

Mark M. Myers
Williams Kastner
601 Union Street, Suite 4100
Seattle, WA 98101
Telephone: 206-628-6633
mmyers@williamskastner.com

Robert F. Bakemeier
Bakemeier Law Firm (Bakemeier, P.C.)
7683 S.E. 27th Street, Suite 464
Mercer Island, Washington 98040
Telephone: 206-230-0600
rfb@rflaw.com

Marlys S. Palumbo
Van Ness Feldman LLP
1191 Second Ave., Ste 1800
Seattle, WA 98101
Telephone: (206) 829-1810
msp@vnf.com

April 29, 2021

Via Email Only (stee461@ecy.wa.gov)

Steve Teel, LHG
Cleanup Project Manager/Hydrogeologist
Washington State Department of Ecology
Toxics Cleanup Program, Southwest Regional Office
P.O. Box 47775
Olympia, Washington 98504-7775

Re: ***“Taylor Way & Alexander Avenue Fill Area” (“TWAAFA”)***
Ecology Facility Site #1403183; Ecology Cleanup Site #4692
Agreed Order No. DE 14260
Enforcement Order No. DE 19410
Ecology Past Costs Invoice #1T000539-001-AA (“Ecology Invoice #1”)
Ecology Past Costs Invoice #1T000539-002-AA (“Ecology Invoice #2”)
Request for “Informal Dispute Decision” to be Prepared by Ecology

Dear Mr. Teel:

We write on behalf of the three parties who are signatories to Agreed Order No. DE 14260 for the “Taylor Way & Alexander Avenue Fill Area” (the “AO”) (General Metals of Tacoma, Inc., Occidental Chemical Corporation, and Burlington Environmental LLC) (collectively the “AO Parties”): (a) to confirm the status of the pending dispute invoked by the AO Parties regarding the two Ecology past costs invoices identified above (the “Dispute”);¹ and (b) to request that Ecology’s Project Coordinator (Mr. Teel) issue the “Informal Dispute Decision” anticipated by

¹ The Dispute was addressed in the letters written by the undersigned to Ecology dated March 5, 2021, and April 9, 2021.

AO Section VIII(H)(1)(b). Thank you for meeting with the AO Parties' Project Coordinator (Tasya Gray) on April 23, 2021, to informally confer about the Dispute (the "Informal Conference"). We understand Ecology now seeks the AO Parties' perspective regarding appropriate next steps to address the Dispute, given the Informal Conference discussions.

DISPUTE STATUS.

The AO Parties paid the two Ecology past costs invoices in full on a timely basis (total payments of \$145,365.99). The AO Parties paid Invoices #1 and #2 in full because they had failed to obtain any commitment from the Port of Tacoma (the "Port") to pay any portions of the two identical invoices issued by Ecology to the Port pursuant to Enforcement Order No. DE 19410 (the "EO"). The Port did not make any timely payments on the invoices. But the Port's Project Coordinator (Scott Hooton) revealed during the Informal Conference that the Port had finally transmitted to Ecology on April 16, 2021, a late 25% payment for Invoice #1 (presumably that Port payment was approximately \$21,238.02). Mr. Hooton's revelation was news to the AO Parties--the AO Parties had not been informed by the Port about that development previously. We understand Mr. Hooton was unable to state at the Informal Conference whether the Port will be making any additional payments to Ecology (e.g., for Invoice #2 or to address the "Port-only" costs which are the subject of the Dispute).²

