

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

Tacoma Public Utilities

AGREED ORDER

No. DE 16955

TO: Jackie Flowers
Tacoma Public Utilities
PO Box 11007
Tacoma, WA 98411

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I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology) and the City of Tacoma, Department of Public Utilities, Light Division (d.b.a. "Tacoma Power") under this Agreed Order (Order) is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Order requires Tacoma Power to conduct remedial action at a facility where there has been a release or threatened release of hazardous substances. This Order requires Tacoma Power to complete a Remedial Investigation and Feasibility Study and unless Ecology determines otherwise prepare a preliminary Draft Cleanup Action Plan in accordance with a stipulated schedule. Ecology believes the actions required by this Order are in the public interest.

II. JURISDICTION

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

III. PARTIES BOUND

This Agreed Order shall apply to and be binding upon the Parties to this Order, their successors and assigns. The undersigned representative of each party hereby certifies that he or she is fully authorized to enter into this Order and to execute and legally bind such party to comply with this Order. Tacoma Power agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter Tacoma Power's responsibility under this Order. Tacoma Power shall provide a copy of this Order to all agents, contractors, and subcontractors retained to perform work required by this Order, and shall ensure that all work undertaken by such agents, contractors, and subcontractors complies with this Order.

IV. DEFINITIONS

Unless otherwise specified herein, the definitions set forth in RCW 70.105D, WAC 173-204 and WAC 173-340 shall control the meanings of the terms in this Order.

A. Site: The Site is referred to as the Kosmos Town Site (a.k.a. Riffe Lake). The Site constitutes a facility under RCW 70.105D.020(8). The Site is defined by where a hazardous

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substance, other than a consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located from a release at the former operations area of the Kosmos lumber mill. Based upon factors currently known to Ecology, the Site is generally located 2.1 miles southwest of Glenoma, Washington. Access is off State Route 12 via Kosmos Road, then Champion Haul Road as shown on the Site Location Diagram (Exhibit A).

B. Parties: Refers to the State of Washington, Department of Ecology and Tacoma Power.

C. Potentially Liable Persons (PLP(s)): Refers to Tacoma Power.

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

All exhibits are integral and enforceable parts of this Order.

V. FINDINGS OF FACT

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

A. Based upon factors currently known to Ecology, the Site is generally located in Rainey Valley, a floodplain area above Riffe Lake reservoir called Kosmos flats. Riffe Lake is currently a part of the power generating system operated by Tacoma Power. Rainey Creek bounds the Site to the north and west, Champion Haul Road to the east, and Riffe Lake to the south. The former lumber mill is mostly submerged when Riffe Lake is above elevation 757 Tacoma City Light datum (TCL). The location is as shown in the Site Location Diagram (Exhibit A). The Site is defined by where a hazardous substance has come to be located from a release at the former operations area of the Kosmos lumber mill. The primary contaminant appears to be Bunker C oil and other contaminants found with Bunker C oil (such as other intermediate and/or heavy fuel oils). The location of the seeps are generally found at Latitude 46.493972 and Longitude - 122.189072 north, generally ranging in elevation from elevation 720 to 730, TCL.

B. In the 1960's, the City of Tacoma (City) purchased the former Kosmos town site and relocated the inhabitants. The purchase also included the lumber mill facility. The land was purchased to create the Riffe Lake reservoir for recreational use and power generation. The

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Kosmos town lumber mill was abandoned and demolished prior to 1968. Completion of the Mossyrock dam construction was in 1968 and the reservoir filled thereafter. The town and lumber mill were established in 1904.

C. Two underground storage tanks (USTs) related to the lumber mill were discovered at the Site in 1992, which were subsequently removed. One UST was a 500-gallon steel tank, which was located south of the observed seeps. The water from that UST was sampled and analyzed for polychlorinated biphenyls (PCBs) and total halogens; neither were detected above laboratory reporting limits. The second UST, a 5,000-gallon tank, was located by the remaining mill facility foundations. That UST contained petroleum product with presence of halogenated hydrocarbons. Soil contaminated with heavy oil-range petroleum at levels exceeding MTCA Method A soil cleanup levels surrounded the 5,000-gallon UST. A total volume of 87 cubic yards of this contaminated soil was removed and disposed at the Kitsap County Landfill.

D. On April 26, 2019, Ecology spills response staff received a report of “black oily liquid” coming out of the hill slope and into the creek. An Ecology field visit on April 27, 2019 confirmed black oily liquid seeping out of bank and layered in sediment along Rainey Creek, a tributary to Riffe Lake. The oily liquid was sampled and Hydrocarbon Identification analysis indicated the liquid contained bunker C-ranged petroleum hydrocarbons.

