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ENFORCEMENT ORDER

In the Matter of Remedial)	Enforcement Order
Action at:)	No. DE 91TC-E702
Whitty's Minimart (Exxon))	
485 South Main Street)	
Colville, WA 99114)	

To: Mr. Carroll Whitten
370 West 5th Avenue
Colville, WA 99114

and

Federated Service Insurance
6060 Sunrise Vista Drive, Suite 2500
Citrus Heights, CA 95610

I.

Jurisdiction

This Order is issued pursuant to the authority of RCW 70.105D.050(1).

II.

Statement of Facts

1. Whitty's Minimart is located at 485 South Main Street, Colville, Washington, within Stevens County. This site is located on the northeast corner of Main and Dominion Streets. It is bounded by Main Street (Highway 395) on the west and Dominion Street on the south.

2. The facility is operated as a retail fuel outlet and convenience store. It has been operated as a retail fuel outlet for more than 20 years.

3. In 1984 an investigation at this site, conducted by Soil Exploration Company for Federated Insurance Company, determined that a gasoline dispenser line had been leaking. The leak was confirmed by means of "petro-tight" testing of the dispenser lines. According to a report dated August 16, 1984, the product released as a result of this leak manifested itself as a gasoline film within a storm water drainage culvert adjacent to the site and on an unnamed creek, also adjacent to the site. The storm water drain is tributary to the creek. There were also strong gasoline vapors detected in the storm water drain and at the creek outfall. This situation had been reported periodically, to local officials, over a two year period prior to the investigation.

4. In 1984, remediation efforts initiated as result of the investigation consisted of the installation of an interceptor trench extending north-south along Main Street on the west side of the site. A recovery sump was installed at the downgradient end of the trench to be used for product recovery on an ongoing basis as required. The sump was pumped out on a sporadic basis for 2-3 years following installation. It has not been maintained since that time.

5. In April, 1990 Ron Harbolt, Public Works Director for the City of Colville, contacted Ecology after he had received a report of strong gasoline vapors and gasoline film on the unnamed creek referenced in ¶3. On April 12, 1990, Ecology responded to and confirmed what had been reported. At that time, gasoline vapors and a sheen were also found within the storm water drain, at an access point to the southwest of Whitty's Minimart. An Ecology representative who investigated the 1984 incident referenced in ¶3 confirmed the similarity of product distribution between the two incidents.

6. On April 26, 1990 approximately 1" of gasoline was measured on the ground water within a monitoring well adjacent to the underground storage tanks (USTs) at Whitty's Minimart. This well was installed in 1984 as part of the investigation referenced in ¶3.

7. Gasoline product has been identified in a creek, on the ground water and in the soils. The product has been observed both on and adjacent to the referenced site. Gasoline vapors have been identified within a culvert diverting the creek and within the storm water line. Gasoline vapors and product have been observed at the point on the creek where it discharges out of a culvert and into an open channel at the site of a private residence.

8. Ecology representatives contacted the Whitten Oil office at the time of the initial investigation on April 12, 1990. Carroll Whitten and Jeff Whitten were verbally notified of the findings of that initial investigation. In a letter dated May 7, 1990, Ecology provided Carroll Whitten formal notification of the results of that investigation and advised him of the regulatory requirements provided by the Model Toxics Control Act (MTCA) and the opportunity to proceed with independent actions.

9. In a letter dated May 18, 1990 the Department issued Mr. Whitten a proposed finding of potential liability status. A response to that proposed finding was submitted by Federated Service Insurance (Federated) on Mr. Whitten's behalf.

10. By letter dated June 26, 1990, Ecology notified Carroll Whitten of the final determination of his status as a "potentially liable person" under RCW 70.105D.040 after notice and opportunity for comment.

11. On August 29, 1990 Ecology initiated an emergency interim action to mitigate the release of gasoline into the ground water and creek. An Ecology contractor installed interceptor trenches along with a vapor phase extraction system adjacent to the site. The function of this system was to intercept the gasoline product and volatilize it before it reached the creek. This was a successful stop-gap measure but, with its limited design, was not able to provide a permanent solution to an active, undefined release.

12. In the continued absence of any independent actions at this site, on March 4, 1991, Ecology, through its contractor, initiated a limited remedial investigation to confirm the source of the contamination. This investigation involved the drilling of soil borings and monitoring wells and extensive soils and water sampling. The report on this investigation was submitted to Ecology on June 26, 1991. That report identified the Whitty's Minimart site as the source of a very recent or ongoing release of the observed contamination.

