

**STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

AGREED ORDER

**City of Yakima**

No. DE 19882

RE: Tiger Oil N 1<sup>st</sup> St Fmr 6013  
1808 N 1<sup>st</sup> St  
Yakima, WA 98902

TO: City of Yakima  
129 North 2<sup>nd</sup> Street  
Yakima, WA 98901

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Site Location Map  
Scope of Work (SOW) and Schedule

## INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology) and City of Yakima (City) 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 the City to complete an interim action for the site identified by Ecology as the Tiger Oil N 1<sup>st</sup> St Fmr 6013 (aka Tiger Oil N 1<sup>st</sup> St Site), located at 1808 N 1st St, Yakima, Washington 98902 (the Site). Ecology believes the actions required by this Order are in the public interest.

### I. JURISDICTION

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

### II. 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 this Order. The City agree to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter the City' responsibility under this Order. The City 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.

### III. DEFINITIONS

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

- A. Site: The Site is referred to as “**Tiger Oil N 1<sup>st</sup> St Fmr 6013**”. The Site constitutes a facility under RCW 70.105D.020(8). The Site is defined by where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located. Based upon factors currently known to Ecology,

the Site is generally located at 1808 N 1st St, Yakima, Washington as shown in the Site Location Map (**Exhibit A**).

B. Parties: Refers to the State of Washington, Department of Ecology and City of Yakima

C. (City): Refers to City of Yakima

D. Agreed Order or Order: Refers to this Order and each of the exhibits to this Order.

All exhibits are integral and enforceable parts of this Order.

#### **IV. FINDINGS OF FACT**

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

- A. The City owns parcel 18131244412, located at 1808 N. 1<sup>st</sup> Street. According to the Yakima County GIS system, the parcel was acquired by the City from Tiger Oil Corp-Idaho on February 21, 2014.
- B. Ecology received a notice of a release of gasoline from a leaking underground storage tank system at this property on or about September 15, 1982 and verified the release during an initial investigation and follow-up site inspections.
- C. A Site Hazard Assessment was completed by Ecology on June 30, 1991. The Site Hazard Assessment resulted in the Site being given a rank of 3, on a scale with 1, the highest, to 5, the lowest.
- D. Soil and groundwater contamination above MTCA Method A Cleanup Levels was verified during an investigation conducted in 2017. Concentrations exceeding MTCA cleanup standards pose a risk to human health and the environment.

#### **V. ECOLOGY DETERMINATIONS**

Ecology makes the following determinations, without any express or implied admissions of such determinations (and underlying facts) by the City.

- A. The City of Yakima is an “owner or operator” as defined in RCW 70.105D.020(22) of a “facility” as defined in RCW 70.105D.020(8).

B. Based upon all factors known to Ecology, a “release” or “threatened release” of “hazardous substance(s)” as defined in RCW 70.105D.020(32) and (13), respectively, has occurred at the Site.

C. Based upon evidence Ecology deems credible, Ecology issued a potentially liable person (PLP) status letter to the City dated September 16, 2014, pursuant to RCW 70.105D.040, .020(26), and WAC 173-340-500. After providing for notice and opportunity for comment, and concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that the City of Yakima is a PLP under RCW 70.105D.040 and notified the City of this determination by letter dated October 28, 2014.

D. Pursuant to RCW 70.105D.030(1) and .050(1), Ecology may require the City 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.

Under WAC 173-340-430, an interim action is a remedial action that is technically necessary to reduce a threat to human health or the environment by eliminating or substantially reducing one or more pathways for exposure to a hazardous substance, that corrects a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed, or that is needed to provide for completion of a site hazard assessment, remedial investigation/feasibility study, or design of a cleanup action plan.

Based on these circumstances, Ecology has determined that an interim action is warranted under WAC 173-340-430. Either party may propose an additional interim action under this Order. If the Parties are in agreement concerning the additional interim action, the Parties will follow the process in Section VII.D. If the Parties are not in agreement, Ecology reserves its authority to

require additional interim action(s) under a separate order or other enforcement action under RCW 70.105D, or to undertake the interim action(s) itself.

