



d. M & E Company, who is a current owner of property within the facility. It is that portion of the facility owned by M & E Company which is the subject of this Interim Action.

2.3 M & E Company shall hereinafter be referred to as the "Respondent" in this Order.

2.4 In August 1994, Ecology informed the PLPs listed in provision 2.2 that an interim action was needed at the Tiger Oil facility. In response, Clearwater Group Inc., working on behalf of Tiger Oil Company and Federated Service Insurance Company, prepared a plan outlining their proposed approach to the interim action. This plan was further discussed at a meeting held on September 15, 1994, between representatives of all the PLPs and Ecology, and formed the basis of a more detailed workplan approved by Ecology on December 28, 1994.

2.5 Ecology issued Enforcement Order No. DE 94TC-C432 on September 27, 1994, to Tiger Oil Company, Federated Mutual Insurance Company (Federated Service Insurance Company), Tiger Oil Corporation, and M & E Company, requiring the interim action.

2.6 Since September 15, 1994, M & E Company has been discussing access arrangements with representatives for Tiger Oil Company and Federated Service Insurance Company, to allow Clearwater Group Inc. access to M & E Company's property for the purpose of conducting the interim action required in Order No. DE 94TC-C432.

2.7 On January 23, 1995, one day prior to Clearwater Group Inc.'s planned arrival onsite to begin construction of the interim action, M & E Company's legal counsel notified Ecology's legal counsel that representatives of Tiger Oil Company and Federated Service Insurance Company refused to sign the access agreement proposed by M & E Company. In the absence of a signed access agreement between the above three PLPs, M & E Company's representatives notified Clearwater Group Inc. that they were denied access to M & E Company's portion of the facility, which is the subject of the interim action required herein and in Order No. DE 94TC-C432.

III.

Statement of Facts

3.1 Petroleum products have been released from the underground storage tank system at the Tiger Mart/Exxon gas station, known as the Tiger Oil site, and located at 2312 West Nob Hill Boulevard, Yakima, Washington 98902. This phase separated petroleum product has contaminated the soil, ground water, water in the Yakima County Drainage Improvement District storm drain line #4 (DID line), and, in the early 1980's, the surface waters in Wide Hollow Creek, where the DID line discharges. Petroleum contamination of these media extends beyond the boundaries of the Tiger Mart property. The Tiger East facility that is the subject of this remedial action includes all that area contaminated by petroleum releases from the Tiger Oil site and owned by M & E Company (hereinafter known as the "Tiger East facility" as described in provision 3.3 of this Order). Petroleum products are hazardous substances as defined at RCW 70.105D.020(5)(d).

3.2 The facility (as defined at RCW 70.105D.020(3) and as described in provision 3.3 of this Order) is located within the NW 1/4, SE 1/4 of Section 26, Township 13 North, Range 18 E.W.M., Yakima, Washington. Results of the draft Remedial Investigation/ Feasibility Study (RI/FS) report indicate the facility is currently bounded by South 24th Avenue on the west, by West Nob Hill Boulevard on the north, by the Yakima County Drainage Improvement District storm drain line #4 (DID line) and surrounding soil and backfill on the east, by the extent of gasoline contaminated water within the DID line to the southeast, and by the parking lot in front of the Safeway and Payless stores to the south. These facility boundaries and those of the Tiger West and Tiger East facilities may be modified in the event that new data is received indicating that petroleum contamination has migrated beyond these boundaries.

3.3 Effective with issuance of this Order, the facility is hereby separated into two portions, as follows:

a. The northwest corner of the facility, currently occupied by a music store and TV station, a Skippers restaurant, and the Tiger Oil Mart/Exxon station, (parcel numbers 42049, 42050, and 42051, respectively), shall hereinafter be known as the "Tiger West facility";

b. The south and east portions of the facility, currently occupied by the Safeway and Payless shopping center, parking lots, and driveways (parcel numbers 42017, 42020, 42021, 42048, all owned by M & E Company), shall hereinafter be known as the "Tiger East facility";

c. The whole facility as described in provisions 3.1 and 3.2 of this Order, and in Order No. DE 94TC-C432, has previously and shall hereinafter be known as: "Tiger Oil facility", "the facility", or the "Tiger Oil site".