13. In a letter dated March 18, 1991, Ecology issued Federated Service Insurance a proposed finding of potential liability status. Federated, through its attorney, responded to this proposed finding in documents dated April 15, 1991 and July 3, 1991.

14. On June 14, 1991 an Ecology contractor conducted a video inspection of the storm water line in which gasoline had been observed. That inspection identified water and/or contaminant leaking into the system at joints along the storm water drainage culvert. Those identified leaks were restricted to an area extending approximately 75 feet north of the storm water access located at the southwest corner of the Whitten site. These findings suggest that gasoline entering the storm water line is doing so at a point(s) immediately adjacent to the Whitty's Minimart facility.

15. On July 15, 1991 the Department of Ecology issued a Enforcement Order No. DE 91-E701 to Carroll Whitten. This Order directed, in part, that tank and distribution line testing be conducted to determine the integrity of the gasoline underground storage tank systems at this facility. As a result of these tests it was determined that there was a leak in the regular unleaded distribution line. Excavation and a visual inspection revealed 3 holes in the piping located within 2" of each other and within 20 feet of the line leak documented in 1984.

16. In a letter dated August 29, 1991, Ecology notified Federated that a final determination had been made and that it had been found to be a "potentially liable person" as defined under Chapter 70.105D RCW.

III.

Ecology Determinations

1. Carroll Whitten is an "owner or operator" as defined at RCW 70.105D.020(6) of a "facility" as defined in RCW 70.105D.020(3).
2. Federated Service Insurance is an "owner or operator" as defined at RCW 70.105D.020(6) of a "facility" as defined in RCW 70.105D.020(3).
3. The facility is known as Whitty's Minimart and is located at 485 South Main Street, Colville, Washington.
4. The substances found at the facility, as well as in ground and surface water adjacent to the facility, as described above are "hazardous substances" as defined at RCW 70.105D.020(5).

5. Based on the presence of these hazardous substances at and near the facility and all factors known to the Department, it has been determined that there has been a release or threatened release of hazardous substances from the facility as defined at RCW 70.105D.020(10) which poses a threat to human health or the environment.

6. In a letter dated June 26, 1991, after providing notice and opportunity for comment, Ecology notified Carroll Whitten of his status as a "potentially liable person" under RCW 70.105D.040.

7. In a letter dated August 29, 1991 Ecology notified Federated Service Insurance Company, after notice and opportunity for comment, that it had been found to be a "potentially liable person" under RCW 70.105D.040.

8. Pursuant to RCW 70.105D.030(1) and 70.105D.050, the Department may require potentially liable persons to investigate or conduct other remedial actions with respect to the release or threatened release of hazardous substances, the release or threatened release of hazardous substances, whenever it believes such action to be in the public interest.

9. Based on the foregoing facts, Ecology believes the remedial action required by this Order is in the public interest.

IV.

Work to be Performed

Based on the foregoing Facts and Determinations, it is hereby ordered that Carroll Whitten and Federated Service Insurance take the following remedial actions:

1. Conduct and report on a Remedial Investigation/Feasibility Study. The purpose of the investigation is to collect, develop and evaluate information regarding the site and potentially affected areas so as to enable the selection of an appropriate cleanup action. The Remedial Investigation will define the type, the extent and the degree of soil, ground water and surface water contamination at the facility and all off-site affected areas. It will also identify the impacts of the contamination on those affected areas. The Feasibility Study will identify and evaluate alternative cleanup actions.

To fulfill the goals of this Remedial Investigation/Feasibility Study, the following actions shall be performed:

- a. Within forty-five (45) calendar days of receipt of this ORDER submit to Ecology for approval, a Work Plan describing the work to be performed and a schedule for the Remedial Investigation phase. At a minimum the Work Plan shall include the following:
 - (1) A Health and Safety Plan fulfilling the requirements of Chapter 296-62 WAC.

