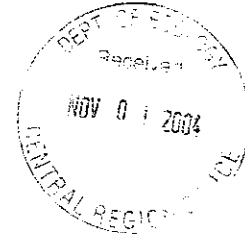


1 The Honorable Christine A. Pomeroy

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3 OCT 29 2004



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7 STATE OF WASHINGTON  
THURSTON COUNTY SUPERIOR COURT

8 STATE OF WASHINGTON,  
9 DEPARTMENT OF ECOLOGY,

NO. 02-2-00956-2

10 Plaintiff,

CONSENT DECREE BETWEEN  
ECOLOGY, TIGER OIL  
CORPORATION, AND FEDERATED  
SERVICE INSURANCE COMPANY

11 v.

*Ecology Docket # 1766*

12 TIGER OIL CORPORATION; TIGER  
13 OIL COMPANY; FEDERATED  
SERVICE INSURANCE COMPANY;  
14 MERCY DEVELOPMENT  
COMPANY; and M&E COMPANY,

15 Defendants.

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## I. INTRODUCTION

A. In entering into this Consent Decree (Decree), the mutual objective of the Washington State Department of Ecology (Ecology), Tiger Oil Corporation ("New Tiger") and Federated Service Insurance Company (Federated) is to provide for remedial action and financial assurance at a facility where there has been a release of hazardous substances, and to resolve pending litigation by entry of this Decree. This Decree requires New Tiger to undertake the remedial action detailed in the Cleanup Action Plan attached as Exhibit B, in accordance with the terms and conditions of this Decree. Ecology maintains that these actions are necessary to protect human health and the environment under the Model Toxics Control Act, chapter RCW 70.105D. This Decree requires Federated to take certain actions only in connection with the financial assurances that are provided for performance of the above obligations of New Tiger under this Decree.

B. This Decree shall resolve all claims of Ecology against New Tiger and all claims of New Tiger against Ecology concerning the facility at 24<sup>th</sup> and West Nob in Yakima Washington, which was the subject of Ecology's Complaint and New Tiger's Answer, Defenses and Counter-Claims, and the subject of litigation up to the point of agreement to

1 entry of this Decree. The Parties agree that ending litigation at this time is reasonable and in  
2 the public interest, and that entry of this Decree is the most appropriate means of resolving  
3 these matters. The Decree also resolves all claims of Ecology against Federated concerning  
4 the facility at 24<sup>th</sup> and West Nob in Yakima, Washington, which was the subject of Ecology's  
5 Complaint, and who was dismissed without prejudice. Federated contends that it is not liable,  
6 no rulings have addressed Federated's liability, and without admitting liability, this Decree  
7 shall settle any claims Federated might have against Ecology arising from or in connection  
8 with the facility.

9 C. In signing and proposing this Decree, the Parties have chosen to agree to its  
10 entry, and not to appeal this Decree. The Parties have agreed to be bound by the terms and  
11 conditions of this Decree.

12 D. By entering into this Decree, the Parties do not intend to discharge non-settling  
13 Parties from any liability they may have with respect to matters alleged in the Complaint. The  
14 Parties retain the right to seek reimbursement, in whole or in part, from any liable persons for  
15 sums expended under this Decree to the extent allowed by law.

16 E. This Decree shall not be construed as proof of liability or responsibility for any  
17 releases of hazardous substances or costs for remedial action or as an admission of any facts.  
18 Nor shall entry of this Decree be construed to waive or to prejudice Ecology from making any  
19 arguments, claims, or defenses that Ecology may have based on all matters leading up to this  
20 Decree. Provided, however, New Tiger and Federated shall not challenge the jurisdiction or  
21 authority of the Attorney General and Ecology to enforce this Decree, and the Parties shall not  
22 collaterally attack this Decree or challenge any party's right to enforce rights under this  
23 Decree.

24 F. The Court is fully advised of the reasons for entry of this Decree, and good  
25 cause having been shown:

26 Now, therefore, it is HEREBY ORDERED, ADJUDGED, AND DECREED as follows:



1 bind such party to comply with the Decree. New Tiger agrees to undertake all actions required  
2 by the terms and conditions of this Decree. Federated agrees to undertake the actions specified  
3 in Section XXI. No change in ownership or corporate status shall alter New Tiger's or  
4 Federated's responsibilities under this Decree as ascribed to each under the specific terms of  
5 the Decree. New Tiger shall provide a copy of this Decree to all agents, contractors, and  
6 subcontractors retained to perform the work required by this Decree, and shall ensure that all  
7 work undertaken by such agents, contractors, and subcontractors complies with this Decree.

#### 8 IV. DEFINITIONS

9 Except as specified herein, all definitions in RCW 70.105D.020 and WAC 173-340-200  
10 apply to the terms in this Decree.

11 A. Site: The Site, referred to as the Tiger Mart Site, is generally located at 24<sup>th</sup> and  
12 West Nob in Yakima, WA. The Site is more particularly described in Exhibits A and B to this  
13 Decree, which includes a detailed Site diagram. The Site constitutes a Facility under RCW  
14 70.105D.020(4). Although there is acknowledgement that a Trust, referenced in Section XXI,  
15 which is the financial assurance, may be used for the benefit of New Tiger at 1606 E. Nob and  
16 1808 N. 1<sup>st</sup>, Yakima, WA, this Decree does not control activities at 1606 E. Nob and 1808 N.  
17 1<sup>st</sup>, Yakima, WA and is not intended to be a MTCA consent decree in connection with 1606 E.  
18 Nob and 1808 N. 1<sup>st</sup>, Yakima, WA.

19 B. Parties: Refers to the Washington State Department of Ecology ("Ecology"),  
20 Tiger Oil Corporation ("New Tiger"), and Federated Service Insurance Company  
21 ("Federated").

22 C. Federated and New Tiger Not Jointly Liable: The obligations of New Tiger and  
23 Federated are different under this Decree and shall not be construed as joint obligations, except  
24 where necessary to implement the financial assurance requirements.

1 D. Consent Decree or Decree: Refers to this Consent Decree and each of the  
2 exhibits to the Decree. All exhibits are integral and enforceable parts of this Consent Decree.  
3 The terms "Consent Decree" or "Decree" shall include all exhibits to the Consent Decree.

#### 4 V. STATEMENT OF FACTS

5 1. New Tiger is the owner of a portion of the Site. Between October, 1987 and 2001,  
6 the property owned by New Tiger was an Exxon Service Station and convenience store known as  
7 "Tiger Mart." New Tiger ceased operations in 2001. New Tiger's property was previously owned  
8 by Tiger Oil Company. New Tiger purchased the property on or about October 1987.

9 2. Prior to purchase by New Tiger, there was a release of fuel from the pipes and  
10 lines connected to the underground fuel storage tanks. MTCA defines this released fuel as a  
11 hazardous substance. The Parties agree that prior estimates of the amount of fuel released  
12 concluded that approximately 20,000 gallons was released in 1982, when the property was  
13 owned by Tiger Oil Company. Initial remediation and recovery occurred at the Site between  
14 1982 and 1985. Beginning in 1990, various MTCA investigatory and remedial actions have  
15 occurred at the Site up to this time. Federated was involved as the insurer of the prior owner,  
16 Tiger Oil Company, and Federated has funded various activities at this site.

17 3. There are hazardous substances in the soil and groundwater at the Site,  
18 notwithstanding prior cleanup and remedial efforts at the Site.

19 4. This recitation is not intended to be a complete description of all material facts  
20 connected with this Site, but merely identifies the general basis for the involvement of New  
21 Tiger and Federated in this Consent Decree.

#### 22 VI. WORK TO BE PERFORMED

23 This Decree describes the program designed to protect human health and the  
24 environment from the known release of hazardous substances or contaminants at, on, or from  
25 the Site.

1           1.     New Tiger shall perform the work and actions detailed in the Cleanup Action  
2 Plan attached as Exhibit B according to the terms and conditions of this Decree, and as  
3 scheduled by Exhibit C. New Tiger shall also record the restrictive covenant required by this  
4 Decree.

5           2.     New Tiger agrees not to perform any remedial actions outside the scope of this  
6 Decree unless the Parties agree to modify the Scope of Work to cover these actions. All work  
7 conducted by New Tiger under this Decree shall be done in accordance with Chapter 173-340  
8 WAC unless otherwise provided herein or agreed upon by New Tiger and Ecology.

9           3.     This Decree is a settlement entered into pursuant to RCW 70.105D.040(4). A  
10 party who has resolved its liability to the state under RCW 70.105D.040(4) shall not be liable  
11 for claims for contribution regarding matters addressed in the settlement. For the purpose of  
12 this Decree, "matters addressed in the settlement" ("Addressed Matters") include (a) all  
13 investigation, assessment and remediation of releases of hazardous substances at the Site, and  
14 in determining the vertical and horizontal extent of all contamination at the Site, (b) all  
15 remedial action costs and all natural resource damages (if any) resulting from such releases of  
16 hazardous substances at the Site, and in determining the vertical and horizontal extent of all  
17 contamination at the Site, (c) all claims, costs and obligations arising under any of Ecology's  
18 Enforcement Orders, the Complaint or this Decree, (d) any claim by Ecology for treble  
19 damages or civil penalties for any alleged past violations of Ecology orders or MTCA.

20           4.     New Tiger and Federated shall not be liable to the State of Washington for the  
21 state's costs associated with or arising from Addressed Matters, including, without limitation,  
22 all Ecology's costs, direct or indirect, associated with work performed by Ecology or its  
23 contractors for investigations, remedial actions, Decree preparation, negotiation, oversight, and  
24 administration and all attorneys' fees incurred by the State in any manner, except as provided  
25 by this Decree.  
26

1 **VII. DESIGNATED PROJECT COORDINATORS**

2 The project coordinator for Ecology is:

3 Rachel Caron  
4 Washington State Department of Ecology  
5 Central Regional Office  
6 15 West Yakima Avenue, Suite 200  
7 Yakima, WA 98902-3452  
8 Phone: (509) 575-2490  
9 Fax: (509) 575-2809

10 The project coordinator for New Tiger is:

11 Chris Generous  
12 Tetra Tech FW, Inc.  
13 North Creek Place 1  
14 12100 NE 195<sup>th</sup> Street, Suite 200  
15 Bothell, WA 98011  
16 Phone: (425) 482-7600  
17 Fax: (425) 482-7652

18 Each project coordinator shall be responsible for overseeing the implementation of this  
19 Decree. The Ecology project coordinator will be Ecology's designated representative for the  
20 Site. To the maximum extent possible, communications between Ecology and New Tiger and  
21 all documents, including reports, approvals, and other correspondence concerning the activities  
22 performed pursuant to the terms and conditions of this Decree shall be directed through the  
23 project coordinators. The project coordinators may designate, in writing, working level staff  
24 contacts for all or portions of the implementation of the remedial work required by this Decree.  
25 The project coordinators may agree to minor changes to the work to be performed without  
26 formal amendments to this Decree. Minor changes will be documented in writing by Ecology.  
Substantial changes shall require amendment of this Decree.

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



1 **VIII. PERFORMANCE**

2 All work performed pursuant to this Decree shall be under the direction and  
3 supervision, as necessary, of a licensed professional engineer or licensed hydrogeologist, or  
4 equivalent, with experience and expertise in hazardous waste site investigation and cleanup.

5 New Tiger shall notify Ecology in writing of the identity of such engineer(s) or  
6 hydrogeologist(s), or others, and of any contractors and subcontractors to be used in carrying  
7 out the terms of this Decree, in advance of their involvement at the Site.

8 Any construction work performed pursuant to this Decree shall be under the  
9 supervision of a professional engineer, a qualified technician under the direct supervision of a  
10 professional engineer, or a qualified technician in connection with tank removal activities  
11 where there is no requirement of a professional engineer. The professional engineer must be  
12 registered in the State of Washington, except as provided in RCW 18.43.130.

13 **IX. ACCESS**

14 Ecology or any Ecology authorized representative shall have full authority to enter and  
15 freely move about all property at the Site that New Tiger either owns, controls, or has access  
16 rights to at all reasonable times for the purposes of, *inter alia*: inspecting records, operation  
17 logs, and contracts related to the work being performed pursuant to this Decree; reviewing  
18 New Tiger's progress in carrying out the terms of this Decree; conducting such tests or  
19 collecting such samples as Ecology may deem necessary; using a camera, sound recording, or  
20 other documentary type equipment to record work done pursuant to this Decree; and verifying  
21 the data submitted to Ecology by New Tiger. New Tiger shall make all reasonable efforts to  
22 secure access rights for those properties within the Site not owned or controlled by New Tiger  
23 where remedial activities or investigations will be performed pursuant to this Decree.

24 Ecology or any Ecology authorized representative shall give reasonable written notice  
25 before entering any Site property owned or controlled by New Tiger unless an emergency  
26 prevents such notice. All Parties who access the Site pursuant to this paragraph shall comply

1 with the approved Health and Safety Plans. Ecology employees and their representatives shall  
2 not be required to sign any liability release or waiver as a condition of site property access.

3 **X. SAMPLING, DATA REPORTING, AND AVAILABILITY**

4 With respect to the implementation of this Decree, New Tiger shall make the results of  
5 all sampling, laboratory reports, and/or test results generated by it or on its behalf available to  
6 Ecology and shall submit these results in accordance with Section XI of this Decree.

7 Ground water sampling data shall be submitted to Ecology according to the  
8 requirements of Exhibit E and WAC 173-340-840(5). These submittals shall be provided to  
9 Ecology in accordance with Section XI of this Decree.

10 If requested by Ecology, New Tiger shall allow split or duplicate samples to be taken  
11 by Ecology and/or its authorized representative of any samples collected by New Tiger  
12 pursuant to the implementation of this Decree provided it does not interfere with New Tiger's  
13 sampling. New Tiger shall notify Ecology seven (7) days in advance of any sample collection  
14 or work activity at the Site. Ecology shall, upon request, allow split or duplicate samples to be  
15 taken by New Tiger or its authorized representative of any samples collected by Ecology  
16 pursuant to the implementation of this Decree provided it does not interfere with Ecology's  
17 sampling. Without limitation on Ecology's rights under Section IX, Ecology shall notify New  
18 Tiger seven (7) days prior to any sample collection activity unless an emergency prevents such  
19 notice.

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

23 **XI. PROGRESS REPORTS**

24 Unless a different period of time is agreed to by the parties in writing, New Tiger shall  
25 submit to Ecology written quarterly Progress Reports that describe the actions taken during the  
26

1 previous quarter to implement the requirements of this Decree. The Progress Reports shall  
2 include the following:

- 3 A. A list of on-site activities that have taken place during the quarter;
- 4 B. Detailed description of any deviations from required tasks not otherwise  
5 documented in project plans or amendment requests;
- 6 C. Description of all deviations from the Schedule (Exhibit C) during the quarter  
7 and any planned deviations in the upcoming quarter;
- 8 D. For any deviations in schedule, a plan for recovering lost time and maintaining  
9 compliance with the schedule;
- 10 E. All raw data (including laboratory analyses) received by New Tiger during the  
11 past quarter and an identification of the source of the sample; and
- 12 F. A list of deliverables for the upcoming quarter if different from the Schedule.

13 All Progress Reports shall be submitted by the tenth (10) day of the month in which  
14 they are due after the effective date of this Decree. Unless otherwise agreed, Progress Reports  
15 and any other documents submitted pursuant to this Decree shall be sent by certified mail,  
16 return receipt requested, to Ecology's project coordinator.

## 17 XII. RETENTION OF RECORDS

18 During the pendency of this Decree and for ten (10) years from the date this Decree is  
19 no longer in effect as provided in Section XXVIII, New Tiger shall preserve all records,  
20 reports, documents, and underlying data in its possession relevant to the implementation of this  
21 Decree and shall insert a similar record retention requirement into all contracts with project  
22 contractors and subcontractors. Upon request of Ecology, New Tiger shall make all records  
23 available to Ecology and allow access for review within a reasonable time.

## 24 XIII. TRANSFER OF INTEREST IN PROPERTY

25 New Tiger shall not consummate any voluntary or involuntary conveyance or  
26 relinquishment of title, easement, or other interest in any portion of the Site owned by New

1 Tiger without provision, as necessary, for continued operation and maintenance of any  
2 containment system, treatment system, and/or monitoring system installed or implemented  
3 pursuant to this Decree. New Tiger shall make prompt payment of all past and future taxes to  
4 prevent any tax liability from creating a lien or impairment on the New Tiger's title to the  
5 property. Provided, however nothing in this Decree shall constitute a waiver by New Tiger of  
6 its right to appeal past and future tax assessments.

7 Prior to New Tiger's transfer of any interest in all or any portion of the Site owned by  
8 New Tiger, and during the effective period of this Decree, New Tiger shall serve a copy of this  
9 Decree upon any prospective purchaser, transferee, assignee, or other successor in said interest;  
10 and, at least fifteen (15) days prior to any transfer, New Tiger shall notify Ecology of said  
11 transfer. Upon transfer of any interest, New Tiger, as necessary, shall restrict uses and  
12 activities to those consistent with this Decree and notify all transferees of the restrictive  
13 covenants applicable to use of the property.

#### 14 XIV. RESOLUTION OF DISPUTES

15 A. In the event a dispute arises as to an approval, disapproval, proposed change, or  
16 other decision or action by Ecology's project coordinator regarding this Decree, the Parties  
17 shall utilize the dispute resolution procedure set forth below.

