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October 7, 2021

**VIA ELECTRONIC MAIL**

Douglas S. Reinhart  
Senior Counsel  
BP Legal  
150 West Warrenville Road  
Mail Code 200-1W  
Naperville, IL 60563

**Re: Huling Brothers Properties, LLC/Virginia Mason Franciscan Health  
4550 Fauntleroy Way SW, Seattle, WA**

Dear Mr. Reinhart:

On behalf of Huling Brothers Properties, LLC (the “Hulings”) and Virginia Mason Franciscan Health (“Franciscan Health”), the undersigned counsel hereby make demand on BP Exploration & Oil, Inc. (“BP”) to address without further delay vapor intrusion issues at the above-referenced property, which vapors are caused by releases of petroleum hydrocarbons at property formerly owned and being remediated by BP, located at 4580 Fauntleroy Way SW, (“Former BP Facility”).

The Hulings are owners of the property located at 4550 Fauntleroy Way SW, adjacent to the Former BP Facility, and lease the property to Franciscan Health for operation of a medical clinic (“Clinic Property”). Adam Troutwine with Polsinelli, counsel for Franciscan Health, previously wrote to you by letters dated December 21, 2018 and September 12, 2019 making demand on BP to address the vapor intrusion issues at the Clinic Property. Notwithstanding the serious concerns raised by those letters, BP has either ignored or denied responsibility for the vapor intrusion problems at the Clinic Property. The situation has not improved in the 33 months since the first letter to BP. Indeed, the vapor intrusion problems at the Clinic Property continue unabated. Without any assistance from BP, Franciscan Health installed a ventilation system to provide some mitigation, but that system must now be replaced because it was never intended to operate for 24 hours a day, seven days a week, let alone as a permanent solution. Meanwhile, BP apparently failed to operate its remediation system for at least eight months, which has only exacerbated the problem.

According to publicly-available records, despite more than five years of operating an air sparge and soil vapor extraction system (“SVE System”), petroleum hydrocarbons in excess of Washington Model Toxics Control Act (“MTCA”) Method A cleanup standards continue to be present in groundwater. According to BP’s 2020 Annual Groundwater Monitoring Report, the consultant conducting the December 2020 groundwater monitoring event could not collect samples from GMW-1 and MW-4 due to the continued presence of LNAPL (an apparent legacy of the up to four feet of LNAPL that had been in found in MW-4 over a period of nearly 20 years). In other sampling events during 2020 total petroleum hydrocarbons in the gasoline-range remain above Method A cleanup levels. GMW-1 is among those wells with continuing exceedances and it is located in the alley adjacent to the Clinic Property. Moreover, the inferred groundwater direction is towards the Clinic Property. The alley also is part of the Hulings’ property and the presence of petroleum hydrocarbons migrating from the Former BP Facility onto the Hulings’ property in excess of MTCA Method A constitute a continuing trespass.<sup>1</sup>

Franciscan Health’s consultant, Associated Environmental Group, LLC (“AEG”), has investigated the source of vapor odors complained of by staff and patients at the Clinic Property, including several collections of air samples. AEG has determined that gasoline-range hydrocarbons and benzene were present in samples from the Franciscan Health storage room, Exam Room #3, and Back Office Pod in excess of MTCA Method B Indoor Air cleanup standards. At AEG’s recommendation, Franciscan Health installed a vapor mitigation system with manifolded sub-slab depressurization points in Exam Room #3, the employee break room, and storage room. The intent of the system was not to remove vapor phase contamination, but to remove a sufficient volume of air to establish a vacuum gradient beneath the concrete floor slab and reduce odors in the Clinic Property. This system has been effective, although operation of the fan on a continuous basis is necessitating replacement before the onset of the winter rainy season.

We understand that BP, through its consultant, provided Ecology with a memo, dated March 11, 2019, in which BP categorically stated that the vapor intrusion at the Clinic Property was not from the Former BP Facility. BP’s arguments, however, are wholly lacking in either factual or technical support.