3.4 Other Orders applicable to this Facility are:

a. Order Docket No. DE 82-517, issued by Washington State Department of Ecology (Ecology) pursuant to the authority of Chapter 90.48 RCW, to Tiger Oil Company on October 7, 1982, and requiring recovery of petroleum product and related activities;

b. Order Docket No. 90-C140 as amended, issued by Ecology pursuant to the authority of Chapter 70.105D RCW, to Tiger Oil Corporation, Tiger Oil Company, Federated Mutual Insurance Company (Federated Service Insurance Company), and M & E Company, and requiring completion of a Remedial Investigation/ Feasibility Study. This Order was originally issued to Tiger Oil Corporation on March 29, 1990, and amended three times, as follows: on June 27, 1990 to adjust the schedule, on October 31, 1991 to add Tiger Oil Company and Federated Mutual Insurance Company as parties and to establish a new schedule, and on August 16, 1993 to add M & E Company as a Respondent.

c. Order Docket No. DE 94TC-C432 as amended, issued by Ecology pursuant to the authority of Chapter 70.105D RCW, to Tiger Oil Corporation, Tiger Oil Company, Federated Mutual Insurance Company (Federated Service Insurance Company), and M & E Company, and requiring an Interim Action to recover free phase petroleum product from the subsurface, and remediation of contaminated ground water. This Order was issued to all PLPs on September 27, 1994.

3.5 In April 1981 an explosion occurred in the DID line adjacent to the Tiger Oil 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.

3.6 Initial investigations of the Facility 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). Federated Mutual Insurance Company (now Federated Service Insurance Company) contracted for further investigation and petroleum product recovery by Crowley Environmental (September 1982 to March 1983), Fuel Recovery Company (April 1983 to May 1985), and Soil Exploration Company (May 1985 to September 1985). In 1982, the amount of petroleum product released to the soil and ground water was estimated to be between 20,000 gallons and 35,000 gallons. Additional releases of approximately 2,000 gallons and 50 gallons were reported to have occurred in January 1983 and January 1984, respectively.

3.7 Remediation activities, as identified in the preceding provision, included installation of recovery wells, monitoring wells, free petroleum product removal, and installation and operation of a soil venting system.

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

3.9 From 1989 to date, numerous investigations of the facility and an adjacent site have been conducted by various consulting agencies, and most of the data collected may be found in the form of reports or data submittal letters in Ecology's files for the Tiger facility. The primary reports submitted to date in response to Order No. DE 90-C140 as amended are listed below:

Progress Reports on Short Term Site Stabilization,  
submitted by Kleinfelder, Inc. on February 1, 1991 and  
on June 26, 1991;

Draft Remedial Investigation/Feasibility Study,  
submitted by Kleinfelder on December 17, 1992;

Draft Revised Remedial Investigation/Feasibility Study,  
submitted on April 29, 1994, after conducting additional  
field work.

The Feasibility Study portion of the report listed above is currently inadequate to enable the facility to proceed to a final cleanup, and revision has been required.

3.10 Data supplementing the current draft Remedial Investigation/Feasibility Study and received on June 29, 1994 documents that the petroleum product located in the soil and ground water throughout the facility is migrating. Of particular concern is the amount of product measured in May and June 1994, in monitoring wells (MW) #S10 and #KMW06. MW #S10 is located approximately 50 feet upgradient of the Yakima County Drainage Improvement District storm drain line #4 (DID line). Petroleum contaminated ground water is currently infiltrating the DID line with concentrations of benzene and xylenes exceeding Method A cleanup levels for ground water listed in WAC 173-340. This DID line runs beneath a residential area to the east, and discharges into Wide Hollow Creek behind Gardner's Nursery on Washington Avenue.

3.11 If no action is undertaken to prevent the continuing offsite migration of hazardous substances prior to the final cleanup action for the facility, free petroleum product threatens to infiltrate the DID line and its backfill, and concentrations of dissolved petroleum in water flowing through the DID line will likely continue to increase. Potential threats to human health and the environment posed by these actual and threatened releases include the accumulation of explosive levels of gasoline vapors in confined spaces, and the migration of hazardous substances beyond current facility boundaries into one or more drinking water wells located downgradient, and into Wide Hollow Creek.

3.12 WAC 173-340-450(3)(b) states that free petroleum product released from an underground storage tank system shall be recovered as soon as possible and to the maximum extent practicable and in a manner which minimizes migration of hazardous substances.

3.13 Ecology has provided notice to the Respondent that it is a potentially liable person after public notice and opportunity for comment, that a release or threatened release of hazardous substances has occurred at the facility, and that remedial action is required.

IV.

Ecology Determinations

4.1 The Respondent is a current "owner or operator" as defined in RCW 70.105D.020(6) and 040(1), of a "facility" as defined at RCW 70.105D.020(3).