18 (1) Upon receipt of the Ecology project coordinator's decision, New Tiger has  
19 fourteen (14) days within which to notify Ecology's project coordinator of its objection to the  
20 decision.

21 (2) The Parties' project coordinators shall then confer in an effort to resolve the  
22 dispute. If the project coordinators cannot resolve the dispute within fourteen (14) days of New  
23 Tiger's objection, Ecology's project coordinator shall issue a written decision. The project  
24 coordinator shall consult with appropriate supervisors and section managers at this stage.

25 (3) If New Tiger finds Ecology's project coordinator's decision unacceptable, New  
26 Tiger may then request final management review of the decision. This request shall be

1 submitted in writing to the Toxics Cleanup Program Manager within seven (7) days of receipt  
2 of the project coordinator's decision.

3 (4) Ecology's Program Manager shall conduct a review of the dispute and shall  
4 issue a written decision regarding the dispute within thirty (30) days of the New Tiger's request  
5 for review. The Program Manager's decision shall be Ecology's final decision on the disputed  
6 matter.

7 B. If Ecology's final written decision is unacceptable to New Tiger, New Tiger has  
8 the right to submit the dispute to the Court for resolution. *Provided*, that prior to submitting  
9 the issue to the Court for resolution, New Tiger may request, in writing, and Ecology shall  
10 participate in, formal mediation in an attempt to resolve the dispute. The mediation shall be  
11 scheduled at a mutually agreed upon location, or in Yakima, and shall be completed within 15  
12 business days of New Tiger's written request for mediation. The parties shall use Retired Judge  
13 Robert J. Doran as a mediator. In the event Judge Doran is unavailable, the parties shall use a  
14 mutually agreed upon mediator. In the absence of agreement on a mediator, Ecology and New  
15 Tiger shall allow Judicial Arbitration and Mediation Services (JAMS) to select an appropriate  
16 mediator. The cost of the mediator shall be the equal responsibility of both parties.

17 C. The Parties agree that one judge should retain jurisdiction over this case and  
18 shall, as necessary, resolve any dispute arising under this Decree. In the event New Tiger  
19 presents an issue to the Court for review, the Court shall review the action or decision of  
20 Ecology on the basis of whether such action or decision was arbitrary and capricious and  
21 render a decision based on such standard of review.

22 D. The Parties agree to only utilize the dispute resolution process in good faith and  
23 agree to expedite, to the extent possible, the dispute resolution process whenever it is used.  
24 Where either Party utilizes the dispute resolution process in bad faith or for purposes of delay,  
25 the other Party may seek sanctions from this Court.  
26

1 E. Implementation of these dispute resolution procedures shall not provide a basis  
2 for delay of any activities required in this Decree, unless Ecology agrees in writing to a  
3 schedule extension or the Court so orders.

4 **XV. AMENDMENT OF CONSENT DECREE**

5 A. This Decree may only be amended by a written stipulation among the Parties  
6 that is entered by the Court, or by order of the Court. Such amendment shall become effective  
7 upon entry by the Court. Agreement to amend the Decree shall not be unreasonably withheld  
8 by any Party.

9 B. New Tiger shall submit any request for an amendment to Ecology for approval.  
10 Ecology shall indicate its approval or disapproval in a timely manner after the request for  
11 amendment is received. If the amendment to the Decree represents a substantial change,  
12 Ecology may provide public notice and opportunity for comment. Reasons for the disapproval  
13 of a proposed amendment to the Decree shall be stated in writing. If Ecology does not agree to  
14 any proposed amendment, the disagreement may be addressed through the dispute resolution  
15 procedures described in Section XIV of this Decree.

16 C. Ecology shall submit any request for an amendment to New Tiger for its  
17 agreement. New Tiger shall indicate its agreement or disagreement in a timely manner after  
18 the request for amendment is received. If New Tiger disagrees with the proposed amendment,  
19 it shall state its reasons in writing. Ecology may address the disagreement through the dispute  
20 resolution procedures described in Section XIV above.

21 D. No guidance, suggestions, or comment by Ecology will be construed as  
22 relieving New Tiger of its obligation to obtain formal approval as may be required by this  
23 Decree. No verbal communication by Ecology shall relieve New Tiger of the obligations  
24 specified herein.

1 **XVI. EXTENSION OF SCHEDULE**

2 A. An extension of schedule shall be granted only when a request for an extension  
3 is submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the  
4 deadline for which the extension is requested, and good cause exists for granting the extension.

5 All extensions shall be requested in writing. The request shall specify:

- 6 (1) The deadline that is sought to be extended;  
7 (2) The length of the extension sought;  
8 (3) The reason(s) for the extension; and  
9 (4) Any related deadline or schedule that would be affected if the extension were

10 granted.

11 B. The burden shall be on New Tiger to demonstrate to the satisfaction of Ecology  
12 that the request for such extension has been submitted in a timely fashion and that good cause  
13 exists for granting the extension. Good cause includes, but is not limited to:

14 (1) Circumstances beyond the reasonable control and despite the due diligence of  
15 New Tiger including delays caused by unrelated third parties or Ecology, such as (but not  
16 limited to) delays by Ecology in reviewing, approving, or modifying documents submitted by  
17 New Tiger; or

18 (2) Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or  
19 other unavoidable casualty; or

20 (3) Endangerment as described in Section XVII.

21 However, neither increased costs of performance of the terms of the Decree nor  
22 changed economic circumstances shall be considered circumstances beyond the reasonable  
23 control of New Tiger.

24 C. Ecology shall act upon any written request for extension in a timely fashion.  
25 Ecology shall give New Tiger written notification in a timely fashion of any extensions granted  
26 pursuant to this Decree. A requested extension shall not be effective until approved by

1 Ecology or, if required, by the Court. Unless the extension is a substantial change, it shall not  
2 be necessary to amend this Decree pursuant to Section XV when a schedule extension is  
3 granted.

4 D. An extension shall only be granted for such period as Ecology determines is  
5 reasonable under the circumstances. Ecology may grant schedule extensions exceeding ninety  
6 (90) days only as a result of:

7 (1) Delays in the issuance of a necessary permit which was applied for in a timely  
8 manner; or

9 (2) Other circumstances deemed exceptional or extraordinary; or

10 (3) Endangerment as described in Section XVII.

#### 11 XVII. ENDANGERMENT

12 If, for any reason, Ecology determines that any activity being performed at the Site is  
13 creating or has the potential to create a danger to human health or the environment, Ecology  
14 may direct New Tiger to cease such activities for such period of time as it deems necessary to  
15 abate the danger. New Tiger shall immediately comply with such direction.

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

24 If Ecology concurs with or orders a work stoppage pursuant to this section, New  
25 Tiger's obligations with respect to the ceased activities shall be suspended until Ecology  
26 determines the danger is abated, and the time for performance of such activities, as well as the



1 time for any other work dependent upon such activities, shall be extended, in accordance with  
2 Section XVI, for such period of time as Ecology determines is reasonable under the  
3 circumstances.

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

#### 6 **XVIII. COVENANT NOT TO SUE**

7 A. Covenant Not to Sue: In consideration of New Tiger's and Federated's  
8 compliance with the terms and conditions of this Decree, Ecology agrees not to institute  
9 administrative, legal or equitable remedies and enforcement actions against New Tiger or  
10 Federated for any of the Addressed Matters covered by this Decree. The Decree resolves all of  
11 New Tiger's and Federated's liability to Ecology for all Addressed Matters, according to the  
12 terms and conditions of this Decree, and subject to all rights and remedies created by this  
13 Decree.

14 B. This Decree covers only the Site specifically identified in Exhibits A and B and  
15 the Addressed Matters. This Decree does not cover any other hazardous substance or Site.  
16 Ecology retains all of its authority relative to any substance or area not covered by this Decree.

17 C. This Covenant Not to Sue shall have no applicability whatsoever to:

18 (1) Criminal liability;

19 (2) Liability for damages for injury to or loss of natural resources;

20 (3) Any Ecology action, including cost recovery, against potentially liable persons  
21 not a party to this Decree.

22 D. Reopeners: Ecology specifically reserves the right to institute legal or  
23 administrative action against New Tiger to require it to perform additional remedial actions at  
24 the Site and any other rights allowed by law, pursuant to RCW 70.105D.050, under the  
25 following circumstances:  
26

1 (1) Upon New Tiger's failure to meet the requirements of this Decree, including,  
2 but not limited to, failure of the remedial action to meet the cleanup standards identified in the  
3 CAP (Exhibit B) under the provisions of the CAP, where "failure of the remedial action" refers  
4 to Site factors or reasons that were not known at the time of this Decree.

5 (2) Upon the availability of new information regarding factors not known to  
6 Ecology, including the nature or quantity of hazardous substances at the Site, and Ecology's  
7 determination, in light of this information, that further remedial action is necessary at the Site,  
8 to address a previously unknown threat to human health or the environment. In such event, the  
9 Court shall be required to amend this Covenant Not to Sue as required by RCW  
10 70.105D.040(4)(c).

11 E. Except in the case of an emergency, prior to instituting legal or administrative  
12 action against New Tiger pursuant to subsection D, above, Ecology shall provide New Tiger  
13 with fifteen (15) calendar days notice of such action. Furthermore, Ecology's decision to  
14 exercise any rights under subsection D shall be subject to dispute resolution provisions of this  
15 Decree.

#### 16 XIX. CONTRIBUTION PROTECTION

17 This Decree expressly grants New Tiger and Federated protection against claims for  
18 contribution for matters addressed in this Decree as provided by RCW 70.105D.040(4)(d).

#### 19 XX. LAND USE RESTRICTIONS

20 Because institutional controls are required at the Site pursuant to WAC 173-340-  
21 440(4), Defendant agrees that the Restrictive Covenant set forth in Exhibit F shall be recorded  
22 with the office of the Yakima County Auditor within ten (10) days of the effective date of this  
23 Decree. New Tiger will provide Ecology with a copy of the recorded Restrictive Covenant  
24 within thirty (30) days of the recording date. New Tiger may, upon a showing that the  
25 restrictive covenant is not necessary for the entire property and in accordance with the terms of  
26 the restrictive covenant, ask Ecology for approval to amend the restrictive covenant to apply

1 only the appropriate definable areas of New Tiger's property. Ecology shall not unreasonably  
2 withhold or delay its approval of this amendment.

3 **XXI. FINANCIAL ASSURANCES**

4 Pursuant to WAC 173-340-440(11), New Tiger shall maintain sufficient and adequate  
5 financial assurance mechanisms to cover all costs associated with the operation and  
6 maintenance of the remedial action at the Site, including institutional controls, compliance  
7 monitoring, and corrective measures. To address New Tiger's obligations under this Consent  
8 Decree and to fulfill Federated's performance required by this Consent Decree, Financial  
9 Assurance shall require the following actions to be taken by New Tiger and Federated:

10 1. **The Trust.** The Trust, which was the subject of litigation between Federated  
11 and New Tiger, and which was originally established as a result of the 1997 Confidential  
12 Settlement Agreement and Release of All Claims between Federated, New Tiger and other  
13 parties, shall be the source of financial assurance. Prior to entering this Decree, New Tiger and  
14 Federated shall execute the Amended Confidential Trust Agreement (Amended Trust  
15 Agreement), agreed to by those parties and approved by Ecology, as adequate financial  
16 assurance to fund New Tiger's responsibilities under this Decree. A copy of the Amended  
17 Trust Agreement, shall be provided to all parties before entry of this Decree. Thereafter, New  
18 Tiger and Federated shall not further amend the Amended Trust Agreement except as  
19 approved, in writing, by New Tiger and Federated, and in no event shall those parties make  
20 any amendment that would be inconsistent in any manner with the requirements of this Decree.  
21 Further, within five (5) days of any amendment, the amendment shall be provided to Ecology,  
22 and Ecology may seek judicial relief if the amendment causes the Amended Trust Agreement  
23 to be inconsistent in any manner with this Decree.  
24  
25  
26

1           2.     **Jurisdiction.** The Trustee and situs of the Trust may remain in Idaho. The  
2 Trustee is not made subject to jurisdiction in Washington by this Decree or the Amended Trust  
3 Agreement. New Tiger and Federated, however, will not assert that the Washington Court  
4 lacks jurisdiction over New Tiger and Federated, nor challenge the jurisdiction over New Tiger  
5 and Federated to the extent the Court requires jurisdiction over those parties to enforce their  
6 financial assurance obligations under this Decree. The Trustee shall be instructed that the  
7 Trust is financial assurance for this Consent Decree, and shall be given a copy of this Decree.  
8 The Trust shall be irrevocable to the extent necessary to satisfy New Tiger's financial  
9 assurance obligations under this Decree and shall not be subject to any security interest, liens,  
10 or attachments created or caused by New Tiger or any other party.

11  
12           3.     **Allowed and Prohibited Uses of the Trust.** All funds remaining in the Trust  
13 as of the effective date of the Decree shall be distributed by the Trustee as follows:

14  
15           A.     **Direct Costs.** The Trustee shall be authorized by the Amended Trust  
16 Agreement to pay, within thirty (30) days following a request for payment by New Tiger, all  
17 direct costs related to investigation and remediation of contamination at or emanating from the  
18 Site that is the subject of this Decree, and the sites at 1606 East Nob and the site at 1808 North  
19 First. Direct costs shall include:

- 20  
21           1. The one-time payment to New Tiger for expert witness fees in the amount of  
22                 \$75,000 as identified in section I.J. of the Amended Trust Agreement.
- 23           2. The actual costs and expenses for investigation and remediation of petroleum  
24                 contamination at the Site subject to this Decree in compliance with the Decree and  
25                 the Clean Action Plan (CAP) attached as Exhibit B to the Decree. In the event New  
26

1 Tiger requests funds to pay itself, any officer, or any direct or indirect employee for  
2 investigation and remediation activities at any site, New Tiger shall demonstrate to  
3 the Trustee how the charge or cost was reasonable and commensurate with the cost  
4 that a third party might charge for the same work.

5  
6 3. The actual costs and expenses for investigation and remediation of petroleum  
7 contamination at or emanating from the 1606 East Nob and 1808 N. First sites,  
8 subject to the same requirement of reasonableness in the prior paragraph if New  
9 Tiger requests funds to pay itself.

10 4. Any attorney and environmental consultants' fees for negotiating with Ecology and  
11 third parties directly related to investigation and remediation of petroleum  
12 contamination at or emanating from all three (3) sites and for supervising or  
13 overseeing said investigation and remediation.

14  
15 5. Any attorney, environmental consultant, or environmental expert fees incurred by  
16 New Tiger to present New Tiger's position in the following: (a) a dispute that is  
17 subject to Dispute Resolution under this Decree, including Court review under  
18 Section XIV of this Decree; or (b) a dispute that is subject to negotiation or  
19 mediation in connection with the investigation or remediation of petroleum  
20 contamination at or emanating from the sites at 1606 East Nob or 1808 North First,  
21 pursuant to the Settlement Agreement between Ecology and New Tiger dated June  
22 21, 2004.

23  
24 6. Any attorney, environmental consultant, or environmental expert fees incurred by  
25 New Tiger in connection with a qualifying bona fide third party claim, and any  
26

1 payments to settle any such claim, under the terms of this Subsection. A  
2 "qualifying third party claim" is one brought by a third party not in privity with  
3 New Tiger, directly arising out of the petroleum contamination at or emanating  
4 from the three (3) sites (24<sup>th</sup> and West Nob, 1606 East Nob, and 1808 North First),  
5 or directly arising out of the investigation or remediation of the three (3) sites. Such  
6 a claim may be treated by New Tiger and the Trustee as qualifying only if New  
7 Tiger first notifies Ecology and Federated in writing of the third party claim and  
8 describes the parties and the nature or basis for the claim. Provided, the Trustee  
9 may pay, for combined defense or settlement costs of such a qualifying third party  
10 claim, up to \$20,000 without prior notice to Federated or Ecology. A payment  
11 toward a qualifying third party claim in excess of this amount shall not be allowed  
12 without a showing by New Tiger in writing that such additional payments do not  
13 present a substantial likelihood that New Tiger will not be able to fulfill the  
14 financial assurance requirements of this Decree.

- 15  
16  
17 7. Environmental expert fees incurred by New Tiger during any litigation involving  
18 Ecology, or any litigation initiated by Federated, directly related to the investigation  
19 or remediation of petroleum contamination at or emanating from the sites at 1606  
20 East Nob or 1808 North First. *Provided*, that the total amount that may be paid by  
21 the Trustee for all such fees under this paragraph for both sites shall not exceed  
22 \$25,000.  
23

24 **B. Indirect Costs.** The Trustee shall pay, within thirty (30) days following a  
25 request for payment by New Tiger, all indirect costs related to the investigation and  
26

1 remediation of contamination at or emanating from the three (3) sites, including but not limited  
2 to:

- 3 1. Trust accounting fees;
- 4 2. Trust taxes;
- 5 3. Reasonable Trustee's fees; and
- 6 4. Necessary attorney fees and related costs incurred by the Trustee in the  
7 performance of his lawful duties under the Amended Trust Agreement.

8  
9 **C. Prohibited Costs.** New Tiger shall not request payment for, and the Trustee  
10 shall not allow use of the Trust to pay for, New Tiger's attorney fees or costs related to any  
11 litigation whatsoever against Ecology or Federated or any litigation involving the  
12 contamination at and arising from the three (3) sites, except as expressly allowed by this  
13 Agreement.

