 29, 2004, filed
under Recording No. 200405060072 (which was recorded
without Figure 1, now attached)

COPY

RESTRICTIVE COVENANT

F & H Petroleum, LLC – Former Kirstein Oil Property
1120 North Avenue D
Snohomish, Washington

This Declaration of Restrictive Covenant is made pursuant to RCW 70.105D.030(1)(f) and (g) and WAC 173-340-440 by the present owner of the Property, F & H Petroleum, LLC, a Washington limited liability company, on behalf of itself and its successors and assigns, and the State of Washington Department of Ecology, its successors and assigns (hereafter "Ecology").

An independent remedial action (hereafter "Remedial Action") occurred at the real property that is the subject of this Restrictive Covenant, which real property is known generally as the "Former Kirstein Oil Property" (hereafter "Property"), is located at 1120 North Avenue D, Snohomish, Washington. The Remedial Action conducted at the property is described in the following documents, which are on file at Ecology's Northwest Regional Office in Bellevue, Washington:

1. *Underground Storage Tank Removal, Site Assessment Report, Kirstein Oil Company, Inc., Snohomish, Washington, 1120 North Avenue D, Snohomish, Washington*, by Bison Environmental Northwest, Inc., February 1993, Project #92319
2. *Limited Subsurface Investigation, 1120 North Avenue D, Snohomish, Washington*, by Point Source Solutions, March 2002, Project #WA020315-1
3. *Site Characterization and Underground Storage Tank Site Assessment, Former Kirstein Oil Property, 1120 North Avenue D, Snohomish, Washington*, by Golder Associates Inc., December 10, 2003
4. *Oversight of Petroleum-Contaminated Soil Excavation, Former Kirstein Oil Property, 1120 North Avenue D, Snohomish, Washington*, by Golder Associates Inc., December 10, 2003

This Restrictive Covenant is required because the Remedial Action resulted in leaving residual concentrations of gasoline-range petroleum hydrocarbons, benzene, toluene, ethylbenzene, xylenes, and

naphthalene in the soil that exceed the Model Toxics Control Act (MTCA) Method A soil cleanup levels established in WAC 173-340-740.

The undersigned, F & H Petroleum, LLC, is the fee owner of real property which is known generally as the "Former Kirstein Oil Property" in the County of Snohomish, State of Washington that is subject to this Restrictive Covenant. The Property is legally described as follows:

THAT PORTION OF LOT 8, LAKE ADDITION TO SNOHOMISH, SECTION 7, TOWNSHIP 28 NORTH, RANGE 6 EAST, W.M., ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 5 OF PLATS, PAGE 10, RECORDS OF SNOHOMISH COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 8;
THENCE SOUTH 00°59'00" EAST, 254.47 FEET ALONG THE WEST BOUNDARY OF SAID LOT 8, TO A POINT WHICH IS NORTH 00°59'00" WEST, 404 FEET DISTANCE FROM THE SOUTHWEST CORNER OF SAID LOT 8;
THENCE NORTH 88°46'00" EAST, 130.39 FEET, MORE OR LESS, TO A POINT ON THE WESTERLY RIGHT-OF-WAY OF PRIMARY STATE HIGHWAY NUMBER 15 AS CONVEYED TO THE STATE OF WASHINGTON BY DEED RECORDED UNDER RECORDING NO. 789152, SAID POINT BEING ON A SPIRAL CURVE;
THENCE NORTHERLY ALONG SAID SPIRAL CURVE 253.03 FEET, MORE OR LESS, TO THE NORTH LINE OF SAID LOT 8;
THENCE SOUTH 89°24'00" WEST, 131.15 FEET ALONG SAID NORTH LINE TO THE POINT OF BEGINNING;

EXCEPT THE WESTERLY 11.00 FEET OF THE SOUTHERLY 101.00 FEET THEREOF;

(ALSO KNOWN AS LOT A OF BOUNDARY LINE ADJUSTMENT RECORDED UNDER SNOHOMISH COUNTY RECORDING NO. 200201070690);

SITUATE IN THE COUNTY OF SNOHOMISH, STATE OF WASHINGTON.

F & H Petroleum, LLC, makes the following declaration as to limitations, restrictions, and uses to which the Property may be put and specifies that such declarations shall constitute covenants to run with the land, as provided by law and shall be binding on all parties and all persons claiming under said declarant, F & H Petroleum, LLC, including all current and future owners of any portion of or interest in the Property (all hereinafter collectively referred to as "Owner").