- (2) A Sampling and Analysis Plan specifically describing the depth and the location of all proposed wells and soil borings. Also included shall be specific information regarding all proposed soil and water sampling including parameters to be analyzed and the frequency of sampling. Criteria of the Remedial Investigation specifically addressed in Section IV, 1., c. of this ORDER shall be considered when preparing this Sampling and Analysis Plan.
 - (3) A Quality Assurance/Quality Control (QA/QC) Plan, consistent with WAC 173-340-830. The QA/QC Plan shall include a detailed description of sampling procedures and equipment to be used; the number and types of blanks, spikes, and duplicates; chain of custody protocol; analytical methods; and data validation and reporting methods.
 - (4) A Public Participation Plan consistent with Section V, 7., of this ORDER.
 - (5) A Site Waste Management Plan detailing the procedure to be employed to contain, stockpile, characterize and treat/dispose of contaminated materials encountered during the course of the Remedial Investigation.
 - (6) A Contractor List identifying those firms which will be participating in activities associated with the Remedial Investigation. This list will include all consultants, contractors and subcontractors.
 - (7) A Statement of Qualifications for those individuals involved in the professional and technical work associated with this Remedial Investigation. This Statement shall include the name, duties, pertinent experience, skills, training and education of the personnel involved.
 - (8) A Work Schedule identifying the anticipated progress of the Remedial Investigation activities.
- b. Ecology will evaluate and determine the appropriateness of the Remedial Investigation Work Plan. The Work Plan shall not be implemented without Ecology's written approval. Upon approval by Ecology, the Work Plan and its schedule shall become an enforceable element of this ORDER. Implementation of the Work Plan shall begin within thirty (30) calendar days of the receipt of Ecology's approval.
- c. A final Remedial Investigation report shall be submitted within thirty (30) calendar days of the completion of the work, but no later than April 1, 1992. The final Remedial Investigation Report shall, at a minimum, include the following:
- (1) General Facility Information. General information, including: project title; name, address, and telephone number of project coordinator; legal description of the facility location; dimensions of the facility; present owner and operator; chronological listing of past owners and operators and operational history.

- (2) Site Conditions Maps and Photographs. Maps, and photographs illustrating relevant site features such as: property boundaries; facility boundaries; surface topography; surface and subsurface structures; utility lines; well and soil boring locations; contaminant distribution, illustrating the extent and degree of soil, ground water and surface water contamination; static water levels of ground water including an indication of the seasonal variability; sample locations; geologic/soil conditions; and other pertinent information.
- (3) Field Investigations. An evaluation, based on developed documentation, characterizing the distribution of hazardous substances at the facility and adjacent affected areas. This would include a characterization of the threat to human health and the environment posed by this release. This evaluation shall, at a minimum, address the following:
 - (a) Surface Water. Investigation of surface water and its drainage features to evaluate potential migration routes. This shall include a description of features such as: drains, dry wells and storm water drainage systems and the relationship between these features and the surface water. Sufficient surface water sampling shall be performed to adequately characterize the areal distribution and concentrations of hazardous substances.
 - (b) Soils. Investigations to characterize the areal and vertical distribution and concentration of hazardous substances in the soil due to the release at the facility. Properties of surface and subsurface soils which are likely to influence the type and rate of hazardous substance migration, or which are likely to affect the ability to implement alternative cleanup actions shall be characterized.
 - (c) Geology and Ground Water System Characteristics. Investigations of site geology and hydrogeology to adequately characterize the areal and vertical distribution and concentrations of hazardous substances in the ground water and those features which affect the fate and transport of these hazardous substances. This shall include, as appropriate, the description, physical properties and distribution of bedrock and unconsolidated materials; ground water flow rate and gradient for affected and potentially affected aquifers; areas of ground water discharge; ground water quality data; and seasonal variation of ground water levels; the relationship between ground water, surface water and artificial drainage features in the affected and potentially affected area.

- (d) Land Use. Characterization of human populations exposed or potentially exposed to the hazardous substances released from this facility and present and proposed land uses for the site and potentially affected areas. This shall include the name and address of any affected or potentially affected landowners in the area.
 - (e) Natural Resources and Ecology. Characterization of the impact or potential impact of the hazardous substance released from the facility on the natural resources and ecology of the area such as: sensitive environment, plant and animal species, and other environmental receptors.
- (4) Appendix. The Remedial Investigation report shall contain an appendix of documentation and data shall include, at a minimum, the following: sample chain of custody reports for all samples; laboratory reports of sample analysis; start cards and logs, as appropriate, for wells and soil borings.
- d. Within forty-five (45) calendar days of submitting the Final Remedial Investigation report, submit a Preliminary Feasibility Study report. The Preliminary Feasibility Study report will serve as an initial screening of cleanup action alternatives. The Remedial Investigation will serve as a basis for the selection of the appropriate cleanup alternatives.
- The Preliminary Feasibility Study shall, at a minimum, include the following:
- (1) An evaluation of alternative remedial actions for contamination within the unsaturated (vadose) zone.
 - (2) An evaluation of alternative remedial actions for contamination within the saturated zone.
 - (3) Preferred alternatives for remedial actions for the site and those affected areas off-site. The use of multiple cleanup technologies may be considered.
- e. Ecology will review and evaluate the Remedial Investigation and Preliminary Feasibility Study reports. Based on that review specific cleanup actions will be selected for final study. Those actions selected for final study may not necessarily be limited to those proposed in the Preliminary Feasibility Study report.
- f. Within forty-five (45) days of receiving Ecology's written notice of those cleanup alternatives selected for additional study, submit a Final Feasibility Study Report. This report shall provide a detailed evaluation of the selected cleanup action(s). The evaluation criteria shall address the concerns for protection of human health and the environment. The action(s) selected shall be consistent with the goal of eliminating, reducing or otherwise controlling risks posed through each exposure pathway and migration route. The alternatives shall be evaluated for compliance with the requirements of WAC 173-340-360.

