



STATE OF WASHINGTON

DEPARTMENT OF ECOLOGY

P.O. Box 47775 • Olympia, Washington 98504-7775 • (360) 407-6300

August 20, 2002

Mr. Alex Jones
Environmental Partners, Inc.
10940 NE 33rd Place, Suite 110
Bellevue, WA 98004

Dear Mr. Jones:

RE: Safeway, Inc. #1436 Remediation Project

This letter is written in response to your submittal and request for review of the Transmittal of Voluntary Cleanup Program Documentation for the Safeway, Inc. #1436, located at 7201 East Portland Avenue, Tacoma, Washington. You asked how you could achieve closure and receive a "no further action" (NFA) letter for the facility.

It is Ecology's understanding that you have characterized the contamination of the soils on this site.

Under the voluntary cleanup program (VCP), you may have the following option available that could lead to an NFA:

1. If the remaining contamination is adjacent to or beneath a building or paved surface, or/and is inaccessible, a deed restriction or restrictive covenant may be placed on the property to address the remaining soil and potential groundwater contamination. An NFA with a restrictive covenant can be issued for the soils. This restrictive covenant will also require monitoring the groundwater at the perimeter of the site. If the soils remain contaminated, they can be addressed when the buildings or paving is removed at some future date. The owner of the site is responsible for filing the restrictive covenant with the local county auditor's office. A copy of recorded restrictive covenant would be included with the NFA letter.
2. Monitor ground water on the perimeter of the site. Install groundwater monitoring well (s) to assess groundwater quality. If the groundwater is not impacted above the MTCA levels the groundwater restriction could be removed. Groundwater monitoring must



Mr. Alex Jones
August 20, 2002
Page 2 of 2

demonstrate that:

- a) Contamination has not left the site;
 - b) Contamination is not spreading;
 - c) In order to remove the ground water restrictive covenant it must be shown that concentrations of pollutants remain below the applicable MTCA levels for four consecutive quarters, throughout the site.
3. The restrictive covenant for the groundwater may not be necessary, if you demonstrate that the groundwater depth at the site's location is protective of ground water quality. You should also indicate what is the receptor for the groundwater at this location. Geological conditions may also play a role and they should be described.

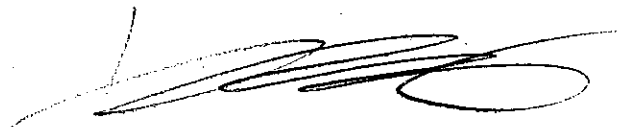
Please note that because your actions were not, or will not be conducted under a consent decree with Ecology, this letter is written pursuant to RCW 70.105D.030(1)(i) and does not constitute a settlement by the state under RCW 70.105D.040(4) and is not binding on Ecology.

The opinions presented by Ecology in this letter are made with respect to the information provided in the above quoted document and the previously submitted documentation. This opinion is only applicable to the specified site (or portion of the site) and may not be used to justify action at any other site (or portion of the site) nor any other properties owned or operated by Safeway, Inc.

The State, Ecology, and its officers and employees are immune from all liability and no cause of action of any nature may arise from any act or omission in providing this determination.

If you have any questions about any of the information presented in this letter, please contact me at (360) 407-6363.

Sincerely,



Marcel Szyszkowski, PE
Toxics Cleanup Program
Southwest Regional Office

MS:as

Enclosure: Restrictive Covenant BoilerPlate

cc: Sherrie Minnick, Ecology
Chuck Cline, Ecology SWRO-TCP

RESTRICTIVE COVENANT

[NAME OF PROPERTY OWNER, AND NAME OF PROPERTY]

This Declaration of Restrictive Covenant is made pursuant to RCW 70.105D.030(1)(f) and (g) and WAC 173-340-440 by [NAME OF PROPERTY OWNER], its successors and assigns, and the State of Washington Department of Ecology, its successors and assigns (hereafter "Ecology").