Section 1. The Property contains residual concentrations of petroleum hydrocarbons in the soil at three areas: (a) at the former eastern dispenser island location, (b) at the existing underground storage tank location, (c) at the former underground storage tank location that exceed the MTCA Method A soil cleanup levels. See Figure 1 (attached).

- a. At the former eastern dispenser island, soil Sample No. SW-2 at the southern wall collected at a depth of 6 – 8 feet below ground surface contains residual concentration of benzene (0.1 milligrams per kilogram) in the soil that exceed the MTCA Method A soil cleanup level of 0.03 milligrams per kilogram.
- b. At the existing underground storage tank location at the northwestern corner of the property, soil Sample No. BH-1 collected at a depth of 10 feet below ground surface contains residual concentrations of: gasoline-range petroleum hydrocarbons (3,400 milligrams per kilogram) in the soil that exceed the MTCA Method A soil cleanup level of 30 milligrams per kilogram; benzene (0.140 milligrams per kilogram) in the soil that exceed the MTCA Method A soil cleanup level of 0.03 milligrams per kilogram; ethylbenzene (15 milligrams per kilogram) in the soil that exceed the MTCA Method A soil cleanup level of 6 milligrams per kilogram; xylenes (140 milligrams per kilogram) in the soil that exceed the MTCA Method A soil cleanup level of 9 milligrams per kilogram; and naphthalene (130 milligrams per kilogram) in the soil that exceed the MTCA Method A soil cleanup level of 5 milligrams per kilogram.

At the existing underground storage tank location at the northwestern corner of the property, soil Sample No. BH-3 collected at a depth of 10 feet below ground surface contains residual concentration of benzene (3.5 milligrams per kilogram) in the soil that exceeds the MTCA Method A soil cleanup level of 0.03 milligrams per kilogram.

c. At the former underground storage tank location at the western side of the property, soil Sample No. BH-4 collected at a depth of 17.5 feet below ground surface contains residual concentrations of: gasoline-range petroleum hydrocarbons (650 milligrams per kilogram) in the soil that exceed the MTCA Method A soil cleanup level of 30 milligrams per kilogram; toluene (9.1 milligrams per kilogram) in the soil that exceed the MTCA Method A soil cleanup level of 7 milligrams per kilogram; ethylbenzene (8.6 milligrams per kilogram) in the soil that exceed the MTCA Method A soil cleanup level of 6 milligrams per kilogram; and xylenes (41 milligrams per kilogram) in the soil that exceed the MTCA Method A soil cleanup level of 9 milligrams per kilogram.

The Owner shall not alter, modify or remove the existing structures nor conduct any other activity on the Property that may result in the release or exposure to the environment of the residual gasoline-range petroleum hydrocarbons contaminated soil, residual benzene contaminated soil, residual toluene contaminated soil, residual ethylbenzene contaminated soil, residual xylenes contaminated soil, and residual naphthalene contaminated soil that were contained on site, or create a new exposure pathway without prior written approval from Ecology. Some examples of activities that are prohibited without prior written approval from Ecology include: drilling, digging, placement of any objects or use of any equipment which deforms or stresses the surface beyond its load bearing capability, piercing the surface with a rod, spike or similar item, bulldozing or earthwork, and site re-development.

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

Section 3. Any activity on the Property that may result in the release or exposure to the

environment of a hazardous substance that remains on the Property as part of the Remedial Action, or create a new exposure pathway, is prohibited without prior written approval from Ecology.

Section 4. The Owner of the property must give thirty (30) day advance written notice to Ecology of the Owner's intent to convey any interest in the Property. No conveyance of title, easement, lease, or other interest in the Property shall be consummated by the Owner without adequate and complete provision for continued monitoring, operation and maintenance of the Remedial Action. The Owner conveying any interest in the property shall notify Ecology of the name, mailing address and telephone number of the person or persons who acquired the title, easement, lease, or other interest in the Property within fifteen (15) days of the transaction.

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

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

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

Section 8. The Owner of the Property reserves the right under WAC 173-340-440 to record an instrument that provides that this Restrictive Covenant shall no longer limit uses of the Property or be of any further force or effect. However, such an instrument may be recorded only if Ecology, after public notice and opportunity for comment, concurs.

DATED: May 29, 2004

F & H PETROLEUM, L.L.C.