E. A December 6, 2019 *Kosmos Mill Oil Cleanup Remedial Investigation Work Plan* (Work Plan), which was prepared for Tacoma Power, outlined proposed Site investigation work. The work required by this Work Plan was underway when Ecology Toxics Cleanup Program (TCP) staff visited the Site on December 9, 2019. During that Site visit, TCP staff found that Tacoma Power was excavating the seep area soil as part of an independent emergency remedial action by Tacoma Power (see Exhibit B, Investigation Area Diagram). Soil from the excavation and excavation sidewalls contained sporadic globs and flowing seeps of black oil. An oil sheen was present on the water surface at the excavation bottom. Black oil was observed in the bank soil above Rainey Creek. Tacoma Power staff and their on-site environmental consultant, Hart Crowser, reported that extensive soil staining was present on sidewalls of test pits dug near and in

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proximity to the soil excavation area. TCP staff observed staining on the sidewalls of one open test pit. In addition to implementing the Site investigation work, Tacoma Power had contracted with Anderson Environmental Contracting to implement an independent emergency remedial action to place a protective cap over the exposed seeps before the water levels in Riffe Lake inundated the site. As part of the independent emergency remedial action, approximately 11,000 tons of impacted soil was removed and disposed of off-site at the Cowlitz County Headquarters Landfill and Hillsboro Landfill. The independent emergency remedial action was completed on February 7, 2020.

VI. ECOLOGY DETERMINATIONS

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

A. The City of Tacoma is the current owner of the property at the Site where there has been a release of hazardous substances to the environment. The City's Department of Public Utilities, Light Division (d.b.a. Tacoma Power) operates the power generating system for the City making the City an "owner or operator" as defined in RCW 70.105D.020(22) of a "facility" as defined in RCW 70.105D.020(8).

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

C. Based upon credible evidence, Ecology issued a PLP status letter to Tacoma Power dated January 7, 2020, pursuant to RCW 70.105D.040, .020(26), and WAC 173-340-500. After providing for notice to Tacoma Power and opportunity for comment, and concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that Tacoma Power is a PLP under RCW 70.105D.040 and notified Tacoma Power of this determination by letter dated February 13, 2020.

D. Pursuant to RCW 70.105D.030(1) and .050(1), Ecology may require PLPs to investigate or conduct other remedial actions with respect to any release or threatened release of

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hazardous substances, whenever it believes such action to be in the public interest. Based on the foregoing facts, Ecology believes the remedial actions required by this Order are in the public interest.

E. Under WAC 173-340-430, an interim action is a remedial action that is technically necessary to reduce a threat to human health or the environment by eliminating or substantially reducing one or more pathways for exposure to a hazardous substance, that corrects a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed, or that is needed to provide for completion of a site hazard assessment, remedial investigation/feasibility study, or design of a cleanup action plan. Either party may propose an interim action under this Order. If the Parties are in agreement concerning the interim action, the Parties will follow the process in Section VII.E. If the Parties are not in agreement, Ecology reserves its authority to require interim action(s) under a separate order or other enforcement action under RCW 70.105D, or to undertake the interim action itself.

VII. WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that Tacoma Power take the following remedial actions at the Site. These remedial actions must be conducted in accordance with WAC 173-340 and 173-204 unless otherwise specifically provided herein:

A. Data Summary Report. Tacoma Power will prepare and submit to Ecology a Data Summary Report of results of investigation work conducted in accordance with the December 6, 2019 Remedial Investigation (RI) Work Plan. This Report will include documentation of the work completed during the independent emergency remedial action. This data will inform the scope of work for the RI Work Plan under this Order for the Site. Tacoma Power will submit the Data Summary Report within 60 calendar days following the effective date of the Order.

B. RI Work Plan. Tacoma Power shall prepare and submit to Ecology for review and approval a work plan to implement an RI in accordance with WAC 173-340-350. Submit the draft RI Work Plan to Ecology within 45 days from receipt of Ecology approval of the Data Summary

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Report. It is anticipated that Ecology will provide comments within 30 days of receiving the draft plan. Tacoma Power shall submit the final RI Work Plan incorporating Ecology's comments within 30 days of receiving Ecology's approval of the draft plan. Once approved by Ecology, the RI Work Plan shall become an integral and enforceable part of this Order. Tacoma Power may consult with Ecology prior to writing the RI Work Plan, to discuss scope of the work and outline for the work plan. At a minimum, the RI Work Plan shall include the items listed below.

1. Preliminary conceptual site model.
2. Summary of existing chemical and hydrogeological data relevant to delineating the extent of contamination at the Site, and identification of remaining data gaps regarding the nature and extent of contamination.
3. Provisions for sufficient research and field investigations to delineate the nature and extent of contamination related to releases at this Site, to enable selection of cleanup standards, and to enable identification and evaluation of cleanup alternatives.
4. An evaluation of potential data needs for conducting the Feasibility Study (FS), and planned methods to obtain the needed data.
5. A Site Safety and Health Plan conforming to the requirements of WAC 173-340-810.
6. A section including the elements of a Sampling and Analysis Plan per the requirements of WAC 173-340-820. This shall include quality assurance/quality control measures necessary to ensure environmental data is complete, representative, accurate, and comparable to regulatory standards.

