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 SEP - 5 2014
 SUPERIOR COURT
 BETTY J. GOULD
 THURSTON COUNTY CLERK

EXPEDITE
 No Hearing is Set
 Hearing is Set
 Date:
 Time:
 The Honorable Christine Schaller

**STATE OF WASHINGTON
 THURSTON COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,
 DEPARTMENT OF ECOLOGY,

 Plaintiff,

 v.

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

 Defendants.

NO. 02-2-00956-2

 AMENDED CONSENT DECREE
 BETWEEN ECOLOGY AND CITY
 OF YAKIMA

FILED

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I. INTRODUCTION

A. Pursuant to Section XV of the Consent Decree between Ecology, Tiger Oil Corporation, and Federated Service Insurance Company, entered by this Court on October 29, 2004 (2004 Decree), State of Washington, Department of Ecology (Ecology) and the City of Yakima (Yakima), hereby stipulate to amend the 2004 Decree.

B. The mutual objective of Ecology and Yakima under these amendments to the 2004 Decree is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Consent Decree requires Yakima to undertake the remedial action detailed in the Amended Cleanup Action Plan (Amended CAP), attached as Exhibit B, in accordance with the terms and conditions of this Decree. Ecology has determined that these actions are necessary to protect human health and the environment under the Model Toxics Control Act, RCW 70.105D.

C. The 2004 Decree resolved all claims of Ecology against the Tiger Oil Corporation (New Tiger) and all claims of New Tiger against Ecology concerning the facility at 24th and West Nob Hill Boulevard 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 entry of this 2004 Decree. The Parties agree that ending litigation in October 2004 was reasonable and in the public interest, and that entry of the 2004 Decree was the most appropriate means of resolving these matters. The 2004 Decree also resolved all claims of Ecology against Federated Service Insurance Company (Federated) concerning the facility at 24th and West Nob Hill Boulevard in Yakima, Washington, which was the subject of Ecology's Complaint, and who was dismissed without prejudice.

D. Yakima and Ecology will file a stipulation with the Court documenting the closure of the 2004 Decree and the survival of the Contribution Protection and Covenant Not to Sue sections of the 2004 Decree as to Federated prior to entry of this Decree.

1 E. By signing this Decree, the Parties have chosen to agree to its entry and agree to
2 be bound by its terms and conditions.

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

7 G. This Decree shall not be construed as proof of liability or responsibility for any
8 releases of hazardous substances or costs for remedial action or as an admission of any facts;
9 provided, however, that Yakima shall not challenge the authority of the Attorney General and
10 Ecology to enforce this Decree.

11 H. The Court is fully advised of the reasons for entry of this Decree, and good
12 cause having been shown:

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

14 II. JURISDICTION

15 A. This Court has jurisdiction over the subject matter and over the Parties pursuant
16 to RCW 70.105D, the Model Toxics Control Act (MTCA).

17 B. Authority is conferred upon the Washington State Attorney General by
18 RCW 70.105D.040(4)(a) to agree to a settlement with any potentially liable person (PLP) if,
19 after public notice and any required hearing, Ecology finds the proposed settlement would lead
20 to a more expeditious cleanup of hazardous substances. RCW 70.105D.040(4)(b) requires that
21 such a settlement be entered as a Consent Decree issued by a court of competent jurisdiction.

22 C. Ecology has determined, and the parties to this Decree agree, that a release of
23 hazardous substances has occurred at the Site that is the subject of this Decree.

24 D. Ecology has given notice to Yakima of Ecology's determination that it is a PLP
25 for the Site, as required by RCW 70.105D.020(26) and WAC 173-340-500.

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1 E. The actions to be taken pursuant to this Decree are necessary to protect public
2 health and the environment.

3 F. This Decree has been subject to public notice and comment. The parties agree
4 that there will be a public hearing if that is necessary after the public notice and in compliance
5 with public notice regulations and policy.

6 G. Ecology finds that this Decree will lead to a more expeditious cleanup of
7 hazardous substances at the Site in compliance with the cleanup standards established under
8 RCW 70.105D.030(2)(e) and WAC 173-340.

9 H. In exchange for the protections provided by this Decree and to resolve the
10 litigation, Yakima agrees to undertake the actions specified in this Decree and consent to the
11 entry of this Decree under MTCA.

12 III. PARTIES BOUND

13 This Decree shall apply to and be binding upon the Parties to this Decree, their
14 successors and assigns. The undersigned representative of each party hereby certifies and
15 warrants that he or she is fully authorized to enter into this Decree and to execute and legally
16 bind such party to comply with the Decree. Yakima agrees to undertake all actions required by
17 the terms and conditions of this Decree. No change in ownership or corporate status shall alter
18 Yakima's responsibilities under this Decree as ascribed to each under the specific terms of the
19 Decree. Yakima shall provide a copy of this Decree to all agents, contractors, and
20 subcontractors retained to perform the work required by this Decree, and shall ensure that all
21 work undertaken by such agents, contractors, and subcontractors complies with this Decree.

22 IV. DEFINITIONS

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

25 A. Site: The Site, referred to as the Tiger Mart Site, is generally located at 24th
26 and West Nob Hill Boulevard in Yakima, Washington. The Site is more particularly described

1 in Exhibit A to this Decree, which includes a detailed Site diagram. The Site constitutes a
2 Facility under RCW 70.105D.020(8).

3 B. Parties: Refers to the Washington State Department of Ecology (Ecology) and
4 the City of Yakima (Yakima).

5 C. Defendant: Refers to Yakima.

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

9 V. STATEMENT OF FACTS

10 Ecology makes the following findings of fact without any express or implied
11 admissions of such facts by Yakima.

12 A. New Tiger is the former owner of the Site. Between October 1987 and 2001,
13 the property owned by New Tiger was an Exxon Service Station and convenience store known
14 as "Tiger Mart." New Tiger ceased operations in 2001. New Tiger's property was previously
15 owned by Tiger Oil Company. New Tiger purchased the property on or about October 1987.

16 B. Prior to purchase by New Tiger, there was a release of fuel from the pipes and
17 lines connected to the underground fuel storage tanks. MTCA defines this released fuel as a
18 hazardous substance. The Parties agree that prior estimates of the amount of fuel released
19 concluded that approximately 20,000 gallons was released in 1982, when the property was
20 owned by Tiger Oil Company. Initial remediation and recovery occurred at the Site between
21 1982 and 1985. Beginning in 1990, various MTCA investigatory and remedial actions have
22 occurred at the Site up to this time. Federated was involved as the insurer of the prior owner,
23 Tiger Oil Company, and Federated has funded various activities at this Site.

24 C. In October 2004, New Tiger and Federated entered into the 2004 Decree with
25 Ecology, which was filed in Thurston County Superior Court on October 29, 2004. The 2004
26 Decree required implementation of Ecology's 2004 Cleanup Action Plan. Under the 2004

1 Cleanup Action Plan, New Tiger was required to: (1) remove from the Site underground
2 storage tanks, a minimum of 650 cubic yards of contaminated soils, and gasoline encountered
3 during underground storage tank removal; (2) dig two trenches to determine the amount of
4 gasoline floating on top of groundwater; and (3) install and operate a soil vapor extraction
5 (SVE) system to treat contamination in the vicinity of the trenches (if free product and/or soil
6 contamination was found present during or after trenching).

7 D. Between December 20 and 22, 2004, New Tiger dug two trenches and installed
8 SVE piping on the Tiger parcel.

9 E. On February 26, 2014, New Tiger transferred ownership of its property at the
10 Site (Yakima County Assessor's Parcel Numbers: 181326-42051, 181326-42050, 181326-
11 42049, and 181326-42054; S. 24th Street and W. Nob Hill Boulevard) to Yakima.

12 VI. WORK TO BE PERFORMED

13 This Decree contains a program designed to protect human health and the environment
14 from the known release of hazardous substances or contaminants at, on, or from the Site.

15 A. Yakima will develop an Amended Scope of Work and Schedule. The Amended
16 Scope of Work and Schedule will clarify the selected cleanup actions and timing of those
17 actions that are found in the Amended CAP. Yakima shall submit the draft Amended Scope of
18 Work and Schedule to Ecology for review and approval. Upon approval by Ecology, the
19 Amended Scope of Work and Schedule will become an integral and enforceable part of this
20 Decree.

21 B. Yakima shall perform the work and actions detailed in the Amended CAP
22 attached as Exhibit B according to the terms and conditions of this Decree, and as scheduled by
23 the final approved Amended Scope of Work and Schedule.

24 C. Yakima agrees not to perform any remedial actions outside the scope of this
25 Decree unless the Parties agree to modify the Scope of Work to cover these actions. All work
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1 conducted by Yakima under this Decree shall be done in accordance with WAC 173-340
2 unless otherwise provided herein or agreed upon by Yakima and Ecology.

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

13 VII. DESIGNATED PROJECT COORDINATORS

14 The project coordinator for Ecology is:

15 Norman (Norm) D. Peck
16 Washington State Department of Ecology
17 Central Regional Office
18 15 West Yakima Avenue, Suite 200
19 Yakima, Washington 98902-3452
20 Phone: (509) 454-7837
21 Email: nope461@ecy.wa.gov

19 The project coordinator for Yakima is:

20 Joan Davenport
21 Strategic Projects Manager
22 City of Yakima
23 129 North Second Street
24 Yakima, Washington 98901
25 Phone: (509) 576-6417
26 Email: joan.davenport@yakimawa.gov

24 Each project coordinator shall be responsible for overseeing the implementation of this
25 Decree. Ecology's project coordinator will be Ecology's designated representative for the Site.
26 To the maximum extent possible, communications between Ecology and Yakima and all

1 documents, including reports, approvals, and other correspondence concerning the activities
2 performed pursuant to the terms and conditions of this Decree shall be directed through the
3 project coordinators. The project coordinators may designate, in writing, working level staff
4 contacts for all or portions of the implementation of the work required by this Decree.

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

7 VIII. PERFORMANCE

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

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

15 Any documents submitted containing geologic, hydrologic, or engineering work shall
16 be under the seal of an appropriately licensed professional as required by RCW 18.220 and
17 18.43.