## VI. WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that the City take the following remedial actions at the Site. And that these actions must be conducted in accordance with WAC 173-340:

A. The City will complete an Interim Action to clean up onsite soil and groundwater with contaminants present at concentrations above MTCA Method A cleanup levels in accordance with the schedule and terms of the Scope of Work and Schedule, **Exhibit B**, and all other requirements of this Order. The City shall submit to Ecology written quarterly Progress Reports that describe the actions taken during the previous quarter to implement the requirements of this Order. All Progress Reports shall be submitted by the tenth (10th) day of the month in which they are due after the effective date of this Order. Unless otherwise specified by Ecology, Progress Reports and any other documents submitted pursuant to this Order shall be sent by mail and electronic mail to Ecology's project coordinator. Electronic files too large for Ecology's email system shall be burned on CDs/DVDs and mailed to Ecology. The Progress Reports shall include the following:

- a. A list of on-site activities that have taken place during the quarter;
- b. Detailed description of any deviations from required tasks not otherwise documented in project plans or amendment requests;
- c. Description of all deviations from the Scope of Work and Schedule (**Exhibit B**) during the current quarter and any planned deviations in the upcoming quarter;
- d. For any deviations in schedule, a plan for recovering lost time and maintaining compliance with the schedule;
- e. All raw data (including laboratory analyses) received by the City during the past quarter and an identification of the source of the sample; and
- f. A list of deliverables for the upcoming quarter if different from the schedule.]

B. All plans or other deliverables submitted by the City for Ecology's review and approval under the Scope of Work and Schedule (**Exhibit B**) shall, upon Ecology's approval, become integral and enforceable parts of this Order.

C. If the Parties agree on an additional interim action under Section VI.E, the City shall prepare and submit to Ecology an Additional Interim Action Work Plan, including a scope of work and schedule, by the date determined by Ecology. Ecology will provide public notice and opportunity to comment on the Additional Interim Action Work Plan in accordance with WAC 173-340-600(16). The City shall not conduct the additional interim action(s) until Ecology approves the Additional Interim Action Work Plan. Upon approval by Ecology, the Additional Interim Action Work Plan becomes an integral and enforceable part of this Order, and the City are required to conduct the additional interim action(s) in accordance with the approved Interim Action Work Plan.

D. If Ecology determines that the City have failed to make sufficient progress or failed to implement the remedial action, in whole or in part, Ecology may, after notice to the City, perform any or all portions of the remedial action or at Ecology's discretion, allow the City opportunity to correct. The City shall reimburse Ecology for the costs of doing such work in accordance with Section VIII.A (Remedial Action Costs). Ecology reserves the right to enforce requirements of this Order under Section X (Enforcement).

E. Except where necessary to abate an emergency situation, the City 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.

## **VII. TERMS AND CONDITIONS**

### **A. Payment of Remedial Action Costs**

The City 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 RCW 70.105D, 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 this Order. Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). For all Ecology costs incurred, the City shall pay the required amount within thirty (30) days of receiving from Ecology an itemized statement (issued quarterly) 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 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.

In addition to other available relief, pursuant to RCW 19.16.500, Ecology may utilize a collection agency and/or, pursuant to RCW 70.105D.055, file a lien against real property subject to the remedial actions to recover unreimbursed remedial action costs.

**B. Designated Project Coordinators**

The project coordinator for Ecology is:

Frank P. Winslow  
Toxics Cleanup Program  
Washington State Department of Ecology  
Central Regional Office  
1250 W. Alder Street  
Union Gap, WA 98903  
Tel: 509-454-7835  
Fax: 509.575.2809  
frank.winslow@ecy.wa.gov

The project coordinator for the City is:

Bill Preston  
City Engineer  
129 N. 2<sup>nd</sup> Street  
Yakima, WA 98901  
Tel: 509-576-6754  
bill.preston@yakimawa.gov

Each project coordinator shall be responsible for overseeing the implementation of this Order. Ecology's project coordinator will be Ecology's designated representative for the Site. To the maximum extent possible, communications between Ecology and the City, 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 coordinators.

The project coordinators may designate, in writing, working level staff contacts for all or portions of the implementation of the work to be performed required by this Order.

Any party may change its respective project coordinator. Written notification shall be given to the other party at least ten (10) calendar days prior to the change.

**C. Performance**

All geologic and hydrogeologic work performed pursuant to this Order shall be under the supervision and direction of a geologist or hydrogeologist licensed by the State of Washington or under the direct supervision of an engineer registered by the State of Washington, except as otherwise provided for by RCW 18.43 and 18.220.

All engineering work performed pursuant to this Order shall be under the direct supervision of a professional engineer registered by the State of Washington, except as otherwise provided for by RCW 18.43.130.

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

Any documents submitted containing geologic, hydrogeologic, or engineering work shall be under the seal of an appropriately licensed professional as required by RCW 18.43 and 18.220.