C. Conduct RI. Tacoma Power shall perform a RI that meets the requirements of WAC 173-340-350 and implement the Final RI Work Plan. Tacoma Power shall begin RI fieldwork within 30 days of receiving Ecology's approval of the final RI Work Plan and completion of any necessary additional National Historic Preservation Section 106 consultation, receipt of any necessary permits, and safe site conditions that allows the investigation to be feasible.

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D. Draft RI Report. Tacoma Power shall prepare and submit to Ecology for review and approval an agency review draft RI Report documenting the findings of the RI that meets the requirements of WAC 173-340-350. Tacoma Power may consult with Ecology prior to writing the agency review draft RI Report, to discuss the report outline. The Draft RI Report shall incorporate relevant data from any previous reports and studies, and those data shall be discussed in the text and incorporated into maps and tables of the RI Report along with the data from the RI fieldwork. After making revisions based on Ecology's comments on the agency review draft RI report, Tacoma Power shall submit a public review draft RI report. The public review draft RI report will be subjected to public notice and opportunity to comment before final approval by Ecology, in accordance with WAC 173-340-600(13)(c). Submit the agency review draft RI Report to Ecology no longer than 90 days from completion of RI field work. Submit the public review draft RI report that incorporates Ecology's comments within 60 days of receiving Ecology's comments on the agency review draft RI report.

E. Draft FS. Tacoma Power shall prepare and submit to Ecology for review and approval an agency review draft FS that meets the requirements of WAC 173-340-350(8). Tacoma Power may consult with Ecology prior to writing the agency review draft FS to discuss the report outline and scope of alternatives to be considered. After making revisions based on Ecology's comments on the draft FS, Tacoma Power shall submit a public review draft FS. The public review draft FS will be subjected to public notice and opportunity to comment before final approval by Ecology, in accordance with WAC 173-340-600(13)(c). Tacoma Power shall submit the agency review draft FS to Ecology no longer than 120 days after Ecology approval of the public review draft RI. Submit the public review draft FS report that incorporates Ecology's comments within 60 days of receiving Ecology's comments on the agency review draft FS.

F. Electronic Data Submittal. In accordance with Section VIII.E (Sampling, Data Submittal, and Availability) of this Order, Tacoma Power shall submit all data generated for the RI to Ecology's EIM database. Tacoma Power may coordinate with Ecology project manager

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before uploading data to the EIM database. Submit data to EIM database within 30 days from completion of data validation.

G. Draft Cleanup Action Plan. After Ecology approval of the public review draft RI and FS reports, Tacoma Power shall prepare and submit to Ecology for review a draft Cleanup Action Plan (dCAP) that meets the requirements in WAC 173-340-380. Tacoma Power shall negotiate the proposed cleanup action in the dCAP with Ecology before the dCAP is written. The dCAP will address the requirements for developing a cleanup action in accordance with WAC 173-340-350 through 173-340-390, with specific attention to Ecology's expectation for cleanup alternatives in WAC 173-340-370. The dCAP will include a general description of the proposed cleanup action, cleanup standards from the RI/FS and a rationale regarding their selection, a proposed schedule for implementation, a description of any institutional controls proposed, and a summary of federal, state and local laws that are applicable to the proposed cleanup action. Tacoma Power will submit the agency review dCAP no longer than 90 days from Ecology's approval of the public review draft FS unless review by the Federal Energy Regulatory Commission of the dCAP prohibits Tacoma Power from meeting the 90-day timeframe. If the review by the Federal Energy Regulatory Commission prohibits Tacoma Power from meeting the 90-day timeframe, Tacoma Power will seek an extension of the schedule pursuant to Section VII.I (Extension of Schedule).

H. Preparation of the final CAP is not part of this Order. Implementation of a final CAP will be addressed by a separate legal agreement.

I. Progress reports and communications with Ecology. Unless otherwise directed by Ecology, Tacoma Power shall provide monthly written progress reports to Ecology by the 15th of each month that provide a synopsis of the previous month's activities, initial findings and observations in the field, status of reports or other deliverables, and expected activities for the upcoming month. Tacoma Power shall meet in person or over the telephone with Ecology at major project junctures, as specified in the tasks of this section, to review expectations and requirements, proposed contents of reports, overall project schedule, new developments, or unexpected results

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that could result in the need for modifications to the work. The first monthly report shall be submitted 30 days after the effective date of the Agreed Order.

