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| **Toxics Cleanup Program** |
| **Procedure 440C: Releasing Environmental Covenants under the Model Toxics Control Act**  |



**[This is Attachment B (Release of Covenant Template) as an MS Word file. For Procedure 440C in its entirety, please visit:** [**https://fortress.wa.gov/ecy/publications/SummaryPages/1509057.html**](https://fortress.wa.gov/ecy/publications/SummaryPages/1509057.html)**]**

*Established:* September 16, 2015

*Revised:* December 22, 2016 (formatting revisions and new Attachment lettering only)

*Contact:* Policy & Technical Support Unit, Headquarters

*Purpose:* This is one in a group of procedures related to establishing, amending, and removing Environmental Covenants that can be found on Ecology’s Toxics Cleanup Program’s policies and procedures webpage at: <http://www.ecy.wa.gov/programs/tcp/policies/tcppoly.html>

*References:* [WAC 173-340-440](https://app.leg.wa.gov/wac/default.aspx?cite=173-340-440)

 [Chapter 70.105D RCW](https://app.leg.wa.gov/rcw/default.aspx?cite=70.105D&full=true), Hazardous Waste Cleanup-Model Toxics Control Act

 [Chapter 64.70 RCW](http://app.leg.wa.gov/rcw/default.aspx?cite=64.70), Uniform Environmental Covenants Act

 [Voluntary Cleanup Program (VCP) User Manual](http://awwecology/sites/TCPI/Shared%20Documents/Forms/VCP%20Documents%20View.aspx) (on SharePoint)

*Attachments:* A – Proposed Release of Covenant Notification Letter

 B – Termination and Release of Covenant Template and Instructions

*Disclaimer:* This Procedure is intended solely for the guidance of Ecology staff. It is not intended, and cannot be relied on, to create rights, substantive or procedural, enforceable by any party in litigation with the state of Washington. Ecology may act at variance with this Procedure depending on site-specific circum­stances, or modify or withdraw this Procedure at any time.

 *Approved by:* [Signature on [PDF](https://fortress.wa.gov/ecy/publications/SummaryPages/1509057.html)]

 James J. Pendowski, Program Manager

 Toxics Cleanup Program

**Accommodation Requests:**To request ADA accommodation, including materials in a format for the visually impaired, call Ecology’s Toxics Cleanup Program at 360-407-7170. Persons with impaired hearing may call Washington Relay Service at 711.  Persons with speech disability may call TTY at 877-833-6341

**Attachment B:**

**Termination and Release of Covenant**

**Template and Instructions**

**Attachment B

Termination and Release of Covenant
Template and Instructions**

Use this Release when the conditions that triggered the need for an environmental covenant no longer exist at a site.

See Procedure 440C for additional instructions for using this Release.

WAC 173-340-440 (12) requires that any proposal to release an environmental covenant must be publicly-noticed and an opportunity provided for public comment. See Policy 440C for a checklist for insuring adequate public notice is provided.

To release an environmental covenant, the following persons must agree and sign the Release under RCW 64.70.100(1):

* 1. The Department of Ecology (Ecology).
	2. Unless waived by Ecology, the current owners of the fee simple of the real property subject to the covenant (i.e., landowner).
	3. Each person who originally signed the covenant, unless:
* The person waived their right to consent in the covenant, or
* A court finds that the person no longer exists or cannot be located or identified with the exercise of reasonable diligence.

*If you determine that a person who originally signed the Covenant no longer exists or cannot be located, contact the AGO to discuss your options.*

* 1. Holders of the covenant, other than Ecology.

*If there are additional holders of the covenant, discuss with the AGO how to best incorporate them in the Release.*

NOTE: Persons who signed a subordination agreement do not need to sign the Release. But these persons should still be notified of the Release, once it is executed (signed and recorded).

There are specific formatting requirements that apply to recorded documents. For example, there must be a three-inch margin on the top of the first page and a one-inch margin on the bottom and sides. See Chapter 65.04.045 RCW for additional format requirements.