The City shall notify Ecology in writing of the identity of any engineer(s) and geologist(s), contractor(s) and subcontractor(s), and others to be used in carrying out the terms of this Order, in advance of their involvement at the Site.

**D. Access**

Ecology or any Ecology authorized representative shall have access to enter and freely move about all property at the Site that the City either own, control, or have access rights to 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 City's progress in carrying out the terms of this Order; conducting such tests or collecting such samples as Ecology 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 the City. The City shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by the City where remedial activities or investigations will be performed pursuant to this Order. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Site property owned or controlled by the City unless an emergency prevents such notice. The City may provide an escort to accompany Ecology or any Ecology authorized representative. All persons who access the Site pursuant to this section shall comply with any applicable health and safety plan(s). Ecology employees and their representatives shall not be required to sign any liability release or waiver as a condition of Site property access.

**E. Sampling, Data Submittal, and Availability**

With respect to the implementation of this Order, the City 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 (Data Submittal Requirements), and/or any subsequent procedures specified by Ecology for data submittal.

If requested by Ecology, the City shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by the City pursuant to implementation of this Order. The City shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow The City and/or its authorized representative to take split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Order, provided that doing so does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section VIII.D (Access), Ecology shall notify the City 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 WAC 173-50 for the specific analyses to be conducted, unless otherwise approved by Ecology.

**F. Public Participation**

CW 70.105D.030(2)(a) requires that, at a minimum, this Order be subject to concurrent public notice. Ecology shall be responsible for providing this 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 this Order is inadequate or improper in any respect.

Ecology shall maintain the responsibility for public participation at the Site. However, the City shall cooperate with Ecology, and shall:

1. If agreed to by Ecology, develop appropriate mailing lists and prepare drafts of public notices and fact sheets at important stages of the remedial action, such as the submission of work plans, remedial investigation/feasibility study reports, cleanup action plans, and engineering design reports. As appropriate, Ecology will edit, finalize, and distribute such fact sheets and prepare and distribute public notices of Ecology's presentations and meetings.
2. Notify Ecology's project coordinator prior to the preparation of all press releases and fact sheets, and before meetings related to remedial action work to be performed at the Site with the interested public and/or local governments. Likewise,

Ecology shall notify the City prior to the issuance of all press releases and fact sheets related to the Site, and before meetings related to the Site with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by the City that do not receive prior Ecology approval, the City shall clearly indicate to its audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology.

3. When requested by Ecology, participate in public presentations on the progress of the remedial action at the Site. Participation may be through attendance at public meetings to assist in answering questions or as a presenter.

4. When requested by Ecology, arrange and/or continue information repositories to be located at the following locations:

- a. **Yakima Public Library**  
**102 North 3<sup>rd</sup> Street,**  
**Yakima, WA 98901**
- b. **Department of Ecology**  
**Central Regional Office**  
**1250 W. Alder St**  
**Union Gap, WA 98903**

At a minimum, copies of all public notices, fact sheets, and documents relating to public comment periods shall be promptly placed in these repositories. A copy of all documents related to this Site shall be maintained in the repository at Ecology's Central Regional Office in Union Gap Washington.

#### **G. 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, the City 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, the City shall make all records available to Ecology and allow access for review within a reasonable time.

Nothing in this Order is intended to waive any right the City may have under applicable law to limit disclosure of documents protected by the attorney work-product privilege and/or the attorney-client privilege. If the City withhold any requested records based on an assertion of privilege, the City shall provide Ecology with a privilege log specifying the records withheld and the applicable privilege. No Site-related data collected pursuant to this Order shall be considered privileged.

#### **H. Resolution of Disputes**

1. In the event that the City elect to invoke dispute resolution the City must utilize the procedure set forth below.

a. Upon the triggering event (receipt of Ecology's project coordinator's written decision or an itemized billing statement), the City have fourteen (14) calendar days within which to notify Ecology's project coordinator in writing of its dispute (Informal Dispute Notice).

b. The Parties' project coordinators shall then confer in an effort to resolve the dispute informally. The parties shall informally confer for up to fourteen (14) calendar days from receipt of the Informal Dispute Notice. If the project coordinators cannot resolve the dispute within those 14 calendar days, then within seven (7) calendar days Ecology's project coordinator shall issue a written decision (Informal Dispute Decision) stating: the nature of the dispute; the City' position with regards to the dispute; Ecology's position with regards to the dispute; and the extent of resolution reached by informal discussion.

c. The City may then request regional management review of the dispute. This request (Formal Dispute Notice) must be submitted in writing to the [region] Region Toxics Cleanup Section Manager within seven (7) calendar days of receipt of Ecology's Informal Dispute Decision. The Formal Dispute Notice shall include a written statement of dispute setting forth: the nature of the dispute; the disputing Party's position with respect to the dispute; and the information relied upon to support its position.

d. The Section Manager shall conduct a review of the dispute and shall issue a written decision regarding the dispute (Decision on Dispute) within thirty (30) calendar days of receipt of the Formal Dispute Notice. The Decision on Dispute 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.