J. If, at any time after the first exchange of comments on drafts, Ecology determines that insufficient progress is being made in the preparation of any of the deliverables required by this section, Ecology may complete and issue the final deliverable.

K. All plans or other deliverables submitted by Tacoma Power for Ecology's review and approval shall, upon Ecology's approval, become integral and enforceable parts of this Order.

L. If Tacoma Power learns of a significant change in conditions at the Site, including but not limited to a statistically significant increase in contaminant and/or chemical concentrations in soil, groundwater and or sediments, Tacoma Power, within seven (7) days of learning of the change in condition, shall notify Ecology in writing of said change and provide Ecology with any reports or records (including laboratory analyses, sampling results) relating to the change in conditions.

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

N. If Ecology determines that Tacoma Power has failed to make sufficient progress or failed to implement the remedial action, in whole or in part, Ecology may, after notice to Tacoma Power and an opportunity for dispute resolution, perform any or all portions of the remedial action or at Ecology's discretion allow Tacoma Power opportunity to correct. In an emergency, Ecology is not required to provide notice to Tacoma Power, or an opportunity for dispute resolution. Tacoma Power shall reimburse Ecology for the costs of doing such work in accordance with

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Section VIII.A (Remedial Action Costs). Ecology reserves the right to enforce requirements of this Order under Section X (Enforcement).

O. Except where necessary to abate an emergency situation or where required by law, Tacoma Power shall not perform any remedial actions at the Site outside those remedial actions required by this Order to address the contamination that is the subject of this Order, unless Ecology concurs, in writing, with such additional remedial actions pursuant to Section VIII.J. (Amendment of Order). In the event of an emergency, or where actions are taken as required by law, Tacoma Power must notify Ecology in writing of the event and remedial action(s) planned or taken as soon as practical but no later than within twenty-four (24) hours of the discovery of the event.

P. Ecology hereby incorporates into this Order the previous remedial actions described in Section V, Findings of Fact. Reimbursement for specific project tasks under a grant agreement with Ecology is contingent upon a determination by Ecology's Toxics Cleanup Program that the retroactive costs are eligible under WAC 173-332A-320(6), the work performed complies with the substantive requirements of WAC 173-340, and the work is consistent with the remedial actions required under this Order. The costs associated with Ecology's determination on the past independent remedial actions described in Section V, Findings of Fact, are recoverable under this Order.

VIII. TERMS AND CONDITIONS

A. Payment of Remedial Action Costs

Tacoma Power shall pay to Ecology costs incurred by Ecology pursuant to this Order and consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology or its contractors for, or on, the Site under RCW 70.105D, including remedial actions and Order preparation, negotiation, oversight, and administration. These costs shall include work performed both prior to and subsequent to the issuance of this Order. Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). Ecology has accumulated \$22,933.94 in remedial action costs related to this site as of December 31, 2019. For all Ecology costs incurred, Tacoma Power shall pay the required amount within thirty (30)

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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 statement of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

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

B. Designated Project Coordinators

The project coordinator for Ecology is:

Craig Rankine, Cleanup Project Manager
Washington State Department of Ecology
SWRO-Vancouver Field Office
12121 NE 99th Street, Suite 2100
Vancouver, WA 98682
(360)690-4795
Craig.Rankine@ecy.wa.gov

The project coordinator for Tacoma Power is:

Jessica Knickerbocker
Tacoma Public Utilities
3625 South 35th Street
Tacoma, WA 98409-3192
(253)502-8250
jknickerbocker@cityoftacoma.org

Each project coordinator shall be responsible for overseeing the implementation of this Order. Ecology's project coordinator will be Ecology's designated representative for the Site. To the maximum extent possible, communications between Ecology's Toxic Cleanup Program and Tacoma Power, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order shall be directed through the project coordinators. The project coordinators may designate, in writing,

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working level staff contacts for all or portions of the implementation of the work to be performed required by this Order.

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

C. Performance

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

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

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

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

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

D. Access

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

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as Ecology may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by Tacoma Power. Tacoma Power shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by Tacoma Power where remedial activities or investigations will be performed pursuant to this Order. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Site property owned or controlled by Tacoma Power unless an emergency prevents such notice. All persons who access the Site pursuant to this section shall comply with any applicable health and safety plan(s). Ecology employees and their representatives shall not be required to sign any liability release or waiver as a condition of Site property access.

E. Sampling, Data Submittal, and Availability

With respect to the implementation of this Order, Tacoma Power shall make the results of all sampling, laboratory reports, and/or test results generated by it or on its behalf available to Ecology. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted to Ecology in both printed and electronic formats in accordance with Section VII (Work to be Performed), Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any subsequent procedures specified by Ecology for data submittal.

If requested by Ecology, Tacoma Power shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by Tacoma Power pursuant to implementation of this Order. Tacoma Power shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow Tacoma Power and/or its authorized representative to take split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Order, provided that doing so does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section VIII.E (Access), Ecology shall notify Tacoma Power prior to any sample collection activity unless an emergency prevents such notice.