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

21 IX. ACCESS

22 Ecology or any Ecology authorized representative shall have full authority to enter and
23 freely move about all property at the Site that Yakima either owns, controls, or has access
24 rights to at all reasonable times for the purposes of, *inter alia*: inspecting records, operation
25 logs, and contracts related to the work being performed pursuant to this Decree; reviewing
26 Yakima's progress in carrying out the terms of this Decree; conducting such tests or collecting

1 such samples as Ecology may deem necessary; using a camera, sound recording, or other
2 documentary type equipment to record work done pursuant to this Decree; and verifying the
3 data submitted to Ecology by Yakima. Yakima shall make all reasonable efforts to secure
4 access rights for those properties within the Site not owned or controlled by Yakima where
5 remedial activities or investigations will be performed pursuant to this Decree.

6 Ecology or any Ecology authorized representative shall give reasonable written notice
7 before entering any Site property owned or controlled by Yakima unless an emergency
8 prevents such notice. All Parties who access the Site pursuant to this paragraph shall comply
9 with any applicable health and safety plan(s). Ecology employees and their representatives
10 shall not be required to sign any liability release or waiver as a condition of site property
11 access.

12 X. SAMPLING, DATA REPORTING, AND AVAILABILITY

13 With respect to the implementation of this Decree, Yakima and New Tiger shall make
14 the results of all sampling, laboratory reports, and/or test results generated by it or on its behalf
15 available to Ecology. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted
16 to Ecology in both printed and electronic formats in accordance with Section XI (Progress
17 Reports), Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements),
18 and/or any subsequent procedures specified by Ecology for data submittal.

19 Ground water sampling data shall be submitted to Ecology according to the
20 requirements of Exhibit D and WAC 173-340-840(5). These submittals shall be provided to
21 Ecology in accordance with Section XI (Progress Reports) of this Decree.

22 If requested by Ecology, Yakima shall allow split or duplicate samples to be taken by
23 Ecology and/or its authorized representative of any samples collected by Yakima pursuant to
24 the implementation of this Decree provided it does not interfere with Yakima's sampling.
25 Yakima shall notify Ecology seven (7) days in advance of any sample collection or work
26 activity at the Site. Ecology shall, upon request, allow split or duplicate samples to be taken by

1 Yakima or its authorized representative of any samples collected by Ecology pursuant to the
2 implementation of this Decree provided it does not interfere with Ecology's sampling.
3 Without limitation on Ecology's rights under Section IX (Access), Ecology shall notify
4 Yakima seven (7) days prior to any sample collection activity unless an emergency prevents
5 such notice.

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

9 XI. PROGRESS REPORTS

10 Unless a different period of time is agreed to by the parties in writing, Yakima shall
11 submit to Ecology written quarterly Progress Reports that describe the actions taken during the
12 previous quarter to implement the requirements of this Decree. The Progress Reports shall
13 include the following:

- 14 A. A list of on-site activities that have taken place during the quarter;
- 15 B. Detailed description of any deviations from required tasks not otherwise
16 documented in project plans or amendment requests;
- 17 C. Description of all deviations from the final approved Amended Scope of Work
18 and Schedule during the quarter and any planned deviations in the upcoming quarter;
- 19 D. For any deviations in schedule, a plan for recovering lost time and maintaining
20 compliance with the schedule;
- 21 E. All raw data (including laboratory analyses) received by Yakima during the past
22 quarter and an identification of the source of the sample; and
- 23 F. A list of deliverables for the upcoming quarter if different from the Schedule.

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

3 **XII. RETENTION OF RECORDS**

4 During the pendency of this Decree and for ten (10) years from the date this Decree is
5 no longer in effect as provided in Section XXVIII (Duration of Decree), Yakima shall preserve
6 all records, reports, documents, and underlying data in its possession relevant to the
7 implementation of this Decree and shall insert a similar record retention requirement into all
8 contracts with project contractors and subcontractors. Upon request of Ecology, Yakima shall
9 make all records available to Ecology and allow access for review within a reasonable time.

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

16 **XIII. TRANSFER OF INTEREST IN PROPERTY**

17 No voluntary conveyance or relinquishment of title, easement, leasehold, or other
18 interest in any portion of the Site shall be consummated by Yakima without provision for
19 continued operation and maintenance of any containment system, treatment system, and/or
20 monitoring system installed or implemented pursuant to this Decree.

21 Prior to Yakima's transfer of any interest in all or any portion of the Site owned by
22 Yakima, and during the effective period of this Decree, Yakima shall serve a copy of this
23 Decree upon any prospective purchaser, transferee, assignee, or other successor in said interest;
24 and, at least thirty (30) days prior to any transfer, Yakima shall notify Ecology of said transfer.
25 Upon transfer of any interest, Yakima, as necessary, shall restrict uses and activities to those
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1 consistent with this Decree and notify all transferees of the restrictive covenants applicable to
2 use of the property.

3 **XIV. RESOLUTION OF DISPUTES**

4 A. In the event a dispute arises as to an approval, disapproval, proposed change, or
5 other decision or action by Ecology's project coordinator, or an itemized billing statement
6 under Section XXIV (Remedial Action Costs), the Parties shall utilize the dispute resolution
7 procedure set forth below.

8 1. Upon receipt of Ecology's project coordinator's decision, or the
9 itemized billing statement, Yakima has fourteen (14) days within which to notify
10 Ecology's project coordinator in writing of its objection to the decision or itemized
11 statement.

12 2. The Parties' project coordinators shall then confer in an effort to resolve
13 the dispute. If the project coordinators cannot resolve the dispute within fourteen (14)
14 days of Yakima's objection, Ecology's project coordinator shall issue a written
15 decision.

16 3. Yakima may then request regional management review of the decision.
17 This request shall be submitted in writing to the Central Region Toxics Cleanup
18 Program Section Manager within seven (7) days of receipt of the project coordinator's
19 decision.

20 4. Ecology's Regional Section Manager shall conduct a review of the
21 dispute and shall endeavor to issue a written decision regarding the dispute within thirty
22 (30) days of the Yakima's request for review.

23 5. If Yakima finds Ecology's Regional Section Manager's decision
24 unacceptable, Yakima may then request final management review of the decision. This
25 request shall be submitted in writing to the Toxics Cleanup Program Manager within
26 seven (7) days of receipt of the Regional Section Manager's decision.

1 6. Ecology's Toxics Cleanup Program Manager shall conduct a review of
2 the dispute and shall endeavor to issue a written decision regarding the dispute within
3 thirty (30) days of Yakima's request for review of the Regional Section Manager's
4 decision. The Toxics Cleanup Program Manager's decision shall be Ecology's final
5 decision on the disputed matter.

6 B. If Ecology's final written decision is unacceptable to Yakima, Yakima has the
7 right to submit the dispute to the Court for resolution. The Parties agree that one judge should
8 retain jurisdiction over this case and shall, as necessary, resolve any dispute arising under this
9 Decree. In the event Yakima presents an issue to the Court for review, the Court shall review
10 the action or decision of Ecology on the basis of whether such action or decision was arbitrary
11 and capricious and render a decision based on such standard of review.

12 C. The Parties agree to only utilize the dispute resolution process in good faith and
13 agree to expedite, to the extent possible, the dispute resolution process whenever it is used.
14 Where either Party utilizes the dispute resolution process in bad faith or for purposes of delay,
15 the other Party may seek sanctions from this Court.

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

19 **XV. AMENDMENT OF CONSENT DECREE**

20 The project coordinators may agree to minor changes to the work to be performed
21 without formally amending this Decree. Minor changes will be documented in writing by
22 Ecology.

23 Substantial changes to the work to be performed shall require formal amendment of this
24 Decree. This Decree may only be formally amended by a written stipulation among the Parties
25 that is entered by the Court, or by order of the Court. Such amendment shall become effective
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1 upon entry by the Court. Agreement to amend the Decree shall not be unreasonably withheld
2 by any party.

3 Yakima shall submit a written request for amendment to Ecology for approval.
4 Ecology shall indicate its approval or disapproval in writing and in a timely manner after the
5 written request for amendment is received. If the amendment to the Decree is a substantial
6 change, Ecology will provide public notice and opportunity for comment. Reasons for the
7 disapproval of a proposed amendment to the Decree shall be stated in writing. If Ecology does
8 not agree to a proposed amendment, the disagreement may be addressed through the dispute
9 resolution procedures described in Section XIV (Resolution of Disputes).

10 **XVI. EXTENSION OF SCHEDULE**

11 A. An extension of schedule shall be granted only when a request for an extension
12 is submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the
13 deadline for which the extension is requested, and good cause exists for granting the extension.
14 All extensions shall be requested in writing. The request shall specify:

- 15 1. The deadline that is sought to be extended;
- 16 2. The length of the extension sought;
- 17 3. The reason(s) for the extension; and
- 18 4. Any related deadline or schedule that would be affected if the extension
19 were granted.

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

- 23 1. Circumstances beyond the reasonable control and despite the due
24 diligence of Yakima including delays caused by unrelated third parties or Ecology,
25 such as (but not limited to) delays by Ecology in reviewing, approving, or modifying
26 documents submitted by Yakima; or

1 2. Acts of God, including fire, flood, blizzard, extreme temperatures,
2 storm, or other unavoidable casualty; or

3 3. Endangerment as described in Section XVII (Endangerment).

4 However, neither increased costs of performance of the terms of the Decree nor
5 changed economic circumstances shall be considered circumstances beyond the reasonable
6 control of Yakima.

7 C. Ecology shall act upon any written request for extension in a timely fashion.
8 Ecology shall give Yakima written notification in a timely fashion of any extensions granted
9 pursuant to this Decree. A requested extension shall not be effective until approved by
10 Ecology or, if required, by the Court. Unless the extension is a substantial change, it shall not
11 be necessary to amend this Decree pursuant to Section XV (Amendment of Decree) when a
12 schedule extension is granted.

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

16 1. Delays in the issuance of a necessary permit which was applied for in a
17 timely manner; or

18 2. Other circumstances deemed exceptional or extraordinary; or

19 3. Endangerment as described in Section XVII (Endangerment).

20 **XVII. ENDANGERMENT**

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

25 If, for any reason, Yakima determines that any activity being performed at the Site is
26 creating or has the potential to create a danger to human health or the environment, Yakima

1 shall cease such activities and provide written notice to Ecology. Yakima shall notify
2 Ecology's project coordinator as soon as possible, but no later than twenty-four (24) hours
3 after making such determination or ceasing such activities under this basis. Upon Ecology's
4 direction, Yakima shall provide Ecology with documentation of the basis for the determination
5 or cessation of such activities. If Ecology disagrees with Yakima's cessation of activities, it
6 may direct Yakima to resume such activities.