4. In case of a dispute, failure to either proceed with the work required by this Order or timely invoke dispute resolution may result in Ecology's determination that insufficient progress is being made in preparation of a deliverable, and may result in Ecology undertaking the work under Section VII.E (Work to be Performed) or initiating enforcement under Section X (Enforcement).

#### **I. Extension of Schedule**

1. The City request for 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:

- 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 the City 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 may include, but may not be limited to:

- a. Circumstances beyond the reasonable control and despite the due diligence of the City 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 the City;
- b. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty; or
- c. Endangerment as described in Section VIII.K (Endangerment).

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 the City.

3. Ecology shall act upon any City' written request for extension in a timely fashion. Ecology shall give the City written notification of any extensions granted pursuant to this 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.J (Amendment of Order) when a schedule extension is granted.

4. At the City' request, 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.K (Endangerment).

**J. 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.L (Reservation of Rights), 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 the City. Ecology will provide its written consent to a formal amendment only after public notice and opportunity to comment on the formal amendment.

When requesting a change to the Order, the City shall submit a written request to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a timely manner after the written request is received. If Ecology determines that the change is substantial, then the Order must be formally amended. Reasons for the disapproval of a proposed change to this Order shall be stated in writing. If Ecology does not agree to a proposed change, the disagreement may be addressed through the dispute resolution procedures described in Section VIII.H (Resolution of Disputes).

**K. Endangerment**

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

In the event the City determines that any activity being performed at the Site under this Order is creating or has the potential to create a danger to human health or the environment, The City may cease such activities. The City 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, the City shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with the City's cessation of activities, it may direct the City to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to this section, the City'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 in accordance with Section VIII.I

(Extension of Schedule) 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.

**L. Reservation of Rights**

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

Ecology nevertheless reserves its rights under RCW 70.105D, including the right to require additional or different remedial actions at the Site should it deem such actions necessary to protect human health or 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.

By entering into this Order, the City does not admit to any liability for the Site. Although the City are committing to conducting the work required by this Order under the terms of this Order, the City expressly reserve all rights available under law, including but not limited to the right to seek cost recovery or contribution against third parties, and the right to assert any defenses to liability in the event of enforcement.

**M. Transfer of Interest in Property**

No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by the City 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 the City transfer of any interest in all or any portion of the Site, and during the effective period of this Order, the City shall provide a copy of this Order to any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least thirty (30) days prior to any transfer, the City shall notify Ecology of said transfer. Upon transfer of any interest, the City shall notify all transferees of the restrictions on the activities and uses of the property under this Order and incorporate any such use restrictions into the transfer documents.

**N. Compliance with Applicable Laws**

1. All actions carried out by the City pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits or approvals, except as provided in RCW 70.105D.090. At this time, no federal, state, or local requirements have been identified as being applicable to the actions required by this Order. The City have a continuing obligation to identify additional applicable federal, state, and local requirements which apply to actions carried out pursuant to this Order, and to comply with those requirements. As additional federal, state, and local requirements are identified by Ecology or the City, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order, and the City must implement those requirements.

2. All actions carried out by the City pursuant to this Order shall be done in accordance with relevant and appropriate requirements identified by Ecology. At this time, no relevant and appropriate requirements have been identified as being applicable to the actions required by this Order. If additional relevant and appropriate requirements are identified by Ecology or the City, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order and the City must implement those requirements.

3. Pursuant to RCW 70.105D.090(1), the City may be exempt from the procedural requirements of RCW 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 and of any laws requiring or authorizing local government permits or approvals. However, the City shall comply with the substantive requirements of such permits or approvals. For permits and approvals covered under RCW 70.105D.090(1) that have been issued by local government, the Parties agree that Ecology

has the non-exclusive ability under this Order to enforce those local government permits and/or approvals. At this time, no state or local permits or approvals have been identified as being applicable but procedurally exempt under this section.

