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STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

*PO Box 47775 • Olympia, Washington 98504-7775 • (360) 407-6300
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November 30, 2021

Andy Zabel
Houlihan Law
100 N. 35th Street
Seattle, WA 98103
Andy@houlihan-law.com

Re: VCP Project Status Request for the following contaminated Site:

- **Site Name:** Old Brewhouse Former Paint Shop
- **Site Address:** 3245 Boston St SW, Tumwater, Thurston County, WA 98501
- **Facility/Site No.:** 6029672
- **Cleanup Site ID.:** 3737
- **VCP Project No.:** SW1162

Dear Andy Zabel:

The Department of Ecology (Ecology) requested additional information regarding the status of the cleanup of the Old Brewhouse Former Paint Shop facility (Site) in a letter dated December 30, 2019. On March 9, 2020, Ecology received your response (**Enclosure A**) and we held our termination decision at that time pending discussion about the cleanup with George Heidgerken, the current Voluntary Cleanup Program (VCP) customer.

Since that time, Ecology has not received any further communication, nor has applicable environmental data been uploaded to Ecology's Environmental Information Management System (EIM) database per Ecology's current data submittal requirements provided in [Toxics Cleanup Program Policy 840](#)¹ (**Enclosure B**).

To continue cleanup efforts under the VCP, please provide the following information.

Request for Information

1. Within 30 days of receipt of this letter, please provide an update to Ecology. Submit one hard copy and one electronic copy of any report. Mail any hard copy to:

¹ <https://apps.ecology.wa.gov/publications/documents/1609050.pdf>

Tim Mullin, LHG
Toxics Cleanup Program, Southwest Regional Office
Washington State Department of Ecology
PO Box 47775
Olympia, WA 98504-7775

2. If any contact information has changed for the VCP customer team, please fill out the enclosed [VCP change of contact form](#).²

Email the updated form to tim.mullin@ecy.wa.gov.

3. **Required electronic data.** Please ensure that all environmental Site data collected since August 1, 2005, are accepted into Ecology's Environmental Information Management (EIM) system database. Ecology's current data submittal requirements are provided in Toxics Cleanup Program Policy 840.

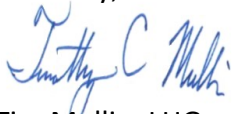
Next Steps

Based on your response, Ecology will decide whether to continue providing you services under the VCP. We will notify you of our decision in writing. Please note that we will terminate the Agreement governing the SW1162 project if you do not respond to this request within 30 days of receipt.

Contact Information

For more information about the VCP and the cleanup process, please visit our [VCP webpage](#).³ If you have any questions about this transmittal, please contact me at (360) 407-6265 or tim.mullin@ecy.wa.gov.

Sincerely,



Tim Mullin, LHG
VCP Site Manager
Toxics Cleanup Program
Southwest Regional Office

Enclosures: A – March 9, 2020 Email
B – Toxics Cleanup Program Policy 840

By certified mail: 9489 0090 0027 6092 9914 37

cc: George Heidgerken, Property Owner
Community Development Department, City of Tumwater
Nicholas Acklam, Ecology (by email)
Ecology Site File

² <https://apps.ecology.wa.gov/publications/documents/ecy070218.pdf>

³ <https://www.ecy.wa.gov/vcp>



Voluntary Cleanup Program

Washington State Department of Ecology Toxics Cleanup Program

CHANGE OF CONTACT FORM

Use this form to notify the Department of Ecology (Ecology) of any changes to the designated points of contact for a project under the Voluntary Cleanup Program (VCP). Include any changes to the contact information for those persons (for example: phone number or address). Please submit only one form for each point of contact.

Step 1: IDENTIFY HAZARDOUS WASTE SITE

Please identify below the hazardous waste site for which you are providing new contact information. This information may be found on the VCP Agreement.

Facility/Site Name:

Facility/Site Address:

Facility/Site No:

VCP Project No.:

Step 2: IDENTIFY CONTACT PERSON

Please identify the role of the person for whom you are providing new contact information. Check all that apply.

- ☐ Project Manager
- ☐ Project Billing Contact
- ☐ Project Consultant
- ☐ Project Attorney
- ☐ Property Owner
- ☐ Other – please specify:

Please provide below the new contact information for this person:

Name:

Title:

Organization:

Mailing address:

City:

State:

Zip code:

Phone:

Fax:

E-mail:

Step 3: IDENTIFY PRIOR CONTACT PERSON (IF APPLICABLE)

Is the new contact person replacing an existing point of contact?