14 4. **Payment Pursuant to Section XXV of this Decree.** The Amended Trust  
15 Agreement shall include a provision allowing for payment of the reasonable costs incurred by  
16 Ecology in the event Ecology implements the remedial action pursuant to Section XXV of this  
17 Decree.

18 5. **Termination of the Trust.** Upon receipt of written No Further Action  
19 determination for this Site, 1606 East Nob, and 1808 N. First, all in Yakima, WA, the  
20 Amended Trust Agreement shall provide first for payment of all Trustee's closing expenses for  
21 the Trust, Trust related taxes, fees, or expenses, then any remaining money in the Trust shall be  
22 paid to New Tiger, and the Trust then terminated, so long as there has been prior payment of  
23 any past or future costs that might be owing for this Site, to the extent required by this Decree.

24 6. **Reporting Requirement.** New Tiger shall provide semi-annual reporting to  
25 Ecology and Federated for two (2) years after the effective date of this Decree, and then  
26 annually thereafter. The reporting shall include the current balance of the Trust, a summary of





1                                   **XXIII. COMPLIANCE WITH APPLICABLE LAWS**

2           A.     All actions carried out by New Tiger pursuant to this Decree shall be done in  
3 accordance with all applicable federal, state, and local requirements, including requirements to  
4 obtain necessary permits, except as provided in RCW 70.105D.090.

5  
6           B.     Pursuant to RCW 70.105D.090(1), the substantive requirements of Chapters  
7 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 RCW and of any laws requiring or authorizing  
8 local government permits or approvals for the remedial action under this Decree that are  
9 known to be applicable at the time of entry of the Decree have been included in Exhibit B, the  
10 CAP, and are binding and enforceable requirements of the Decree.

11           New Tiger has a continuing obligation to determine whether additional permits or  
12 approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial  
13 action under this Decree. In the event either New Tiger or Ecology determines that additional  
14 permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the  
15 remedial action under this Decree, it shall promptly notify the other party of this determination.  
16 Ecology shall determine whether Ecology or New Tiger shall be responsible to contact the  
17 appropriate state and/or local agencies. If Ecology so requires, New Tiger shall promptly  
18 consult with the appropriate state and/or local agencies and provide Ecology with written  
19 documentation from those agencies of the substantive requirements those agencies believe are  
20 applicable to the remedial action. Ecology shall make the final determination on the additional  
21 substantive requirements that must be met by New Tiger and on how New Tiger must meet  
22 those requirements. Ecology shall inform New Tiger in writing of these requirements. Once  
23 established by Ecology, the additional requirements shall be enforceable requirements of this  
24  
25  
26

1 Decree. New Tiger shall not begin or continue the remedial action potentially subject to the  
2 additional requirements until Ecology makes its final determination.

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

5  
6 C. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the  
7 exemption from complying with the procedural requirements of the laws referenced in RCW  
8 70.105D.090(1) would result in the loss of approval from a federal agency which is necessary  
9 for the state to administer any federal law, the exemption shall not apply and New Tiger shall  
10 comply with both the procedural and substantive requirements of the laws referenced in RCW  
11 70.105D.090(1), including any requirements to obtain permits.

#### 12 13 **XXIV. REMEDIAL AND INVESTIGATIVE COSTS**

##### 14 **A. Future Costs**

15 New Tiger shall pay future costs incurred by Ecology pursuant to this Decree and  
16 consistent with WAC 173-340-550(2), but those shall be paid at the time and under the terms  
17 and conditions of Subsection C, below. These costs shall include work performed by Ecology  
18 or its contractors for, or on, the Site under Chapter 70.105D RCW, including remedial actions,  
19 negotiations, oversight and administration which are incurred *after* the entry date of this  
20 Decree. Ecology costs shall include costs of direct activities and support costs of direct  
21 activities as defined in WAC 173-340-550(2).

##### 22 **B. Past Costs.**

23 New Tiger shall pay \$ 62,500.00 subject to the terms and conditions of Subsection C  
24 below, which shall be the full and complete satisfaction of any right that Ecology may have to  
25 recover any past remedial and investigative costs incurred by Ecology or its contractors in  
26 connection with the Site prior to the date of entry of this Decree. Upon entry of this Decree,

1 Ecology shall have waived any right to seek other past costs, or interest, from New Tiger,  
2 Federated, or any other person, in connection with this Site.

3 **C. Structuring payment of past costs and conditions for such payment and credits.**

4 Future costs incurred consistent with this Decree, and the past costs of \$62,500.00 shall  
5 be paid pursuant to the following terms and conditions and subject to the following credits: (1)  
6 only if there is money left in the Trust when "No Further Action" determinations are issued by  
7 Ecology or a court of competent jurisdiction for the Site subject to this Decree and the 1606  
8 East Nob and 1808 N. First Sites; and (2) the obligation to pay the past costs of \$62,500.00 for  
9 this Site shall be reduced by the amount owed as "future costs" upon the issuance of the NFA  
10 determination for the Site subject to this Decree. To keep accurate track of the future costs to  
11 be credited against the past costs for this Site, Ecology shall provide in writing, at the same  
12 time as the Trustee provides a report under Section XXI, a statement identifying the future  
13 costs owed for this Site so that the parties may credit that against the amount of past costs  
14 owed. No interest will be charged on the past costs of \$62,500.00 or the amount of any future  
15 costs.  
16 costs.  
17 costs.

18 **XXV. COSTS IN THE EVENT OF ECOLOGY'S IMPLEMENTATION OF**  
19 **REMEDIAL ACTION.**

20 Notwithstanding any other provision of this Decree, in the event the Court determines  
21 that New Tiger has failed without sufficient cause, to implement the remedial action set forth  
22 in the CAP, in whole or in part, Ecology may, after written notice to New Tiger and a  
23 reasonable opportunity to cure, and a reasonable opportunity to invoke the dispute resolution  
24 provisions of this Decree perform any or all portions of the CAP that remain incomplete. If  
25 Ecology performs all or portions of the CAP because of New Tiger's failure, without sufficient  
26 cause, to perform the CAP, the Trustee shall reimburse Ecology from the Trust for the

1 reasonable costs incurred by Ecology performing the CAP. Ecology's costs for performing the  
2 CAP shall include work performed by Ecology or its contractors, and shall also include  
3 Ecology's oversight and administration of the CAP. Ecology's costs for performing the CAP  
4 shall include only work performed subsequent to entry of this Decree, and shall include those  
5 costs defined in WAC 173-340-550(2). Ecology shall, in advance of exercising this remedy,  
6 seek relief from the Court declaring that New Tiger has failed, without sufficient cause, to  
7 implement the remedial action in the CAP.

8 The Trustee shall pay the amount of Ecology's costs within ninety (90) days of  
9 receiving from Ecology an itemized statement of costs that includes a summary of costs  
10 incurred, an identification of involved staff, and the amount of time spent by involved staff  
11 members implementing the CAP. Pursuant to WAC 173-340-550(4), failure by the Trustee to  
12 pay Ecology's costs within ninety (90) days of receipt of the itemized statement will result in  
13 interest charges at the rate of twelve percent (12%) per annum, compounded monthly. The  
14 Trustee is not obligated under this Decree to reimburse Ecology for costs incurred for work  
15 inconsistent with or beyond the scope of this Decree or the CAP attached hereto as Exhibit B.  
16 New Tiger retains the right to challenge whether Ecology's costs are reasonable and consistent  
17 with this Decree pursuant to the dispute resolution procedures set forth in this Decree. The  
18 Court shall review any such challenge not on the basis of whether Ecology's costs are arbitrary  
19 or capricious, but on the basis of whether Ecology's costs are reasonable and consistent with  
20 the CAP and this Decree.

## 21 XXVI. PERIODIC REVIEW

22 As remedial action, including ground water monitoring, continues at the Site, the  
23 Parties agree to review the progress of remedial action at the Site, and to review the data  
24 accumulated as a result of monitoring the Site as often as is necessary and appropriate under  
25 the circumstances. At least every six months after the initiation of cleanup action at the Site,  
26 the Parties shall meet to discuss the status of the Site and the need, if any, for further remedial

1 action at the Site. Ecology reserves the right to require further remedial action at the Site under  
2 appropriate circumstances. This provision shall remain in effect for the duration of the Decree.  
3 A report, which addresses the review criteria in WAC 173-340-420, shall be submitted by New  
4 Tiger annually on the anniversary of the entry of this Decree.

## 5 **XXVII. PUBLIC PARTICIPATION**

6 Ecology shall maintain the responsibility for public participation at the Site. However,  
7 New Tiger shall cooperate with Ecology, and shall:

8 A. If agreed to by Ecology, review drafts of public notices and fact sheets at  
9 important stages of the remedial action, such as the submission of work plans, remedial  
10 investigation/feasibility study reports, cleanup action plans, and engineering design reports. As  
11 appropriate, Ecology will finalize and distribute such fact sheets and prepare and distribute  
12 public notices of Ecology's presentations and meetings;

13 B. Ecology shall notify New Tiger prior to the issuance of all press releases and  
14 fact sheets, and before major meetings with the interested public and local governments. In the  
15 event that New Tiger chooses to issue any materials related to public participation without  
16 Ecology approval, it shall so indicate.

17 C. Participate in public presentations on the progress of the remedial action at the  
18 Site. Participation may be through having a representative in attendance at public meetings to  
19 assist in answering questions, or as a presenter;

20 D. In cooperation with Ecology, arrange and/or continue information repositories  
21 at the following locations:

22 (1) Ecology's Central Regional Office, Yakima, Washington.

23 At a minimum, copies of all public notices, fact sheets, and press releases; all quality  
24 assured monitoring data; remedial actions plans and reports, supplemental remedial planning  
25 documents, and all other similar documents relating to performance of the remedial action  
26 required by this Decree shall be promptly placed in this repository.

1 **XXVIII. DURATION OF DECREE**

2 The remedial program required pursuant to this Decree shall be maintained and  
3 continued until New Tiger has satisfactorily completed this Decree and the CAP attached  
4 hereto as Exhibit B, subject to all required monitoring in that CAP. At that point, Ecology  
5 shall provide New Tiger with written notification that the requirements of this Decree have  
6 been satisfactorily completed, and that No Further Action is required under this Decree. New  
7 Tiger may then request that this Decree be dismissed by the Court. Until such dismissal, this  
8 Decree shall remain in effect. When dismissed, Section XVIII, Covenant Not to Sue, and  
9 Section XIX, Contribution Protection, shall survive. The dispute resolution procedure and  
10 Court review set forth in Section XIV of this Decree shall apply to a request by New Tiger that  
11 Ecology issue a No Further Action determination and that this Decree be dismissed.

12 Upon completion of the active remedial measures set forth in Section 3.0 of the CAP,  
13 New Tiger may submit a written request to Ecology to fully cease operation and remove any  
14 portion of the remediation system at the Site. New Tiger shall submit data showing that further  
15 operation of any portion of the remediation system is not necessary to achieve the cleanup  
16 levels set forth in the CAP. Ecology shall grant or deny New Tiger's request in a timely  
17 manner. The dispute resolution procedure and court review set forth in Section XIV of this  
18 Decree shall apply to a request by New Tiger that Ecology approve full cessation and removal  
19 of a portion of the remediation system.

20 **XXIX. CLAIMS AGAINST THE STATE**


21 New Tiger hereby agrees that it will not seek to recover any costs accrued in  
22 implementing the remedial action required by this Decree from the State of Washington or any  
23 of its agencies; and further, that New Tiger will make no claim against the State Toxics  
24 Control Account or any Local Toxics Control Account for any costs incurred in implementing  
25 this Decree. New Tiger expressly reserves its right to seek to recover any costs incurred in  
26 implementing this Decree from any other potentially liable person, except Federated.



1  
2 If the Court withholds or withdraws its consent to this Decree, the Decree shall be null  
3 and void at the option of any party and no party shall be bound by the requirements of this  
4 Decree. The above captioned case may then proceed as if this Decree had not been offered and  
5 in accordance with further directions and orders of the Court.

6 STATE OF WASHINGTON  
7 DEPARTMENT OF ECOLOGY

CHRISTINE O. GREGOIRE  
Attorney General

8   
9 Jim Pendowski  
10 Program Manager  
11 Toxics Cleanup Program  
12 Date: 10/29/04

Colleen G. Warren  
Assistant Attorney General  
WSBA Number: 16506  
Date: Oct 29, 2004 #17716

13 TIGER OIL CORPORATION

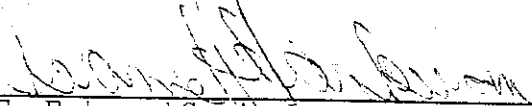
McCREEDY LAW OFFICE, P.C.


14 For Tiger Oil Corporation  
15 Name: Charles Conley  
16 Title: President  
17 Date: \_\_\_\_\_

John C. McCreedy, ISB #3823  
Attorney for Tiger Oil Corporation  
Date: \_\_\_\_\_

18 FEDERATED SERVICE  
19 INSURANCE COMPANY

BULLIVANT HOUSER BAILEY PC

20   
21 For Federated Service Insurance Company  
22 Name: Jeanne H. Hankerson  
23 Title: VP - Staff Counsel  
24 Date: 10-29-04

  
25 Marianne Ghim, WSBA #21702  
26 Attorney for Federated Service Ins. Co.  
Date: 10/29/04

ENTERED this 29 day of October 2004.

CHRISTINE A. POMEROY

JUDGE CHRISTINE A. POMEROY  
Thurston County Superior Court



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If the Court withholds or withdraws its consent to this Decree, the Decree shall be null and void at the option of any party and no party shall be bound by the requirements of this Decree. The above captioned case may then proceed as if this Decree had not been offered and in accordance with further directions and orders of the Court.

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

CHRISTINE O. GREGOIRE  
Attorney General

\_\_\_\_\_  
Jim Pendowski  
Program Manager  
Toxics Cleanup Program  
Date: \_\_\_\_\_

\_\_\_\_\_  
Colleen G. Warren  
Assistant Attorney General  
WSBA Number: 16506  
Date: \_\_\_\_\_

TIGER OIL CORPORATION

McCREEDY LAW OFFICE, P.C.

\_\_\_\_\_  
*Charles Conley*  
For Tiger Oil Corporation  
Name: Charles Conley  
Title: President  
Date: 10-29-04

\_\_\_\_\_  
*John C. McCreedy*  
John C. McCreedy, ISB #3823  
Attorney for Tiger Oil Corporation  
Date: 10/29/04

FEDERATED SERVICE  
INSURANCE COMPANY

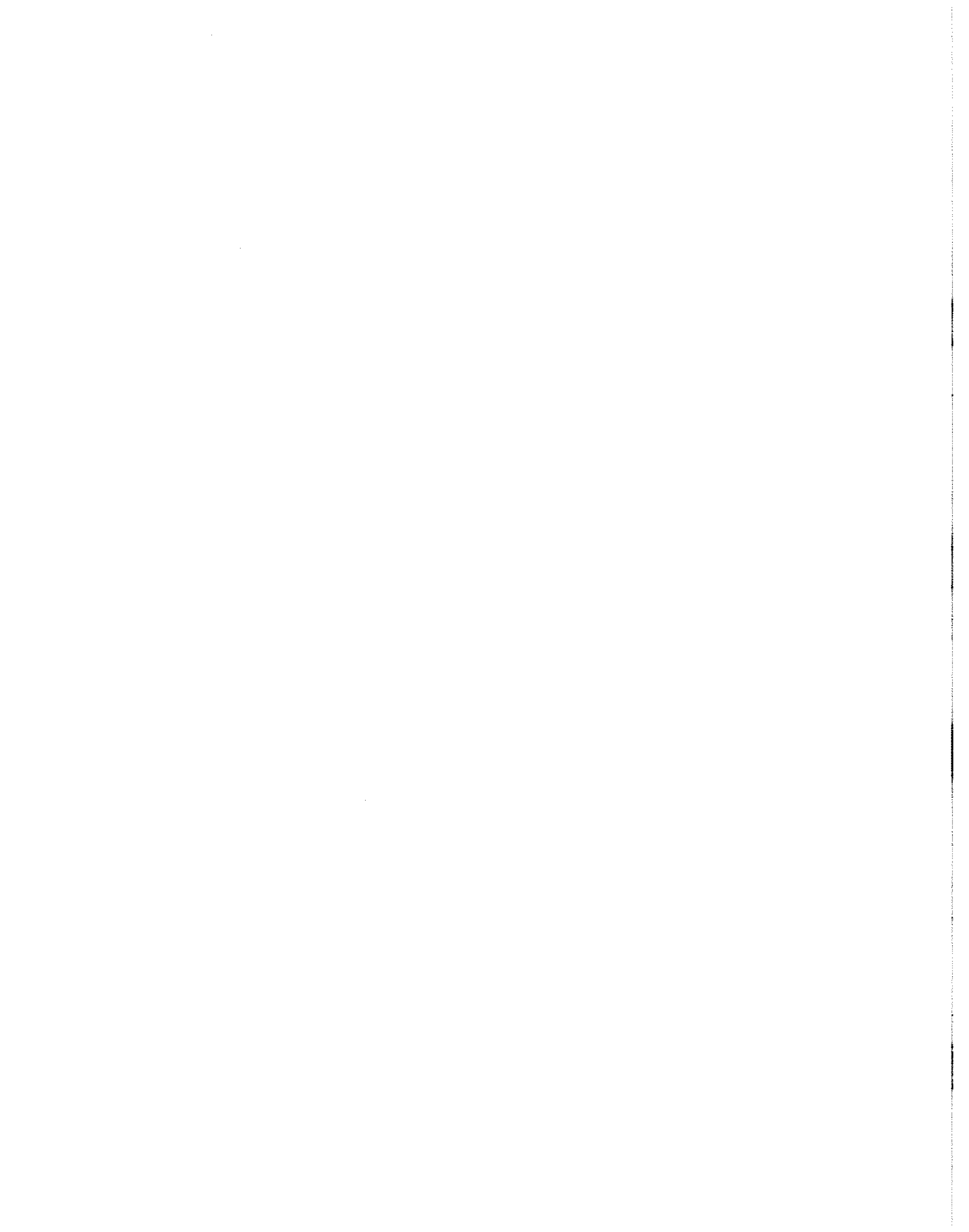
BULLIVANT HOUSER BAILEY PC

\_\_\_\_\_  
For Federated Service Insurance Company  
Name:  
Title:  
Date:

\_\_\_\_\_  
Marianne Ghim, WSBA #21702  
Attorney for Federated Service Ins. Co.  
Date: \_\_\_\_\_

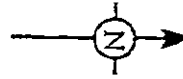
ENTERED this \_\_\_\_\_ day of \_\_\_\_\_ 2004.