4. The City have 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 the City determine 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 the City shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, the City 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 the City and on how the City must meet those requirements. Ecology shall inform the City in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. The City shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

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 that is necessary for the state to administer any federal law, the exemption shall not apply and the City 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 or approvals.

**O. Indemnification**

The City agree to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action (1) for death or injuries to persons, or (2) for loss or damage to property, to the extent arising from or on account of acts or omissions of

the City, its officers, employees, agents, or contractors in entering into and implementing this Order. However, the City shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action to the extent arising out of the negligent acts or omissions of the State of Washington, or the employees or agents of the State, in entering into or implementing this Order.

#### **VIII. SATISFACTION OF ORDER**

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

#### **IX. ENFORCEMENT**

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. A liable party who refuses, without sufficient cause, to comply with any term of this Order will be liable for:

1. Up to three (3) times the amount of any costs incurred by the State of Washington as a result of its refusal to comply.

2. Civil penalties of up to twenty-five thousand dollars (\$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.

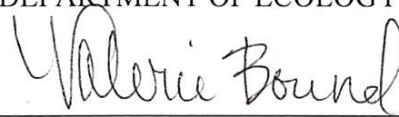
Effective date of this Order: ~~March 18, 2021~~ **May 11, 2021**

CITY OF YAKIMA



BOB HARRISON  
City Manager  
City of Yakima  
129 N 2<sup>nd</sup> Street  
Yakima, WA 98901  
(509) 575-6040

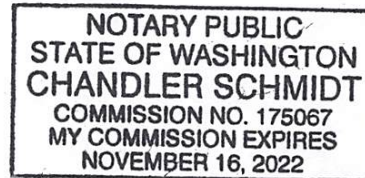
STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY



VALERIE BOUND  
Section Manager

Toxics Cleanup Program  
Central Regional Office  
1250 W. Alder Street  
Union Gap, WA 98903  
(509) 454-7886

CITY CONTRACT NO: 2021-041  
RESOLUTION NO: R-2021-039



NOTARY PUBLIC  
STATE OF WASHINGTON  
CHANDLER SCHMIDT  
COMMISSION NO. 175087  
MY COMMISSION EXPIRES  
NOVEMBER 16, 2025

11/16/25

# EXHIBIT A – SITE LOCATION MAP



\*Note: The Site is generally located at 1808 N 1<sup>st</sup> Street in Yakima, and is defined by the extent of soil and groundwater contamination, not property boundaries. The arrow shown is for general location purposes only.

Aerial Map Source: GeoEngineers 2017.

# **EXHIBIT B –SCOPE OF WORK (SOW) AND SCHEDULE**

## **SCOPE OF WORK**

### **PURPOSE**

The work required under this Agreed Order (AO) is to address remaining gasoline-related contamination in soil and groundwater at 1808 N 1<sup>st</sup> Street. A release of gasoline from an underground storage tank (UST) system was first identified in 1982. Since that time, various investigations and remedial actions have taken place including pumping to remove free product in 1982 and 1983. An assessment of the extent of groundwater contamination was performed by the U.S. Geological Survey (U.S.G.S.) in 1991. The USTs were removed in 2005. The extent of soil and groundwater contamination was reassessed in 2017. The 2017 study showed that while soil and groundwater contamination concentrations remain above MTCA Method A cleanup levels, the extent of contamination is much smaller than the extent of contamination delineated in 1991.

Gasoline contamination in the subsurface tends to naturally degrade provided electron acceptors (e.g. oxygen) are present to support natural biodegradation. The reduction in the extent of contamination between 1991 and 2017 is believed to be due to natural attenuation. The 2017 investigations demonstrated that the groundwater system is aerobic at a distance from the area of contamination. Gasoline in the subsurface typically degrades in the presence of free oxygen. In the core area of the remaining contamination, free oxygen has been depleted and the groundwater system is anaerobic. Therefore, the proposed interim action involves the injection of oxygen, an oxidizing agent, or air into the subsurface to allow the remaining gasoline in soil and groundwater to degrade.

The property is under a Lease-to-Own agreement between the City and a Lessee. The work described herein will be done on behalf of the City, but will need to be done in consultation with the Lessee. This includes coordinating locations and periods of work with the Lessee to minimize adverse impacts to the Lessee's operations.