- ☐ Yes
☐ No

If you answered "YES" above, please identify below the person who is being replaced:

Name:

Title:

Organization:

Mailing address:

City:

State:

Zip code:

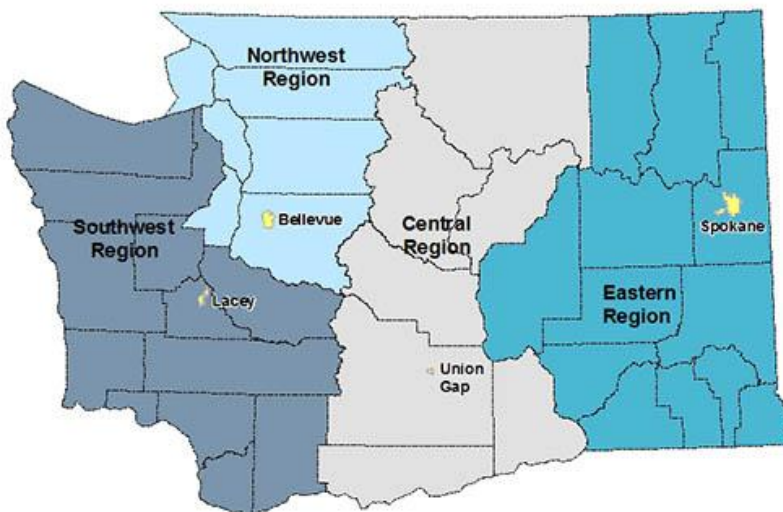
Phone:

Fax:

E-mail:

Step 4: SUBMITTAL

Please mail your completed form to the Ecology site manager assigned to your Site. If a site manager has not yet been assigned, please mail your completed form to the Ecology regional office for the County in which your Site is located.



Northwest Region:

Attn: VCP Coordinator
3190 160th Ave. SE
Bellevue, WA 98008-5452

Central Region:

Attn: VCP Coordinator
1250 West Alder St.
Union Gap, WA 98903-0009

Southwest Region:

Attn: VCP Coordinator
P.O. Box 47775
Olympia, WA 98504-7775

Eastern Region:

Attn: VCP Coordinator
N. 4601 Monroe
Spokane WA 99205-1295

If you need this publication in an alternate format, please call the Toxics Cleanup Program at 360-407-7170. Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call 877-833-6341.

Enclosure A

March 9, 2020 Email

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From: [Mullin, Tim \(ECY\)](#)
To: [Andy Zabel](#)
Cc: [Rocky Collis](#); [Rand Bellar](#); [Acklam, Nicholas \(ECY\)](#)
Subject: RE: Old Brewhouse - Tumwater (VCP Project No. SW1162/Cleanup ID 3737)
Date: Monday, March 9, 2020 4:14:12 PM

Ecology holds our termination decision until you have a chance to review and discuss SW1162 with Mr. Heidgerken.

From: Andy Zabel
Sent: Friday, March 6, 2020 5:15 PM
To: Mullin, Tim (ECY)
Cc: Rocky Collis ; Rand Bellar ; Acklam, Nicholas (ECY)
Subject: RE: Old Brewhouse - Tumwater (VCP Project No. SW1162/Cleanup ID 3737)

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Mr. Mullin,

Thanks for providing that information. I would note that at this point George is still the owner of the LLC, though he never owned the property. I would ask that any decision to terminate the VCP be postponed until we can review and discuss this matter with Mr. Heidgerken.

We'll be in touch shortly.

Best regards,

Andy



ANDREW L. ZABEL
ATTORNEY

206.547.1752 DIRECT

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From: Mullin, Tim (ECY) [<mailto:TMUL461@ECY.WA.GOV>]

Sent: Friday, March 06, 2020 5:11 PM

To: Andy Zabel <Andy@houlihan-law.com>

Cc: Rocky Collis <rcollis@acceleronlaw.com>; Rand Bellar <rhb513@gmail.com>; Acklam, Nicholas (ECY) <nack461@ECY.WA.GOV>; Mullin, Tim (ECY) <TMUL461@ECY.WA.GOV>

Subject: RE: Old Brewhouse - Tumwater (VCP Project No. SW1162/Cleanup ID 3737)

Good afternoon,

Thank you for your patience. For VCP project SW1162 – Old Brewhouse Paint Shop, I attached

Ecology's April 18, 2011 VCP acceptance letter, VCP agreement (executed April 18, 2011), and the VCP application (received April 15, 2011).

It appears that the SW1162 VCP agreement is with George Heidgerken. The VCP application references Managing Green, LLC, but not Falls Development, LLC. It appears that Falls Development, LLC was added later to the Site file as a change of contact update for the SW1162 project, but was not a signatory to the VCP agreement.

The VCP customer for SW1162, based on our review, is George Heidgerken. It is our understanding that he will no longer be involved in this cleanup.