An independent remedial action (hereafter "Remedial Action") occurred at the property that is the subject of this Restrictive Covenant. The Remedial Action conducted at the property is described in the following document[s]: [INSERT THE DATE AND TITLE FOR EACH DOCUMENT¹ LISTED INCLUDING THE NAME OF THE PERSON OR BUSINESS WHO PREPARED THE DOCUMENT(S)]. [THIS or THESE] document[s] [IS or ARE] on file at Ecology's SWRO.

This Restrictive Covenant is required because the Remedial Action resulted in residual concentrations of TPH which exceed the Model Toxics Control Act Method [LIST APPLICABLE METHOD A OR B] Residential Cleanup Level(s) for [SOIL, GROUNDWATER, ETC.] established under WAC 173-340-_____.

The undersigned, [NAME OF PROPERTY OWNER], is the fee owner of real property (hereafter "Property") in the County of [NAME OF COUNTY], State of Washington, that is subject to this Restrictive Covenant. The Property is legally described [AS

¹ The term 'document' means reports prepared regarding the remedial action as

MODEL RESTRICTIVE COVENANT

Page 3

Property."

3. *If contaminated soil remains that is above Method A or B Residential Cleanup Levels describe prohibited activities.*

a. *For contaminated soil under a structure use the following sentence: "A portion of the Property contains [SPECIFICALLY LIST SUBSTANCE(S)] contaminated soil located [SPECIFICALLY DESCRIBE WHERE THE SOIL IS LOCATED, I.E., UNDER THE SOUTHEAST PORTION OF BUILDING 10]. The Owner shall not alter, modify, or remove the existing structure[s] in any manner that may result in the release or exposure to the environment of that*

MODEL RESTRICTIVE COVENANT

Page 4

contaminated soil or create a new exposure pathway without prior written approval from Ecology."

b. Example language for contaminated soil under a cap:

"Any activity on the Property that may result in the release or exposure to the environment of the contaminated soil that was contained as part of the Remedial Action, or create a new exposure pathway, is prohibited. Some examples of activities that are prohibited in the capped areas include: drilling, digging, placement of any objects or use of any equipment which deforms or stresses the surface beyond its load bearing capability, piercing the surface with a rod, spike or similar item, bulldozing or earthwork."

Section 2. Any activity on the Property that may interfere with the integrity of the Remedial Action and continued protection of human health and the environment is prohibited.

Section 3. Any activity on the Property that may result in the release or exposure to the environment of a hazardous substance that remains on the Property as part of the Remedial Action, or create a new exposure pathway, is prohibited without prior written approval from Ecology.

Section 4. The Owner of the property must give thirty (30) day advance written notice to Ecology of the Owner's intent to convey any interest in the Property. No conveyance of title, easement, lease, or other interest in the Property shall be consummated by

MODEL RESTRICTIVE COVENANT

Page 5

the Owner without adequate and complete provision for continued monitoring, operation, and maintenance of the Remedial Action.

Section 5. The Owner must restrict leases to uses and activities consistent with the Restrictive Covenant and notify all lessees of the restrictions on the use of the Property.

Section 6. The Owner must notify and obtain approval from Ecology prior to any use of the Property that is inconsistent with the terms of this Restrictive Covenant. Ecology may approve any inconsistent use only after public notice and comment.

Section 7. The Owner shall allow authorized representatives of Ecology the right to enter the Property at reasonable times for the purpose of evaluating the Remedial Action; to take samples, to inspect remedial actions conducted at the property, and to inspect records that are related to the Remedial Action.

Section 8. The Owner of the Property reserves the right under WAC 173-340-440 to record an instrument that provides that this Restrictive Covenant shall no longer limit use of the Property or be of any further force or effect. However, such an instrument may be recorded only if Ecology, after public notice and opportunity for comment, concurs.

MODEL RESTRICTIVE COVENANT
Page 6

[NAME OF PROPERTY OWNER]

[DATE SIGNED]

[NOTE: The Property Owner must have this Restrictive Covenant
notarized.]