7 If Ecology concurs with or orders a work stoppage pursuant to this section, Yakima's
8 obligations with respect to the ceased activities shall be suspended until Ecology determines
9 the danger is abated, and the time for performance of such activities, as well as the time for any
10 other work dependent upon such activities, shall be extended, in accordance with Section XVI
11 (Extension of Schedule), for such period of time as Ecology determines is reasonable under the
12 circumstances.

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

15 **XVIII. COVENANT NOT TO SUE**

16 A. Covenant Not to Sue: In consideration of Yakima's compliance with the terms
17 and conditions of this Decree, Ecology agrees not to institute administrative, legal, or equitable
18 remedies and enforcement actions against Yakima regarding the release or threatened release
19 of hazardous substances covered by this Decree.

20 B. This Decree covers only the Site specifically identified in the Site Diagram
21 (Exhibit A) and the Addressed Matters. This Decree does not cover any other hazardous
22 substance or Site. Ecology retains all of its authority relative to any substance or area not
23 covered by this Decree.

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

- 25 1. Criminal liability;
- 26 2. Liability for damages for injury to or loss of natural resources;

1 3. Any Ecology action, including cost recovery, against potentially liable
2 persons not a party to this Decree.

3 If factors not known at the time of entry of this Decree are discovered and present a
4 previously unknown threat to human health or the environment, the Court shall amend this
5 Covenant Not to Sue.

6 D. Reopeners: Ecology specifically reserves the right to institute legal or
7 administrative action against Yakima to require it to perform additional remedial actions at the
8 Site and any other rights allowed by law, pursuant to RCW 70.105D.050, under the following
9 circumstances:

10 1. Upon Yakima's failure to meet the requirements of this Decree,
11 including, but not limited to, failure of the remedial action to meet the cleanup
12 standards identified in the Amended CAP (Exhibit B);

13 2. Upon Ecology's determination that remedial action beyond the terms of
14 this Decree is necessary to abate an imminent and substantial endangerment to human
15 health or the environment;

16 3. Upon the availability of new information regarding factors not known to
17 Ecology, including the nature or quantity of hazardous substances at the Site, and
18 Ecology's determination, in light of this information, that further remedial action is
19 necessary at the Site to protect human health or the environment; or

20 4. Upon Ecology's determination that additional remedial actions are
21 necessary to achieve cleanup standards within the reasonable restoration time frame set
22 forth in the Amended CAP.

23 E. Except in the case of an emergency, prior to instituting legal or administrative
24 action against Yakima pursuant to this section, Ecology shall provide Yakima with fifteen (15)
25 calendar days notice of such action.

1 **XIX. CONTRIBUTION PROTECTION**

2 With regard to claims for contribution against Yakima, the Parties agree that Yakima is
3 entitled to protection against claims for contribution for matters addressed in this Decree as
4 provided by RCW 70.105D.040(4)(d).

5 **XX. LAND USE RESTRICTIONS**

6 On February 7, 2005, New Tiger recorded an environmental (restrictive) covenant with
7 the office of the Yakima County Auditor. The environmental (restrictive) covenant restricts
8 future activities and uses of the Site as agreed to by Ecology and New Tiger. Yakima may,
9 upon a showing that the restrictive covenant is not necessary for the entire property and in
10 accordance with the terms of the restrictive covenant, ask Ecology for approval to amend the
11 restrictive covenant to apply only to the appropriate definable areas of Yakima's property.
12 Ecology shall not unreasonably withhold or delay its approval of this amendment.

13 **XXI. FINANCIAL ASSURANCES**

14 Within sixty (60) days of the effective date of the amendments to this Decree, Yakima
15 shall submit to Ecology for review and approval an estimate of the costs that it will incur in
16 carrying out the terms of the amendments to this Decree, including operation and maintenance,
17 and compliance monitoring. Within sixty (60) days after Ecology approves the
18 aforementioned cost estimate, Yakima shall provide proof of financial assurances sufficient to
19 cover all such costs in a form acceptable to Ecology.

20 Yakima shall adjust its financial assurance coverage and provide Ecology's project
21 coordinator with documentation of the updated financial assurance for:

22 A. Inflation, annually, within thirty (30) days of the anniversary date of the entry of
23 the amendments to this Decree; or if applicable, the modified anniversary date established in
24 accordance with this Section, or if applicable, ninety (90) days after the close of Yakima's
25 fiscal year if the financial test or corporate guarantee by Yakima is used; and
26

1 B. Changes in cost estimates, within thirty (30) days of issuance of Ecology's
2 approval of a modification or revision to the Amended CAP that result in increases to the cost
3 or expected duration of remedial actions required by Yakima. Any adjustments for inflation
4 since the most recent preceding anniversary date shall be made concurrent with adjustments for
5 changes in cost estimates. The issuance of Ecology's approval of a revised or modified CAP
6 will revise the anniversary date established under this Section to become the date of issuance
7 of such revised or modified CAP; and

8 C. Changes in cost estimates, within thirty (30) days of issuance of Ecology's
9 written notification that all completion reports have been approved as provided in
10 Section VI.D. Any adjustments for inflation since the most recent preceding anniversary date
11 shall be made concurrent with adjustments for changes in cost estimates. The issuance of
12 Ecology's written notification that all remediation tasks have been completed will revise the
13 anniversary date established under this section.

14 XXII. INDEMNIFICATION

15 Yakima agrees to indemnify and save and hold the State of Washington, its employees,
16 and agents harmless from any and all claims or causes of action (1) for death or injuries to
17 persons, or (2) for loss or damage to property arising from or on account of negligent acts or
18 omissions of Yakima, its officers, employees, agents, or contractors in entering into and
19 implementing this Decree. However, Yakima shall not indemnify the State of Washington nor
20 save nor hold its employees and agents harmless from any claims or causes of action arising
21 out of any of the negligent acts or omissions of the State of Washington, or the employees or
22 agents of the State, in entering into and implementing this Decree.

23 XXIII. COMPLIANCE WITH APPLICABLE LAWS

24 A. All actions carried out by Yakima pursuant to this Decree shall be done in
25 accordance with all applicable federal, state, and local requirements, including requirements to
26 obtain necessary permits, except as provided in RCW 70.105D.090. The permits or other

1 federal, state, or local requirements that the agency has determined are applicable and that are
2 known at the time of entry of this Decree have been identified in the Amended CAP
3 (Exhibit B).

4 B. Pursuant to RCW 70.105D.090(1), Yakima is exempt from the procedural
5 requirements of RCW 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 and of any laws requiring
6 or authorizing local government permits or approvals. However, Yakima shall comply with
7 the substantive requirements of such permits or approvals. The exempt permits or approvals
8 and the applicable substantive requirements of those permits or approvals, as they are known at
9 the time of entry of this Decree, have been identified in the Amended CAP (Exhibit B).

10 Yakima has a continuing obligation to determine whether additional permits or
11 approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial
12 action under this Decree. In the event Yakima or Ecology determines that additional permits
13 or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial
14 action under this Decree, it shall promptly notify the other party of this determination.
15 Ecology shall determine whether Ecology or Yakima shall be responsible to contact the
16 appropriate state and/or local agencies. If Ecology so requires, Yakima shall promptly consult
17 with the appropriate state and/or local agencies and provide Ecology with written
18 documentation from those agencies of the substantive requirements those agencies believe are
19 applicable to the remedial action. Ecology shall make the final determination on the additional
20 substantive requirements that must be met by Yakima and on how Yakima must meet those
21 requirements. Ecology shall inform Yakima in writing of these requirements. Once
22 established by Ecology, the additional requirements shall be enforceable requirements of this
23 Decree. Yakima shall not begin or continue the remedial action potentially subject to the
24 additional requirements until Ecology makes its final determination.

25 C. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the
26 exemption from complying with the procedural requirements of the laws referenced in

1 RCW 70.105D.090(1) would result in the loss of approval from a federal agency which is
2 necessary for the state to administer any federal law, the exemption shall not apply and Yakima
3 shall comply with both the procedural and substantive requirements of the laws referenced in
4 RCW 70.105D.090(1), including any requirements to obtain permits.

5 **XXIV. REMEDIAL AND INVESTIGATIVE COSTS**

6 Yakima shall pay to Ecology costs incurred by Ecology pursuant to this Decree and
7 consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology
8 or its contractors for, or on, the Site under RCW 70.105D, including remedial actions and
9 Decree preparation, negotiation, oversight, and administration. These costs shall include work
10 performed both prior to and subsequent to the entry of this Decree. Ecology's costs shall
11 include costs of direct activities and support costs of direct activities as defined in
12 WAC 173-340-550(2). Yakima shall pay the required amount within thirty (30) days of
13 receiving from Ecology an itemized statement of costs that includes a summary of costs
14 incurred, an identification of involved staff, and the amount of time spent by involved staff
15 members on the project. A general statement of work performed will be provided upon
16 request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4),
17 failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of
18 costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded
19 monthly.

20 In addition to other available relief, pursuant to RCW 70.105D.055, Ecology has
21 authority to recover unreimbursed remedial action costs by filing a lien against real property
22 subject to the remedial actions.

23 **XXV. IMPLEMENTATION OF REMEDIAL ACTION**

24 If Ecology determines that Yakima has failed without good cause to implement the
25 remedial action, in whole or in part, Ecology may, after notice to Yakima, perform any or all
26 portions of the remedial action that remain incomplete. If Ecology performs all or portions of

1 the remedial action because of Yakima's failure to comply with its obligations under this
2 Decree, Yakima shall reimburse Ecology for the costs of doing such work in accordance with
3 Section XXIV (Remedial Action Costs), provided that Yakima is not obligated under this
4 section to reimburse Ecology for costs incurred for work inconsistent with or beyond the scope
5 of this Decree.

6 Except where necessary to abate an emergency situation, Yakima shall not perform any
7 remedial actions at the Site outside those remedial actions required by this Decree, unless
8 Ecology concurs, in writing, with such additional remedial actions pursuant to Section XV
9 (Amendment of Decree).

10 **XXVI. PERIODIC REVIEW**

11 As remedial action, including ground water monitoring, continues at the Site, the
12 Parties agree to review the progress of remedial action at the Site, and to review the data
13 accumulated as a result of monitoring the Site as often as is necessary and appropriate under
14 the circumstances. At least every five (5) years after the initiation of cleanup action at the Site,
15 the Parties shall meet to discuss the status of the Site and the need, if any, for further remedial
16 action at the Site. Ecology reserves the right to require further remedial action at the Site under
17 appropriate circumstances. This provision shall remain in effect for the duration of the Decree.