Three tasks have been developed under this Agreed Order Scope of Work:

- Task 1 – UST & Contaminated Soil Removals
- Task 2 – Monitoring Well Replacements
- Task 3 – Interim Action

Cleanup at the Site under this Agreed Order is proposed as an Interim Action. An Interim Action is a cleanup action under the Model Toxics Control Act (MTCA) that can be performed at any time, and potentially result in a final cleanup action. This would eliminate the need for preparation a Feasibility Study (FS) and Corrective Action Plan (CAP). An Interim Action will allow the City to address remaining contamination at the Site with the

goal of achieving MTCA cleanup levels to allow for a No Further Action (NFA) determination.

### **Task 1 – UST & Contaminated Soil Removals**

Two underground storage tanks (USTs) were found during site preparation work; a waste oil UST and a heating oil UST. Four fueling USTs had previously been removed in 2005. The two USTs were removed on October 14, 2019 and soil samples were collected from the floor and sidewalls of the excavations. Heavy oil was found above cleanup levels in one soil sample collected adjacent to the waste oil tank, and diesel was found above cleanup levels in one soil sample collected adjacent to the heating oil tank. The contaminated soil will need to be excavated and properly disposed of prior to Ecology issuing a No Further Action (NFA) determination for the site. Previously incurred work for the UST removals and contaminated soil excavation and offsite disposal in 2019 shall be considered part of this task.

### **Task 2 – Monitoring Well Replacements**

Subsequent to the Remedial Investigation Report dated May 22, 2017, several monitoring wells were apparently destroyed. In order to perform the Interim Action and associated monitoring under Task 3, several monitoring wells need to be replaced. Ecology will determine the number, locations, and completions of the replacement monitoring wells, in consultation with the property Lessee. Consistent with the existing monitoring wells, the replacement monitoring wells shall be constructed with 2-inch PVC well pipe and screen, with 0.010 slot screens from 10 to 20 feet below ground surface (ft bgs). The monitoring wells shall be completed with flush-mount vaults and locking well caps.

All wastes, including drill cuttings and well development water, shall be properly disposed of. The wells will be installed by licensed well driller, and the wells registered with Ecology.

### **Task 3 – Groundwater Interim Action**

#### **Interim Action Approach**

Oxygen, oxidizing agent, or air will be delivered to the subsurface through the installation of temporary injection points. The injection points will be spaced approximately 20 feet apart. A total of 24 injection points are anticipated.

The injection points are anticipated to be installed via direct push (e.g. Geoprobe) methods. A high hammer weight direct push rig (Geoprobe Model 3230 or equivalent) will be needed. A well construction variance potentially could be needed to comply with WAC-173-160. If needed, Ecology Toxics Cleanup Program (TCP) will support a variance application with Ecology Water Resources Program. The following discussion regards the anticipated construction methods for the injection points.



## Exhibit B Scope of Work and Schedule

The probe rod will be driven until refusal is reached or a total depth of 20 ft bgs, whichever is shallower. Nominal 1-inch diameter, Schedule 40 well screen and blank pipe will be lowered within the probe rod to the bottom of the road. The bottom of the well point will consist of one foot length of 0.010 inch slotted PVC with end cap. The well slotted interval will be placed a minimum of three feet below the seasonal low water level, estimated to be 14 ft bgs.

After the PVC well point has been lowered inside the probe rod, the rod will be retracted, allowing the disposable probe tip to fall out of the probe rod, leaving the PVC pipe in place. The probe rods will then be removed from the ground, and the upper one to two feet of the PVC pipe annular space sealed with hydrated granular bentonite. A 3-inch to 5-inch diameter temporary vault will be installed to protect the tubing at the surface.

After all of the injection points have been installed, pressurized oxygen tanks will be acquired, and affixed to the PVC well point using an adaptor and polyethylene tubing along with a pressure gauge. The oxygen will be discharged into the well point at a low rate until either the targeted pressure/volume is reached or the tank is empty. The oxygen will bubble up through the groundwater adjacent to the injection point and either dissolve within the groundwater or migrate upward until it reaches the unsaturated zone, where it will disperse and diffuse radially. The portion of the oxygen that dissolves will disperse laterally within the groundwater, enhancing biodegradation. The portion that reaches the vadose zone is anticipated to enhance biodegradation of vadose zone contamination, as well as at the water table interface.

The rate of injection should be designed to optimize oxygen delivery to the saturate zone (a low flow rate). The added oxygen is expected to significantly accelerate the rate of biodegradation of the remaining gasoline, both within the saturated zone as dissolved phase or adsorbed phase contamination, and within the vadose zone.