\_\_\_\_\_  
JUDGE CHRISTINE A. POMEROY  
Thurston County Superior Court



# EXHIBIT "A" TO CONSENT DECREE - SITE DIAGRAM

Tiger Oil Facility  
2132 West Nob Hill Boulevard  
Yakima, Washington



SOUTH 24th AVENUE

NOB HILL BOULEVARD

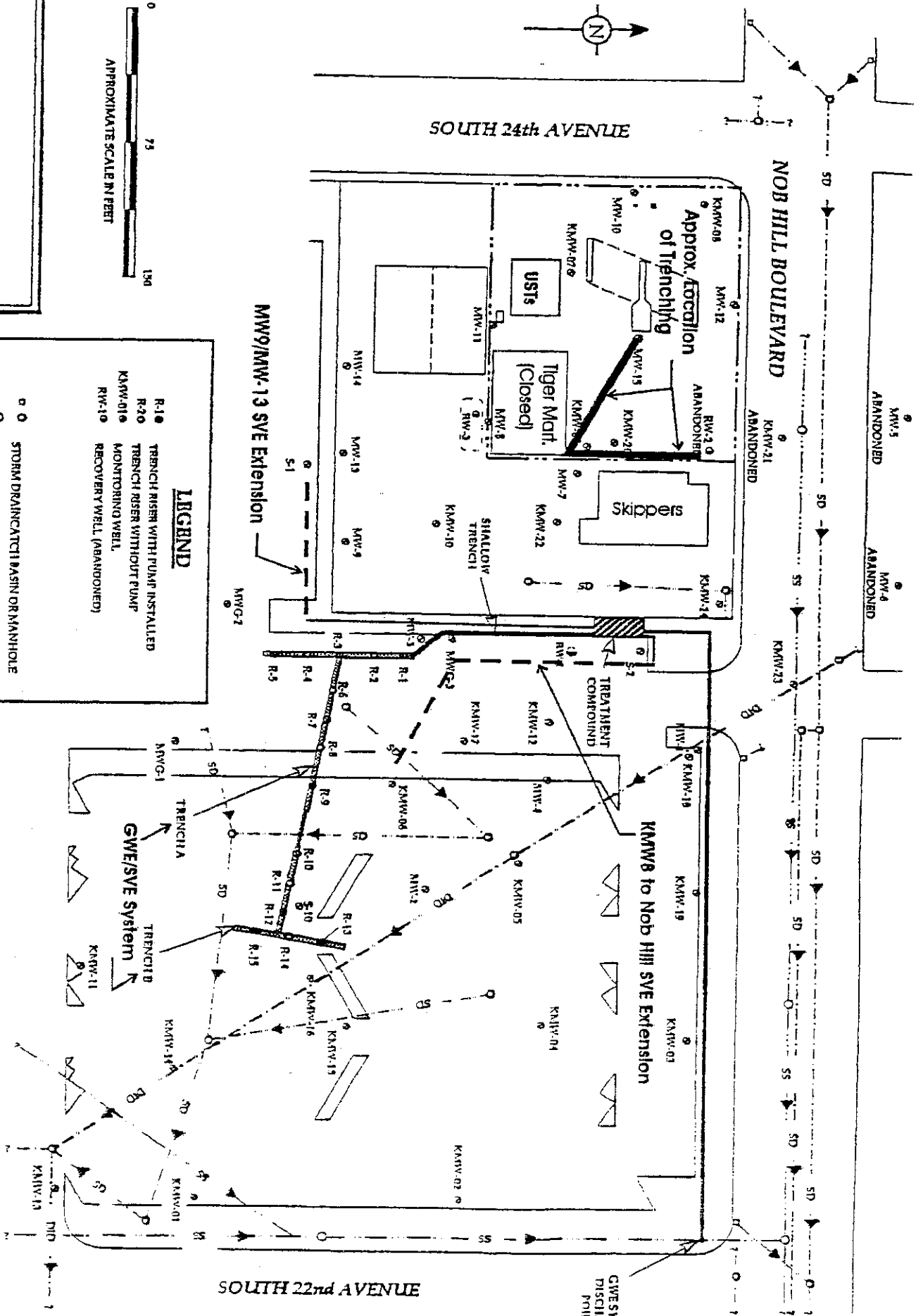
MMW/MM-13 SVE Extension

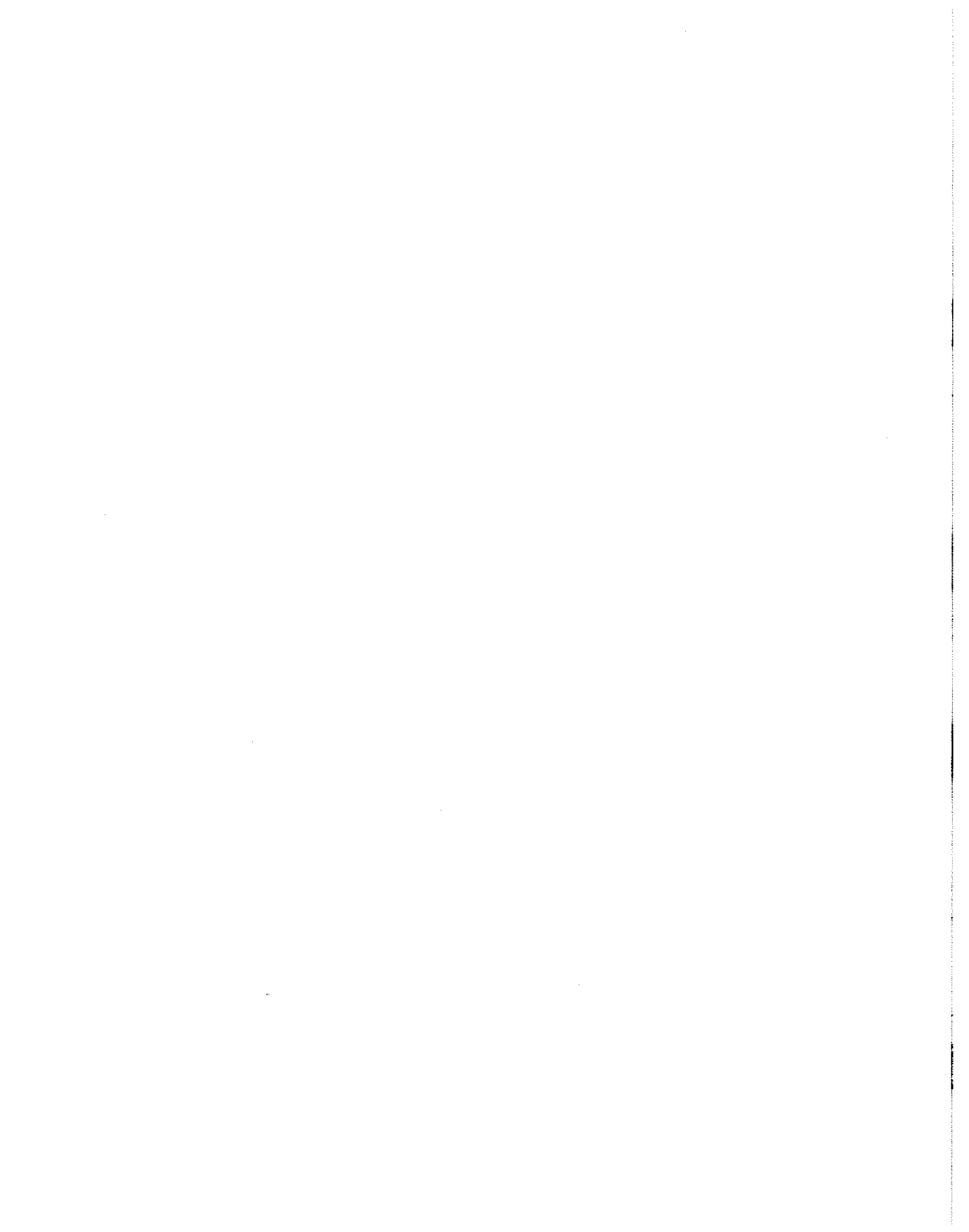
KMW8 to Nob Hill SVE Extension

SOUTH 22nd AVENUE

**LEGEND**

- ○ STORM DRAIN/CATCH BASIN OR MANHOLE
- ○ SANITARY SEWER MANHOLE
- TRENCHING
- EXTRACTION TRENCH
- STORM DRAIN LINE WITH FLOW DIRECTION
- SANITARY SEWER LINE WITH FLOW DIRECTION
- R-10 TRENCH RISER WITH PUMP INSTALLED
- R-20 TRENCH RISER WITHOUT PUMP
- KMW-010 MONITORING WELL
- RW-100 RECOVERY WELL (ABANDONED)





**EXHIBIT B**  
**TO CONSENT DECREE BETWEEN ECOLOGY,**  
**NEW TIGER AND FEDERATED**

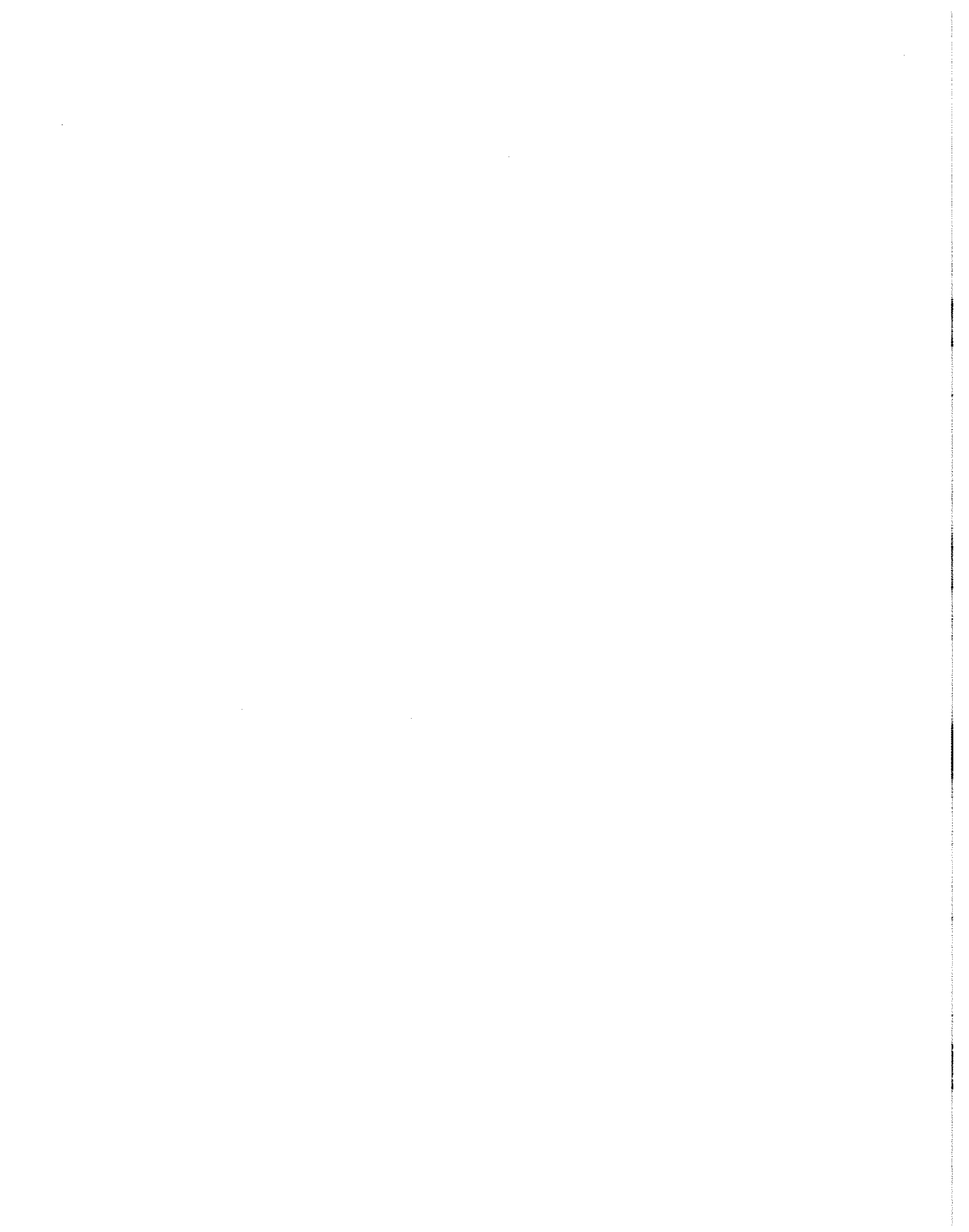
CLEANUP ACTION PLAN

Tiger Oil Facility  
2312 West Nob Hill Boulevard  
Yakima, Washington

Prepared by

Department of Ecology  
Toxics Cleanup Program, Central Regional Office  
(509) 575-2490

June 8, 2004



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FIGURE 1 - MAP OF SITE



## 1.0 Introduction

### 1.1 Purpose

The purpose of this Cleanup Action Plan (CAP) is to identify the cleanup actions agreed upon by the Department of Ecology (Ecology) and the Tiger Oil Corporation (New Tiger) for the remediation and monitoring of contaminated groundwater and soils at the Tiger Oil Site (Site), located at 2312 West Nob Hill Boulevard, Yakima, Washington. This CAP has been developed in accordance with the Model Toxics Control Act, RCW 70.105D (MTCA), and Chapter 173-340 of the Washington Administrative Code (WAC).<sup>1</sup> In accordance with WAC 173-340-360(2)(a), the selected cleanup actions meet the threshold requirements at the defined points of compliance; are protective of human health and the environment; comply with remedial action levels; comply with applicable state and federal laws; and provide for compliance monitoring.

This CAP outlines the cleanup action alternatives presented in the following documents:

- *Draft Revised Remedial Investigation/Feasibility Study, Tiger Oil Facility*, Kleinfelder, 1994.
- *Feasibility Study Addendum, Tiger Oil Facility*, Clearwater Group, Inc., 1997.
- *Draft Cleanup Action Plan, Tiger Oil Facility*, Foster Wheeler Environmental Corporation, 1998.
- *Draft Proposal for Remediation of Contamination at Tiger Oil Facility*, Foster Wheeler Environmental Corporation, 2001.

This CAP specifies the cleanup actions to take place at the Site. These cleanup actions include:

- Removal of all underground storage tanks (USTs), associated lines, and dispensers.
- Removal of petroleum contaminated soils (PCS).
- Free product investigation and removal through trenching
- Possible installation of a soil vapor extraction (SVE) system.
- Possible use of hydrogen peroxide or Oxygen Release Compound (ORC) to enhance aerobic degradation.
- Continuing to operate and maintain the current interim remediation system.
- Monitored Natural Attenuation (MNA)

In accordance with WAC 173-340-360, Ecology has selected the above cleanup actions based upon site-specific data provided in the following documents, which are on file at the Washington State Department of Ecology, Central Regional Office. These documents have been used either directly or by reference in the writing of the CAP:

*Draft Revised Remedial Investigation/Feasibility Study, Tiger Oil Facility*, Kleinfelder, 1994.

*Revised Interim Remedial Action Plan*, Clearwater Group, Inc., 1994.

*Work Plan for Interim Remedial Action*, Clearwater Group, Inc., 1994

*System Operation and Maintenance Plan*, Clearwater Group, Inc., 1995.

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<sup>1</sup> This Cleanup Action Plan is based on the revised WAC 173-340, which became effective on August 15, 2001.

*Remedial System Installation, Startup and Monitoring Report, Tiger Oil Facility, Clearwater Group, Inc., 1996.*

*Feasibility Study Addendum, Tiger Oil Facility, Clearwater Group, Inc., 1997*

*Draft Cleanup Action Plan, Tiger Oil Facility, Foster Wheeler Environmental Corporation, 1998.*

*Quarterly Monitoring Reports, Clearwater Group, Inc., QUEST, Foster Wheeler Environmental Corporation, 1997, 1998, 1999, 2000, 2001.*

*Tiger Oil Corporation's Draft Proposal For Remediation of Contamination at Tiger Oil Facility, 24th and West Nob Hill Blvd., Foster Wheeler Environmental Corporation, 2001.*

All of the above mentioned firms are environmental consulting businesses hired by one or more of the potentially liable persons (PLPs) at the Site.