18 **XXVII. PUBLIC PARTICIPATION**

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

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

1 B. Ecology shall notify Yakima prior to the issuance of all press releases and fact
2 sheets, and before major meetings with the interested public and local governments. In the
3 event that Yakima chooses to issue any materials related to public participation without
4 Ecology approval, it shall so indicate.

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

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

- 10 1. Ecology's Central Regional Office
11 15 West Yakima Avenue, Suite 200
12 Yakima, Washington 98902
- 13 2. Yakima Valley Regional Library
14 102 North 3rd Street
15 Yakima, Washington 98901

16 At a minimum, copies of all public notices, fact sheets, and press releases; all quality assured
17 monitoring data; remedial actions plans and reports, supplemental remedial planning
18 documents, and all other similar documents relating to performance of the remedial action
19 required by this Decree shall be promptly placed in this repository. A copy of all documents
20 related to this Site shall be maintained in the repository at Ecology's Central Regional Office
21 in Yakima, Washington.

22 **XXVIII. DURATION OF DECREE**

23 The remedial program required pursuant to this Decree shall be maintained and
24 continued until Yakima has received written notification from Ecology that the requirements of
25 this Decree have been satisfactorily completed. This Decree shall remain in effect until
26 dismissed by the Court. When the Decree is dismissed, Section XVIII (Covenant Not to Sue)
and Section XIX (Contribution Protection) shall survive.

1 **XXIX. CLAIMS AGAINST THE STATE**

2 Yakima hereby agrees that it will not seek to recover any costs accrued in
3 implementing the remedial action required by this Decree from the State of Washington or any
4 of its agencies; and further, that Yakima will make no claim against the State Toxics Control
5 Account or any Local Toxics Control Account for any costs incurred in implementing this
6 Decree. Except as provided above, however, Yakima expressly reserves its right to seek to
7 recover any costs incurred in implementing this Decree from any other potentially liable
8 person, except Federated. This section does not limit or address funding that may be provided
9 under WAC 173-322.

10 **XXX. EFFECTIVE DATE**

11 This Decree is effective upon the date it is entered by the Court.

12 **XXXI. WITHDRAWAL OF CONSENT**

13 This Decree has been the subject of public notice and comment under
14 RCW 70.105D.040(4)(a). As a result of this process, Ecology has found that this Decree will
15 lead to a more expeditious cleanup of hazardous substances at the Site in compliance with the
16 cleanup standards established under WAC 173-340.

17 If the Court withholds or withdraws its consent to this Decree, the Decree shall be null
18 and void at the option of any party and no party shall be bound by the requirements of this

19 //

20 //

21 //

22 //

23 //

24 //

25 //

1 Decree. The above-captioned case may then proceed as if this Decree had not been offered
2 and in accordance with further directions and orders of the Court.

3
4 STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

ROBERT W. FERGUSON
Attorney General

5 



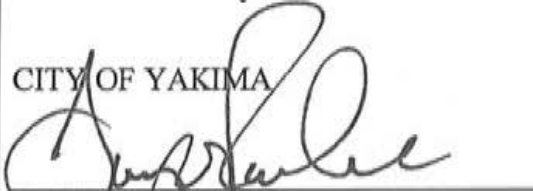
6
7 JAMES PENDOWSKI
Program Manager
8 Toxics Cleanup Program
(360) 407-7177

JOHN A. LEVEL, WSBA #20439
Assistant Attorney General
(360) 586-6753

9
10 Date: 8/29/14

Date: 8/29/14

11
12 CITY OF YAKIMA



13
14 TONY O'ROURKE
City Manager
15 (509) 575-6000

16 Date: 8/25/14

17
18 ENTERED this 5 day of Sept. 2014.

19
20 
21 JUDGE CHRISTINE SCHALLER
22 Thurston County Superior Court

FILED

SEP - 5 2014

SUPERIOR COURT
BETTY J. GOULD
THURSTON COUNTY CLERK

EXPEDITE
 No Hearing is Set
 Hearing is Set
Date:
Time:
The Honorable Christine Schaller

**STATE OF WASHINGTON
THURSTON COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

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

Defendants.

NO. 02-2-00956-2

STIPULATION AND ORDER
STIPULATING TO THE SURVIVAL
OF SECTION XIX (CONTRIBUTION
PROTECTION) AND SECTION XVIII
(COVENANT NOT TO SUE) OF THE
2004 CONSENT DECREE

EX PARTE


COMES NOW Plaintiff State of Washington, Department of Ecology (Ecology), acting by and through Robert W. Ferguson, Attorney General, and John A. Level, Assistant Attorney General, and the City of Yakima (Yakima), being represented by Mark Kunkler, and enter into the following stipulation and agreement. Ecology and Yakima stipulate and agree that the protections afforded to Federated Service Insurance Company under Section XIX (Contribution Protection) and Section XVIII (Covenant Not to Sue) of the October 29, 2004 Consent Decree shall survive and continue after the filing of the Amended Consent Decree in


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this matter.

ROBERT W. FERGUSON
Attorney General

CITY OF YAKIMA


JOHN A. LEVEL, WSBA #20439
Assistant Attorney General


MARK KUNKLER, WSBA #14995
Senior Assistant City Attorney

ORDER

NOW THEREFORE, pursuant to the foregoing stipulation of the parties, it is hereby ORDERED that the protections afforded to Federated Service Insurance Company under Section XIX (Contribution Protection) and Section XVIII (Covenant Not to Sue) of the October 29, 2004 Consent Decree shall survive and continue after the filing of the Amended Consent Decree in this matter.

ENTERED this 5 day of Sept 2014.


JUDGE CHRISTINE SCHALLER
Thurston County Superior Court

FILED

SEP - 5 2014

SUPERIOR COURT
BETTY J. GOULD
THURSTON COUNTY CLERK

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EXPEDITE
 No Hearing is Set
 Hearing is Set
Date:
Time:
The Honorable Christine Schaller

**STATE OF WASHINGTON
THURSTON COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

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

Defendants.

No. 02-2-00956-2

AFFIDAVIT OF JOHN A. LEVEL

RE: FACSIMILE OF MARK
KUNKLER [STIPULATION AND
ORDER]

STATE OF WASHINGTON)
) ss.
County of THURSTON)

I, JOHN A. LEVEL, being first duly sworn upon oath, deposes and says:

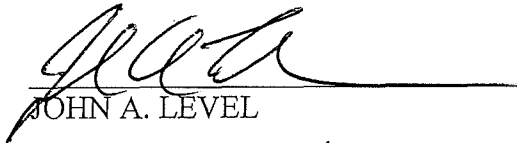
1. I am over the age of 18, competent to be a witness herein, and make this affidavit in that capacity. I state the following based upon my personal knowledge and pursuant to the provisions of GR 17.

2. I received the foregoing facsimile for filing. I have examined the facsimile and determined that the facsimile of the Stipulation and Order Stipulating to the Survival of Section

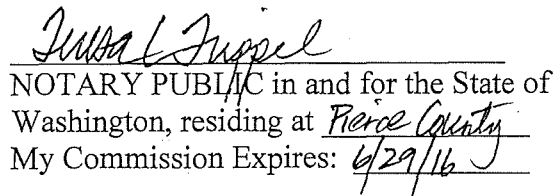
1 XIX (Contribution Protection) and Section XVIII (Covenant Not to Sue) of the 2004 Consent
2 Decree signed by Mark Kunkler and received on August 29, 2014, consists of four pages
3 (including this Affidavit) and that it is complete and legible.

4 3. My address is 2425 Bristol Court SW, Olympia, WA 98502. My phone
5 number is (360) 586-6753. The facsimile address where I received the document is
6 johnl3@atg.wa.gov.

7 I declare under penalty of perjury of the laws of the state of Washington that to the best
8 of my knowledge the foregoing statement is true and correct.

9
10 
11 JOHN A. LEVEL

12 SUBSCRIBED AND SWORN to before me this 3rd day of September 2014.

13
14 
15 NOTARY PUBLIC in and for the State of
16 Washington, residing at Pierce County
17 My Commission Expires: 6/29/16

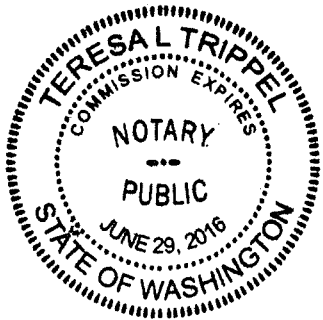
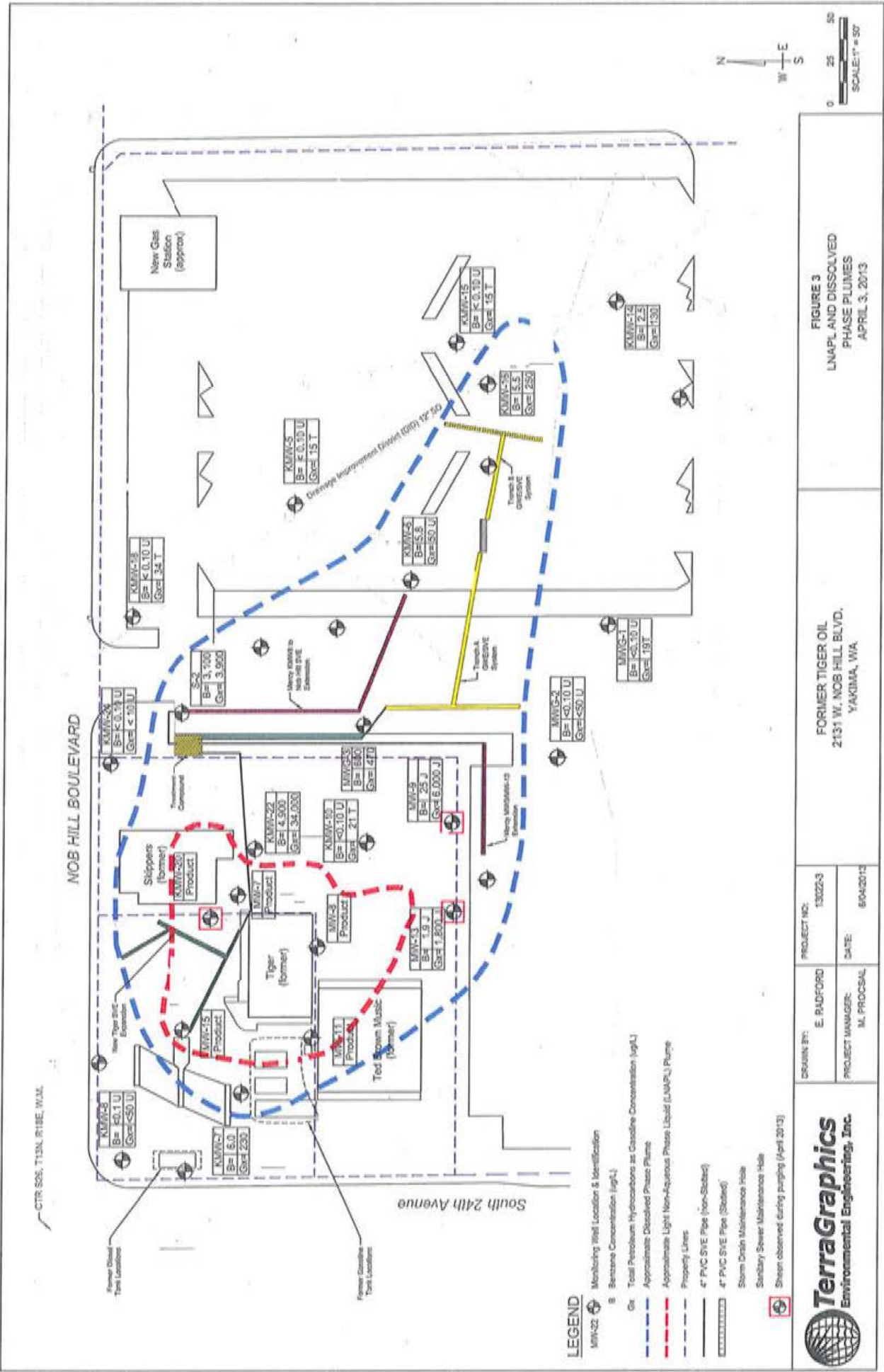