2. To facilitate communication with Ecology, the following provisions shall apply:
 - a. The designated Project Coordinator for Carroll Whitten and Federated Service Insurance shall, at a minimum, unless otherwise approved by Ecology, submit the following reports to Ecology's Project Coordinator:
 - (1) During the implementation phase of the Remedial Investigation, a weekly verbal progress report. The frequency and timing of the reports may be amended with approval of Ecology's Project Coordinator.
 - (2) A monthly written report summarizing activities, changes in the Work Plan, scheduling and other pertinent findings.
 - b. The following information shall be submitted to Ecology during the implementation phase of the Remedial Investigation:
 - (1) Preliminary logs obtained during the construction of wells, soil borings or excavations. These logs would describe, at a minimum, sample locations, lithology, ground water conditions and observed contamination. This preliminary data shall be submitted within fifteen (15) calendar days of completion of the well, soil boring or excavation.
 - (2) Reports of laboratory sample analysis. These reports shall be submitted within fifteen (15) calendar days of receipt by the designated Project Coordinator.
 - (3) All additional information, data or reports deemed pertinent to the Remedial Investigation as requested by Ecology.
 - (4) Within thirty (30) calendar days of the effective date of this ORDER, submit to Ecology all data and reports generated as part of any investigations at this site which were conducted independently, subsequent to the confirmation of the line leak. This would include that work performed during the first week of October, 1991, but would not include any reports previously submitted.
3. Ecology and other appropriate agencies shall be contacted immediately if the Remedial Investigation activities identify conditions which may pose an immediate threat to human health or safety. Potential threats on this site may include the accumulation of vapors or the presence of free product.
4. During that time this ORDER is in effect, either Project Coordinator may request a meeting. A minimum of seven (7) calendar days written notice of the requested meeting is to be provided the affected Project Coordinator.

V.

Terms and Conditions of Order

1. Definitions

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

2. Public Notice

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

3. Remedial Actions Costs.

Carroll Whitten and Federated Service Insurance shall pay to Ecology costs incurred by Ecology pursuant to this Order. These costs shall include work performed by Ecology or its contractors for investigations, remedial actions, and Order preparation, oversight and administration. Ecology costs shall include costs of direct activities; e.g., employee salary, laboratory costs, travel costs, contractor fees, and employee benefit packages; and agency indirect costs of direct activities. Carroll Whitten and Federated Service Insurance 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. Itemized statements shall be prepared quarterly. A description of work performed will be provided upon request. Failure to pay Ecology's costs within ninety (90) days of receipt of an itemized statement of costs may result in interest charges.

4. Designated Project Coordinators. - Within ten (10) days of the effective date of this ORDER, Carroll Whitten and Federated Service Insurance shall designate a Project Coordinator, and notify Ecology as to the identity, address and telephone number of such Project Coordinator.

The Project Coordinator for Ecology is:

Michael R. Boatsman
Department of Ecology
Eastern Regional Office
N. 4601 Monroe, Suite 100
Spokane, WA 99205-1295

The Project Coordinator(s) shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communications between Ecology and Carroll Whitten and Federated Service Insurance, 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). Should Ecology or Carroll Whitten and Federated Service Insurance change Project Coordinator(s), written notification shall be provided to Ecology or Carroll Whitten and Federated Service Insurance at least ten (10) calendar days prior to the change.

5. Performance. All work performed pursuant to this Order shall be under the direction and supervision, as necessary, of a professional engineer or hydrogeologist, or similar expert, with appropriate training, experience and expertise in hazardous waste site investigation and cleanup.

Carroll Whitten and Federated Service Insurance shall notify Ecology as to the identity of such engineer(s), hydrogeologist(s), 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.

Except when necessary to abate an emergency situation, Carroll Whitten or Federated Service Insurance shall not perform, or cause to be performed, any remedial action at the site outside that required by this Order, unless Ecology concurs, in writing, with such actions.