At the Informal Conference (and via a subsequent email on April 23, 2021), we understand Mr. Teel indicated the following regarding the Dispute. First, Ecology is willing to issue a credit to the AO Parties for \$1,570.66 on Invoice #1, for various Ecology past costs arising from Ecology's interactions with representatives of Emerald Services and Pierce County.³ Second, Ecology declines to grant such credit for the other Ecology past costs at issue in the Dispute. The AO Parties have identified in the Dispute all those other costs as unfairly and improperly charged to the AO Parties, for reasons expressed previously. In short, the AO Parties believe Ecology should seek the "Port-only" costs from the Port via the EO. The amounts as issue are: (a) \$7,935.10 in "PORT-ONLY PROPERTY ACQUISTION" and "PORT-ONLY" costs included in Invoice #1; (b) \$263.78 in "PORT-ONLY" costs included in Invoice #2; (c) \$7,588.42 in "PORT-EO" costs included in Invoice #2 for Ecology's technical personnel; and (d) an amount to be determined by Ecology/AGO for "PORT-EO" costs included in Invoice #2 attributable to the EO-related work of the AGO personnel.⁴ Collectively those "Port-only" costs total \$15,787.30, plus the yet-undetermined AGO costs.

² The AO Parties invited the Port's Project Coordinator to participate in the Informal Conference in hopes the Port would fulfill its EO obligations, would agree to pay the "Port-only" costs at issue, and would thus "moot" the pending Dispute. To date, the Port has not done so.

³ The specific time entries and costs subject to Ecology's credit were summarized in a spreadsheet attached to the email Mr. Teel transmitted to Ms. Gray, Mr. Hooton, Mr. Healy, and Mr. Acklam on April 23, 2021.

⁴ All these costs were specifically identified in spreadsheets transmitted with the letters written by the undersigned to Ecology dated March 5, 2021, and April 9, 2021. For the reasons explained in the letters dated March 5, 2021, and April 9, 2021, these costs are partial and incomplete and thus the disputed amounts are conservative.

NEXT STEPS TO ADDRESS THE DISPUTE.

The AO Parties request that Ecology's Project Coordinator (Mr. Teel) issue the written Informal Dispute Decision anticipated by AO Section VIII(H)(1)(b). We request the Informal Dispute Decision: (a) confirm Ecology's receipt of \$145,365.99 from the AO Parties in full and timely payment of Ecology Invoices #1 and #2 (and confirm Ecology's credit of those payments to the AO); (b) confirm Ecology's receipt of \$21,238.02 from the Port as a late partial payment on Invoice #1 (received by Ecology several weeks after the Invoice #1 payment was due) (and confirm Ecology's credit of that payment to the AO); (c) confirm the amount of credit Ecology proposes to issue to the AO Parties for the disputed costs included in Invoices #1 and #2; and (d) confirm the rationale for Ecology's conclusion that other costs at issue in the Dispute should not be subject to credit as requested by the AO Parties.

Once the AO Parties have received the written Informal Dispute Decision, the AO Parties will consider whether to proceed further with the Dispute (pursuant to the AO's Section VIII(H)(1)(c)).

Thank you for addressing the Dispute, and for your consideration of the matters in this letter.

Sincerely,

/s/ Robert F. Bakemeier (transmitting letter)

Robert F. Bakemeier
Bakemeier, P.C.
Counsel for Occidental Chemical Corporation

/s/ Mark M. Myers (per email approval)

Mark M. Myers
Williams Kastner
Counsel for General Metals of Tacoma, Inc.

/s/ Marlys S. Palumbo (per email approval)

Marlys S. Palumbo
Van Ness Feldman LLP
Counsel for Burlington Environmental LLC

cc: (All Via Email Only)

Shannon Spurling (sspu461@ecy.wa.gov)
Gabrielle Gurian, Assistant Attorney General (Gabrielle.Gurian@atg.wa.gov)
Ivy Anderson, Assistant Attorney General (Ivy.Anderson@atg.wa.gov)
Scott Hooton, Port of Tacoma (shooton@portoftacoma.com)
Kim Seely, Counsel for Port of Tacoma (kseely@coastlinelaw.com)
Tasya Gray, Dalton, Olmsted & Fuglevand (ngray@dofnw.com)
Clint Babcock, Glenn Springs Holdings, Inc. (Clint_Babcock@oxy.com)
Brenda Meehan, General Metals of Tacoma, Inc. (bmeehan@schn.com)
Laura Dell'Olio, Burlington Environmental LLC (ldellolio@harsco.com)