In these situations, because the VCP customer listed on the VCP agreement will no longer be involved, Ecology would terminate SW1162. To continue the cleanup in VCP, we request that a new VCP application, VCP agreement, and agency determination checklist be submitted. Ecology would assign a new VCP number and submit a new acceptance letter with additional details. The VCP documents are available here: <https://ecology.wa.gov/Spills-Cleanup/Contamination-cleanup/Cleanup-process/Cleanup-options/Voluntary-cleanup-program>

Per our letter dated [December 30, 2019](#), and presuming you choose to re-apply to VCP, Ecology still encourages you to submit a plan and schedule and upload any Site data collected after August 1, 2005 to our Environmental Information Management (EIM) System database. As a new VCP application would represent a new VCP customer team, there is flexibility with the completion date of June 30, 2020 for these tasks. However, the Site data required to be entered into EIM consistent with [Ecology Policy 840](#) would need to be uploaded and accepted prior to requesting an opinion.

Sincerely,

Tim Mullin, LHG

Voluntary Cleanup Program Site Manager
Southwest Region – Toxics Cleanup Program
Washington State Department of Ecology
PO Box 47775
Olympia, WA 98504-7775
360-407-6265
tmul461@ecy.wa.gov

From: Andy Zabel <Andy@houlihan-law.com>

Sent: Thursday, February 27, 2020 3:21 PM

To: Mullin, Tim (ECY) <TMUL461@ECY.WA.GOV>

Cc: Rocky Collis <rcollis@acceleronlaw.com>; Rand Bellar <rhb513@gmail.com>

Subject: Old Brewhouse - Tumwater (VCP Project No. SW1162/Cleanup ID 3737)

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Mr. Mullin,

Thanks for your time this afternoon. As we discussed, I represent HDG LP who is the lender to Falls Development LLC, owner of the property at 3245 Boston St. SW. We are in the process of acquiring the property through a deed in lieu of foreclosure and will also control Falls Development LLC.

We are interested in remaining in the Voluntary Cleanup Program and will update you about our next steps to respond to your letter of December 30, 2019 once the transfer process is completed. Please let me know if you have any questions or need anything from us in the interim.

Best regards,
Andy



100 N. 35th Street ■ Seattle, WA 98103

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Enclosure B

Ecology Toxics Cleanup Program Policy 840

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Toxics Cleanup Program

Policy 840: Data Submittal Requirements

Established: August 1, 2005

Revised: April 12, 2016

Contact: Policy & Technical Support Unit, Headquarters

Purpose: This Policy provides guidance on the submission of environmental monitoring data generated or collected during the investigation or cleanup of contaminated sites under the Model Toxics Control Act.

References: [WAC 173-340-840 \(5\)](#)
[Chapter 173-204 WAC](#)
[Environmental Information Management System Database](#)
[Sediment Cleanup Users Manual II](#)

Attachments: A - Model Grant and Permit Condition

Disclaimer: This Policy is intended solely for the guidance of Ecology staff. It is not intended, and cannot be relied on, to create rights, substantive or procedural, enforceable by any party in litigation with the state of Washington. Ecology may act at variance with this Policy depending on site-specific circumstances, or modify or withdraw this Policy at any time.

Approved by:

James J. Pendowski, Program Manager
Toxics Cleanup Program

Accommodation Requests: To request ADA accommodation, including materials in a format for the visually impaired, call Ecology's Toxics Cleanup Program at 360-407-7170. Persons with impaired hearing may call Washington Relay Service at 711. Persons with speech disability may call TTY at 877-833-6341.

Purpose and Applicability

The investigation and cleanup of contaminated sites generate a large volume of environmental monitoring data that need to be properly managed to facilitate regulatory decisions. The data also need to be accessible by Ecology staff, site owners, consultants, and the general public.

This Policy describes the requirements for submitting environmental monitoring data generated or collected during the investigation and cleanup of contaminated sites under Chapter 70.105D RCW, Model Toxics Control Act (MTCA).

This Policy applies to Ecology staff and any person who investigates or cleans up contaminated sites and submits related environmental sampling data to Ecology, including potentially liable persons, Voluntary Cleanup Program (VCP) customers, prospective purchasers, government agencies, and Ecology contractors.

1. Unless otherwise specified by Ecology, all environmental monitoring data generated during contaminated site investigations and cleanups are required to be submitted to Ecology in both written format and electronically through EIM.

Environmental monitoring data include biological, chemical, physical, and radiological data generated during site investigations and cleanups under the Model Toxics Control Act Cleanup Regulation (Chapter 173-340 WAC) and the Sediment Management Standards (Chapter 173-204 WAC).

The Environmental Information Management System (EIM) is a searchable database that contains data collected by Ecology (or by environmental contractors on behalf of Ecology), and by Ecology grant recipients, local governments, the regulated community, and volunteers.

Under this Policy, data are considered to be “environmental monitoring data” if generated or collected during:

- a. Site investigations and cleanups conducted under an order, agreed order or consent decree, permit, grant, loan, contract, interagency agreement, memorandum of understanding; or
- b. An independent remedial action.