To review or obtain copies of the above documents, contact Roger Johnson (Public Disclosure Coordinator) at Ecology's Central Regional Office in Yakima, Washington, at (509) 454-7658.

## **1.2 Cleanup Action Ownership**

New Tiger is responsible for the overall implementation and maintenance of the cleanup action. New Tiger is performing the actions in this CAP pursuant to a Consent Decree, No. 02-2-00956-2 (Decree), entered with the Thurston County Superior Court. This CAP is Exhibit B to the Decree. Federated Service Insurance Company (Federated) is also a party to the Decree, but is not performing any of the work in this CAP.

In addition, Mercy Development Company (Mercy) has entered into a separate Consent Decree (Mercy Decree) for additional remedial actions at the Site. The actions in this CAP and associated Decree will be coordinated with the activities called for in the Mercy Decree.

## **2.0 Background**

### **2.1 Site Location and Description**

The Tiger Oil Site (Site) is located in Yakima, Washington, at the southeast corner of the intersection of West Nob Hill Boulevard and South 24th Avenue within the NW ¼, SE ¼ of Section 26, Township 13 North, Range 18 E.W.M. In this CAP, the terms "Site" and "Facility" are used interchangeably. According to WAC 173-340-200, "Facility" means any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, . . . ; or any site or area 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. The Site is comprised of the Tiger Mart retail gasoline store and

its underground storage tank system, the monitoring wells and recovery wells west of the DID line, the soil, groundwater, and petroleum-contaminated surface water/captured groundwater in the Yakima County Drainage Improvement District storm drain line #4 (DID line #4), the portion of the Safeway Shopping Center parking lot located west of the DID line, the Ted Brown Music Co. property, located to the south of the Tiger Mart property, and the Skipper's restaurant property located to the east of the Tiger Mart property. The Site is illustrated in Figure 1, attached. The Site excludes all hazardous substances located east of the DID line #4.

## **2.2 Hydrogeology/Geology**

Depth to groundwater fluctuates from 5 to 15 feet below ground surface (b g s ) depending on the time of year, with an overall average of 10-12 feet b.g.s. Higher water levels occur in the spring and summer; these correspond with an influx of water due to local and regional irrigation practices. The estimated rate of groundwater flow is 0.08 ft/day to 0.6 ft/day (Kleinfelder, 1994). Geology of the Site consists of silty/clayey to silty/sandy sediments coarsening downward to sandy/gravelly sediments that begin at about 15-25 feet b.g.s., depending on site location. More detailed hydrogeologic and geologic information is located in the RI/FS (Kleinfelder, 1994).

## **2.3 Site History**

In the early 1980s, petroleum products were released from the underground storage tank system at the Site. These phase separated petroleum products contaminated the soil, groundwater, surface water/captured groundwater in DID line #4.

In April 1981, an explosion occurred in the DID line near the Site, injuring two City of Yakima workers. The explosion likely resulted from the presence of explosive levels of gasoline vapors in the line, caused by the presence of gasoline in and around the DID line. Initial investigations of the Site were conducted by Ecology and the City of Yakima between December 1980 and September 1982. These investigations resulted in locating a release of hazardous substances (petroleum products) from the Tiger Bin retail facility. On October 7, 1982, Ecology issued Enforcement Order No. DE 82-517 to Tiger Oil Company that required recovery of floating petroleum product and other remedial activities.

In a letter to Ecology dated May 18, 1983, Zarembo Claims, an independent claims adjuster, estimated that approximately 18,772 gallons of petroleum product had been released at the Site in 1982. Known additional releases of 2,000 gallons (Zarembo Claims) and 50 gallons (Kleinfelder, 1994) of petroleum product occurred in 1983 and 1984, respectively.

Federated contracted with Crowley Environmental (September 1982 to March 1983), Fuel Recovery Company (April 1983 to May 1985), and Soil Exploration Company (May 1985 to September 1985) for further investigation and petroleum product recovery.

In February 1989, staff from Riebe Well Drilling notified Ecology that they had discovered free petroleum product in monitoring wells at the Site. In July 1989, during an Ecology investigation, free petroleum product was found in monitoring wells MW-9, MW-11, MW-13, and MW-15. In

March 1990, Ecology issued Enforcement Order No. DE 90-C140, pursuant to MTCA, to New Tiger, who had purchased the gas station from the Tiger Oil Company in October 1987. The order required site stabilization and a Remedial Investigation/Feasibility Study (RI/FS). Subsequently, Enforcement Order No. DE 90-C140 was amended to include Tiger Oil Corporation and Federated Insurance.

In November 1990, New Tiger began recovery of free product through bailing. In September 1994, Ecology issued Enforcement Order No. DE 94TC-C432 to New Tiger, Tiger Oil Company, Federated, and M & E Company requiring installation of a free product recovery system designed to collect product, contaminated groundwater, contaminated soil vapors, and prevent contaminant migration into the DID line offsite. An interim remedial system consisting of a soil vapor extraction (SVE) and groundwater extraction (GWE) system commenced operation in August 1995. Additional information on the interim action is addressed later in this report.

In September 1998, Ecology issued Enforcement Order No. DE 98TC-C166 to all PLPs requiring the planning and implementation of a final cleanup action at the Site.

Free product levels near the UST system, as measured in MW-11, located at the southeast corner of the property, decreased from 1992-1998, increased from 1998-2001, and have decreased from 2001-2003.

## **2.4 Interim Remedial Action**

Commencement of an interim remediation system occurred in August 1995. Clearwater Group, Inc. (Clearwater) oversaw design, installation and operation of the system until May 1997 when New Tiger hired QUEST, who oversaw system operation until April 1998. Since September 1998, Foster Wheeler has been in charge of overseeing operation of the interim remediation system. Periodically, the system has been shut down for repairs or due to the weather.

The interim remediation system was installed as a method of preventing off-site migration of separate phase hydrocarbons (SPH). The system consists of two trenches fitted with vacuum equipment designed to extract groundwater (groundwater extraction, GWE) and soil vapors (soil vapor extraction, SVE) from the subsurface and transport them to an on-site treatment facility. The treated water is discharged into the municipal sanitary sewer system, and vapors are passed through an air filter before being vented to the atmosphere. For a more detailed description of the interim treatment process, refer to the *Remedial System Installation Startup and Monitoring Report* (Clearwater, 1996).

In the *Remedial System Installation, Startup and Monitoring Report* (1996) submitted to Ecology, Clearwater stated that the interim remediation system was effective at removing contaminants from the subsurface and limiting contaminant migration into the DID line. In the *Groundwater Monitoring and Remediation System Report for 2nd Quarter, 1997*, Clearwater presented data indicating that approximately 1843 lbs. of hydrocarbons, 42 lbs. of which were benzene, had been extracted from the subsurface by the combined GWE/SVE system. In the

same report, Clearwater recommended that the combined GWE/SVE system remain in operation to protect the DID line from contaminants.

Although the interim remediation system has been effective, it is limited in its scope. The location of the interim remediation system is presented in Figure 1. The radius of influence was calculated by Clearwater (1996) to be approximately 75 feet for the GWE system and approximately 50 feet for the SVE system. Whereas the system may be adequate for remediating the subsurface of portions of the Safeway parking lot, it does not target the areas where free product is present on the Tiger Oil property. According to WAC 173-340-450 (4), "the UST owner or UST operator shall: Conduct free product removal to the maximum extent practicable and in a manner that minimizes the spread of hazardous substances, by using recovery and disposal techniques appropriate to the hydrogeologic conditions at the site. The objective of free product removal system must be, at a minimum, to stop the free product migration." The interim remediation system does not adequately address free product removal onsite. Therefore, the interim remediation system was not approved as a final cleanup action.

### 3.0 Cleanup Alternatives

#### 3.1 Cleanup Action Alternatives

The following is a brief description of the cleanup action alternatives presented in the RI/FS submitted by Kleinfelder (1994), which can be referred to for more detailed information.

- K1) *Surface Capping/Compliance Monitoring*: This alternative consists of capping the Site with asphalt pavement and monitoring the Site. Restrictions would be placed on actions requiring soil excavation and groundwater removal from the Site.
- K2) *In Situ Soil Vapor Extraction*: For this alternative, steps listed in K1 would be completed. In addition, an in situ soil-vapor extraction system would be installed in conjunction with a vacuum system to remove volatile vapors from the subsurface and transport them to an on-site treatment facility for processing. Oxygen would be injected into the subsurface in order to enhance aerobic biodegradation at the Site.
- K3) *Air Sparging*: This alternative combines steps taken in alternatives K1 and K2 with installation of an air sparging system. This process involves injecting air into the subsurface below the water table. As air bubbles move upward through the groundwater, contaminants in the groundwater are volatilized and transported from the subsurface, through vacuum, to an on-site treatment facility.

The following additional alternatives were proposed in the FS Addendum presented by Clearwater Group, Inc. (1997), which can be referred to for more detailed information.

- C1) *Vacuum Enhanced Total Fluids Recovery/Soil Vapor Extraction and Bioventing Wells*: This cleanup action consists of the installation of two horizontal slotted SVE wells and eight passive bioventing wells. A vacuum is used to draw SPH, contaminated groundwater, and vapors out of the subsurface where they are directed to an on-site treatment facility and

passed through an air/water separator. The groundwater mixture is passed through a coalescing oil/water separator and an air stripper for treatment before being discharged into the sanitary sewer system. Vapors are passed through an air filter before they are vented to the atmosphere. Bioventing wells would be installed to enhance the movement of air through soil and also allow for introduction of oxygen into the subsurface to enhance naturally occurring aerobic degradation. In addition, this alternative proposes that ORC (oxygen release compound) be injected in selective wells in order to enhance aerobic degradation.

- C2) *Removal and Treatment or Disposal of Petroleum Contaminated Soils:* This alternative consists of excavating approximately 33,349 cubic yards of soil in the area of the dispenser islands at the Tiger Mart gas station extending out into the Safeway parking lot to the DID line. An estimated 27,088 cubic yards of this is contaminated soil that would be treated by thermal desorption or disposal in a landfill. Any water encountered during soil excavation at the Site would be treated to remove contaminants.
- C3) *Air Sparging/Soil Vapor Extraction:* This alternative is similar to alternative K3. It calls for modifications to be made on the existing interim remediation system and for ORC injections into selected areas of the subsurface to enhance aerobic degradation.

The following additional alternative was proposed in the draft Cleanup Action Plan presented by Foster Wheeler (1998), which can be referred to for more detailed information.

- F1) *Hydrogen Peroxide Injection and Monitoring:* This alternative consists of injecting hydrogen peroxide into the subsurface to enhance aerobic degradation of contaminants at the Site. This would be done in conjunction with monitoring groundwater at the Site.

In addition to the above cleanup action alternatives, New Tiger presented a Draft Proposal for Remediation of Contamination at the Tiger Oil Facility (Foster Wheeler) to Ecology on June 1, 2001. The cleanup actions proposed in this document were:

- Removal of underground storage tanks (USTs), lines, and dispensers.
- Removal of petroleum contaminated soil (PCS) from the tank pit.
- Free product investigation through trenching or digging test pits.
- Free product removal.
- Installation of vertical risers.
- Possible design and installation of a SVE system, with additional excavation and disposal of PCS offsite, if necessary.
- Possible use of hydrogen peroxide and/or ORC to enhance degradation in areas that remain contaminated.

Finally, the following alternative was considered by Ecology:

*Monitored Natural Attenuation:* this alternative includes a variety of physical, chemical and/or biological processes that, under favorable conditions, act without human intervention to reduce the mass, toxicity, mobility, volume, or concentration of hazardous substances in the

environment. These in situ processes include: natural biodegradation; dispersion; dilution; sorption; volatilization; and, chemical or biological stabilization, transformation, or destruction of hazardous substances.

## **3.2 Selected Cleanup Actions**

Ecology has selected the following cleanup actions for the Site. The cleanup actions selected parts of alternatives presented in the *Draft Proposal for Remediation of Contamination at the Tiger Oil Facility* (Foster Wheeler, 2001).

### **3.2.1 UST Removal**

All USTs, associated lines, and dispensers will be removed from the Site. In accordance with WAC 173-340-400(6)(b)(ii), at the completion of removal of the USTs, associated lines, and dispensers, the engineer or certified underground storage tank provider shall prepare as built drawings and a report documenting all aspects of the UST removal. The report shall also contain an opinion from an engineer, based on testing results and inspections, as to whether the UST removal has been completed in substantial compliance with this CAP, and the applicable plans and specifications.

### **3.2.2 Removal of PCS**

PCS encountered during UST, line, and dispenser removal will be excavated, stockpiled, sampled, and managed according to Table 1. Existing Site utility services will be disconnected, removed, and/or rerouted. PCS removal shall consist of a minimum of approximately 650 cubic yards of PCS, generally the amount associated with UST system removal. The 650 cubic yards does not include the clean overburden excavated. Tiger may, but is not required to, remove additional PCS encountered during UST system removal, and Tiger may also remove additional PCS after UST removal.

In addition, should the existing Tiger Mart convenience store building be removed for any reason, New Tiger shall submit to Ecology a proposal for the removal of some or all of the PCS from underneath the building. Ecology shall review the proposal and provide comments and the project coordinators for Ecology and New Tiger shall meet and discuss the proposal. Should New Tiger and Ecology fail to agree on a plan for the removal of PCS below the building, either Ecology or New Tiger may invoke the dispute resolution process set forth in the Decree. Any soil removal shall be the responsibility of New Tiger.

During UST removal and PCS excavation, New Tiger will remove any free product encountered and discharge the free product to the existing treatment system, or in another legally appropriate manner, should the existing system have insufficient capacity.

During PCS removal, soil samples from the excavated area and stockpiled soil will be taken in accordance with guidelines set forth in *Guidance for Remediation of Petroleum Contaminated Soils*, Washington State Department of Ecology Toxics Cleanup Program Publication 91-30,

November, 1995 and *Guidance for Site Checks and Site Assessments for Underground Storage Tanks*, Pursuant to the Decree, Ecology and New Tiger may take split samples at the site during USI, associated piping, and PCS removal activities and trenching, in addition to other sampling activities that may take place at the Site.

**Table 1. Tiger Oil Site PCS End Use Criteria**

Analyte	Method	Soil Concentration (ppm)	
		Backfill*	Treatment required
	WTPH- 418.1 mod. or		
heavy fuel	NWTPH-Dx	≤ 2000	> 2000
	WIPH-D or		
diesel	NWTPH-Dx	≤ 2000	> 2000
	WIPH-G or		
gasoline	NWTPH-Gx	≤ 30	> 30
benzene	8020 or 8021	≤ 0.03	> 0.03
ethylbenzene	8020 or 8021	≤ 6	> 6
toluene	8020 or 8021	≤ 7	> 7
xylene	8020 or 8021	≤ 9	> 9

\*Backfill: Used for backfill on the Tiger Oil Property

Values in this table were obtained from Table V in *Guidance for Remediation of Petroleum Contaminated Soils*, Washington State Department of Ecology Toxics Cleanup Program Publication 91-30.

### 3.2.3 Free Product Investigation and Possible Soil Vapor Extraction (SVE) System

At the same time as the USI removal, two (2) trenches shall be dug to determine the existence and amount of free product, and the potential of an SVE. The trenches shall be located:

(a) On the north side of the Tiger Mart building starting at the approximate location of KMW-9, and extending to the northwest to the approximate location of MW-15, which is approximately 75 feet; and

(b) From approximately the northeast corner of the Tiger Mart building to the former location of RW-2, which is 60 feet north of the northeast corner of the building.

Attachment A to this CAP shows the approximate location of the trenching.

The trenches shall be 2-3 feet wide (width of a backhoe bucket) and approximately 15 feet deep or at a depth to groundwater. Free product encountered during the trenching shall be removed and discharged to the existing treatment system, should the existing treatment system have sufficient capacity for such discharge. PCS encountered during trenching shall be stockpiled, sampled and managed according to Table 1.



Should the trenching discover free product and/or TPH-G contamination at 30 ppm or greater in soil, Tiger shall install an SVE system to remediate contamination in the vicinity of the trenches. Should SVE installation be necessary, the system shall be engineered to have sufficient radius of influence to remediate the hot spot contamination.

The SVE system shall be engineered in such a way as to be connected to and become part of the vapor extraction system currently being used in the current interim remediation system.

The Mercy Decree also calls for Mercy to install and operate an SVE system on Mercy's property, which is part of the Site. The Mercy SVE system is to also be connected to the current interim remediation system.

#### ***3.2.4 Hydrogen Peroxide Injection***

Hydrogen peroxide and/or ORC may be added to the UST area, test pits, and trenches to enhance degradation of contaminants. Hydrogen peroxide and/or ORC may also be injected/placed into the subsurface down-gradient of the source area, as a way of enhancing biodegradation of contaminants. Should Tiger decide to add hydrogen peroxide and/or ORC, it shall submit an engineering plan to Ecology for review and approval. Existing monitoring wells specified for monthly sampling may not be used as hydrogen peroxide or ORC injection wells.

