PKG | LAW

April 12, 2022

Via Email/Certified Mail, Return-Receipt Requested

John Mefford, Site Manager
Central Regional Office
1250 West Alder Street
Union Gap, WA 98903-0009

Derek Threet, AAG
Washington State Office of the Attorney General
800 Fifth Avenue, Suite 2000
Seattle, WA 98104

Re: Smith-Kem Ellensburg, Inc., Facility Site ID: 12832256, Cleanup Site ID: 4257

Dear Messrs. Mefford and Threet:

This letter is submitted on behalf of Smith-Kem Ellensburg, Inc. (Smith-Kem) for the purpose of initiating consent decree negotiations for the Smith-Kem Ellensburg Cleanup Site (Site) under Washington Administrative Code (WAC) 173-340-520(1)(a). A Remedial Investigation and Feasibility Study (RI/FS) for the Site has been completed and a draft Cleanup Action Plan (dCAP) is currently under review by the Department of Ecology (Ecology). We understand that the CAP may be finalized within a few months. The Site is well-characterized and the plan for remedial action is well developed. Consent decree negotiations are therefore appropriate.

We furnish the following information in accordance with WAC 173-340-520(1)(a). We also rely on more detailed information provided in documents previously submitted to Ecology pursuant to the Agreed Order (AO), including the RI/FS and dCAP. Please contact us if additional information is needed.

I. The Site

The Site is generally located at 200 S. Railroad Avenue, Ellensburg, Washington. It lies largely on a two-acre parcel, Kittitas County parcel number 226833. The Site is bounded to the north by vacant properties and to the south by various light-industrial and commercial businesses. To the east is the BNSF Railway Company rail yard and the rail spur that comes onto the eastern portion of the property. To the west of S. Railroad Avenue is a rural residential property zoned as "Residential Suburban." The Site includes a portion of the BNSF rail yard to the east and likely a small portion of commercial property to the south. The Site has been listed in Ecology's Integrated Site Information System under Facility ID number 12832256 and Cleanup Site ID number 4257.

II. Environmental Conditions, Releases, and Potential Impact of Releases

Current and historical activities at the Site—which include the handling, storage, or transfer of pesticides, fertilizer, and bulk petroleum fuels—resulted in contamination of soil and groundwater. Multiple Site investigations, which are summarized in the RI/FS, were conducted between 2007 and 2020. Those investigations were adequate to characterize the chemicals of concern (COCs) for the Site and the nature and extent of contamination.

The Site COCs are nitrate, nitrite, pesticides and herbicides—beta-BHC, aldrin, chlordane, alpha-chlordane, total dichlorodiphenyltrichloroethane (DDT), dieldrin, toxaphene, 2,4-Dichlorophenoxyacetic acid (2,4-D) 2-Mehtyl-4chlorophenoxyacetic acid (MCPA), atrazine, and simazine—diesel-range TPH, oil-range TPH, dioxins/furans, and lead.

A conceptual site model (CSM) of contaminant sources and migration pathways was included the dCAP. Potential sources of contamination include:

- Direct releases from equipment washing operations;
- Generation of by-products during burning operations;
- Direct releases from material storage, use, and handling;
- Leaks and spills from equipment, tanks, and machinery;
- Leaks and spills during fueling and fuel transfer operations at the rail spur or between above-ground storage tanks (ASTs) and trucks;
- Grading of the ground surface to maintain gravel surfaces; and
- Infiltration of precipitation and overland flow through contaminated soil, causing leaching into groundwater.

Where contamination at the Site exceeds cleanup or remediation levels, it may pose risks to human health and the environment. Risks to human health arise from the possibility of direct contact with contaminated soil or groundwater, consumption of drinking water, or indoor vapor inhalation of TPH. The RI/FS and dCAP further describe these risks as well as the preferred remedial actions which are designed to address them.

III. Summary of Historical Use

The following summarizes relevant historical uses of the property. A more detailed history of property ownership, development, and operations can be found in the RI/FS.

A. Shell Operations and Products

Shell Oil Products US (Shell) operated as a bulk fuel distributor at the Site from about 1923 to 1972. Historical property records show Shell received, stored, and distributed bulk fuel products at the property. During its operations, Shell had at least four primary ASTs ranging from 6,000 gallons to 25,000 gallons. These ASTs were used to store gasoline and diesel fuels arriving on railcars. A pumphouse, located south of the office building, pumped fuel from the railcars into the ASTs. Fuel

was also pumped through aboveground product lines into holes through the roof of the office building and out to trucks for filling. Trucks would also fill their tanks directly from the ASTs.