There is some uncertainty regarding whether or not the initial injection will result in achievement of targeted cleanup levels. If the injected oxygen does not result in achieving targeted cleanup levels within the desired time span, then additional injection of either oxygen, an oxidizing agent, or air will follow. The steps of the remedial approach and schedule constraints are summarized in Table 1.

**Table 1: Remedial Approach Steps**

<b>Step</b>	<b>Activity</b>	<b>Schedule</b>
Step 1	Install and develop additional monitoring wells for performance and compliance monitoring.	Within 90 calendar days following the effective date of the Agreed Order.
Step 2	Sample all monitoring wells to characterize baseline conditions.	Within one month of completion of Step 1.
Step 3	Install approximately 24 injection points.	Within one month of completion of Step 2.

Exhibit B Scope of Work and Schedule

Step 4	Injection of oxygen into injection points.	Within one week of completion of Step 3.
Step 5	Monitor groundwater quality, quarterly for two quarters.	Starting approximately two months after Step 4.
Step 6*	Assess groundwater conditions. If additional treatment needed, return to Step 4. If not needed, proceed to Step 7.	Immediately following completion of Step 5.
Step 7*	Complete additional two quarters of quarterly groundwater monitoring in case or rebound. If rebound concern, return to Step 4. If no rebound concern, proceed to Step 8.	Following completion of Step 6.
Step 8	Prepare Interim Action Completion Report.	Following completion of Step 7.

\*Note that Steps 6 and 7 will include decisions by Ecology as to whether or not additional oxygen injection or monitoring is needed. Ecology may identify specific injection points to target for additional oxygen injection, based on groundwater sampling results. A minimum of six quarterly monitoring rounds are anticipated prior to proceeding to Step 8.

The City shall coordinate with Ecology throughout the development of the Interim Action and shall keep Ecology informed of changes to any Work Plan or other project plans, and of any issues or problems as they develop.

Task 3 is divided into four subtasks as follows:

- Task 3a. Interim Action Work Preparation
- Task 3b. Interim Action Field Execution
- Task 3c. Interim Action Contingency Work
- Task 3d. Interim Action Report

**TASK 3a. INTERIM ACTION WORK PREPARATION**

During Task1, the City’s consultant shall make preparations including:

- Submittal of a variance application to Ecology, Water Resources Program, for proposed injection point design.
- Prepare and engineering cost estimate for the project. This estimate include options for contingency injection rounds.
- Identification and contracting of drilling and probing subcontractor(s).
- Identification and contracting of analytical laboratory subcontractor.
- Identification and contracting of licensed surveyor.

## Exhibit B Scope of Work and Schedule

- Sourcing and rental of oxygen tanks, appurtenances, and suitable storage for the tanks during the course of the interim action.
- Submittal of proposed locations and construction of performance/compliance monitoring wells to Ecology for approval.
- Preparation of detailed map of proposed injection locations for approval by Ecology.
- Submittal to Ecology of calculated oxygen injection amounts, including estimated volume, pressure, and radius of influence.
- Preparation a Health & Safety Plan for all Interim Action activities.
- Coordination with the lessor of the property at 1808 N 1st Street and owner of the property at 1904 N 1st Street, and preparation and negotiation of access agreements on behalf of the City.
- Satisfying all requirements of Ecology's Underground Injection Control (UIC) program.

### **TASK 3b. INTERIM ACTION FIELD EXECUTION**

After completion of the preparation activities detailed under Task 1, Steps 1 through 8 shall be executed. Specifications for these steps are included as follows:

- All purge and development water and investigation-derived wastes to be appropriately disposed of.
- Monitoring wells shall be completed with a permanent water-tight flush mount vault, including locking j-plug.
- Monitoring well top of casing elevation and horizontal coordinates to be surveyed by a licensed surveyor to a minimum accuracy of 0.01 feet and 0.1 feet, respectively.
- All monitoring well sampling to follow low flow purge methods using a flow-through cell and including monitoring of pH, temperature, conductivity, turbidity, dissolved oxygen (DO), and oxidation-reduction potential (ORP).
- All laboratory analysis of groundwater samples to include gasoline range organics (NWTPH-Gx), diesel and heavy oil range organics (NWTPH-Dx with no silica gel cleanup), and benzene, toluene, ethylbenzene, and xylenes (BTEX, by EPA Method 8260C).
- Injection points shall be completed with a water-tight flush mount vault, 3-inches in diameter. At the end of the project, these injection points shall be plugged and abandoned by a licensed well driller.