The above cleanup actions are to be used in conjunction with the existing interim remediation system and institutional controls.

#### ***3.2.5 Monitored Natural Attenuation***

**MNA shall be allowed for this site**

MTCA allows for natural attenuation when:

- (1) Source control (including removal and/or treatment of hazardous substances) has been conducted to the maximum extent practicable;
- (2) Leaving contaminants on-site during the restoration time frame does not pose an unacceptable threat to human health and the environment;
- (3) There is evidence that natural biodegradation or chemical degradation is occurring and will continue to occur at a reasonable rate at the site; and
- (4) Appropriate monitoring requirements are conducted to ensure that the natural attenuation process is taking place and that human health and the environment are protected.

WAC 173-340-370(7). The engineering design report to be written in accordance with this CAP shall include documentation that ensures compliance with WAC 173-340-370(7)

### **3.3 Monitoring Wells**

Any monitoring wells removed during the remediation activities listed above need not be replaced.

## 4.0 Exposure Assessment

### 4.1 Chemicals of Concern

Chemicals of concern in the groundwater and soil at the Site include total petroleum hydrocarbons as gasoline (TPH-G), and benzene, toluene, ethylbenzene, and xylenes (BTEX). These compounds are present above the Method A cleanup levels for groundwater found in Table 720-1, WAC 173-340-900 (*Results of Groundwater Monitoring (September 2001) at Tiger Oil Corp Facility, 2312 West Nob Hill Boulevard, Yakima, Washington, Foster Wheeler, November 2001*). Currently, there is a diesel tank located onsite. If soil samples taken in conjunction with tank removal indicate the presence of diesel range contaminants at concentrations above MTCA Method A levels, then total petroleum hydrocarbons as diesel (TPH-D) will be added to the list of chemicals of concern for the Site.

### 4.2 Exposure Pathways

There is potential for humans to be exposed to contaminants at the Site through exposure to contaminated subsurface soil, groundwater, and vapors.

*Subsurface soil:* Activities that involve soil excavation may lead to contaminant exposure to humans through inhalation, ingestion, and dermal contact. The most likely population to be affected by this exposure pathway is utility workers and those participating in the installation of wells and remedial measures.

*Groundwater:* There is potential for humans to come into contact with groundwater during excavations at the Site. The most likely population to be affected by this exposure pathway is utility workers and those participating in the installation of wells and remedial measures. There is also the potential for contaminants dissolved in the groundwater to be transported offsite via the DID line that runs through the Site and discharges into surface water (Wide Hollow Creek). Contamination has impacted the shallow unconfined aquifer at the Site. Although residential wells in the area are not used for drinking water purposes, humans may come into contact with contaminants dissolved in the groundwater when using water from these wells for other purposes.

*Vapors:* There is potential for humans to come into contact with hazardous vapors that volatilize from soil and groundwater during excavation of soil at the Site. In addition, contaminant vapors can pose a threat to human health and the environment when they are present at concentrations in confined spaces that exceed NIOSH (National Institute for Occupational Safety and Health) and/or OSHA (Occupational Safety and Health Administration) permissible exposure limits, or at high enough concentrations to create conditions that may lead to explosions. The most likely population to be affected by this exposure pathway is utility workers and those participating in the installation of wells and remedial measures.

During any Site activities, steps should be taken to minimize the risk to workers and the public. These steps will be outlined in the Safety and Health Plan.

## 5.0 Terrestrial Ecological Evaluation

This site is excluded from a terrestrial ecological evaluation based on WAC 173-340-7491(1)(b), which states, "All soil contaminated with hazardous substances is, or will be, covered by buildings, paved roads, pavement, or other physical barriers that will prevent plants or wildlife from being exposed to the soil contamination. To qualify for this exclusion, an institutional control shall be required by the department under WAC 173-340-440." This site will have appropriate institutional controls. Institutional controls are described in section 7.

## 6.0 Cleanup Standards

### 6.1 Cleanup Level

Method A cleanup levels for groundwater and soil, as described in sections 720 and 740 of WAC 173-340, were selected for the Site. Table 2 lists Method A cleanup levels for groundwater and soil for chemicals of concern at the Site.

**Table 2.** Method A cleanup levels for groundwater (WAC 173-340-900, table 720-1) and soil (WAC 173-340-900, table 740-1).

	Groundwater ( $\mu\text{g/L}$ )	Soil ( $\text{mg/kg}$ )
Benzene	5	0.03
Toluene	1000	7
Ethylbenzene	700	6
Xylenes	1000	9
TPH-G	800	30

Reasons for using Method A levels for groundwater and soil at the Site are as follows:

WAC 173-340-720(1)(a) states, "Ground water cleanup levels shall be based on estimates of the highest beneficial use and the reasonable maximum exposure expected to occur under both current and potential future site conditions." Due to private wells in the area, and the fact that groundwater discharges into the DID line and impacts surface water in Wide Hollow Creek, there is potential in the future for groundwater at the Site to be used for ingestion or other domestic uses. There is also potential for humans to be exposed to this groundwater. Therefore, Method A cleanup levels were chosen for the Site.

WAC 173-340-704(1) states, "Method A may be used to establish cleanup levels at sites that have few hazardous substances and that meet one of the following criteria: (a) Sites undergoing a routine cleanup action as defined in WAC 173-340-200; or (b) Sites where numerical standards

are available in this chapter or applicable state and federal laws for all indicator hazardous substances in the media for which Method A cleanup levels are used.”

### **6.1.1 Routine Cleanup Action**

This site fulfills the requirements for undergoing a routine cleanup action, as defined in WAC 173-340-200. Following are a list of criteria to determine if a site is undergoing a “routine cleanup action,” and how the cleanup actions for the Tiger Oil Site fulfill those criteria.

- *Cleanup standards for each hazardous substance addressed by the cleanup are obvious and undisputed, and allow for an adequate margin of safety for protection of human health and the environment* – The cleanup standards for each hazardous substance at the Site are Method A cleanup levels, which allow for an adequate margin of safety for protection of human health and the environment.
- *It involves an obvious and limited choice among cleanup alternatives and uses an alternative that is reliable, has proven capable of accomplishing cleanup standards, and with which the department has experience.* – The selected cleanup actions, UST removal, PCS removal, free product removal, possible SVE, and possible hydrogen peroxide injection and/or ORC use, have all been proven to be successful at remediating sites. Specifically, SVE has already been implemented at the Site as part of the interim remediation system, and has proven successful at reducing contaminant concentrations in the groundwater.
- *The cleanup action does not require preparation of an environmental impact statement; and the site qualifies under WAC 173-340-7491 for an exclusion from conducting a simplified or site-specific terrestrial ecological evaluation, or if the site qualifies for a simplified ecological evaluation, the evaluation is ended under WAC 173-340-7492(2) or the values in Table 749-2 are used.* – This cleanup action does not require preparation of an environmental impact statement. The site qualifies under WAC 173-340-7491(1)(b) for an exclusion from conducting a site-specific terrestrial ecological evaluation.

### **6.1.2 Numerical Standards**

This site also fulfills requirement WAC 173-340-704(b)(1) because numerical standards are available in Tables 720-1 and 740-1, WAC 173-340-900, for all indicator hazardous substances in the media for which Method A cleanup levels are used.

## **6.2 Clean Site Determination**

Groundwater at the Site shall be considered clean when Method A cleanup levels for groundwater, as defined in Table 2, in WAC 173-340-720 (groundwater) and WAC 173-340-740 (soil), have been met for eight consecutive quarters, or two years of monitoring at all conditional points of compliance described in this CAP. The eight quarters or two years of monitoring shall commence upon the completion of the active remedial measures described in section 3.0.

Soil at the site shall be considered clean when Method A cleanup levels in soil are reached at the points of compliance.

A "No Further Action" determination shall be issued for this Site when the requirements in this CAP have been met and the Method A cleanup levels for groundwater have been met for two (2) years of monitoring at the points of compliance as discussed in this CAP. An NFA determination is not the equivalent of a clean site determination.

### **6.3 Points of Compliance**

#### **6.3.1 Groundwater**

Pursuant to WAC 173-340-720(8)(d), conditional points of compliance (CPOCs) have been selected for this site. The CPOCs are at KMW-14, 16, 18, 24; MWG-2; and DID No15. To ensure that groundwater in the contaminant plume is reaching the established MICA Method A cleanup levels, monitoring and reporting shall occur as specified in Sections 9.1 through 9.3 of this CAP.

#### **6.3.2 Soil**

WAC 173-340-740(6)(b) states, "For soil cleanup levels based on the protection of ground water, the point of compliance shall be established in the soils throughout the site." Points of compliance for the Site include all areas where contaminants have come to be located.

## **7.0 Institutional Controls**

Institutional Controls are measures undertaken to limit or prohibit activities that may interfere with the integrity of a cleanup action or result in exposure to hazardous substances at the Site (WAC 173-340-440(1)).

### **7.1 Types of Institutional Controls**

Institutional controls that shall be implemented for the Site include installation of physical measures such as fences, signs, and locks to prevent tampering with on-site wells, monitoring, and remediation equipment. In addition, the site will be covered in asphalt to cap and contain contaminated soils onsite. Regular inspections of implemented institutional controls will be conducted and repairs made if necessary. Education of employees and the public about site contamination and ways to limit exposure are also forms of institutional controls to be conducted at the Site. A restrictive covenant pursuant to the requirements of WAC 173-340-440(9) and approved by Ecology shall be recorded for this Site.

### **7.2 Placement of Institutional Controls**

Institutional controls will be in place on all areas of the Site where cleanup levels have not been attained for soil and groundwater. If it is determined that cleanup levels for soil and groundwater

have been attained in a portion of the site that is delineated by property boundaries, institutional controls may be removed from that property with the following limitations:

- Institutional controls will remain in place to prevent tampering with monitoring wells.
- Institutional controls will remain in place to prevent tampering with any equipment associated with the cleanup actions at the site.

## **8.0 Cleanup Actions**

### **8.1 Selected Cleanup Actions**

The cleanup actions selected for the Site shall fulfill the threshold requirements put forth in WAC 173-340-360(2)(a), which include protecting human health and the environment, complying with cleanup standards, and complying with applicable state and federal laws. Other requirements in WAC 173-340-360(2)(b) state the selected action shall use permanent solutions to the maximum extent practicable, provide for a reasonable restoration time frame, and consider public concerns.

The cleanup actions selected for the Site include removal of Underground Storage Tanks (USTs), removal of petroleum contaminated soils (PCS), removal of free product, exploratory trenching to determine whether the installation of an SVE system is necessary, and possible use of hydrogen peroxide and/or ORC to enhance aerobic degradation, and monitored natural attenuation (MNA). These cleanup actions are to be used in conjunction with the current interim remedial system, Mercy SVE system and institutional controls.

### **8.2 Justification for Selected Cleanup Action**

Justification for the selected cleanup actions is provided in the following sections that detail how the cleanup actions fulfill the requirements for a cleanup action set forth in WAC 173-340-360.

#### ***8.2.1 Threshold requirements – WAC 173-340-360(2)(a)***

- *Protection of Human Health and the Environment*  
The selected cleanup actions address removal of free product, contaminants in groundwater, and contaminants in the vapor and/or liquid phase from the subsurface. These actions will help to reduce the risk posed to humans and the environment at the Site.
- *Compliance with Cleanup Standards*  
The purpose of the selected cleanup actions is to reduce contaminant concentrations in the groundwater and soil at the Site to at or below Method A cleanup levels put forth in WAC 173-340-720 and WAC 173-340-740.
- *Compliance with Applicable State and Federal Laws*  
The selected cleanup actions comply with all applicable state and federal laws.
- *Compliance Monitoring*

A Site Safety and Health Plan (see section 9.4) will be used as guidance to protect workers and the public prior to, during, and after installation of the proposed cleanup system. Groundwater samples will be taken and analyzed to monitor contaminant concentrations in the subsurface to confirm that the cleanup actions are effective at reducing contaminant concentrations. Air and groundwater passing through the existing treatment system, and any additional SVE, will be monitored to assure that discharges to the atmosphere and sanitary sewer, respectively, are in compliance with applicable state and federal laws.

### **8.2.2 Other requirements – WAC 173-340-360(2)(b)**

- *Permanent Solution*  
WAC 173-340-360(3) outlines the requirements and procedures for determining whether a cleanup action uses permanent solutions to the maximum extent practicable. Section 8.4, *Evaluation Criteria*, details how the selected cleanup actions are permanent to the maximum extent practicable.
- *Reasonable Restoration Time Frame*  
The cleanup actions described in this CAP provide for a reasonable restoration time frame, as is outlined in WAC 173-340-360 (4). According to the FS Addendum (Clearwater, 1997), the estimated restoration time frame using alternative C1 is 2 to 4 years; the estimated restoration time frame using alternative C3 is approximately 5+ years. The cleanup actions selected by Ecology calls for UST system removal according to WAC 173-360, PCS excavation and removal, free product removal, an SVE system should exploratory trenching establish an SVE is necessary, potential hydrogen peroxide injection and/or ORC use, and MNA. UST and PCS removal activities at the site, as outlined in section 3.2, are estimated to take no more than one month. PCS removal, in conjunction with the Mercy SVE, and an SVE targeting the highest areas of contamination (if exploratory trenching establishes its necessity) will provide for a quicker restoration time frame than would SVE alone as outlined in alternatives C1 and C3. The combination of the selected alternatives at this Site are expected to restore soil and groundwater at the Site to concentrations below the cleanup levels within 10-15 years.
- *Public Concern*  
Public comments received during the comment period for this CAP will be considered and addressed by Ecology.

### **8.2.3 Disproportionate Cost Analysis**

Because the CAP is agreed upon by Ecology and Tiger, no disproportionate cost analysis is required.

### **8.3 Expectations for Cleanup Action Alternatives**

Expectations for cleanup actions are listed in WAC 173-340-370. These expectations include, but are not limited to, the following:

- Emphasis on treatment technologies;
- Destruction, detoxification, and/or removal of hazardous substances;
- Use of engineering controls;
- Minimization of migration of hazardous substances;
- Consolidation, to the maximum extent practicable, of hazardous substances remaining onsite;
- Taking active measures to prevent/minimize the release of contaminants to surface water.

#### **8.4 Evaluation Criteria**

WAC 173-340-360(3)(f) puts forth the criteria for determining whether a cleanup action is “permanent to the maximum extent practicable.” Following is a list of these criteria and a discussion of how the selected cleanup actions fulfill each of them.

##### ***8.4.1 Protectiveness— WAC 173-340-360(3)(f)(i)***

The selected cleanup actions include the removal of the UST system and associated PCS, free product removal, and, if necessary, SVE to treat PCS left in situ, and MNA to remediate contamination in soil, groundwater, and subsurface vapors. PCS removal serves to remove free product and contaminants sorbed to soil particles, which will reduce leaching of contaminants to the groundwater; SVE (if shown to be necessary) will address removal of contaminants in the vapor phase, and, in turn, contaminants sorbed to soil and contained in pore water. MNA with, or without hydrogen peroxide injections will serve to enhance biodegradation of contaminants in the groundwater. These actions will help to reduce contaminant concentrations to Method A cleanup levels for groundwater defined in WAC 173-340-720. These actions also serve to reduce the risk of contaminant exposure to human health and the environment. The on-site risks resulting from implementing the alternative include the risk of exposure to contaminants as free product, in the groundwater and soil, and in the vapor phase during UST excavation, PCS excavation, and potential installation of SVE system(s). Implementation of appropriate safety measures and institutional controls will minimize the risk to human health and the environment. The selected alternative will improve the overall environmental quality of the Site by reducing contaminant concentrations in the groundwater, soil gas, and removing SPH from the subsurface.

##### ***8.4.2 Permanence – WAC 173-340-360 (3)(f)(ii)***

The selected cleanup alternative will serve to permanently remove contaminants from the subsurface, and to reduce the volume and mobility of any contaminants remaining in the subsurface. The cleanup alternatives will be effective in destroying the hazardous substances at the Site by removal from the subsurface and processing in the treatment facility. PCS removal, SVE if shown to be necessary, potential hydrogen peroxide injections and/or ORC use, and MNA will serve to further reduce contaminant concentrations in the subsurface. UST removal serves as a method of prevention of future releases at the Site and eliminates the possibility of additional hazardous substance releases.

##### ***8.4.3 Cost – WAC 173-340-360 (3)(f)(iii)***



The cleanup action selected is not considered to be substantial and disproportionate to the incremental degree of protection it would achieve over a lower preference cleanup action.

#### ***8.4.4 Effectiveness over the long-term – WAC 173-340-360(3)(f)(iv)***

The following types of cleanup action components may be used as a guide, in descending order, when assessing the relative degree of long-term effectiveness:

- Reuse or recycling;
- Destruction or detoxification;
- Immobilization or solidification;
- On-site or off-site disposal in an engineered, lined, and monitored facility;
- On-site isolation or containment with attendant engineering controls;
- Institutional monitoring.

The cleanup alternatives selected involve exploratory trenching to determine whether installation of additions to the system similar to the current interim remediation system should be installed in the area of greatest contamination at the site. To date, the interim remediation system has been effective. The main limitation of the interim remediation system is that it doesn't target the area of highest contamination at the Site. If shown to be necessary, the additions to the system would target the area of highest contamination. With proper maintenance, the system has the potential for long-term reliability.