A 600-gallon underground storage tank (UST), located near the southwestern corner of the office building, was used for storage of white gas and, later, for zinc chelates until the tank was decommissioned and removed in the late 1970s.

The Kittitas County tax assessor records show Shell sold the property, including all buildings and land improvements, to the Smiths on November 30, 1972. Ad Gro, LLC acquired the property from the Smiths on August 5, 1996.

B. The Smiths and Smith-Kem

From 1948 to 1972, Shell leased a portion of the property to the Smiths to conduct an agricultural products business. The Smiths operated under the Shell Chemical Company brand, selling fertilizers, pesticides, and herbicides.

After Shell's operations ceased in the early 1970s, Smith-Kem repurposed some of the ASTs for the storage of fertilizer products. In the late 1980s, all remaining steel ASTs were replaced with ASTs made of fiberglass. The fertilizer operation expanded in the late 1970s to early 1980s, and to comply with Washington State Department of Agriculture and insurance requirements, a 70-foot-by-90-foot concrete secondary containment was constructed around the fertilizer tank farm located north of the current bulk fertilizer building (the AST containment area). During Smith-Kem operations on the property, up to six ASTs containing fertilizer products (of varying volumes), an 8,000-gallon diesel AST, and a 2,000-gallon gasoline AST were also located within the AST containment area. The diesel and gasoline ASTs were used for refueling equipment. These were installed after or concurrent with the AST containment area installation.

In 1988, the fertilizer business shifted from mostly "wet" application (i.e., anhydrous ammonia) to more "dry" application (i.e., pelletized/granular products). To accommodate the storage and mixing of fertilizers, a 5,000-square-foot building (bulk fertilizer building) was built in 1988 south of the AST containment area. Additionally, a designated paved wash area was constructed on the north side of the bulk fertilizer building to collect rinse water, which was stored in a polyethylene tank. In February 1995, Smith-Kem installed a 21,000-gallon anhydrous ammonia AST, which was used until approximately 2010 when it was removed and sold.

The Smiths' historical pesticide operations did not involve converting raw pesticide products into finished products ready for application, nor did it involve reformulating products. There are no known adjuvants, solvents, or carriers that were added to pesticides or fertilizer formulations during historical operations. Historically, pesticides were loaded onto trucks to the north of the office and storage building and to the south of the storage area, which is north of the AST containment area. In general, it is impossible to recreate an accurate product list of all herbicides and pesticides that could have been used and sold on the property given the duration and nature of the operations.

As noted, the Smiths sold the property to Ad Gro in 1996. However, Smith-Kem continued to operate on the property until 2015, when the McGregor Company (McGregor) acquired the business and assumed control of the property and several adjacent parcels.

C. Current Use

The property is leased by McGregor, which is a distributor and manufacturer of bulk crop nutrition and protection products. McGregor handles bulk liquid and dry fertilizer products, as well as handling a range of crop protection products.

Land use at the property is currently industrial and will remain industrial based on City of Ellensburg zoning and growth plans.

IV. Other Potentially Liable Persons

In addition to Smith-Kem, Ecology has identified Shell Oil Products US and Ad Gro, LLC as potentially liable persons (PLPs) for the Site. McGregor, as the current operator and tenant, is a PLP although they have not been formally identified as such by Ecology.

V. Proposed Remedial Action and Work Schedule

As described in greater detail in the RI/FS and dCAP, the preferred remedial action for the Site is a combination of excavation, installation of a geosynthetic clay liner (GCL), in situ groundwater treatment, and capping.

The key elements of the preferred remedial action, which will be applied to one or more of the identified areas of concern (AOCs) at the Site, include:

- Excavation and off-site disposal of soil in all six of the AOCs and one additional area where concentrations of certain COCs exceed applicable remediation or cleanup levels.

- Installation of a GCL and drainage in portions of two AOCs where soil remains in place at depth with concentrations greater than the leaching cleanup level.

- In situ groundwater treatment in one of the AOCs involving the injection of liquid-activated carbon to immobilize certain COCs in groundwater migrating from beneath the office and storage building.

- Capping contaminated soil where COC concentrations are greater than remediation levels to protect worker direct contact exposure, including certain contamination in one of the AOCs beneath the office and storage building and deeper contamination beneath the gravel cap in another AOC.

- Institutional controls prohibiting use of Site groundwater as drinking water and maintaining the cap.