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

F. Public Participation

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

1. If agreed to by Ecology, develop appropriate mailing lists and prepare drafts of public notices and fact sheets at important stages of the remedial action, such as the submission of work plans, remedial investigation/feasibility study reports, cleanup action plans, and engineering design reports. As appropriate, Ecology will edit, finalize, and distribute such fact sheets and prepare and distribute public notices of Ecology's presentations and meetings.

2. Notify Ecology's project coordinator prior to the preparation of all newsletters, press releases and fact sheets, and before meetings related to remedial action work to be performed at the Site with the interested public and/or local governments. Likewise, Ecology shall notify Tacoma Power prior to the issuance of all press releases and fact sheets related to the Site, and before meetings related to the Site with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by Tacoma Power that do not receive prior Ecology approval, Tacoma Power shall clearly indicate to its audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology.

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

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

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- a. Morton Timberland Regional Library
701 Airport Way
Morton, WA 98356
- b. Washington State Department of Ecology
Southwest Regional Office
300 Desmond Drive
Lacey, WA 98503

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

G. Retention of Records

During the pendency of this Order, and for ten (10) years from the date of completion of work performed pursuant to this Order, Tacoma Power shall preserve all records, reports, documents, and underlying data in its possession relevant to the implementation of this Order and shall insert a similar record retention requirement into all contracts with project contractors and subcontractors. Upon request of Ecology, Tacoma Power shall make all records available to Ecology and allow access for review within a reasonable time.

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

H. Resolution of Disputes

1. In the event that Tacoma Power elects to invoke dispute resolution Tacoma Power must utilize the procedure set forth below.

- a. Upon the triggering event (receipt of Ecology's project coordinator's written decision or an itemized billing statement), Tacoma Power has fourteen (14)

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calendar days within which to notify Ecology's project coordinator in writing of its dispute (Informal Dispute Notice).

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

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

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

2. The Parties agree to only utilize the dispute resolution process in good faith and agree to expedite, to the extent possible, the dispute resolution process whenever it is used.

3. Implementation of these dispute resolution procedures shall not provide a basis for delay of any activities required in this Order, unless Ecology agrees in writing to a schedule extension.

4. In case of a dispute, failure to either proceed with the work required by this Order or timely invoke dispute resolution may result in Ecology's determination that insufficient

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progress is being made in preparation of a deliverable, and may result in Ecology undertaking the work under Section VII.E (Work to be Performed) or initiating enforcement under Section X (Enforcement).

I. Extension of Schedule

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

- a. The deadline that is sought to be extended.
- b. The length of the extension sought.
- c. The reason(s) for the extension.
- d. Any related deadline or schedule that would be affected if the extension were granted.

2. The burden shall be on Tacoma Power to demonstrate to the satisfaction of Ecology that the request for such extension has been submitted in a timely fashion and that good cause exists for granting the extension. Good cause may include, but may not be limited to:

- a. Circumstances beyond the reasonable control and despite the due diligence of Tacoma Power including delays caused by unrelated third parties or Ecology, such as (but not limited to) delays by Ecology in reviewing, approving, or modifying documents submitted by Tacoma Power.
- b. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty.
- c. Endangerment as described in Section VIII.K (Endangerment).
- d. Delays resulting from Federal Energy Regulatory Commission, or other State or Federal Agency, review, approval or requirements pertaining to the Work to be Performed pursuant to this Order.

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However, neither increased costs of performance of the terms of this Order nor changed economic circumstances shall be considered circumstances beyond the reasonable control of Tacoma Power.

3. Ecology shall act upon any Tacoma Power's written request for extension in a timely fashion. Ecology shall give Tacoma Power written notification of any extensions granted pursuant to this Order. A requested extension shall not be effective until approved by Ecology. Unless the extension is a substantial change, it shall not be necessary to amend this Order pursuant to Section VIII.J (Amendment of Order) when a schedule extension is granted.

4. At Tacoma Power's request, an extension shall only be granted for such period of time as Ecology determines is reasonable under the circumstances. Ecology may grant schedule extensions exceeding ninety (90) days only as a result of one of the following:

- a. Delays in the issuance of a necessary permit which was applied for in a timely manner.
- b. Other circumstances deemed exceptional or extraordinary by Ecology.
- c. Endangerment as described in Section VIII.K (Endangerment).
- d. Delays resulting from Federal Energy Regulatory Commission, or other State or Federal Agency, review, approval or requirements pertaining to the Work to be Performed pursuant to this Order.

J. Amendment of Order

The project coordinators may verbally agree to minor changes to the work to be performed without formally amending this Order. Minor changes will be documented in writing by Ecology within seven (7) days of verbal agreement.

