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STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY  
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October 28, 2021

Jerry Mahan  
Green Cove Park LLC  
429 29th Street NE, Suite A  
Puyallup, WA 98372

**Re: Final Determination of Potential Liability for Release of Hazardous Substances at the following Contaminated Site:**

- **Site Name:** Sundberg Gravel Pit
- **Site Address:** 2200 Cooper Point Rd, Olympia, Thurston County, WA 98502
- **Cleanup Site ID:** 10635
- **Facility/Site ID:** 82016954
- **County Assessor's Parcel Number(s):** 81700000000, 74202900000, 74202500200, 74202500100, 50400100100, 50400200100, 50400300100, 50400400100, 50400402000, 50400402100, 50400402300, 50400402500

Dear Jerry Mahan:

On August 18, 2021, the Department of Ecology (Ecology) sent you written notice of our preliminary determination that Green Cove Park LLC (Green Cove) is a potentially liable person (PLP) for a release of hazardous substances at the Sundberg Gravel Pit facility (Site). On September 23, 2021, the 30-day comment period on our preliminary determination expired. On September 15, 2021, Ecology received your written comments.

Ecology has reviewed Green Cove's written comments and addresses them generally in this final determination of PLP status letter. At the outset, Ecology emphasizes that Green Cove is identified as a PLP based on its status as "owner or operator" as defined in the Model Toxics Control Act (MTCA), RCW 70A.305.020(22)(a), of the Sundberg Gravel Pit, a "facility" as defined in MTCA, *id.* at 70A.305.020(8).

Next, for the purposes of naming a PLP, MTCA does not require that contamination at the Sundberg Gravel Pit exceed MTCA cleanup standards. As the courts have noted, "no minimum level of hazardous substance is required to trigger MTCA liability." *PacifiCorp Env'tl. Remediation Co. v. WSDOT*, 162 Wn. App. 627, 658 (2011) (quoting *Seattle City Light v. WSDOT*, 98 Wn. App. 165, 172 (1999)). Under MTCA, the existence of contamination at the property owned by Green Cove is the concern; exceedance of clean-up levels is not a threshold requirement.

Green Cove asserts that there is *no* credible evidence to conclude that the Sundberg Gravel Pit should be treated as a contaminated site. However, Green Cove's response not only establishes the existence of contamination at the Site (which alone is sufficient for PLP purposes) but it also provides additional sampling results that confirm exceedances of MTCA Method A or B soil and groundwater cleanup screening levels. These exceedances include carcinogenic polycyclic aromatic hydrocarbons (cPAHs) in soil, and diesel and heavy oil total petroleum hydrocarbons, arsenic, iron, and manganese in groundwater. The 2020 and 2021 data are new to Ecology. Ecology expects to do a full review of this data as part of a future remedial investigation report.

In sum, based on available information, Ecology finds that credible evidence exists that Green Cove is liable for a release of hazardous substances at the Site. On the basis of this finding, Ecology has determined that Green Cove is a PLP with regard to the Site.

Ecology makes this determination notwithstanding Green Cove's assertion that it is entitled to an "innocent purchaser" defense to liability under RCW 70A.305.040(3)(b). Green Cove fails to show how it meets the express requirements to qualify for such a defense under MTCA, which must be shown by a preponderance of evidence. Green Cove has not done so, and preliminary facts establish that it cannot. The acknowledged presence of ground staining in the garage and truck parking area outside the garage noted during the 2004 Phase I Assessment, performed when Green Cove purchased the property, is likely sufficient to eliminate an innocent purchaser defense because Green Cove knew of the release at the time of purchase or should have made further inquiries regarding the staining. See RCW 70A.305.040(3)(b)(i). Despite the ground staining, Green Cove completed no sampling to investigate the staining – or any other area of the site – at the time of purchase, which would have been good commercial or customary practice, and a prerequisite to asserting a valid innocent purchaser defense.

Ecology also makes this determination notwithstanding Green Cove's assertion that it is entitled to a third-party defense to liability. Green Cove fails to show how it meets the express requirements to qualify for such a defense under MTCA. See RCW 70A.305.040(3)(a)(iii). MTCA requires that the party who asserts a third-party defense show how it meets all the factors required for the defense. Green Cove has not shown that the release of hazardous substance(s) at the site was solely a result of the "illegal dumping" or that Green Cove had acted with utmost care both in seeking to prevent the dumping *and* in responding to the dumping and the release caused by that act.

Ecology would also like to briefly address your assertion that it acted improperly by meeting with concerned citizens without the involvement of Green Cove. Community engagement is a function of a public agency, and in particular, MTCA encourages Ecology to partake in public outreach. Ecology and Green Cove will be working together as this site moves through the cleanup process, and Green Cove will have an opportunity to discuss public involvement as the agency develops a public participation plan.

The purpose of MTCA is to identify, investigate, and clean up facilities where hazardous substances have been released. Liability for environmental contamination under MTCA is strict, joint and several. RCW 70A.305.040(2). Ecology ensures that contaminated sites are investigated and cleaned up to the standards set forth in the MTCA statute and regulations. Ecology has determined that it is in the public interest for remedial actions to take place at this Site. Ecology plans to pursue an agreed order with Green Cove to complete a remedial investigation, and if needed, a feasibility study and preliminary draft cleanup action plan to bring about the prompt and thorough cleanup of hazardous substances at this Site.

Failure to cooperate with Ecology or comply with MTCA in this matter will result in Ecology employing enforcement tools as it deems necessary and appropriate. This includes, but is not limited to, the issuance of an administrative order. Failure to comply with such an order may result in a fine of up to \$25,000 per day and liability for up to three times the costs incurred by the state. RCW 70A.305.050(1).

Your rights and responsibilities as a PLP are outlined in RCW 70A.305, WAC 173-340, 173-240 and <https://ecology.wa.gov/Footer/rulemaking/Index>. Ecology is in the process of preparing a draft agreed order and will be sending it to you for your review in the next few weeks. The sixty-day discussion period will begin on the date the draft agreed order is sent to you.

If you have any questions regarding this notice, please contact me at 360-407-6241 or [rebecca.lawson@ecy.wa.gov](mailto:rebecca.lawson@ecy.wa.gov).

Sincerely,



Rebecca S. Lawson, P.E., LHG  
Section Manager  
Toxics Cleanup Program  
Southwest Region Office

By certified mail: 9489 0090 0027 6092 9913 69

cc by email: Connie Groven, Ecology, [connie.groven@ecy.wa.gov](mailto:connie.groven@ecy.wa.gov)  
Kathryn Wyatt, Office of the Attorney General, [kathryn.wyatt@atg.wa.gov](mailto:kathryn.wyatt@atg.wa.gov)  
Ecology Site File