- Monitored natural attenuation for groundwater recovery and implementation of a groundwater monitoring plan.

The work schedule will be as follows:

Implementation Step	Estimated Duration
Submit Public Review Draft CAP to Ecology	Within 45 calendar days of receipt of Ecology's Comments on the Agency Review Draft CAP
Public Comment Period for Draft CAP	30 days
Finalize and Submit Final CAP	Within 45 calendar days of receipt of Ecology's comments on the Public Review Draft CAP
Draft Pre-Design Investigation (PDI) Work Plan	Within 90 Days of effective date of CD or AO
Finalize PDI Work Plan	30 days after receipt of Ecology's final comments
Implement PDI	Initiate within 45 days of Ecology approval of final PDI Work Plan
Preparation of a Draft Engineering Design Report and PDI Results	Within 180 days of effective date of CD or AO
Finalize EDR and preparation of all applicable permits	90 days after receipt of Ecology final comments
Remedial Action Construction; assume duration of 3 to 4 months, summer months only	Initiate within 120 days of Ecology approval of the EDR or after permit acquisition and contractor notice to proceed
Submit Draft Remedial Action Completion Report (RACR) and LTCMP	180 days following construction completion
Submit Final RACR and LTCMP	45 days after receipt of Ecology's final comments
Implement Final LTCMP	In accordance with schedules established in the Final LTCMP; groundwater compliance monitoring to begin no later than 1 year after construction completion

VI. Special Scheduling Considerations

The property is currently owned by Ad Gro and has been leased to McGregor since 2015. McGregor uses the property to conduct its agricultural product distribution business, and they are responsible for all current operations at the facility. Thus, as a general matter, cleanup action implementation will need to be closely coordinated with McGregor (or with the current tenant if McGregor terminates their lease) to minimize disruption to their operations.

In addition, we understand that the City of Ellensburg has planned construction of its Anderson Road Sewer Extension Project for the Summer of 2022. Given that at least a portion of the planned sewer

line is near the property boundary of the Site, special scheduling considerations may be necessary depending on when the City conducts construction near the Site. If there are competing construction schedules, we will coordinate with the City of Ellensburg to reduce any conflicts.

VII. Date for Detailed Proposal

To the extent the CAP can meet the requirements of a detailed proposal, we anticipate that the CAP could be finalized in three to four months. The timing of the CAP is dependent, in part, on public comment and input from Ecology. We intend to work with Ecology to find a mutually agreeable date for the detailed proposal required under the WAC.

VIII. Public Participation Plan

On October 1, 2020, Ecology published a Public Participation Plan for this Site. We propose adhering to the existing plan, which purports to be applicable to all phases of remedial action.

IX. Expeditious Cleanup

As previously noted, an RI/FS has been completed for the Site and a dCAP has been developed and submitted for agency review. Based on this extensive technical work, Ecology can determine the nature, extent, and sources of contamination at the Site; identify liable persons; apply appropriate cleanup standards; assess whether the proposed remedial action will achieve standards within a reasonable time; and make other determinations regarding the adequacy or suitability of the selected remedial action and its compliance with regulatory requirements.

We believe that the proposed remedial action is consistent with cleanup standards, is achievable within a reasonable time, and will be protective and durable. Compliance monitoring will be implemented and contingency actions will be developed to ensure the effectiveness of the cleanup.

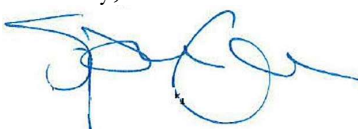
To date, Smith-Kem has worked cooperatively and productively with Ecology on this Site and has complied with the requirements of the AO. It is willing and able to complete the proposed cleanup in a timely fashion.

This Site meets the criteria and characteristics for Ecology oversight and justifies the dedication of resources from Ecology and the Attorney General to negotiate a consent decree. The consent decree is necessary for the cleanup to proceed due to property ownership and transactional issues. To fully address Site needs, it is necessary to execute a consent decree with a covenant not to sue and contribution protection. Both the public, the environment, and the signatories to the agreement will be beneficiaries of such a process.

Conclusion

As the foregoing information demonstrates, a consent decree will lead to a more expeditious cleanup. As such, Smith-Kem requests that consent decree negotiations be initiated for this Site.

Sincerely,



Spencer N. Gheen
Direct Line: (206) 257-5853
Email: spencer.gheen@pkglaw.com

SNG:ma

cc: Andy Erickson
Andy King
Kurt Peterson