6. Access

Ecology or any Ecology authorized representative shall have the authority to enter and freely move about all property at the Site at all reasonable times for the purposes of, inter alia: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing the progress in carrying out the terms of this Order; conducting such tests or collecting samples as Ecology or the subject coordinator may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by Carroll Whitten and Federated Service Insurance. Ecology shall provide reasonable notice before entering property unless an emergency prevents notice. Ecology shall allow split or replicate samples to be taken by Carroll Whitten and Federated Service Insurance during an inspection unless doing so would interfere with Ecology's sampling. Carroll Whitten and Federated Service Insurance shall allow split or replicate samples to be taken by Ecology and shall provide Ecology seven (7) days notice before any sampling activity.

7. Public Participation

Carroll Whitten and Federated Service Insurance shall prepare a public participation plan for the site. This plan shall be prepared in accordance with WAC 173-340-600(8). Ecology shall maintain the responsibility for public participation at the site. Carroll Whitten and Federated Service Insurance shall help coordinate and implement public participation for the site.

8. Retention of Records

Carroll Whitten and Federated Service Insurance shall preserve in a readily retrievable fashion, during the pendency of this Order and for ten (10) years from the date of completion of the work performed pursuant to this Order, all records, reports, documents, and underlying data in its possession relevant to this Order. Should any portion of the work performed hereunder be undertaken through contractors or agents of Carroll Whitten and Federated Service Insurance, a record retention requirement meeting the terms of this paragraph shall be required of such contractors and/or agents.

9. Dispute Resolution

Carroll Whitten and Federated Service Insurance may request Ecology to resolve factual or technical disputes which may arise during the implementation of this Order. Such request shall be in writing and directed to the signatory of this Order. Ecology resolution of the dispute shall be binding and final. Carroll Whitten and Federated Service Insurance are not relieved of any requirement of this Order during the pendency of the dispute and remains responsible for timely compliance with the terms of the Order unless otherwise provided by Ecology in writing.

10. Reservation of Rights

Ecology reserves all rights to issue additional orders or take any action authorized by law in the event or upon the discovery of a release or threatened release of hazardous substances not addressed by this Order, upon discovery of any factors not known at the time of issuance of this Order, in order to abate an emergency, or under any other circumstances deemed appropriate by Ecology.

In the event Ecology determines that conditions at the Site are creating or have the potential to create a danger to the health or welfare of the people on the Site or in the surrounding area or to the environment, Ecology may Order Carroll Whitten and Federated Service Insurance to stop further implementation of this Order for such period of time as needed to abate the danger.

11. Transference of Property

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

Prior to transfer of any legal or equitable interest, Carroll Whitten and Federated Service Insurance may have in the Site or any portions thereof, Carroll Whitten and Federated Service Insurance shall serve a copy of this Order upon any purchaser, lessee, transferee, assignee, or other successor in such interest. At least thirty (30) days prior to the finalization of any transfer, Carroll Whitten and Federated Service Insurance shall notify Ecology of the contemplated transfer.

12. Compliance With Other Applicable Laws

All actions carried out by Carroll Whitten and Federated Service Insurance pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements.

VI.

Satisfaction of this Order

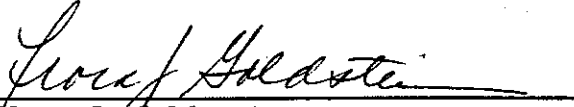
The provisions of this Order shall be deemed satisfied upon Carroll Whitten's and Federated Service Insurance's receipt of written notification from Ecology that Carroll Whitten and Federated Service Insurance have completed the remedial activity required by this Order, as amended by any modifications,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

VII.

Enforcement

1. Pursuant to RCW 70.105D.050, this Order may be enforced as follows:
 - A. The Attorney General may bring an action to enforce this Order in a state or federal court.
 - B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the Site.
 - C. In the event Carroll Whitten and Federated Service Insurance refuse, without sufficient cause, to comply with any term of this Order, Carroll Whitten and Federated Service Insurance will be liable for:
 - (1) up to three times the amount of any costs incurred by the state of Washington as a result of its refusal to comply; and
 - (2) civil penalties of up to \$25,000 per day for each day it refuses to comply.
 - D. This Order is not appealable to the Washington Pollution Control Hearings Board. This Order may be reviewed only as provided under RCW 70.105D.060.

Effective date of this Order: October 23, 1991.



Flora J. Goldstein
Section Supervisor
Toxics Cleanup Section
State of Washington
Department of Ecology
Eastern Regional Office