#### ***8.4.5 Management of short-term risks – WAC 173-340-360(3)(f)(v)***

Steps will be taken to minimize exposure to contaminated soil and groundwater if installation of an extended SVE system is conducted. A Safety and Health Plan will be followed at the Site. If an extended system is to be installed, once installed, there is little risk to human health and the environment prior to the attainment of cleanup standards because the area will be paved over. Institutional controls will be in place to prevent tampering with existing wells and the treatment system, and a restrictive covenant will be recorded to prevent use of groundwater prior to achievement of the cleanup levels and to restrict access to contaminated soil.

#### ***8.4.6 Technical and administrative implementability – WAC 173-340-360(3)(f)(vi)***

The proposed cleanup alternatives are technically possible to implement at the Site. PCS removal will take place in conjunction with USI removal. Should an extended SVE system need to be installed, it should be similar to the interim remediation system, which was shown to be effective and technically possible to implement at the Site. All necessary services are available and the extended SVE system can be integrated into the current treatment system in place at the Site.

#### ***8.4.7 Consideration of public concerns – WAC 173-340-360(3)(f)(vii)***

Ample opportunity will be given to the community to comment on the CAP

## 9.0 Additional Requirements

### 9.1 Compliance Monitoring

Requirements of Compliance Monitoring as stated in WAC 173-340-410 include:

- a) Protection monitoring. Confirm that human health and the environment are adequately protected during construction and the operation and maintenance period of an interim action or cleanup action as described in the safety and health plan;
- b) Performance monitoring. Confirm that the interim action or cleanup action has attained cleanup standards and, if appropriate, remediation levels or other performance standards such as construction quality control measurements or monitoring necessary to demonstrate compliance with a permit or, where a permit exemption applies, the substantive requirements of other laws;
- c) Confirmational monitoring. Confirm the long-term effectiveness of the interim action or cleanup action once cleanup standards and, if appropriate, other performance standards have been attained.

According to WAC 173-340-410 (3), a Compliance Monitoring Plan shall be prepared for all cleanup actions and shall include:

- a) A sampling and analysis plan meeting the requirements of WAC 173-340-820 which shall explain in the statement of objectives how the purposes of WAC 173-340-410(1) are met;
- b) Data analysis and evaluation procedures used, to demonstrate and confirm compliance and justification for these procedures, including:
  - i) A description of any statistical method to be employed; or
  - ii) If sufficient data is not available prior to writing the plan to propose a reliable statistical method to demonstrate and confirm compliance, a contingency plan proposing one or more reliable statistical methods to demonstrate and confirm compliance, and the conditions under which the methods would be used at the facility; and
- c) Other information as required by the department.

### 9.2 Sampling and Analysis Plan

The Sampling and Analysis Plan shall specify procedures that ensure that sample collection, handling, and analysis will result in data of sufficient quality to plan and evaluate remedial actions at the Site. The Sampling and Analysis Plan shall be prepared by the implementers of this CAP. As defined in WAC 173-340-820, the Sampling and Analysis Plan shall include the following:

- a) A statement on the purpose and objectives of the data collection, including quality assurance and quality control requirements;
- b) Organization and responsibilities for the sampling and analysis activities;
- c) Requirements for sampling activities including:
  - i) Project schedule;
  - ii) Identification and justification of location and frequency of sampling;

- iii) Identification and justification of parameters to be sampled and analyzed;
  - iv) Procedures for installation of sampling devices;
  - v) Procedures for sample collection and handling, including procedures for personnel and equipment decontamination;
  - vi) Procedures for the management of waste materials generated by sampling activities; including installation of monitoring devices, in a manner that is protective of human health and the environment;
  - vii) Description and number of quality assurance and quality control samples, including blanks and spikes;
  - viii) Protocols for sample labeling and chain of custody; and
  - ix) Provisions for splitting samples where appropriate.
- d) Procedures for analysis of samples and reporting of results, including:
- i) Detection or quantification limits;
  - ii) Analytical techniques and procedures;
  - ii) Quality assurance and quality control procedures; and
  - iii) Data reporting procedures, and where appropriate, validation procedures.

### ***9.2.1 Tasks To Be Completed During Each Sampling Event***

- 1) Obtaining water level measurements in each well accurate to one one-hundredth of a foot (.01 foot).
- 2) Obtaining the following field parameters: pH, dissolved oxygen, temperature, and IDS.
- 3) Evaluating each well to determine the integrity of the well seal and cap to ensure no contamination will enter the well from the surface.
- 4) Utilizing an oil water interface meter or patch to determine if free petroleum products are present in the well.
- 5) Testing for TPH-G as gasoline using method WTPH-G, and BTEX compounds. Reporting limits will be the analytical method detection limits.
- 6) If TPH-D is determined to be a chemical of concern for the Site, based on soil samples obtained during UST removal, testing for IPH-D in groundwater will occur. The reporting limit will be the analytical method detection limit.
- 7) Table 830-1, WAC 173-340-900 lists the minimum testing requirements for petroleum contaminated sites and will provide guidance as to what additional compounds must be tested for at the site. The reporting limit for any additional compound will be the analytical method detection limit.
- 8) Reporting analytical results in micrograms per liter ( $\mu\text{g/L}$ ) in tables and in graphical form with concentration over time.
- 9) Preparing and submitting groundwater elevations and flow directions after each sampling event, with data presented in table and map form.
- 10) Preparing and submitting contaminant contour maps with benzene and IPH-G concentrations

### ***9.2.2 Wells To Be Sampled/Frequency of Sampling***

- A. Information Wells

After the active remedial measures identified in Section 3.0 have been implemented, including the installation of the Mercy SVE system, the following groundwater monitoring wells shall be sampled to obtain information regarding the effectiveness of the remedial actions: Wells MW-8, MW-7, MW-9, KMW-9, MW-15, KMW-17, KMW-22, and S-2. Each of these wells will be inspected quarterly for measurable free floating petroleum product (Separate Phase Hydrocarbons, or SPH). If measurable SPH is present, the SPH thickness will be determined, and the SPH shall be bailed and disposed of by discharging the SPH to the existing treatment system. If measurable SPH is not detected in these wells, groundwater in the wells will be sampled and analyzed for the chemical constituents listed in Section 9.2.1.

#### B. Conditional Points of Compliance

The conditional points of compliance (MWG-2; KMW-14, 16, 18, 24; and DID # 15) shall be sampled for the chemical constituents listed in Section 9.2.1. The CPOC wells shall be sampled quarterly. If SPH is encountered in any of the wells designated as conditional points of compliance, the SPH thickness will be determined, the SPH shall be bailed and disposed of by discharging the SPH to the existing treatment system, and the wells shall not be sampled for the chemical constituents listed in Section 9.2.1.

All groundwater sampling for the informational wells and the conditional points of compliance shall include measuring and recording the water levels. New Tiger may request in writing at anytime; that the wells to be sampled and the frequency of sampling be modified by Ecology. All wells not listed as informational wells or conditional points of compliance may be abandoned, if after two (2) years, site conditions do not change.

Monitoring under this section shall begin after all active remedial measures have been implemented, except for the possible PCS removal underneath the Tiger Mart building as discussed in section 3.2.2.

### 9.3 Reporting Requirements

All analytical results shall be reported in the following manner:

- a) Copies of all data sheets received from the laboratory shall be submitted to Ecology on paper and in electronic digital format, preferable in EXCEL spreadsheets. This includes all chromatographs, and data showing any QA/QC analysis run by the laboratory, and chain of custody forms.
- b) All data will be presented in tables and graphically showing concentration over time.
- c) The most recent sampling and analysis shall be presented as received from the lab as stand alone documents.
- d) A brief report explaining the procedures used, anything unusual noted during sampling, the condition of each well, and discussion of the data will be submitted within 45 days of each sampling event.

### 9.4 Worker Safety Plan

Section 810(2) of WAC 173-340 outlines the requirements for a Safety and Health Plan. A Safety and Health Plan shall be prepared by the PLPs and submitted to the Ecology Site Manger for review and comment. The plan must include all Applicable and Relevant or Appropriate Requirements (ARARs).

### **9.5 Public Participation Plan**

Section 600(9) of WAC 173-340 outlines the requirements for the Public Participation Plan. A Public Participation Plan shall be prepared by New Tiger and submitted to the Ecology Site Manager for review and approval. The plan must include all ARARs.

### **9.6 Work Plan**

WAC 173-340-400(6) outlines the requirements for plans describing the cleanup action, which will be referred to as the "Work Plan." The Work Plan shall include an Engineering Design Report, per WAC 173-340-400(4)(a), Construction Plans and Specifications per WAC 173-340-400(4)(b), and an Operation and Maintenance Plan per WAC 173-340-400(4)(c).

### **9.7 Applicable, Relevant and Appropriate Requirements**

WAC 173-340-700(4)(a) states, "In addition to establishing minimum requirements for cleanup standards, applicable state and federal laws may also impose certain technical and procedural requirements for performing cleanup actions." The PLPs shall be responsible for determining and implementing ARARs (applicable, relevant and appropriate requirements) for the Site.

## **10.0 Schedule**

### **10.1 Removal of USTs, associated piping, over-excavation of PCS, free product investigation and possible hydrogen peroxide/ORC use on the Tiger Oil property**

Within 14 calendar days of the effective date of the Decree, New Tiger shall submit to Ecology a schedule for removal of USTs, associated piping, over-excavation of PCS, free product investigation, and possible hydrogen peroxide/ORC use and SVE piping installation on the Tiger Oil property, and a signed contract from a licensed tank removal/site assessor for work to be completed at the Site. Tank removal and site assessment will commence no later than 60 days after the effective date of the Decree.

Within 30 calendar days of the effective date of the Decree, New Tiger shall submit to Ecology, for review and approval, a draft letter identifying soil sample collection locations, intended laboratory analyses, a trench cross-section schematic, and other pertinent information to serve as a Work Plan and a Sampling and Analysis Plan for removal of USTs, associated piping, over-excavation of the PCS, free product investigation, and possible hydrogen peroxide/ORC use and SVE piping installation on the Tiger Oil property, per WAC 173-340-820, and a draft Public Participation Plan per WAC 173-340-600.

Within 15 calendar days of receiving Ecology's comments on the draft letter Work Plan, including a Sampling and Analysis Plan, for removal of USTs, associated piping, over-excavation of PCS, free product investigation, and possible hydrogen peroxide/ORC use and SVE piping installation on the Tiger Oil property, and draft Public Participation Plan, New Tiger shall submit, for review and approval, a final Work Plan, including a Sampling and Analysis Plan, for removal of USTs, associated piping, and PCS on the Tiger Oil property, and a final Public Participation Plan. The final Work Plan, Sampling and Analysis Plan and Public Participation Plan shall address and incorporate Ecology's comments.

Tank removal and site assessment will commence after the effective date of the Decree, when the water table at the site is determined to be at the average annual low water table point.

Within 30 calendar days of the effective date of the Decree, and prior to UST removal and associated activities, New Tiger shall submit to Ecology, for review and comment, a Safety and Health Plan for cleanup activities outlined in this CAP. The Safety and Health Plan must be submitted to Ecology prior to the commencement of tank removal activities at the Site.

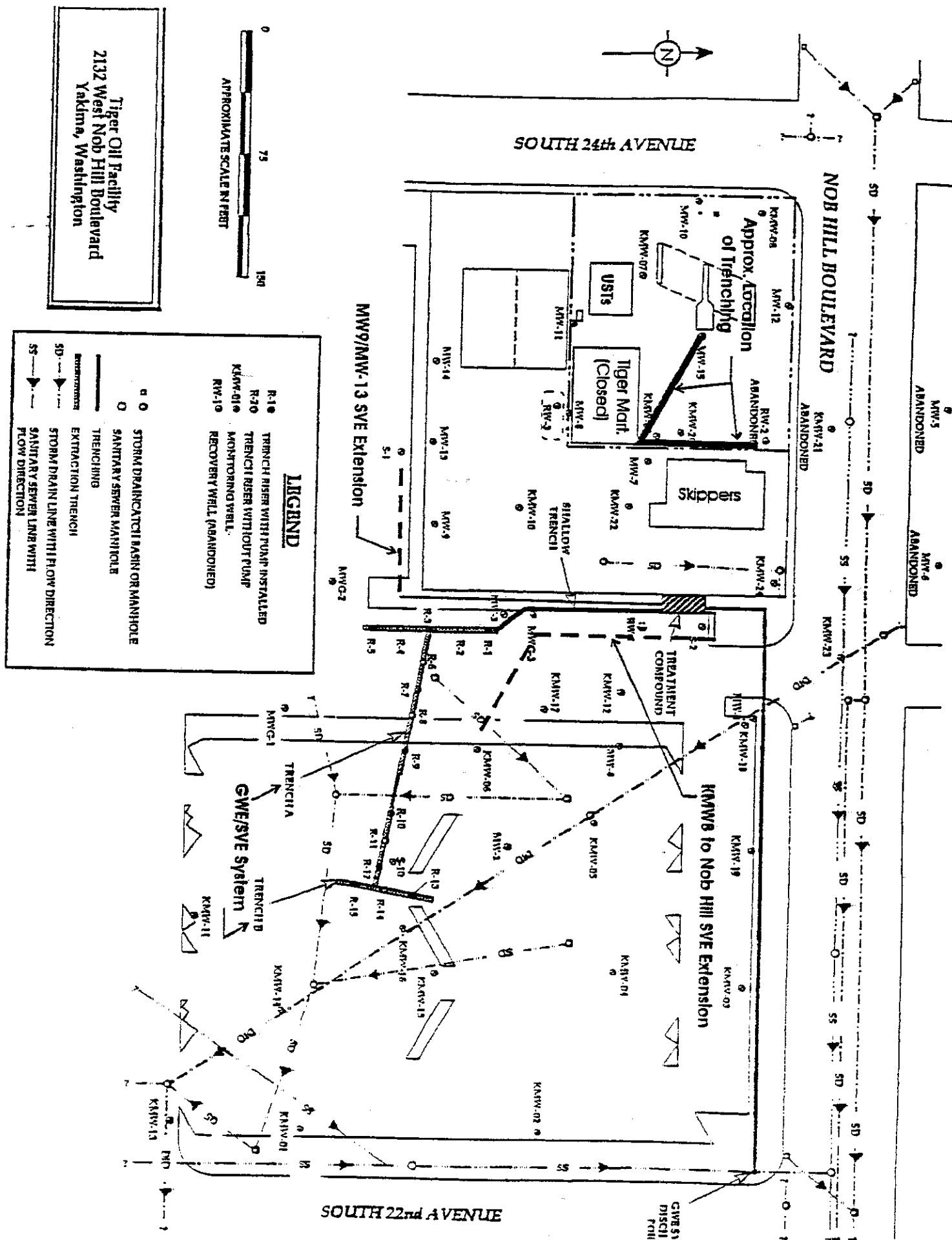
Within 45 days of completion of UST removal, associated piping removal, PCS removal, New Tiger shall submit to Ecology an UST Closure and Site Assessment Notice including results of PCS removal and free product investigation as described in section 3.2.2 of the CAP.

## **10.2 Operation and Maintenance, Compliance Monitoring, and Sampling and Analyses Plan**

Should exploratory trenching determine that SVE piping installation is necessary, New Tiger will submit to Ecology for review and approval, within 45 calendar days of the completion of the final UST Closure Report, a draft Operation and Maintenance Plan per WAC 173-340-400, draft Compliance Monitoring Plan per WAC 173-340-410, and draft Sampling and Analysis Plan per WAC 173-340-820.

Within 30 calendar days of receiving Ecology's comments on the draft Operation and Maintenance Plan, draft Compliance Monitoring Plan, and draft Sampling and Analysis Plan, New Tiger shall submit to Ecology, for review and approval, the final Operation and Maintenance Plan, final Compliance Monitoring Plan, and final Sampling and Analysis Plan. The final Operation and Maintenance Plan, final Compliance Monitoring Plan, and final Sampling and Analysis Plan shall address and incorporate Ecology's comments.

FIGURE "1" TO  
CLEANUP ACTION PLAN







**EXHIBIT C  
TO CONSENT DEGREE BETWEEN ECOLOGY, NEW TIGER, AND  
FEDERATED**

**SCOPE OF WORK  
FOR CORRECTIVE ACTION  
DURING UST SYSTEM REMOVAL**

**Tiger Oil Corporation Site  
24<sup>th</sup> and West Nob Hill  
Yakima, Washington**

This Scope of Work (SOW) defines the field activities to implement corrective action during Underground Storage Tank (UST) removal as outlined in the Cleanup Action Plan (CAP) for the Tiger Oil Site (Site) located at 2312 West Nob Hill Road, Yakima, Washington. The CAP was approved by the Washington Department of Ecology (Ecology) and identifies the actions necessary for the remediation and monitoring of contaminated groundwater and soils at the Site. Tiger Oil Corporation is soliciting bids to implement tasks in the CAP that can be accomplished at the same time the UST system is removed from the Site. Tiger Oil Corporation has already received proposals from contractors for the removal of the four USTs, dispensers, and piping at the Site.