By: 
Amin S. Lakha, Manager

STATE OF WASHINGTON

COUNTY OF KING

) ss
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I certify that I know or have satisfactory evidence that AMIN S. LAKHA is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument as the MANAGER on behalf of F & H PETROLEUM, LLC, a Washington limited liability company, pursuant to the provisions of the Limited Liability Company Agreement of said company, and acknowledged it to be the free and voluntary act of said company for the uses and purposes mentioned in the instrument.



DATED: 5/29/24

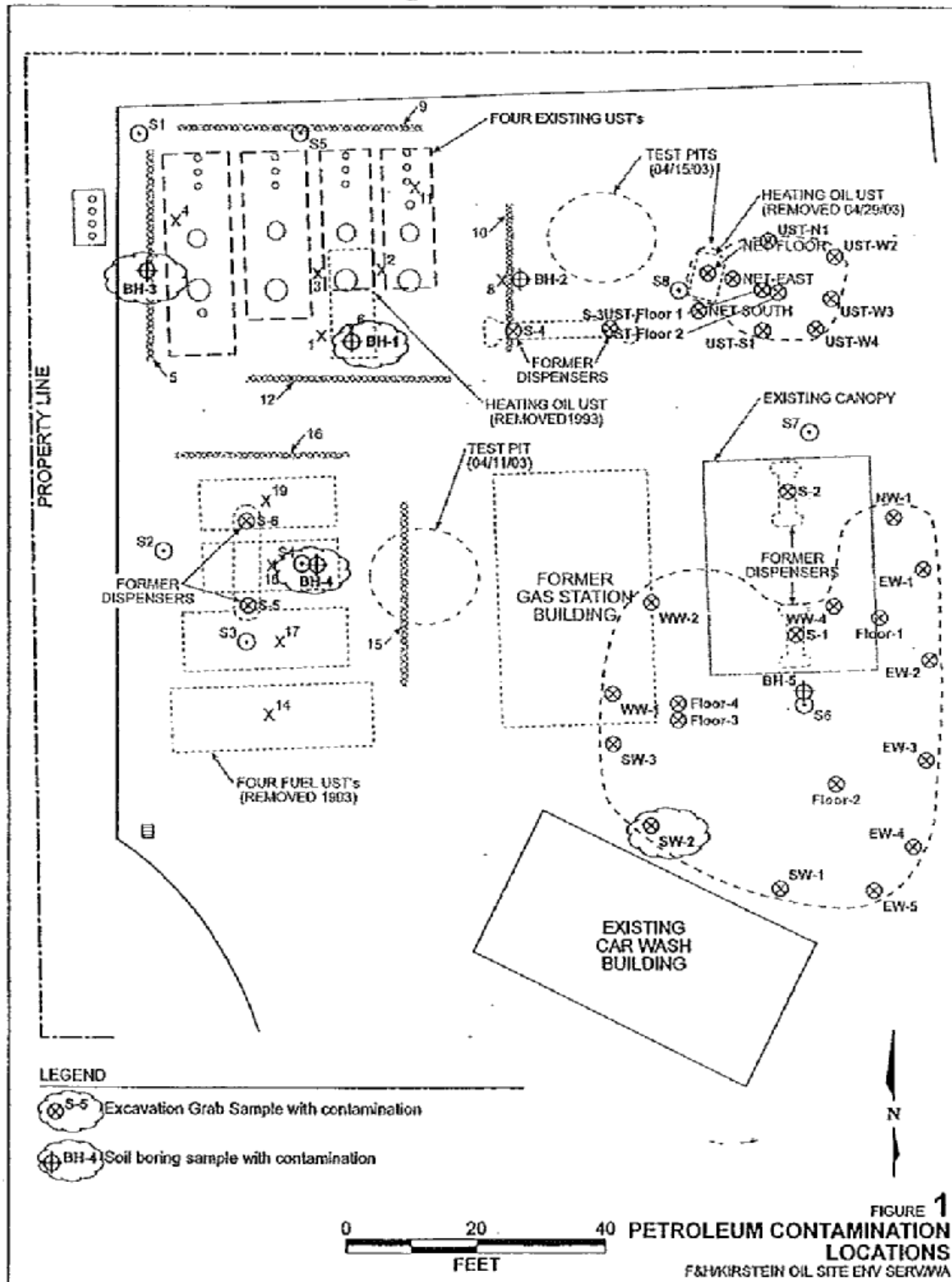
NAME: DL SCROGHAM

(Print Name)

Notary Public in and for the State of Washington

Commission Expires: 12/24/07

Figure 1



DRAWING NO. 0331472160200901.8h11 DATE 05/12/04 DRAWN BY EL

Figure 1