EXHIBIT A
SITE DIAGRAM



CTR 505, T13N, R18E, W4E

MOB HILL BOULEVARD

South 24th Avenue



LEGEND

- MW-22 Monitoring Well Location & Identification
- B Benzene Concentration (µg/L)
- Gx Total Petroleum Hydrocarbons as Gasoline Concentration (µg/L)
- Approximate Dissolved Phase Plume
- Approximate Light Non-Aqueous Phase Liquid (LNAPL) Plume
- Property Lines
- 4" PVC SVE Pipe (Non-Static)
- 4" PVC SVE Pipe (Static)
- Storm Drain Maintenance Hole
- Sanitary Sewer Maintenance Hole
- Shown observed during purging (April 2013)



DRAWN BY: E. RADFORD
 PROJECT NO.: 13022-3
 PROJECT MANAGER: M. PROCSAL
 DATE: 6/04/2013

FIGURE 3
 LNAPL AND DISSOLVED
 PHASE PLUMES
 APRIL 3, 2013

FORMER TIGER OIL
 2131 W. MOB HILL BLVD.
 YAKIMA, WA

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

AMENDED 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 2014

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1.0 Introduction

1.1 Purpose

The purpose of this Amended Cleanup Action Plan (Amended CAP) is to identify the cleanup actions agreed upon by the Department of Ecology (Ecology) and the City of Yakima (Yakima) 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 Amended 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).¹ 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 possible 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 including possible installation of an infiltration gallery or manifold to remediate groundwater.
- 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.

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

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

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 Jackie Cameron (Public Disclosure Coordinator) at Ecology's Central Regional Office in Yakima, Washington, at (509) 454-7658.

1.2 Cleanup Action Ownership

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

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 $\frac{1}{4}$, SE $\frac{1}{4}$ of Section 26, Township 13 North, and 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, monitoring wells and recovery wells, and any other areas where hazardous substances have come to be located, including, but not limited to, 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 Site includes the Argo Yakima LLC property where the Safeway Shopping Center parking lot located in the eastern and southeastern portions of the Site, the property, the KSKC Properties LLC property located to the south of the Tiger Mart property, and the Three Sisters Holdings LLC restaurant property located to the east of the Tiger Mart property. Figure 1, attached, shows a map of the Site.

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 groundwater 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

2.3.1 Release at Site and Early Investigations

In the early 1980s, petroleum products were released from the underground storage tank system at the Site. These free petroleum products (free product) 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, Zaremba 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 (Zaremba 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.

2.3.2 Interim Remedial Action

Design and implementation 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 free product. The system consisted 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 was discharged into the municipal sanitary sewer system, and vapors were 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 was effective, it was 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 did 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.

2.3.3 Actions Post September 2004

In October 2004, New Tiger and Federated entered into the 2004 Consent Decree (Decree) with Ecology, which was filed in Thurston County Superior Court on October 29, 2004. The 2004 Decree required implementation of Ecology's 2004 Cleanup Action Plan.

Under the 2004 Cleanup Action Plan, New Tiger was required to: (1) remove from the Site underground storage tanks (USTs), a minimum of 650 cubic yards of contaminated soils, and gasoline encountered during underground storage tank removal; (2) dig two trenches to determine the amount of gasoline floating on top of groundwater; and (3) install and operate a soil vapor extraction (SVE) system to treat contamination in the vicinity of the trenches (if free product and/or soil contamination was found present during or after trenching).

Between December 20 and 22, 2004, New Tiger removed the USTs, dug two trenches, discovered free product, and installed SVE piping on the New Tiger Parcel.

During sampling at the Site in April 2009, MW-7 contained 2.71 feet of free product and MW-11 contained 1.06 feet of free-phase gasoline.

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 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 free product, 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/ORC Injection and Monitoring*: This alternative consists of injecting hydrogen peroxide or other ORC mixtures into the subsurface to enhance aerobic degradation and chemical oxidation 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.

2014 CLEANUP ALTERNATIVES

- Interim Action, including demolition of the existing building and removal of PCS;
- Possible vapor intrusion investigation into buildings which will be occupied post remediation that are located within the Site;
- Possible use of hydrogen peroxide and/or ORC mixture(s) and/or other Ecology-approved in-situ treatment amendments including installation of infiltration manifolds or galleries ; and
- Possible installation and operation an SVE system.
- Monitored Natural Attenuation

PCS shall be excavated as dictated by the terms of Exhibit G to the Decree. See Exhibit G. Confirmation sampling and analysis shall be conducted in accordance with an approved Sampling and Analysis Plan. Laboratory analyses shall be for all analytes associated with petroleum contamination. See Table at -830(1). Clean overburden soils may be used as post-interim-action backfill if approved by Ecology.

Waste soils shall be designated and transported to an accepting, permitted landfill or an Ecology approved soil treatment facility. All transported contaminated soil loads shall be covered. All contaminated soil shall be transported from the Site in dump trucks that use a tarp covering system.

Once excavation is completed and contaminated soil has been transported off-site, the excavation shall be filled with clean fill, graded, and compacted to the satisfaction of the Ecology.

3.2 Selected Cleanup Actions

Ecology has selected the following cleanup actions for the Site. The cleanup actions selected are those listed in the 2014 Cleanup Alternative.

3.2.1 Removal of PCS

In December of 2004, New Tiger removed PCS it encountered during UST, line, and dispenser removal. PCS removal consisted of removing approximately 650 cubic yards of PCS. The 650 cubic yards did not include the clean overburden excavated. Removal of additional PCS was authorized under the 2004 CAP.

An Interim Action shall result in excavation and removal of all accessible PCS saturated with LNAPL or containing concentrations of gasoline-range hydrocarbons as specified in Table 1 of the CAP that does not compromise the integrity of existing occupied buildings that will continue in use after completion of the soil removal, city or private infrastructure (streets, sidewalks, etc.) and/or soils that cannot be effectively removed due to groundwater levels at the time of this removal action. PCS encountered during excavation shall be stockpiled, sampled and managed according to Table 1.

Yakima shall remove the existing Tiger Mart convenience store building, which is necessary for the removal of PCS from underneath the building. Yakima shall submit plans for PCS removal and building removal to the Ecology Project Coordinator. Ecology shall review the proposal, provide comments and Ecology must approve any remedial actions before implementation.

During PCS excavation, Yakima will remove any free product encountered and dispose of the free product in a legally appropriate manner. Ecology must approve the disposal method(s) selected.

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 No. 10-09-057, September, 2011 and *Guidance for Site Checks and Site Assessments for Underground Storage Tanks*. Pursuant to the Decree, Ecology and Yakima may take split samples at the site during 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 (mg/Kg)	
		Backfill*	Treatment or disposal required
heavy fuel	NWTPH-Dx	≤ 2000	> 2000
diesel	NWTPH-Dx	≤ 2000	> 2000
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 Site.

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 No. 10-09-057, September, 2011.

3.2.2 Possible Installation and Operation of a Soil Vapor Extraction (SVE) System

Should free product be discovered beneath structures that will be occupied post remediation, installation of an SVE system may be necessary. Should SVE installation be necessary, the system shall be engineered to have sufficient radius of influence to remediate the hot spot contamination. Alternative methods to address protection of structures from vapor intrusion may be proposed by Yakima, and will be considered by Ecology.

3.2.3 Hydrogen Peroxide Injection and/or ORC

Hydrogen peroxide and/or ORC and/or other Ecology-approved in-situ treatment amendments may be added to the Site to enhance degradation of contaminants. Hydrogen peroxide and/or ORC and/or other Ecology-approved in-situ treatment amendments may also be injected/placed into the subsurface at or down-gradient of the source area, as a way of enhancing biodegradation of contaminants. Placement or injection of in-situ treatment amendments may utilize direct, one-time injections, or may utilize installed wells, piping/manifolds or infiltration galleries. Should Yakima decide to add hydrogen peroxide and/or ORC and/or other Ecology-approved in-situ treatment amendments, it shall submit an engineering plan to Ecology for review and approval. Existing monitoring wells specified for quarterly or other compliance 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 institutional controls.

3.2.5 Monitored Natural Attenuation

MNA may 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.
- (5) MNA will be effective in cleaning up the site in a reasonable restoration time frame.

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 in this Amended CAP may need to be replaced. Yakima shall submit a monitoring well replacement plan within 30 days following any remediation activity that destroys or removes any monitoring wells at the Site. Yakima must respond to Ecology's review comments and produce an approved monitoring well replacement plan within 15 days following receipt of Ecology's review comment, and implement the plan within 30 days of Ecology approval of the plan.