**SCOPE OF WORK**

The tasks to be performed during UST system removal include the following:

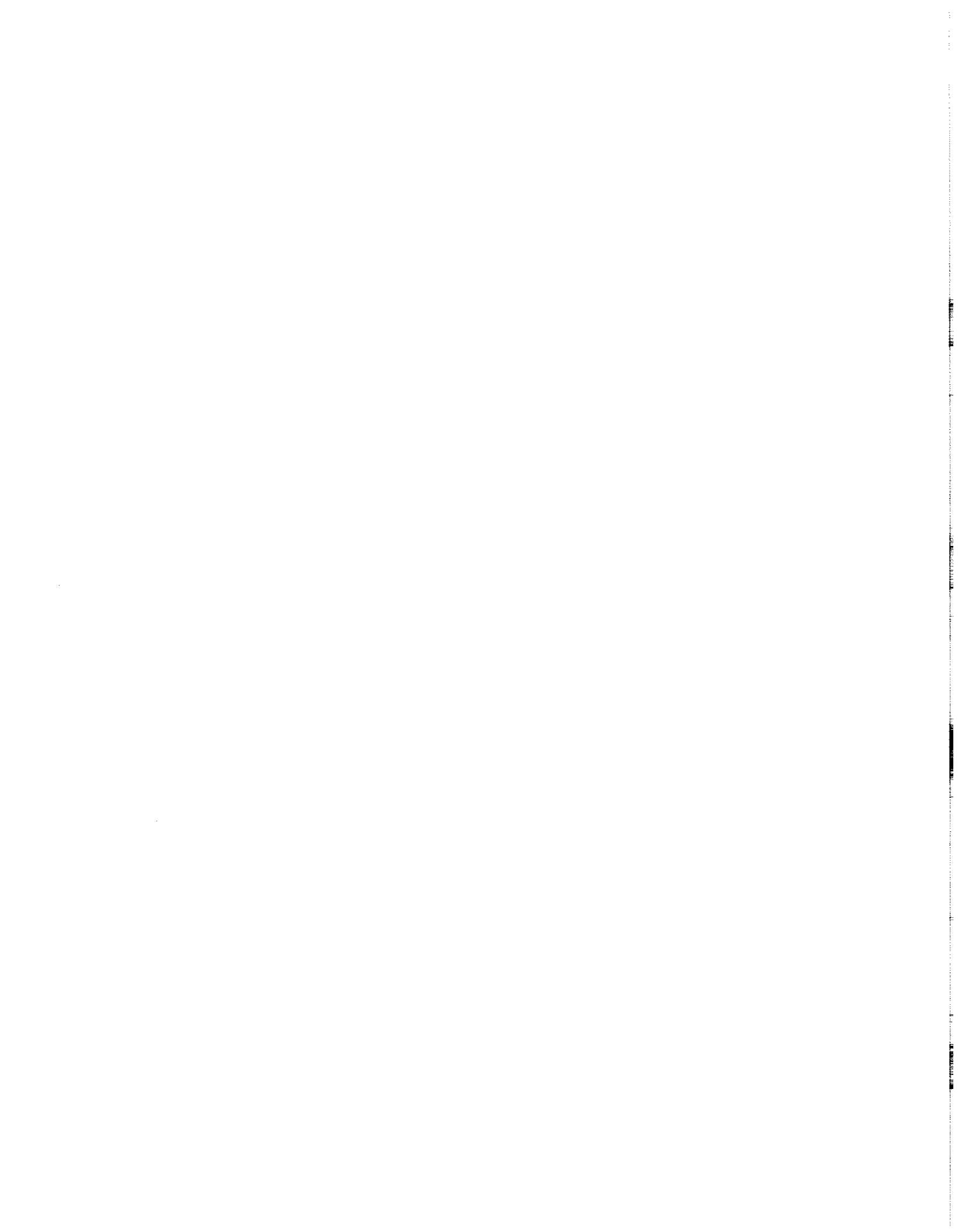
1. The excavation of approximately 650 cubic yards of petroleum contaminated soil (PCS) from the former UST area and dispenser area to a depth of 15 to 17 feet (a few feet below groundwater).
2. The transportation and disposal of 650 cubic yards of soil at Anderson Rock landfill located in Yakima.
3. The pumping of approximately 1,000 gallons of product and water from the UST excavation using a vacuum truck and the transfer of this product and water to the onsite groundwater treatment system. Care will be taken to ensure that the capacity of the onsite groundwater treatment system is not exceeded.

4. The backfill and compaction of the former UST area with clean imported fill (pea gravel or coarse sand should be used at or below the ground surface to assure proper compaction is achieved). Oxygen Release Compound (ORC) may be added during the backfilling of the excavation.
5. The excavation of two exploratory trenches on the Tiger Oil property between 2-3 feet wide (width of a backhoe); one approximately 75 feet long and one approximately 60 feet long to a depth of approximately 15-17 feet deep (assume 225 cubic yards). The approximate location of the trenches are shown on the attached Site Diagram.
6. The transportation and disposal of PCS from the trenches to Anderson Rock landfill in Yakima (assume 150 cubic yards).
7. The stockpiling of clean soil from the trenches for future use as backfill in the upper 5 feet of the trenches (assume the remaining 75 cubic yards)
8. The pumping of approximately 1,000 gallons of product and water from the trenches and the transfer of this product and water to the onsite groundwater treatment system. Care will be taken to ensure that the capacity of the onsite groundwater treatment system is not exceeded.
9. The possible installation of slotted PVC piping in the trenches at a depth of approximately 10 feet. The decision to install the PVC piping will depend upon visual observations and soil sample results, and will be directed by the Project Coordinator for Tiger Oil Corporation.
10. The backfilling of the trenches with pea gravel or coarse sand to 1 foot above the water table. The stockpiled soil will be used for the remaining backfill and may be supplemented with clean fill if needed. ORC may be added during backfilling of the trenches.
11. Any areas where asphalt or concrete have been removed during cleanup activities shall be re-covered with asphalt or other appropriate material, as approved by Ecology, to minimize infiltration of surface water.

**Principal Assumptions:**

1. The Project Coordinator for Tiger Oil Corporation shall supervise the timing and performance of all work, and the collection of all environmental samples.

2. Excavation of the two exploratory trenches shall be completed prior to excavation and removal of the UST system so that the results of soil samples from the trenches are received while the contractor's equipment is still at the Site.
3. Asphalt paving is present at the site except above the USTs and at the dispenser island, where concrete is present.
4. No shoring or benching will be required.
5. Contractor's work shall meet all applicable state and local regulations.
6. Contractor shall obtain all applicable permits.
7. Contractor shall locate all utilities.
8. Contractor shall be responsible for securing his equipment and materials at the Site.
9. Contractor shall assume that work will be conducted in Level D personal protection equipment (PPE), but an upgrade to Level C may be required for brief periods of time.
10. The Project Coordinator for Tiger Oil Corporation will perform workspace air monitoring.
11. Contractor will not be responsible for the collection of soil samples, laboratory analyses, or reporting, but will assist the Project Coordinator in the event soil samples require collection with the use of a backhoe.



**EXHIBIT E – GROUND WATER SAMPLING  
DATA SUBMITTAL REQUIREMENTS**

Ground water sampling data shall be submitted to Ecology according to the requirements of Section XI of this Decree, Section 9.5 of the Cleanup Action Plan (Exhibit B) and WAC 173-340-840(5).



**EXHIBIT F TO CONSENT DECREE BETWEEN ECOLOGY,  
NEW TIGER AND FEDERATED**

**Restrictive Covenant for Tiger Oil Corporation Property**

This Declaration of Restrictive Covenant is made pursuant to RCW 70.105D.030(1)(f) and (g) and WAC 173-340-440 by Tiger Oil Corporation ("Tiger") its successors and assigns, and the State of Washington Department of Ecology ("Ecology"), its successors and assigns.

Pursuant to a Consent Decree entered in *State of Washington v. Tiger Oil Corporation*, Thurston County Superior Court, Cause No. 02-2-00956-2, a remedial action involving the Cleanup Action Plan (the "CAP") described by that Decree, which includes soil removal, the installation and operation of additional soil vapor extraction lines, if necessary, and continued operation of other remedial measures (the "Remedial Action") will be implemented on Tiger's property within the Tiger Oil Site ("Site") that is described in the Decree. Exhibit B to the Decree is the CAP which describes the remedial action being conducted, and Exhibit C describes the work schedule. The Decree and other documents relating to the Tiger Oil Site are on file at Ecology's Central Regional Office, 15 West Yakima Avenue, Yakima, WA 98902.

This Restrictive Covenant is required because the remedial action may not address all of the contamination at the Tiger Oil Site. Thus, the residual concentrations of total petroleum hydrocarbons, benzene, toluene, ethylbenzene and xylenes (the "Identified Substances") within the Site may, despite the remedial action, still exceed the Model Toxics Control Act Method A Cleanup Levels for soil and groundwater established under WAC 173-340-720 and 740.

The undersigned, Tiger Oil Corporation is the fee owner of real property in the County of Yakima, State of Washington on which a portion of the remedial action is to be conducted





("Property"). The Property that is subject to this Restrictive Covenant is shown on the attached Figure 1, and is legally described on Attachment A hereto.

Tiger Oil Corporation makes the following declaration as to limitations, restrictions, and uses to which the Property may be put and specifies that such declarations shall constitute covenants to run with the land, as provided by law and shall be binding on all parties and all persons claiming under them, including all current and future owners of any portion of or interest in the Property (hereafter "Owner").

**Section 1.** No groundwater may be taken for domestic use from the Property unless the Method A groundwater Cleanup Levels for the Identified Substances have been met at the Property, or as otherwise approved by Ecology in writing.

**Section 2.** Any activity on the Property that may interfere with the integrity of either the remedial action or existing monitoring wells on the Property that are part of the remedial action is prohibited without the prior written approval of Ecology, which shall not be unreasonably withheld or delayed.

**Section 3.** Any activity on the Property that may result in the release or exposure to the environment of contaminated soil or create a new exposure pathway is prohibited without the prior written approval of Ecology, which shall not be unreasonably withheld or delayed. Some activities that are prohibited on the Property where contaminated soil is known to be located or may be located include: drilling, digging, placement of any objects or use of any equipment which deforms or stresses the surface beyond its load bearing capability, piercing the surface with a rod, spike or similar item, bulldozing or earthwork. Activities involving the routine repair and maintenance of the Property or existing improvements on it can be conducted



without any prior written approval of Ecology to the extent that such activities otherwise comply with this Restrictive Covenant.

**Section 4.** At least fifteen (15) days prior to transfer of a fee interest in all or any portion of the Property on which an SVE System operated by Tiger Oil is located, the Owner of the Property must give advance written notice to Ecology of such transfer. The Owner shall not consummate any voluntary or involuntary conveyance or relinquishment of title, easement or other interest in the Property without provision, as necessary, for continued operation, maintenance and monitoring of the remedial action on the Property.

**Section 5.** The Owner shall allow Ecology and its authorized representatives the right to enter the Property as specified in the Consent Decree.

**Section 6.** The Owner of the Property reserves the right under WAC 173-340-440 to record an instrument that provides that this Restrictive Covenant shall no longer limit use of the Property or be of any further force or effect. However, such an instrument may be recorded only if Ecology, after public notice and opportunity for comment, concurs. The Owner also reserves the right to request that Ecology limit the scope of this Restrictive Covenant in the event sampling and monitoring data demonstrate that portions of the Property meet Method A cleanup levels for soil and groundwater. Ecology's approval of such a request shall not be unreasonably withheld or delayed.



1 The Honorable Christine A. Pomeroy

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7 STATE OF WASHINGTON  
THURSTON COUNTY SUPERIOR COURT

8 STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

NO. 02-2-00956-2

9 Plaintiff,

AFFIDAVIT OF  
JAY D. GECK  
RE: FACSIMILE

10 v.

11 TIGER OIL CORPORATION; TIGER  
12 OIL COMPANY; FEDERATED  
13 SERVICE INSURANCE COMPANY;  
14 MERCY DEVELOPMENT  
COMPANY; and M&E COMPANY,

Defendants.

15 STATE OF WASHINGTON )

16 County of Thurston : ss.  
17 )

18 Pursuant to the provisions of GR 17, I state as follows:

- 19 1. I am the party who received the foregoing facsimile transmission for filing and certify that it is on bond paper.
- 20 2. My address is 2425 Bristol Court SW, Olympia, WA 98502.
- 21 3. My phone number is (360) 586-6770.
- 22 4. The facsimile number where I received the document is (360) 586-6760.

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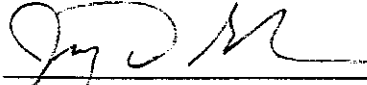
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5. I have examined the foregoing document, determined that it consists of 70 pages, including these affidavit pages, and that is it complete and legible.

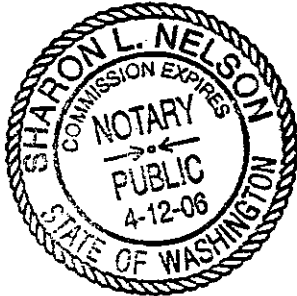


Jay D. Geck, WSBA #17916  
Phone: (360) 586-6770

SUBSCRIBED AND SWORN TO before me this 29<sup>th</sup> day of October, 2004.

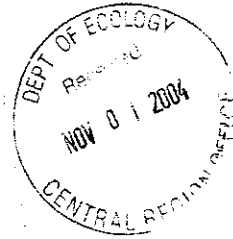


NOTARY PUBLIC in and for the  
State of Washington. My commission  
Expires: 4/12/06









OCT 29 2004

Honorable Christine A. Pomeroy

SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

NO. 02-2-00956-2

Plaintiff,

STIPULATION FOR ENTRY OF  
CONSENT DECREE

v.

TIGER OIL CORPORATION; TIGER OIL  
COMPANY; FEDERATED SERVICE  
INSURANCE COMPANY; MERCY  
DEVELOPMENT COMPANY; and M&E  
COMPANY,

Defendants.

Plaintiff State of Washington, Department of Ecology (Ecology), and  
Defendants Tiger Oil Corporation and Federated Service Insurance Company (Federated),  
through counsel, stipulate and agree as follows:

1. On October 14, 2004, Ecology filed its Motion for Entry of Consent Decree;
2. On October 20, 2004, Tiger Oil Corporation filed its Opposition to Ecology's Motion for Entry of Consent Decree;
3. On October 29, 2004, at 10:30 a.m., a hearing was held on Ecology's

STIPULATION FOR ENTRY OF CONSENT DECREE -

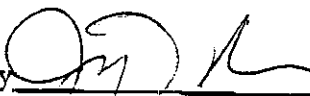


1 Motion for Entry of Consent Decree. At the hearing, Ecology, Federated and Tiger Oil  
2 Corporation agreed to certain changes to the Consent Decree and the Cleanup Action Plan  
3 attached as Exhibit B to the Consent Decree.  
4

5 4. The parties have made the necessary changes to the Consent Decree,  
6 have signed the Consent Decree, and now respectfully request that the Court enter the  
7 Consent Decree pursuant to RCW 70.105D.040.


8 DATED this 29<sup>th</sup> day of October, 2004.

9 WASHINGTON DEPARTMENT OF ECOLOGY

10  
11 By   
12 Jay D. Geck  
13 Colleen G. Warren  
14 Attorneys for Department of Ecology

15 DATED this 29<sup>th</sup> day of October, 2004.

16 BULLIVANT, HOUSER, BAILEY, P.C.

17  
18 By   
19 Dianne K. Dailey  
20 Marianne M. Ghim  
21 Attorneys for Federated Service Insurance Company

22 DATED this 29<sup>th</sup> day of October, 2004.

23 McCREEDY LAW OFFICE, P.C.

24 By \_\_\_\_\_  
25 John C. McCreedy  
26 Attorney for Tiger Oil Corporation



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DATED this 29<sup>th</sup> day of October, 2004.

WASHINGTON DEPARTMENT OF ECOLOGY

By \_\_\_\_\_  
Jay D. Geck  
Colleen G. Warren  
Attorneys for Department of Ecology

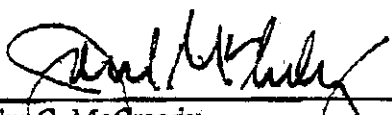
DATED this 29<sup>th</sup> day of October, 2004.

BULLIVANT, HOUSER, BAILEY, P.C.

By \_\_\_\_\_  
Dianne K. Dailey  
Marianne M. Ghim  
Attorneys for Federated Service Insurance Company

DATED this 29<sup>th</sup> day of October, 2004.

McCREEDY LAW OFFICE, P.C.

By  \_\_\_\_\_  
John C. McCreedy  
Attorney for Tiger Oil Corporation



1 The Honorable Christine A. Pomeroy

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7 STATE OF WASHINGTON  
THURSTON COUNTY SUPERIOR COURT

8 STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

NO. 02-2-00956-2

9 Plaintiff,

AFFIDAVIT OF  
JAY D. GECK  
RE: FACSIMILE

10 v.

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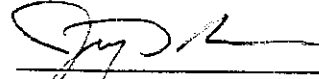
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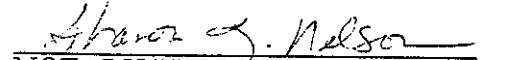
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2 5. I have examined the foregoing document, determined that it consists of 5 pages,  
3 including these affidavit pages, and that is it complete and legible.

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Jay D. Geck, WSBA #17916  
Phone: (360) 586-6770

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6 SUBSCRIBED AND SWORN TO before me this 29<sup>th</sup> day of October, 2004.

7   
8 NOTARY PUBLIC in and for the  
9 State of Washington. My commission  
10 Expires: 4/12/06