4.2 That portion of the Tiger Oil facility known as the Tiger East facility is located on the south and east portion of the block occupied by the Safeway/Payless shopping center and parking lot on West Nob Hill Boulevard (between South 22nd Avenue and South 24th Avenue), Yakima, Washington 98902. The Tiger East facility includes all areas contaminated by the releases of petroleum products from the Tiger Oil site which are owned by M & E Company, including soil, ground water, and petroleum contaminated water in the Yakima County Drainage Improvement District storm drain #4 (DID line).

4.3 The petroleum products found at the facility as described above are "hazardous substances" as defined at RCW 70.105D.020(5).

4.4 Based on the presence of these hazardous substances at the facility and all factors known to Ecology, there has been and continue to be releases of hazardous substances from the facility, as defined at RCW 70.105D.020(10).

4.5 By letter dated as listed below, Ecology notified the following of its status as a "potentially liable person" under RCW 70.105D.040 after notice and opportunity for comment:

- a. M & E Company by letter dated November 20, 1992.

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

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

V.

Work to be Performed

5.1 Based on the foregoing Facts and Determinations, it is hereby ordered that the Respondent take the following remedial actions and that these and related actions be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein.

5.2 The Respondent shall plan, conduct, and finance an Interim Action consisting of the following tasks:

a. Design, construct, install, and operate an automatic free product recovery system which will efficiently intercept and remove free petroleum product from the subsurface throughout the Tiger East facility. The area encompassed by monitoring wells (MW) KMW-06, S-10 and the Yakima County Drainage Improvement District storm drain line #4 (DID line) is of particular concern. In this area, the recovery system shall be designed and installed with a focus on preventing free product from infiltrating the DID line.

b. Design, construct, install, and operate a treatment system for contaminated ground water planned to be extracted during free product recovery.

c. The Respondent may utilize the December 14, 1994 Workplan as prepared and amended by Clearwater Group Inc. and approved by Ecology on December 28, 1994. In the event that the Respondent declines to utilize this Workplan, the Respondent shall submit to Ecology a detailed workplan which outlines how the tasks required herein are planned to be conducted. The workplan shall also include the following:

1. A description, with design plans, of the type of product recovery and ground water treatment system proposed, along with information from any other applicable subsections of the design and construction requirements of WAC 173-340-400;

2. A compliance monitoring plan meeting the applicable requirements of WAC 173-340-410;



3. A sampling and analysis plan meeting the requirements of WAC 173-340-820; and

4. A safety and health plan meeting the requirements of WAC 173-340-810.

d. Written progress reports shall be submitted to Ecology on a monthly basis, summarizing how the activities required herein are proceeding, and including all available sampling results not previously submitted. Submittal of progress reports shall commence within four (4) calendar weeks of Ecology's approval of the workplan.

e. All laboratory results shall be submitted to Ecology upon receipt from the laboratory, both prior to the consultant's QA/QC (quality analysis/quality control) editing, and afterwards. Chromatograms shall be included.

5.3 Any discharge of treated petroleum contaminated ground water or petroleum impacted air shall be in compliance with substantive requirements of the discharge permits which would be required. Such requirements shall be incorporated by amendment to this order at a later date.

5.4 Any waste contaminated by a hazardous substance generated during remedial activities and requiring off-site treatment, storage, or disposal, shall be transported to a facility permitted or approved to handle these wastes.

5.5 Any construction related to this Interim Action shall be in conformance with WAC 173-340-400(7).

5.6 This Interim Action shall be conducted in accordance with the following schedule:

a. Upon issuance of this Order the Respondent and/or its consultant shall determine whether or not they will utilize the Clearwater Group Inc.'s Workplan or draft their own, and shall notify Ecology of their decision within one (1) working day of issuance of this Order.

b. In the event that a new workplan is to be drafted, the draft workplan shall be submitted to Ecology within one (1) calendar week of issuance of this Order.

c. Within three (3) working days of receipt of Ecology's comments on the draft workplan, a final workplan shall be submitted to Ecology. In the event the draft workplan does not need revision, it shall serve as the final workplan.

d. Within one (1) calendar week of Ecology's approval of the workplan (or of notification that the Clearwater Group Inc.'s Workplan is to be utilized, whichever applies), field work as required herein and as outlined in the approved workplan shall be initiated.

e. As-builts for the product recovery and ground water treatment system shall be submitted with the monthly progress report following the first full month of operation.

f. The free product recovery and ground water treatment system is expected to be operational and functioning as planned to comply with this Order within four (4) calendar weeks of workplan approval.

## VI.

### Terms and Conditions of Order

#### 1. Definitions

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

#### 2. Public Notice

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

#### 3. Remedial Action Costs

The Respondent shall pay to Ecology costs incurred by Ecology pursuant to this Order. These costs shall include

work performed by Ecology or its contractors for investigations, remedial actions, and Order preparation, oversight and administration. Ecology costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). The Respondent shall pay the required amount within 90 days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general description of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Failure to pay Ecology's costs within 90 days of receipt of the itemized statement of costs will result in interest charges.