- BP argued that historical city directories indicated that a car lot/dealership had operated on the Clinic Property between 1986 and 2010, which purportedly “included automotive repair for a portion of that time.” On behalf of the Hulings, as owners of the property during that time, the relevant period is 1990 to 2007 and we can assure you that no automotive repair activities ever took place on the property. The City of Seattle building permit did not include

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<sup>1</sup> To the Hulings’ knowledge, BP never sought the Hulings’ permission to access the alley for installation of groundwater monitoring wells. BP must provide the Hulings with documentation concerning the basis on which BP undertook to perform remediation work on property it neither owns nor had permission of the owner to access.

servicing motor vehicles. The Hulings used the property strictly as a Chrysler/Jeep automobile showroom; there were no automotive repair facilities, such as hoists or lifts, and no automotive repair activities ever took place there. In fact, the Hulings' Chrysler/Jeep service department was located across the street at 4550 38th Ave SW, where the Link apartment is now located. When that apartment complex was constructed, that facility did not have any contamination. The statement in the memo is pure speculation unsupported by any facts.

- BP's consultant also claimed that the detection of chlorinated solvents in one sample suggested that a release unrelated to the Former BP Facility was the cause of vapor intrusion issues at the Clinic. At the time the Hulings redeveloped the Clinic property in 1989-90, the floor areas of the former YMCA building on the site were excavated and filled with clean material. Samples from that excavation did not identify the presence of any chlorinated solvents. Furthermore, the chlorinated solvent detection noted in the AEG sample was minor and isolated, particularly when compared to the levels of petroleum hydrocarbon related vapor issues.
- BP also criticized the AEG air sampling for not including analysis of fractionated APH ranges. However, in subsequent sampling, when AEG has included data for fractionated APH EC 9-12 aliphatics, the vapor levels in the storage room and employee break room for those constituents exceeded the MTCA Method B cleanup level for indoor air.

BP's 2020 Annual Groundwater Monitoring Report also noted that the SVE System on the Former BP Property did not operate for a period of eight to nine months in 2019-2020. The failure to operate for such an extended period of time suggests both a cause of continuing vapor intrusion issues at the Clinic Property and a lack of diligence on the part of BP to address the shortcomings in its remediation system.

It is long past time for BP to acknowledge the continued failure of its remediation system at the Former BP Property to manage and control vapor intrusions at the Clinic Property. While it is unfortunate that Ecology has not seen fit to enforce its MTCA regulations by ordering BP to control vapor intrusion at the Clinic Property (even in the midst of the COVID-19 pandemic when health care facilities are facing additional challenges), that does not mean BP can continue to ignore, delay, or deflect the serious human health risks posed by its failures to address the vapor intrusions at the Clinic Property. If Ecology is unwilling to act, the Hulings and Franciscan Health are not without remedies. Because BP is strictly liable under MTCA for releases from the Former BP Property, BP must immediately undertake mitigation of its vapor intrusions at the Clinic Property by, among other things, a) upgrading and operating the SVE System at the Former BP Property to encompass the Clinic Property, b) paying for replacement of the fan at the Clinic Property that is currently out of warranty, c) conducting periodic air

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sampling at the Clinic Property, and d) reimbursement of all costs incurred by the Hulings and Franciscan Health to investigate and mitigate the vapor intrusions from the Former BP Property.

Unless we hear from BP by October 29, 2021 that it will agree to the foregoing and make meaningful ongoing efforts to address vapor intrusion issues at the Clinic Property, the Hulings and Franciscan Health have authorized the filing of a complaint in King County Superior Court against BP for cost recovery and declaratory judgment, including attorney fees, under MTCA. Although it is unfortunate that litigation appears to be the only avenue left, the Hulings and Franciscan Health can no longer bear the costs and risks of BP's inaction.

We look forward to your prompt response.

Very truly yours,

LANE POWELL PC



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Counsel for Huling Family Properties,  
LLC

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Adam Troutwine  
Counsel for Virginia Mason Franciscan Health

cc: Derek Threet, Esq.

Michael Warfel

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