Except as provided in Section VIII.L (Reservation of Rights), substantial changes to the work to be performed shall require formal amendment of this Order. This Order may only be formally amended by the written consent of both Ecology and Tacoma Power. Ecology will provide its written consent to a formal amendment only after public notice and opportunity to comment on the formal amendment.

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

K. Endangerment

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

In the event Tacoma Power determines that any activity being performed at the Site under this Order is creating or has the potential to create a danger to human health or the environment, Tacoma Power may cease such activities. Tacoma Power shall notify Ecology's project coordinator as soon as possible, but no later than twenty-four (24) hours after making such determination or ceasing such activities. Upon Ecology's direction, Tacoma Power shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with Tacoma Power's cessation of activities, it may direct Tacoma Power to resume such activities.

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

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

L. Reservation of Rights

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

Ecology nevertheless reserves its rights under RCW 70.105D, including the right to require additional or different remedial actions at the Site should it deem such actions necessary to protect human health or the environment, and to issue orders requiring such remedial actions. Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the release or threatened release of hazardous substances at the Site.

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

M. Transfer of Interest in Property

No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by Tacoma Power 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 Tacoma Power's transfer of any interest in all or any portion of the Site, and during the effective period of this Order, Tacoma Power shall provide a copy of this Order to any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least

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thirty (30) days prior to any transfer, Tacoma Power shall notify Ecology of said transfer. Upon transfer of any interest, Tacoma Power shall notify all transferees of the restrictions on the activities and uses of the property under this Order and incorporate any such use restrictions into the transfer documents.

N. Compliance with Applicable Laws

1. *Applicable Laws.* All actions carried out by Tacoma Power pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits or approvals, except as provided in RCW 70.105D.090. The permits or specific federal, state, or local requirements that Ecology has determined are applicable and that are known at the time of the execution of this Order include Section 401 Water Quality Certification (WQC) of the Federal Water Pollution Control Act (33 U.S.C § 1341), and Hydraulic Project Approval under RCW 77.55. Specific WQC conditions for the Cowlitz River Hydroelectric Project (FERC No. 2016) are found in the WQCs dated January 15, 2002 (Order #11-2001), amended date August 20, 2002 (Amended Order No. DE 02WQSR-4098A-01), and supplemental date June 18, 2003 (Supplemental Order in #01SEASR-3367). A Hydraulic Project Approval permit under RCW 77.55 is a requirement for construction projects for the protection of fish life. Tacoma Power has a continuing obligation to identify additional applicable federal, state, and local requirements which apply to actions carried out pursuant to this Order, and to comply with those requirements. As additional federal, state, and local requirements are identified by Ecology or Tacoma Power, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order, and Tacoma Power must implement those requirements.

2. *Relevant and Appropriate Requirements.* All actions carried out by Tacoma Power pursuant to this Order shall be done in accordance with relevant and appropriate requirements identified by Ecology. At this time, no relevant and appropriate requirements have been identified as being applicable to the actions required by this Order. If additional relevant and appropriate requirements are identified by Ecology or Tacoma Power, Ecology will document in writing if

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they are applicable to actions carried out pursuant to this Order and Tacoma Power must implement those requirements.

3. Pursuant to RCW 70.105D.090(1), Tacoma Power may be exempt from the procedural requirements of RCW 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 and of any laws requiring or authorizing local government permits or approvals. However, Tacoma Power shall comply with the substantive requirements of such permits or approvals. For permits and approvals covered under RCW 70.105D.090(1) that have been issued by local government, the Parties agree that Ecology has the non-exclusive ability under this Order to enforce those local government permits and/or approvals. At this time, no state or local permits or approvals have been identified as being applicable but procedurally exempt under this section.

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

Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70.105D.090(1)

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

O. Indemnification

Tacoma Power agrees to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action (1) for death or injuries to persons, or (2) for loss or damage to property, to the extent arising from or on account of acts or omissions of Tacoma Power, its officers, employees, agents, or contractors in entering into and implementing this Order. However, Tacoma Power shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action to the extent arising out of the negligent acts or omissions of the State of Washington, or the employees or agents of the State, in entering into or implementing this Order.

IX. SATISFACTION OF ORDER

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

X. ENFORCEMENT

Pursuant to RCW 70.105D.050, this Order may be enforced as follows:

- A. The Attorney General may bring an action to enforce this Order in a state or federal court.
- B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the Site.
- C. A liable party who refuses, without sufficient cause, to comply with any term of this Order will be liable for:

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

2. Civil penalties of up to twenty-five thousand dollars (\$25,000) per day for each day it refuses to comply.

D. This Order is not appealable to the Washington Pollution Control Hearings Board.

This Order may be reviewed only as provided under RCW 70.105D.060.

