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DEPARTMENT OF ECOLOGY
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June 4, 2021

Tasya Gray, LG
DOF Dalton, Olmsted & Fuglevand
1001 SW Klickitat Way, Suite 200B
Seattle, WA 98134
ngray@dofnw.com

Scott Hooton
Port of Tacoma
PO Box 1837
Tacoma, WA 98401-1837
shooton@portoftacoma.com

Re: Informal Dispute Decision

- **Site Name:** Taylor Way and Alexander Avenue Fill Area (TWAAFA)
- **Site Address:** 1500 Block Taylor Way E, Tacoma, Pierce County, WA 98409
- **Agreed Order:** DE 14260
- **Enforcement Order:** DE 19410
- **Facility/Site No.** 1403183
- **Cleanup Site ID No.** 4692

Dear Tasya Gray and Scott Hooton:

The purpose of this letter is to provide documentation of the Department of Ecology's (Ecology) Informal Dispute Decision¹ as requested by the Agreed Order (AO) Parties (General Metals of Tacoma, Inc., Occidental Chemical Corporation, and Burlington Environmental LLC).²

Background

Ecology received the Informal Dispute Notice from the Agreed Order (AO) Parties (General Metals of Tacoma, Inc., Occidental Chemical Corporation, and Burlington Environmental LLC) on April 9, 2021.³ The AO Parties also previously sent a letter requesting that Ecology waive portions of Invoice #1 costs because the AO Parties considered them to only pertain to the

¹ The informal dispute process is described in Agreed Order and Enforcement Order Section VIII(H)(1)(b).

² Re: "Taylor Way & Alexander Avenue Fill Area" ("TWAAFA"), Request for "Informal Dispute Decision" to be Prepared by Ecology. Letter from Robert F. Bakemeier, Mark M. Myers, and Marlys S. Palumbo to Steve Teel, Ecology, dated April 29, 2021.

³ Re: "Taylor Way & Alexander Avenue Fill Area" ("TWAAFA"), "Informal Dispute Notice" Regarding Certain Invoiced Past Costs. Letter from Robert F. Bakemeier, Mark M. Myers, and Marlys S. Palumbo to Shannon Spurling and Steve Teel, Ecology, dated April 9, 2021.

enforcement Order (EO) Party (Port of Tacoma).⁴ On April 23, 2021, Ecology met with the AO and EO Project Coordinators (Tasya Gray and Scott Hooton, respectively). Rob Healy, Port of Tacoma, and Nick Acklam, Ecology also attended the meeting. In the meeting, Ecology described which costs would be credited and shared a summary table that detailed these costs. This table was emailed to the attendees following the meeting.⁵

AO Parties Request and Ecology Response

In their April 29 letter, the AO Parties requested four items from Ecology. These are listed below, followed by Ecology's response:

- 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).*

Ecology response: Below is a table that shows the payments that have received from the AO and EO Parties. A revised Invoice #1 that includes the amount that Ecology will be crediting was sent to the AO and EO project coordinators via email on May 25.⁶ Therefore, the revised total amount due for Invoices #1 and #2 is \$143,900.22. Since the amount paid to date is \$138,286.66, the amount of \$5,613.56 for Invoice #2 is still owed to Ecology.

As stated by Ecology during the April 23 meeting with the AO and EO project coordinators, Ecology will not allocate costs between the AO and EO Parties. Invoices are sent to both the AO and EO Parties and it is up to the Parties to decide how the invoices will be paid. Because the work to be performed for the AO and EO is common and shared, there is no separation of Ecology oversight costs between the AO and EO.

Date	Paid amount	Remitter name
2/24/2021	28,317.35	CLEAN EARTH ENVIRONMENTAL SOLUTIONS
3/5/2021	28,317.35	SCHNITZER STEEL INDUSTRIES
4/16/2021	20,137.98	SCHNITZER STEEL INDUSTRIES
4/20/2021	8,179.37	TACOMA PORT
4/20/2021	13,058.65	TACOMA PORT
4/14/2021	20,137.98	GLENN SPRINGS HOLDINGS INC
4/23/2021	20,137.98	CLEAN EARTH ENVIRONMENTAL SOLUTIONS
Total	138,286.66	

- 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).*

⁴ Re: "Taylor Way & Alexander Avenue Fill Area" ("TWAAFA"), Payment of Ecology Past Costs Invoice by the AO Parties and Related Matters. Letter from Robert F. Bakemeier, Mark M. Myers, and Marlys S. Palumbo to Shannon Spurling and Steve Teel, Ecology, dated March 5, 2021.

⁵ Invoice Credit Table. Email from Steve Teel, Ecology to Tasya Gray, Scott Hooton, Rob Healy, and Nick Acklam, dated April 23, 2021.

⁶ Re: 1T539-001 AB Revised. Email from Shannon Spurling, Ecology, to Scott Hooton, Port of Tacoma, dated May 25, 2021; and, FW: 1T539-001-AA Revised Invoice. Email from Ecology Cost Recovery, to Tasya Gray, dated May 25, 2021.

Ecology Response: A total of \$21,238 has been received from the Port of Tacoma as shown in the above table.

- c) *Confirm the amount of credit Ecology proposes to issue to the AO Parties for the disputed costs included in Invoices #1 and #2.*

Ecology Response: No separate credit will be issued to the AO Parties since Ecology is not allocating costs between the AO and EO Parties. As shown in the May 25 revised invoices, Ecology is crediting a total of \$1,465.77 on Invoice #1. These credits are detailed on the attached table. The reason these costs were credited is because they were not applicable to the TWAAFA Site investigation and/or administrative order negotiation. No Invoice #2 costs will be credited since the costs on this invoice are valid TWAAFA Site costs.

- 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.*

Ecology Response: See above responses and attached table.

We are hopeful that this information will successfully resolve the Dispute. If you have any questions or if you would like to schedule a meeting, please contact me at (360) 407-6247 or steve.teel@ecy.wa.gov.

Sincerely,



Steve Teel, LHG
Toxics Cleanup Program
Southwest Regional Office

Attachment: Invoice #1 Credit Summary Table

cc by email: Clint Babcock, Glenn Springs Holdings Clint_Babcock@oxy.com
Robert F. Bakemeier, Bakemeier, P.C. rfb@rflaw.com
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Ecology Site File