Under this Policy, data are not considered to be environmental monitoring data if generated or collected for the following studies. This means that entering data into EIM, while encouraged, is optional for:

- a. Non site-specific studies;
- b. Site hazard assessments that result in no further action; and
- c. All initial site investigations.

2. Orders, agreed orders, consent decrees, or permits must include a condition that site-specific environmental sampling data be submitted in compliance with this Policy.

For those reports prepared and submitted for review under an order, agreed order, consent decree, or permit, the environmental sampling data must be entered into EIM at the time of report submittal. If reports for such work do not include documentation that data was submitted in compliance with this Policy, the reports shall be deemed incomplete and a notice will be provided to the submitter.

Generally, Ecology should not review such reports until that documentation is provided. The assistant attorney general assigned to the site should be consulted for an appropriate response when Ecology's review is delayed due to failure of data entry into EIM.

3. Site-specific environmental sampling data must be entered into EIM before Ecology will review independent remedial action reports under the Voluntary Cleanup Program.

For independent remedial action reports prepared and submitted under Ecology's Voluntary Cleanup Program (VCP), environmental sampling data must be entered into EIM at the time any report is submitted requesting an opinion on the sufficiency of the action under the VCP.

However, Ecology may establish an alternate deadline for entering data into EIM if this Policy creates undue hardship on the VCP customer and Ecology does not need the data in EIM to begin the review.¹ But in no case will Ecology issue a No Further Action (NFA) opinion letter under the VCP—either for the whole site or a property located within the site—until the data has been entered into EIM.

If sampling data has not been entered into EIM, Ecology may still review the report for the limited purpose of determining whether it contains sufficient information to provide an opinion. If the report is incomplete, Ecology may also respond to the VCP customer's request for an opinion by issuing an administrative letter rejecting the report and requesting additional information.

¹ For example, when a site has multiple groundwater sampling events over time, it may be more efficient to enter the data into EIM at one time after monitoring is completed, rather than for each monitoring event. Another example would be where a VCP consultant is using EIM for the first time and needs additional time to learn how to use the system.

4. Grants, contracts, interagency agreements or memoranda of understanding issued after the effective date of this Policy must include a condition that site-specific data be submitted in compliance with this Policy.

Reports on such work will not be accepted as complete until the data have been submitted in compliance with this Policy. If a payment or transfer of funds is involved in the transaction, the relevant payment or transfer shall be withheld until this requirement has been met. Attachment A contains example language to include in these documents.

5. Data generated during upland investigations and cleanups must be submitted electronically using Ecology's EIM.

The Environmental Information Management System is Ecology's main database for environmental monitoring data. Proper submission of data through this system meets the requirement of submitting such data in an electronic format.

Additional information about EIM, including instructions for data submittal, can be found on Ecology's EIM website at <http://www.ecy.wa.gov/eim/>. The Toxic Cleanup Program's (TCP) EIM Coordinator can also provide technical assistance to site managers and consultants who use EIM.

6. Data generated during sediment investigations and cleanups must be submitted electronically using Ecology's EIM.

Effective March 1, 2008, EIM is Ecology's data management system for sediment-related data. Proper submission of data through EIM meets the requirement of submitting such data in an electronic format. Electronic data must be submitted to Ecology simultaneously with the accompanying report.

For additional information on sediment sampling and analysis plan requirements, see Ecology's *Sediment Cleanup Users Manual (SCUM II)* Publication No. 12-09-057, available at: <https://fortress.wa.gov/ecy/publications/summarypages/1209057.html>

The Sediment Data Coordinator in TCP's Aquatic Land Cleanup Unit (ALCU) can also provide technical assistance with EIM.

7. Data submitted electronically using EIM must be checked by the Toxics Cleanup Program's EIM Coordinator before the data will be officially loaded into EIM.

Normally, TCP's EIM Coordinator will receive a notice that data have been submitted through EIM. Upon receipt of the notice, the EIM Coordinator should notify the Cleanup Project Manager. The EIM Coordinator then reviews the submittal for quality control and officially loads the data into the system.

Attachment A

Model Grant and Permit Condition

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Model Grant and Permit Condition

The following condition is to be inserted in grants, loans, contracts, interagency agreements, and memoranda of understandings where site-specific environmental monitoring data is expected to be generated:

All sampling data shall be submitted to Ecology in both printed and electronic formats in accordance with WAC 173-340-840(5) and Ecology Toxics Cleanup Program Policy 840: Data Submittal Requirements. Electronic submittal of data is not required for site hazard assessments that result in no further action and initial site investigations. (FOR GRANTS, AND LOANS ADD: Failure to properly submit sampling data will result in Ecology withholding payment and could jeopardize future funding.)

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