4. Designated Project Coordinators.

The project coordinator for Ecology is:

Susan Burgdorff (509) 454-7835  
Washington State Department of Ecology  
Central Regional Office  
106 South 6th Avenue  
Yakima, WA 98902-3387

The project coordinator for the Respondent is:

The project coordinator(s) shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communications between Ecology and the Respondent, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order, shall be directed through the project coordinator(s). Should Ecology or the Respondent change project coordinator(s), written notification shall be provided to Ecology or the Respondent at least ten (10) calendar days prior to the change.

5. Performance.

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

such engineer(s) or hydrogeologist(s), and of any contractors and subcontractors to be used in carrying out the terms of this Order, in advance of their involvement at the Tiger East Facility. The Respondent shall provide a copy of this Order to all agents, contractors and subcontractors retained to perform work required by this Order and shall ensure that all work undertaken by such agents, contractors and subcontractors will be in compliance with this Order.

Except when necessary to abate an emergency situation, the Respondent shall not perform any remedial actions at the Tiger East Facility outside that required by this Order unless Ecology concurs, in writing, with such additional remedial actions.

6. Access

Ecology or any Ecology authorized representative shall have the authority to enter and freely move about all property at the Tiger East Facility at all reasonable times for the purposes of, inter alia: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing the progress in carrying out the terms of this Order; conducting such tests or collecting samples as Ecology or the project coordinator may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by the Respondent. When entering the Tiger East Facility under ch. 70.105D RCW, Ecology shall provide reasonable notice prior to entering the Tiger East Facility unless an emergency prevents notice. Ecology shall allow split or replicate samples to be taken by the Respondent during an inspection unless doing so would interfere with Ecology's sampling. The Respondent shall allow split or replicate samples to be taken by Ecology and shall provide Ecology seven (7) days notice before any sampling activity.

7. Public Participation

Ecology shall continue to maintain the responsibility for public participation at the Tiger East Facility. The Respondent shall help coordinate and implement public participation for the Tiger East Facility, should the need arise.

8. Retention of Records

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

9. Dispute Resolution

The Respondent may request Ecology to resolve factual or technical disputes which may arise during the implementation of this Order. Such request shall be in writing and directed to the signatory, or his/her successor(s), of this Order. Ecology resolution of the dispute shall be binding and final. The Respondent is not relieved of any requirement of this Order during the pendency of the dispute and remain responsible for timely compliance with the terms of the Order unless otherwise provided by Ecology in writing.

10. Reservation of Rights

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

Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the release or threatened release of hazardous substances from the Tiger East Facility.

In the event Ecology determines that conditions at the Tiger East Facility are creating or have the potential to create a danger to the health or welfare of the people on the Tiger East Facility or in the surrounding area or to the environment, Ecology may Order the Respondent to stop further implementation of this Order for such period of time as needed to abate the danger.

11. Transference of Property

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

Prior to transfer of any legal or equitable interest the Respondent may have in the Tiger East Facility or any portions thereof, the Respondent shall serve a copy of this Order upon any prospective purchaser, lessee, transferee, assignee, or other successor in such interest. At least thirty (30) days prior to finalization of any transfer, the Respondent shall notify Ecology of the contemplated transfer.

12. Compliance With Other Applicable Laws

All actions carried out by the Respondent pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements.

VII.

Satisfaction of this Order

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

VIII.

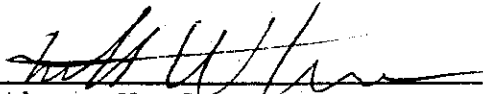
Enforcement

1. Pursuant to RCW 70.105D.050, this Order may be enforced as follows:
  - A. The Attorney General may bring an action to enforce this Order in a state or federal court.
  - B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the Tiger East Facility.

- C. In the event the Respondent refuses, without sufficient cause, to comply with any term of this Order, the Respondent will be liable for:
- (1) up to three times the amount of any costs incurred by the state of Washington as a result of its refusal to comply; and
  - (2) civil penalties of up to \$25,000 per day for each day they refuse to comply.
- D. This Order is not appealable to the Washington Pollution Control Hearings Board. This Order may be reviewed only as provided under RCW 70.105D.060.

Effective date of this Order: FEB 15 1995.

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

  
Anthony W. Grover  
Section Manager  
Toxics Cleanup Program  
Central Regional Office

AWG:SB:dk  
(sueb-feoia.mec)