4.0 Exposure Assessment

4.1 Chemicals of Concern

Chemicals of concern in the groundwater and soil at the Site include the compounds listed in Table 830-1 of WAC 173-340-900. These compounds are present above the Method A cleanup levels for groundwater found in Table 720-1, WAC 173-340-900 (List report from 2013 *Results of Groundwater Monitoring (September 2001) at Tiger Oil Corp. Facility, 2312 West Nob Hill Boulevard, Yakima, Washington*, Foster Wheeler, November 2001). If the presence of diesel range contaminants at concentrations above MTCA Method A levels are found in soil samples taken during PCS removal, 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 are 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, for those who work in buildings located within the Site and those individual conducting the 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, those participating in the installation of wells and remedial measures and those who work in buildings within the Site.

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 (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, PCS removal, free product removal, possible SVE, and possible hydrogen peroxide injection and/or ORC use, have been proven to be successful at remediating sites.

- *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

To determine if Method A cleanup levels for groundwater, as defined in Table 2, have been met at the Site, four consecutive quarters or more of sampling shall commence upon the completion of the active remedial measures described in section 3.0. Whether more than four quarters of samples will be required will depend on Site specific conditions as determined by Ecology. Groundwater at the Site shall be considered clean when Method A cleanup levels for groundwater in WAC 173-340-720 (groundwater) and WAC 173-340-740 (soil), have been met for the Ecology determined amount of sampling events at all points of compliance described in this CAP.

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

6.3 Points of Compliance

6.3.1 Groundwater

Standard points of compliance shall be used to determine completion of remedial actions. See WAC 173-340-720(8)(b). To ensure that groundwater in the contaminant plume is reaching the established MTCA Method A cleanup levels, monitoring and reporting shall occur as specified in Sections 9.1 through 9.3 of this CAP.

6.3.1.1 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. 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 has been 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.

Between December 20 and 22, 2004, New Tiger removed the USTs dug two trenches, discovered free product, and installed SVE piping on the New Tiger Parcel.

The cleanup actions selected for the Site include removal of Underground Storage Tanks (USTs, completed), removal of petroleum contaminated soils (PCS), removal of free product, possible installation and use of an SVE system or other soil vapor control methods, and possible use of hydrogen peroxide and/or ORC and/or other Ecology-approved in-situ treatment amendments to

enhance aerobic degradation, and monitored natural attenuation (MNA). **These cleanup actions are to be used in conjunction with the current 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, soil 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 local, 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, possible installation and operation of an SVE system should an SVE be necessary, potential hydrogen peroxide injection and/or ORC use and/or other Ecology-approved in-situ treatment amendments, and MNA. PCS removal activities at the site, as outlined in section 3.2, are estimated to take no more than three months. PCS removal will provide for a quicker restoration time frame than the operation of the SVE at the Site. The combination of the selected alternatives at this Site is 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 draft CAP will be considered and addressed by Ecology.

8.2.3 Disproportionate Cost Analysis

Because the Amended draft CAP is agreed upon by Ecology and Yakima, 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 of the Amended CAP include the removal of the PCS, free product removal, and, if necessary, introduction or injections of Hydrogen peroxide and/or ORC and/or other Ecology-approved in-situ treatment amendments, possible installation and operation of an SVE system or other soil vapor control action to treat PCS left in situ, and possible 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; possible SVE or other soil vapor control actions (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. Possible MNA or use of hydrogen peroxide injections and/or other Ecology-approved in-situ treatment amendments 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 PCS excavation, and potential installation and operation of an SVE system or other vapor control measures. 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 of the Amended CAP 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, possible SVE operation or other vapor control measures, potential hydrogen peroxide injections and/or ORC use and/or other Ecology-approved in-situ treatment amendments, and possible MNA will serve to further reduce contaminant concentrations in the subsurface.

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. Because Ecology and Yakima have agreed to the remedial actions, no disproportionate cost analysis is required.

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.

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 during the PCS removal and possible installation and operation of an SVE system or other vapor control measures is conducted. A Safety and Health Plan will be followed at the Site. 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 of the Amended CAP are technically possible to implement 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 and confirm when conditions at the site meet cleanup standards. 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, oxidation reduction potential (ORP), and conductivity.
- 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 NWTPH-Gx, and BTEX compounds. Reporting limits will be the analytical method detection limits. Laboratory MDLs must be below Ecology's cleanup levels.
- 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 TPH-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 TPH-G concentrations.

9.2.2 Wells To Be Sampled/Frequency of Sampling

Sample all wells during each sampling event.

If measurable SPH is present, the free product thickness will be determined, and the SPH shall be bailed and discharged in a legally appropriate manner. 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.

Yakima may request in writing at anytime that the wells to be sampled and the frequency of sampling be modified by Ecology.

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) All data shall be submitted in compliance with reporting requirements found in WAC 173-340-840.
- b) 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.
- c) All data will be presented in tables and graphically showing concentration over time.
- d) The most recent sampling and analysis results shall be presented as received from the lab as stand-alone documents in the report appendix.

- e) All sampling data shall be submitted to Ecology in both printed and electronic formats in accordance with Section XI (Progress Reports), Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any subsequent procedures specified by Ecology for data submittal
- f) A 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 Yakima and submitted to the Ecology Cleanup Project Manager for review and comment. The plan must include all Applicable and Relevant or Appropriate Requirements (ARARs) and comply with the requirements of the Washington State Department of Labor and Industry.

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 Yakima or Ecology and submitted to the Ecology Site Manager for review and approval.

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." Work Plans for all proposed remedial actions shall be reviewed by Ecology and may not be implemented until approved by Ecology. The Work Plan(s) 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." Yakima shall be responsible for determining and implementing ARARs (applicable, relevant and appropriate requirements) for the Site.

10.0 Schedule

10.1 Removal of PCS on the Tiger Oil property and possible: Vapor Intrusion Investigation; Use of Hydrogen Peroxide and/or ORC and/or other Ecology-approved in-situ treatment amendments; and Installation and Operation of a SVE system or other vapor control measures.

Schedules shall be completed and approved by Ecology for all work plans prepared under this Amended CAP.

EXHIBIT C

PUBLIC PARTICIPATION PLAN

Public Participation Plan

Tiger Oil 24th Ave and W Nob Hill Blvd
Facility/Site ID # 469
Yakima, Washington



Prepared by

Washington State Department of Ecology

June 2014

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INTRODUCTION

The Washington State Department of Ecology (Ecology) has developed this draft public participation plan in accordance to the Model Toxics Control Act (MTCA) to promote meaningful community involvement during the investigation and cleanup of the Tiger Oil 24th Avenue and W. Nob Hill Site (Site) in Yakima, Washington. Public participation is an integral part of Ecology's responsibilities under the MTCA. Ecology's goal is to provide the public with timely information and meaningful opportunities for participation that are commensurate with each site. Public participation plans are intended to encourage coordinated and effective public involvement tailored to the public's needs at a particular facility. This draft public participation plan describes the tools that Ecology plans to use to inform the public about the Site and identifies opportunities for the community to become involved.

LOCATION AND SITE BACKGROUND

Location

The Site is located at 2312 W Nob Hill Boulevard in Yakima, Washington (see figure on page 2).

Site Background

The Site is currently vacant and owned by the City of Yakima. It has historically been used as a gasoline station. A large volume of petroleum products leaked from the underground storage tanks and contaminated soil and groundwater at the Site. Previous environmental investigations of the Site indicate the presence of hazardous substances in soils and groundwater above state cleanup standards. Contaminants remaining at the site include leaded gasoline and benzene, toluene, ethylbenzene and xylenes (BTEX). As a result, the Site is subject to the investigation and cleanup requirements of the Model Toxics Control Act (MTCA) administered by Ecology.

Site Location Map



HOW THE SITE WILL BE CLEANED UP

Investigation and Study

A remedial investigation and feasibility study was completed after release of approximately 20,000 gallons of petroleum product from leaking underground storage tanks occurred in the early 1980s. The remedial investigation revealed gasoline and BTEX contamination contaminated soils and groundwater both at the Site and on some of the adjacent properties. The leaking tanks were removed, and 700 tons of contaminated soils were transported off-site.

An interim remediation system was installed and operated from 1995 through 2006. The systems extracted groundwater and soil vapors from the subsurface in an effort to reduce the levels of contamination at the Site, as well as prevent contamination from moving farther off of the property. Since 2006, cleanup actions have been stalled by litigation. The City of Yakima purchased this property in 2014, and will continue moving forward with cleanup actions under a Consent Decree negotiated with Ecology. Ecology will release the Consent Decree and draft Cleanup Action Plan for public comment in the summer of 2014.

Cleanup

Cleanup is expected to begin in the summer of 2014. The building on Site will be demolished to allow for access to contaminated soils that are beneath it. Excavation of soils will take place to the extent possible, and a chemical/biological amendment will be placed in the excavated pit to speed up destruction of petroleum products in the groundwater. Groundwater will be monitored until it meets MTCA cleanup levels.

KEY COMMUNITY CONCERNS

Ecology has preliminarily identified the following concerns and interests that may apply to the investigation and cleanup of the Site:

- Protection of human health and the environment
- Opportunities for public involvement
- Compliance with regulatory requirements

Additional public concerns may be identified over the course of the Site cleanup through public comment periods; community interviews; surveys; meetings; and other contacts with individuals, community groups, or organizations.

PUBLIC PARTICIPATION ACTIVITIES AND RESPONSIBILITIES

The purpose of this public participation plan is to promote public understanding and participation in the MTCA activities planned for this site. This section of the plan addresses how Ecology and the Potentially Liable Persons will share information and receive public comments and community input on the Site activities.

Public Involvement Activities

Ecology uses a variety of activities to facilitate public participation in the planning and cleanup of MTCA sites. The following is a list of the public involvement activities that Ecology will use, their purposes, and how they will be used during the cleanup of the Site.

Formal Public Comment Period

Public comment periods usually last 30 days and are the primary method Ecology uses to get feedback from the public on proposed cleanup decisions. Public comment periods are required on all agreed orders, consent decrees, and enforcement orders. Public comment periods are also required for all Ecology-conducted remedial actions.

During a comment period, the public can comment in writing. Verbal comments are taken if a public hearing is held. After formal comment periods, Ecology reviews all comments received and may respond in a document called a *responsiveness summary*. A responsiveness summary is a summary of oral and/or written public comments received by Ecology during a comment period on key documents, and Ecology's responses to those comments.

Ecology will consider the need for changes or revisions based on input from the public. If significant changes are made, then a second comment period may be held. If no significant changes are made, then the draft document(s) will be finalized.