Effective date of this Order: August 19, 2020

CITY OF TACOMA
TACOMA PUBLIC UTILITIES

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Jackie Flowers

Jackie Flowers
Director
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Marian L. Abbott for

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Section Manager
Toxics Cleanup Program
Southwest Regional Office
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DocuSign Envelope ID: 7AB60601-F34D-4670-853A-D9E8C3DB727B

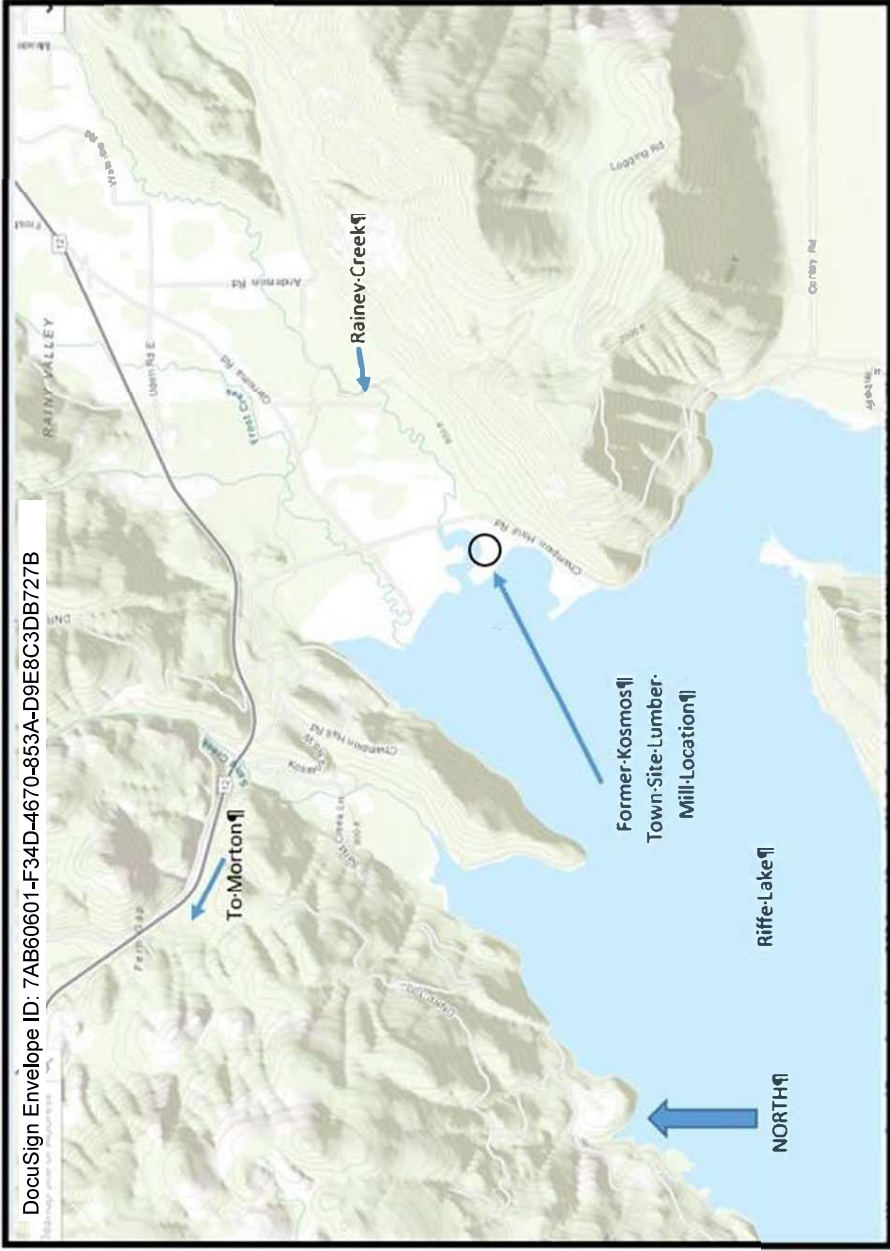


Exhibit-A
Site-Location-Diagram
Agreed-Order-16955

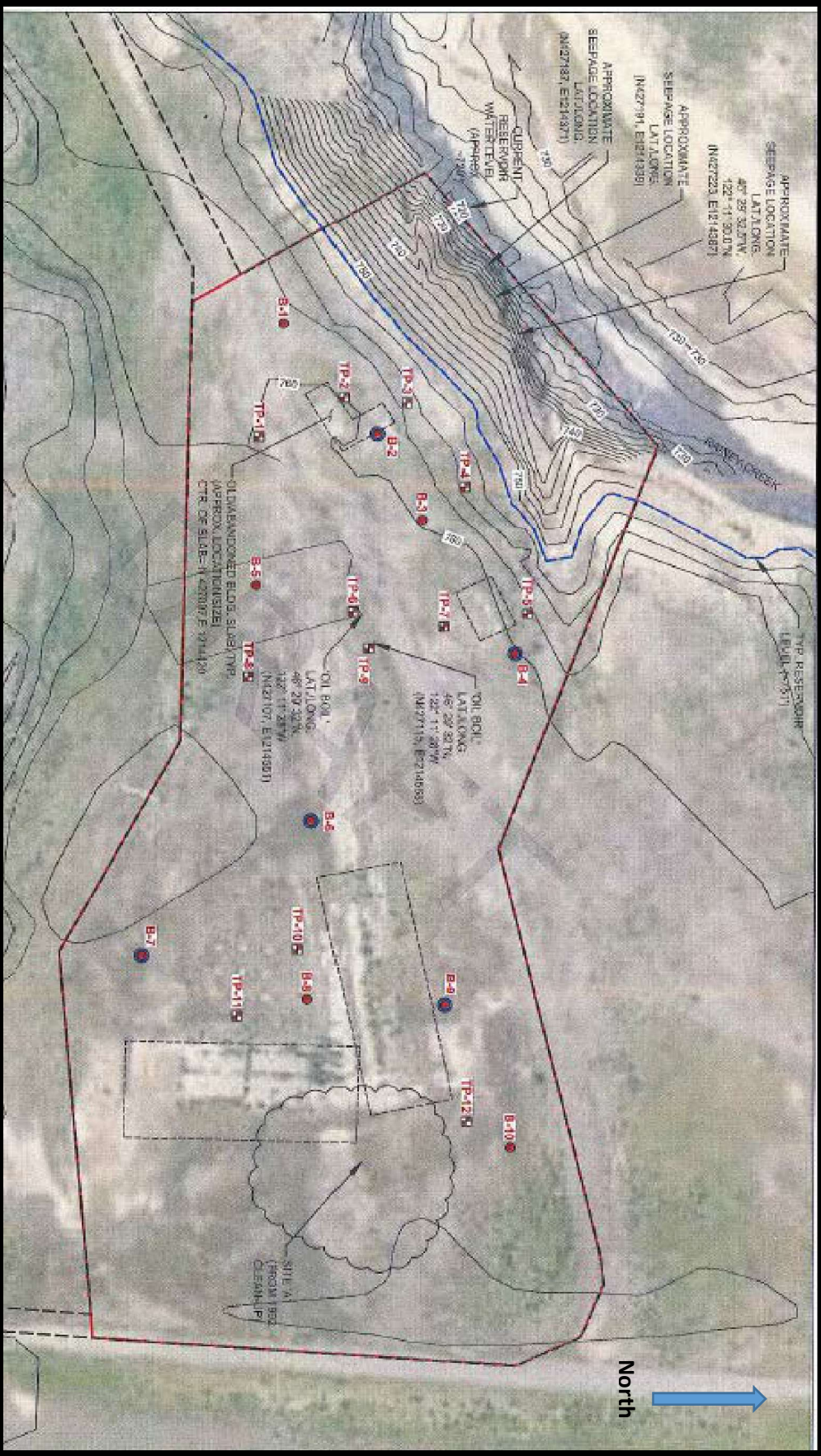


Exhibit B
Investigation Area Diagram
Agreed Order 16955

**EXHIBIT C
Tacoma Power
Agreed Order 16955**

SCHEDULE OF DELIVERABLES

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

Deliverables	Completion Times
First Monthly Report	30 calendar days following the effective date of the Agreed Order, and after that by the 15 th of each month
Data Summary Report	60 calendar days following the effective date of the Agreed Order DE 16955
RI Work Plan	45 calendar days following Ecology approval of Data Summary Report
Ecology provide comments on Remedial Investigation (RI) Work Plan	Ecology endeavor to provide comments within 30 calendar days following receipt of RI Work Plan
Final RI Work Plan	30 calendar days following Ecology approval of Draft RI Work Plan
Agency Review Draft RI Report	90 days following completion of RI field work
Ecology provide comments on Agency Review Draft RI Report	Ecology endeavor to provide comments within 45 calendar days following receipt of Agency Review Draft RI Report
Ecology receive Public Review Ready Draft RI Report	60 calendar days following receipt of Ecology comments on the Agency Review Draft RI Report
Ecology receive Agency Review Draft Feasibility Study (FS)	120 calendar days following Ecology approval of the Public Review Ready Draft RI Report
Ecology provide comments on Agency Review Draft FS	Ecology endeavor to provide comments within 45 calendar days following receipt of Agency Review Draft FS
Public Comment Period on Public Review Ready RI and FS documents	60 calendar days following receipt of Ecology comments on the Agency Review Draft FS
Ecology receive Agency Review Draft Cleanup Action Plan	90 calendar days following Ecology approval of the Public Review Ready RI and FS documents