After Recording Return

Original Signed Release to:

[Ecology Contact Name and Address]

**TERMINATION AND RELEASE OF ENVIRONMENTAL COVENANT [[1]](#footnote-1)**

**Grantor:** State of Washington, Department of Ecology

**Grantee:** [Current Landowner]

**Brief Legal Description:** [Brief Legal Description of Property]

**Cleanup Site ID:** [CSID Number]

**Facility/Site ID:** [FSID Number]

**Tax Parcel Nos.:** [Relevant Tax Parcel Numbers]

**Cross-Reference:** [Original Recording Number for Covenant]

 Pursuant to the Model Toxics Control Act (MTCA), Chapter 70.105D RCW; the Uniform Environmental Covenants Act, RCW 64.70.100; and WAC 173-340-440, the Washington State Department of Ecology (Ecology) has determined, after public notice and comment, that the Environmental Covenant (hereafter “Covenant”) filed of record in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ County under Auditor File Number \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ on **[**date of recording**]** between [Landowner(s) and Other(s)] as Grantor(s) and Ecology as Grantee or Holder of the Covenant over the property legally described [below or in Exhibit A**]** is no longer necessary under MTCA and its implementing regulations, Chapter 173-340 WAC, to protect human health and the environment and the integrity of the remedial action. Ecology hereby consents to termination and release of the Covenant and relinquishes and quitclaims to **[**Name(s) of Current Owner(s) and Other(s)**]** any and all rights it may have that were created by the Covenant.

This document is not a settlement under MTCA. Ecology’s signature below does not constitute a covenant not to sue or a compromise of Ecology’s authority or rights other than those rights created by the Covenant itself.

The legal description of the property subject to the Covenant is as follows:

**[**Insert legal description from Covenant**]**

**OR**

The legal description of the property subject to the Covenant is described in Exhibit A.

**[**Insert legal description in Exhibit A and attach**]**

 Dated this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_.

STATE OF WASHINGTON

DEPARTMENT OF ECOLOGY

\_\_\_\_\_\_\_ [Signature] \_\_\_\_\_\_\_

by:\_\_\_ [Printed name] \_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**STATE ACKNOWLEDGMENT**

STATE OF

COUNTY OF

 On this day of , 20\_\_, I certify that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ personally appeared before me, acknowledged that **he/she** is the of the state agency that executed the within and foregoing instrument, and signed said instrument by free and voluntary act and deed, for the uses and purposes therein mentioned, and on oath stated that **he/she** was authorized to execute said instrument for said corporation.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public in and for the State of Washington

Residing at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

My appointment expires \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

## CONSENT TO TERMINATION AND RELEASE OF COVENANT

**For a list of persons other than Ecology who must sign the Release, see the preface to this template. Each person who signs the Release must have a separate signature block and applicable notary acknowledgement. Repeat as many times as necessary.**

The undersigned **[**Person’s Name**]** hereby consents to the release and termination of the above-described Environmental Covenant.

\_\_\_\_\_\_\_\_\_\_\_\_ [Signature] \_\_\_\_\_\_\_\_\_\_\_

by: \_\_\_\_\_\_\_\_ [Printed name] \_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Insert one of the following, as applicable. See example format on next page:**

**INDIVIDUAL ACKNOWLEDGMENT**

**CORPORATE ACKNOWLEDGMENT**

**REPRESENTATIVE ACKNOWLEDGEMENT**

**INDIVIDUAL ACKNOWLEDGMENT**

STATE OF

COUNTY OF

 On this day of , 20\_\_, I certify that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ personally appeared before me, acknowledged that **he/she** is the individual described herein and who executed the within and foregoing instrument and signed the same at **his/her** free and voluntary act and deed for the uses and purposes therein mentioned.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public in and for the State of Washington **[[2]](#footnote-2)**

Residing at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

My appointment expires \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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**CORPORATE ACKNOWLEDGMENT**

STATE OF

COUNTY OF

 On this day of , 20\_\_, I certify that personally appeared before me, acknowledged that **he/she** is the of the corporation that executed the within and foregoing instrument, and signed said instrument by free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that **he/she** was authorized to execute said instrument for said corporation.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public in and for the State of Washington **3**

Residing at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

My appointment expires \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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**REPRESENTATIVE ACKNOWLEDGEMENT**

STATE OF

COUNTY OF

 On this day of , 20\_\_, I certify that personally appeared before me, acknowledged that **he/she** signed this instrument, on oath stated that **he/she** was authorized to execute this instrument, and acknowledged it as the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [type of authority] of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [name of party being represented] to be the free and voluntary act and deed of such party for the uses and purposes mentioned in the instrument.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public in and for the State of Washington **3**

Residing at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

My appointment expires \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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1. Use same term as used in original document: i.e. deed restriction, restrictive covenant, or environmental covenant. [↑](#footnote-ref-1)
2. Where landowner is located out of state, replace with appropriate out-of-state title and location. [↑](#footnote-ref-2)