Public Meetings

Public meetings may be held at key points during the investigation and cleanup process. Ecology also may offer public meetings for actions expected to be of particular interest to the community. These meetings will be held at locations convenient to the community.

Information Repositories

During the comment period, the site documents will be available for review at information repositories. Ecology can also make copies of documents for a fee.

For this Site, the information repositories are:

- Yakima Valley Regional Library, 102 N 3rd Street, Yakima, Phone: (509) 452-8541
- Department of Ecology, Central Regional Office, 15 W Yakima Avenue, Ste 200, Yakima, Phone (509) 575-2490

Information on the Site will also be posted on the Ecology website at:
<https://fortress.wa.gov/ecy/gsp/Sitepage.aspx?csid=4919>

Site Register

The Site Register is published by Ecology bi-monthly to inform the public of:

- Activities related to the study and cleanup of contaminated sites
- Public meetings/hearings and public comment periods
- Discussion or negotiations of legal agreements
- Availability of cleanup reports
- Hazard rankings of sites

If you would like to be placed on the Site Register's e-mailing list, complete the electronic form at http://www.ecy.wa.gov/programs/tcp/pub_inv/pub_inv2.html.

Mailing List

Ecology has compiled a mailing list for the Site. The list includes individuals, groups, public agencies, elected officials, private businesses, potentially affected parties, and other known interested parties. The list is maintained at Ecology's Central Regional Office and will be updated as needed.

Fact Sheets

Ecology will mail fact sheets to persons and organizations interested in the Site to inform them of public meetings and comment opportunities and important site activities. Ecology may also mail fact sheets about the progress of site activities.

Newspaper Ads

At a minimum, Ecology will place an ad in the *Yakima Herald Republic* to announce public comment periods and public meetings or hearings for the Site.

Plan Update

This public participation plan may be updated as the project proceeds. If an update is necessary, the revised plan will be submitted to the public for comment.

Public Points of Contact

If you have questions or need more information about this plan or this Site, please contact the following person:

Norm Peck, Site Manager
Washington State Department of Ecology
Central Regional Office
15 W Yakima Avenue, Suite 200
Yakima WA 98902
(509) 454-7837

GLOSSARY

Cleanup: Actions taken to deal with a release, or threatened release of hazardous substances that could affect public health and/or the environment. The term "cleanup" is often used broadly to describe various response actions or phases of remedial responses such as the remedial investigation/feasibility study.

Cleanup Action Plan (CAP): A document that explains which cleanup alternative(s) will be used at sites for the cleanup. The Cleanup Action Plan is based on information and technical analysis generated during the remedial investigation/feasibility study and consideration of public comments and community concerns.

Comment Period: A time period during which the public can review and comment on various documents and Ecology or EPA actions. For example, a comment period is provided to allow community members to review and comment on proposed cleanup action alternatives and proposed plans. Also, a comment period is held to allow community members to review and comment on draft feasibility studies.

Consent Decree: A formal legal document, approved and issued by a court, which formalizes an agreement reached between the state (and EPA if involved) and the potentially liable person(s) on what will take place during the remedial investigation/feasibility study and/or cleanup action. A Consent Decree is similar to an Agreed Order except that a Consent Decree goes through the courts. Consent Decrees are subject to public comment. If a decree is substantially changed, an additional comment period is provided.

Feasibility Study (FS): This study uses information obtained in a remedial investigation to develop and evaluate a range of cleanup options for a site.

Information Repository: A file containing current information, technical reports, and reference documents available for public review. The information repository is usually located in a public building that is convenient for local residents such as a public school, city hall or library.

Model Toxics Control Act (MTCA): Legislation passed by the state of Washington in 1988. Its purpose is to identify, investigate, and clean up facilities where hazardous substances have been released. It defines the role of Ecology and encourages public involvement in the decision making process. MTCA regulations became effective March 1, 1989 and are administered by the Washington State Department of Ecology.

Potentially Liable Person (PLP): Any individual(s) or company(s) potentially responsible for, or contributing to, the contamination problems at a site. Whenever possible, Ecology requires these PLPs, through administrative and legal actions, to clean up sites.

Public Participation Plan: A plan prepared to encourage coordinated and effective public involvement designed to the public's needs at a particular site.

Remedial Investigation: This study characterizes the site and defines the type and extent of

contamination.

Remedial Investigation/Feasibility Study: Two distinct but related studies. They are usually performed at the same time, and together referred to as the "RI/FS." They are intended to:

- Gather the data necessary to determine the type and extent of contamination;
- Establish criteria for cleaning up the site;
- Identify and screen cleanup alternatives for remedial action; and
- Analyze in detail the technology and costs of the alternatives.

Responsiveness Summary: A summary of oral and/or written public comments received by Ecology during a comment period on key documents, and Ecology's responses to those comments. The responsiveness summary is especially valuable during the Cleanup Action Plan phase at a site when it highlights community concerns.

Site: Any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, vessel, or aircraft; 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.

EXHIBIT D
ECOLOGY POLICY 840 – DATA SUBMITTAL
REQUIREMENTS



Toxics Cleanup Program Policy

Policy 840

Resource Contact: Policy and Technical Support Staff *Effective:* August 1, 2005

References: WAC 173-340-840(5) *Revised:* September 9, 2005

<http://www.ecy.wa.gov/eim/>

<http://www.ecy.wa.gov/programs/tcp/smu/sedqualfirst.htm>

<http://www.ecy.wa.gov/biblio/0309043.html>

Replaces: Procedure 840

Policy 840: Data Submittal Requirements

Purpose: Contaminated site investigations and cleanups generate a large volume of environmental monitoring data that need to be properly managed to facilitate regulatory decisions and access to this data by site owners, consultants, and the general public. The purpose of this policy is to describe the requirements for submitting environmental monitoring data generated/collected during the investigation and cleanup of contaminated sites under the Model Toxics Control Act (MTCA) and the Sediment Management Standards.

Application: This policy applies to Ecology staff, potentially liable parties, prospective purchasers, state and local agencies, and Ecology contractors that investigate or manage the cleanup of contaminated sites.

- 1. Unless Otherwise Specified by Ecology, all Environmental Monitoring Data Generated during Contaminated Site Investigations and Cleanups shall be Required to be Submitted to Ecology in both a Written and Electronic Format.**
-

Environmental monitoring data include biological, chemical, physical, and radiological data generated during site investigations and cleanups under the Model Toxics Control Act Cleanup Regulation (WAC 173-340) and the Sediment Management Standards (WAC 173-204).

Data generated/collected during site investigations and cleanups conducted under an order, agreed order or consent decree, permit, grant, loan, contract, interagency agreement, memorandum of understanding or during an independent remedial action, are considered environmental monitoring data under this policy.

Data generated/collected for non site-specific studies, site hazard assessments that result in no further action and initial site investigations are not considered environmental monitoring data under this policy.

- 2. Orders, Agreed Orders, Consent Decrees, or Permits Issued After the Effective Date of this Policy Shall Include a Condition that Site-Specific Data be Submitted in Compliance with this Policy.**
-

Reports on such work that do not include documentation that the data have been submitted in compliance with this policy shall be deemed incomplete and a notice of such provided to the

Policy 840 Data Submittal Requirements

submitter. These reports generally should not be reviewed until that information is provided. The assistant attorney general assigned to the site should be consulted in these situations.

3. Reports on Independent Remedial Actions Submitted for Review After October 1, 2005, Under Ecology's Voluntary Cleanup Program Shall Not be Reviewed Until the Data Have Been Submitted in Compliance with this Policy.

Such reports shall be deemed incomplete, and a notice to this effect provided to the submitter.

4. Grants, Contracts, Interagency Agreements or Memoranda of Understanding Issued After the Effective Date of this Policy Shall Include a Condition that Site-Specific Data be Submitted in Compliance with this Policy.

Reports on such work shall not be accepted as complete until the data have been submitted in compliance with this policy. If a payment or transfer of funds is involved in the transaction, the relevant payment or transfer shall be withheld until this requirement has been met.

Example language to include in these documents is attached in Appendix A.

5. Data Generated During Upland Investigations and Cleanups Shall be Submitted Electronically Using Ecology's Environmental Information Management System (EIM).

EIM is Ecology's main database for environmental monitoring data. Proper submission of data through this system meets the requirement of submitting such data in an electronic format. Electronic data shall be submitted to Ecology simultaneously with the accompanying printed report.

Additional information on EIM, including instructions for data submittal, can be found on Ecology's EIM web site at <http://www.ecy.wa.gov/eim/>. TCP's EIM Coordinator also is available for technical assistance to site managers and consultants using EIM.

6. Data Submitted Electronically Using EIM Shall be Checked by the Toxics Cleanup Program's EIM Coordinator Prior to Loading the Data into EIM.

Normally, notice that data have been submitted through EIM will come to TCP's EIM Coordinator. Upon receipt of such a notice the EIM Coordinator should notify the site manager. Similarly, if the Ecology site manager receives a notice of an EIM submittal, they should notify TCP's EIM Coordinator. Upon receipt of the data, TCP's EIM Coordinator reviews the submittal for quality control and officially loads the data into the system.

7. Data Generated During Sediment Investigations and Cleanups shall be Submitted Electronically Using Ecology's Sediment Quality Information System (SEDQUAL).

SEDQUAL is Ecology's data management system for sediment-related data. Proper submission of data through this system meets the requirement of submitting such data in an electronic format. Electronic data shall be submitted to Ecology simultaneously with the accompanying printed report.

8. Sediment Sampling Data Shall be Submitted to Ecology Using the SEDQUAL Data Entry Templates.

At a minimum, the following SEDQUAL data entry templates must be completed:

1. **Reference & Bibliography:** Describes lab reports and publications that relate to the data being entered;
2. **Survey:** Sample number;
3. **Station:** Specifies geographic location of the sediment sample. Sample latitude/longitude coordinates must be entered using the North American Datum of 1983 in U.S. Survey feet (NAD 83, U.S. feet);
4. **Sample:** Describes sample characteristics such as depth; and
5. **Sediment Chemistry:** Reports chemical concentration data in dry weight units.

The following additional templates must also be completed where these measurements/observations have been made:

1. **Bioassay:** Bioassay test results;
2. **Bioassay Control:** Bioassay control test results;
3. **Benthic Infauna:** Species abundance & diversity;
4. **Tissue:** Describes the organism collected;
5. **Bioaccumulation:** Reports tissue chemical concentrations; and
6. **Histopathology:** Reports tissue pathology such as tumors or lesions.