The City's consultant shall provide interim data reports and updates to Ecology as new site data and information become available. Laboratory analysis data shall also be provided in

## Exhibit B Scope of Work and Schedule

electronic format when it has been validated. Raw laboratory data will be provided to Ecology upon request.

### **TASK 3c. INTERIM ACTION CONTINGENCY WORK**

The need for additional oxygen or oxidizing agent injection and/or monitoring will be at the sole discretion of Ecology. The City's consultant shall be prepared to perform additional injection rounds within two weeks of Ecology's decision. Contingency injection of oxidizing agent should be included in the initial underground injection control notification under Task 1 in order to not delay implementation of this contingency option. In addition to contingency injection, contingency rehabilitation of the injection points could be needed in case rapid biofouling is encountered.

### **TASK 3d. INTERIM ACTION REPORT**

The Interim Action Completion Report shall be prepared by the City's consultant after groundwater monitoring has been completed to Ecology's satisfaction. This report shall include:

- Laboratory analytical reports.
- Tables presenting analytical data.
- Evaluation and discussion data quality.
- Drilling logs and monitoring well completion diagrams for new monitoring wells.
- Site plan showing all injection and monitoring locations.
- Table detailing oxygen injection periods, amounts injected by injection point, and slotted interval depths for injection points.
- Time trend plots for key contaminants in groundwater and showing injection events.
- Groundwater monitoring purge field forms.
- Table summary of final field parameter measurements, for each monitoring round.
- Brief discussion of Interim Action methods and results.
- Water level measurement data table, and potentiometric surface map for each monitoring round.

The City's consultant shall compile the above information into an Interim Action Completion Report. Two hard copies and one electronic copy in Adobe (.pdf) format, to Ecology for review and comment.

## SCHEDULE OF DELIVERABLES

The schedule for deliverables described in the Agreed Order and the Scope of Work is presented below in Table 2. If the date for submission of any item or notification required by this Schedule of Deliverables occurs on a weekend, state or federal holiday, the date for submission of that item or notification is extended to the next business day following the weekend or holiday. Where a deliverable due date is triggered by Ecology notification, comments or approval, the starting date for the period shown is the date the City received such notification, comments or approval by certified mail, return receipt requested, unless otherwise noted below. Where triggered by Ecology receipt of a deliverable, the starting date for the period shown is the date Ecology receives the deliverable by certified mail, return receipt requested, or the date of Ecology signature on a hand-delivery form.

**Table 2: Schedule of Deliverables**

<b>Task</b>	<b>Responsible Party</b>	<b>Deliverable description</b>	<b>Completion Times</b>
	City	Selection and contracting with City’s Consultant complete.	Within 30 calendar days following the effective date of the Agreed Order
1 – Contaminated Soil Removal	City (work can be done by City’s or Lessee’s Consultant)	UST closure report.	To Be Determined (prior to Ecology issuing a NFA for the site)
	Ecology	Comments on or approval of submittal.	Within 20 days after report receipt
2 – Replacement Monitoring Wells	City’s Consultant	Replacement monitoring well completion diagrams and registration forms.	Within 60 calendar days following the effective date of the Agreed Order
3a – Interim Action Preparation	City’s Consultant	Project cost estimate, proposed monitoring and injection well locations and construction, and injection.	Within 60 calendar days following the effective date of the Agreed Order
	Ecology	Comments on or approval of submittal.	Within 14 calendar days of submittal receipt.

Exhibit B Scope of Work and Schedule

<b>Task</b>	<b>Responsible Party</b>	<b>Deliverable description</b>	<b>Completion Times</b>
3b – Interim Action Field Execution	City’s Consultant	Beginning of interim action field work	Within 90 calendar days following the effective date of the Agreed Order
	City’s Consultant	Completion of interim action field work	Depends on Ecology decisions regarding injection and monitoring. Minimum of 6 quarters of groundwater monitoring following injection.
3c – Interim Action Contingency Work	City’s Consultant	Completion of interim action contingency field work	Depends on Ecology decisions regarding potential additional injection and monitoring.
3d – Interim Action Completion Report	City’s Consultant	Submittal of Report to Ecology.	Within 60 calendar days following completion of Interim Actions
	Ecology	Ecology comments on draft report to City.	Within 30 calendar days following receipt of draft document
	City’s Consultant	Revised report Ecology <sup>1</sup>	Within 30 calendar days of receipt of Ecology comments

1 – Ecology reserves the right, at the sole discretion of Ecology, to require one additional comment and document revision round, if needed. All Ecology comments must be addressed to Ecology’s satisfaction prior to document finalization.