9. Electronic Data Formats Shall be Verified to be Compatible with SEDQUAL Prior to Submittal.

Because SEDQUAL uses ASCII protocol and comma delimited text files, data format verification shall be conducted prior to submittal to Ecology. Data shall be verified by downloading the SEDQUAL database, importing the data into the database, correcting errors, and then exporting the corrected templates.

For additional information on sediment sampling and analysis plan requirements, see Ecology publication 03-09-043 "Sediment Sampling and Analysis Plan Appendix", April, 2003. A copy of this document can be obtained from Ecology's publication office or downloaded from the following web site: <http://www.ecy.wa.gov/biblio/0309043.html>

Additional information on SEDQUAL can be found at:

<http://www.ecy.wa.gov/programs/tcp/smu/sedqualfirst.htm>, TCP's SEDQUAL Coordinator is also available for technical assistance to site managers and consultants using SEDQUAL.

10. Sediment Sampling Data Shall Also be Submitted to Ecology in a Printed Report.

Printed reports shall present the data in both dry weight and total organic carbon normalized units in data tables that compare the results to applicable state regulatory criteria.

11. Data Submitted Electronically Using SEDQUAL Shall be Checked by the Toxics Cleanup Program's SEDQUAL Coordinator Prior to Loading the Data into SEDQUAL.

Normally, SEDQUAL data submittals will come to TCP's SEDQUAL Coordinator. Upon receipt of a submittal, the Coordinator should notify the site manager. Similarly, if the Ecology site manager receives a SEDQUAL submittal, they should notify TCP's SEDQUAL Coordinator. Upon receipt of the data, TCP's SEDQUAL Coordinator reviews the submittal for quality control and officially loads the data into the system.

Approved



James J. Pendowski, Program Manager
Toxics Cleanup Program

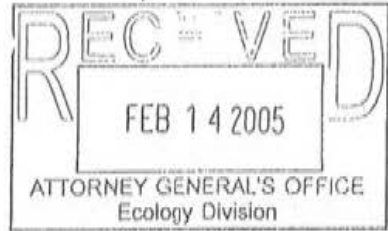
Policy Disclaimer: This policy is intended solely for the guidance of Ecology staff. It is not intended, and cannot be relied on, to create rights, substantive or procedural, enforceable by any party in litigation with the state of Washington. Ecology may act at variance with this policy depending on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

APPENDIX A: MODEL GRANT AND PERMIT CONDITION

The following condition is to be inserted in permits, grants, loans, contracts, interagency agreements, memorandum of understandings where site-specific environmental monitoring data is expected to be generated:

All sampling data shall be submitted to Ecology in both printed and electronic formats in accordance with WAC 173-340-840(5) and Ecology Toxics Cleanup Program Policy 840: Data Submittal Requirements. Electronic submittal of data is not required for site hazard assessments that result in no further action and initial site investigations. (FOR GRANTS & CONTRACTS ADD: Failure to properly submit sampling data will result in Ecology withholding payment and could jeopardize future grant funding.)

EXHIBIT E
RESTRICTIVE COVENANT



Return Address

McCreeedy Law Office, P.C.
3184 Elder Street
Boise, Idaho 83705

Document 1 Title: Restrictive Covenant

Reference #'s: _____
Additional reference #'s on page _____

Grantors:
Tiger Oil Corporation

Grantees:

Additional grantors on page _____

additional grantees on page _____

Document 2 Title: _____

Reference #'s: _____
Additional reference #'s on page _____

Grantors:

Grantees:

Additional grantors on page _____

additional grantees on page _____

Legal Description (abbreviated form: i.e. lot, lbk, plat or S,T,R quarter/quarter)

S. 26, T. 13 N., R. 18, NW 1/4 NW 1/4 SE 1/4 and NW 1/4 SE 1/4
Additional legal is on pages Attachment A

Assessor's Property Tax Parcel/Account Number

181326-42051-8 AC 333

Emergency nonstandard document recording: I am requesting an emergency nonstandard recording for an additional fee as provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some part of the text of the original document.

Signature: _____

The Auditor/Recorder will rely on the information provided on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.



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ORIGINAL

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



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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



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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 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.

DATED this 31st day of January, 2005.

TIGER OIL CORPORATION

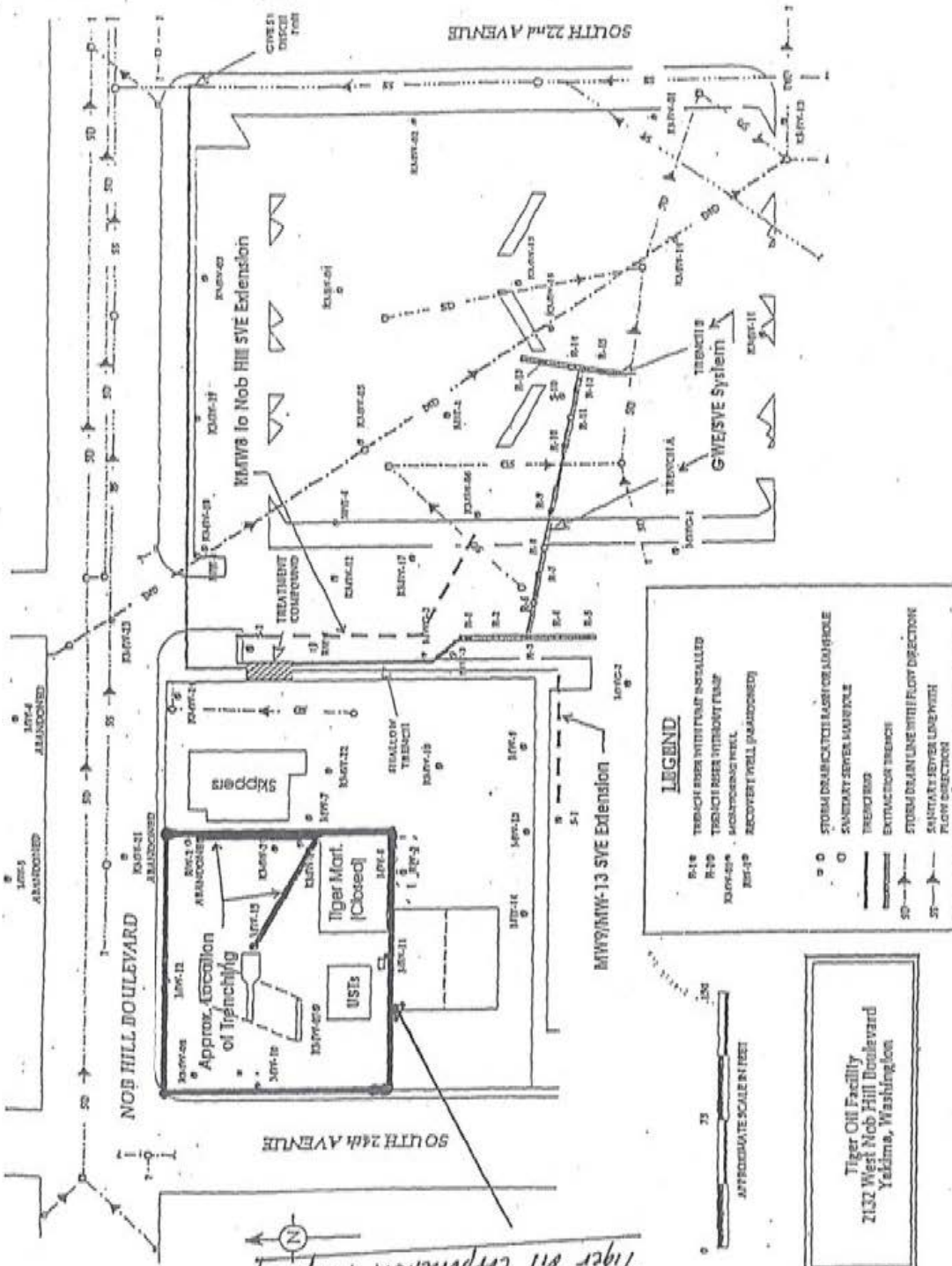

By: Charles D. Conley
Its: President



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FIGURE "1" TO
CLEANUP ACTION PLAN

Tiger Oil Corporation Property



LEGEND

- R-10 TRENCH ROSE WITH PUMP INSTALLED
- R-11 TRENCH ROSE WITH PUMP INSTALLED
- R-12 TRENCH ROSE WITH PUMP INSTALLED
- R-13 TRENCH ROSE WITH PUMP INSTALLED
- R-14 TRENCH ROSE WITH PUMP INSTALLED
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- R-16 TRENCH ROSE WITH PUMP INSTALLED
- R-17 TRENCH ROSE WITH PUMP INSTALLED
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- R-99 TRENCH ROSE WITH PUMP INSTALLED
- R-100 TRENCH ROSE WITH PUMP INSTALLED

Tiger Oil Facility
2132 West Nob Hill Boulevard
Yakima, Washington

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ATTACHMENT A

DESCRIPTION

Parcel A:

The North 141 feet of the West 147 feet of the Northwest 1/4 of the Northwest 1/4 of the Southeast 1/4 of Section 26, Township 13 North, Range 18, E.W.M., EXCEPT the North 26 feet and the West 20 feet

AND EXCEPT those portions conveyed to the City of Yakima by deeds recorded October 16, 1964, under Auditor's File NO's. 2014381, 2014382 and 2787766.

ASSESSOR'S PARCEL NO.: 181326-42051-8 Area Code 333

Situated in Yakima County, State of Washington.

Parcel B:

That portion of the Northwest 1/4 of the Southeast 1/4 of Section 26, Township 13 North, Range 18, described as follows:

Commencing at the Northwest corner of said subdivision;
thence South along the Centerline of 24th Avenue South, a distance of 141.00 feet, said centerline being the West line of said subdivision;
thence South 89° 17' 00" East a distance of 28.50 feet to the Easterly margin of said 24th Avenue South and the true point of beginning;
thence continuing South 89° 17' 00" East a distance of 118.50 feet;
thence North on a line parallel with the West line of said subdivision 115.00 feet to the Southerly margin of Nob Hill Boulevard;
thence South 89° 17' 00" East along said Southerly margin a distance of 40.00 feet;
thence South a distance of 132.00 feet;
thence North 89° 17' 00" West a distance of 158.51 feet to the Easterly margin of 24th Avenue South;
thence North along said Easterly margin a distance of 17.00 feet to the true point of beginning.

ASSESSOR'S PARCEL NO.: 181326-42051-8 Area Code 333

Situated in Yakima County, State of Washington.



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