



eCopy

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

PO Box 47600, Olympia, WA 98504-7600 • 360-407-6000

November 9, 2022

Charles Musang Lee
Airgas, Inc.
7200 Fun Center Way
Tukwila WA 98188

Re: Application Acceptance – Voluntary Cleanup Program

- **Site name:** Family Fun Center
- **Site address:** 7100-7300 Fun Center Way, Tukwila WA 98188
- **Facility/Site ID:** 18434384
- **Cleanup Site ID:** 385
- **VCP Project ID:** XN0027

Dear Charles Musang Lee:

The Department of Ecology (Ecology) accepted your application to the Expedited process of the Voluntary Cleanup Program (VCP) for the Family Fun Center site (Site). We applaud your initiative and welcome your interest in the VCP. This letter provides important information on how we will review your VCP cleanup project (project) at the Site.

Agreement

We completed and signed your Expedited VCP agreement for the project on November 9, 2022. This date is the effective date of the agreement. A copy of your signed agreement is enclosed.

Identification Numbers

We have assigned a unique name and number to your Site. This information is listed on the first page of your Expedited VCP agreement (enclosed). When contacting us, please reference this information to identify your project.

Communications

Unless otherwise requested, we will communicate directly with your project manager, Jeff Johnstone, as listed on your VCP application form. If you replace your project manager, or their contact information changes, please submit a completed [change of contact form](#).¹

The following cleanup project manager is our point of contact for your project:

Frank Winslow, LHG, Expedited VCP Cleanup Project Manager
Toxics Cleanup Program, Central Regional Office
Department of Ecology
1250 W Alder St
Union Gap, WA 98903-0009
(509) 454-7835
frank.winslow@ecy.wa.gov

Request for Written Opinion

In your application, you requested a written opinion on the sufficiency of your Remedial Investigation/Focused Feasibility Study Report dated October 18, 2022. We will review your submitted document and expect to provide a written response within approximately 90 calendar days.

Reporting Requirements

When requesting written opinions, you must comply with the following reporting requirements to avoid unnecessary delays in the VCP process:

- **Licensing.** You must submit documents containing geologic and hydrogeologic work and engineering work under the seal of an appropriately licensed professional, as required in chapters [18.220](#)² and [18.43](#)³ RCW, respectively.
- **Data Submittal.** You must submit environmental data to our [Environmental Information Management](#) (EIM) system.⁴ The [Toxics Cleanup Program Policy 840](#)⁵ describes data submittal requirements. Please visit the [EIM Submit Data webpage](#) for data submittal instructions.

¹ <http://www.ecy.wa.gov/programs/tcp/vcp/vcpmain.htm>

² <https://apps.leg.wa.gov/RCW/default.aspx?cite=18.220>

³ <https://apps.leg.wa.gov/RCW/default.aspx?cite=18.43>

⁴ <https://ecology.wa.gov/eim>

⁵ <https://fortress.wa.gov/ecy/publications/SummaryPages/1609050.html>

Initial Prepayment

We will send you a prepayment invoice within 10 calendar days after your acceptance into the Expedited VCP process. Under your Expedited VCP agreement, you must submit the initial prepayment of \$20,000 within 30 calendar days of the invoice date.

If we do not receive the initial prepayment within 30 calendar days, we will terminate your Expedited VCP agreement, and immediately stop work on your project. Further, you must still pay for both of the following:

- Any costs we incur to review your submitted report and other materials before agreement termination.
- The \$1,500 agreement close out fee.

We will invoice you for our costs. If we do not receive payment within 60 calendar days after the invoice date, we may assign the debt to a collection agency under chapter [19.16](#) RCW.⁶ You are responsible for paying all collection fees. Please refer to the [Voluntary Cleanup Program \(VCP\): Guidance for the Expedited VCP Process](#)⁷ for the schedule of fees and billing information.

Payment

We will send monthly invoices to the billing contact listed in your VCP application form. Our invoices include a summary of costs incurred, payments received, names of staff billing to the project, and the time spent on the project during the previous month. We will cost recover against the prepayment balance and ask for subsequent prepayments as needed. If the prepayment balance approaches or crosses the prepayment threshold, we will invoice you for the subsequent prepayment. Customers will have 30 calendar days from the invoice date to provide the subsequent prepayment.

If you replace your billing contact, or their contact information changes, you must submit a completed [change of contact form](#).

⁶ <https://apps.leg.wa.gov/RCW/default.aspx?Cite=19.16>

⁷ <https://fortress.wa.gov/ecy/publications/summarypages/2009053.html>

Charles Musang Lee

November 9, 2022

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Contact Information

We are committed to working with you to achieve the prompt and effective cleanup of your Site. If you have any questions, please contact Frank Winslow at frank.winslow@ecy.wa.gov or call (509) 424-0543.

Sincerely,



Nicholas M. Acklam
Section Manager Toxics
Cleanup Program

Enclosure: Copy of signed Expedited VCP Agreement

cc: Mark Havighorst, Farallon Consulting
 Ecology Fiscal Office – TCP Cost Recovery Coordinator

Enclosure

Copy of Signed Expedited VCP Agreement

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Voluntary Cleanup Program: Expedited Process Agreement

Washington State Department of Ecology
Toxics Cleanup Program

Instructions

Submit an electronic Agreement as part of your Expedited VCP application materials. Send the signed agreement (original) with any other physical materials to:

Sarah Wollwage, Expedited VCP Planner
Department of Ecology
PO Box 47600
Lacey, WA 98504-7600

To request ADA accommodation including materials in a format for the visually impaired, call Ecology at 360-407-6831 or visit <https://ecology.wa.gov/accessibility>. People with impaired hearing may call Washington Relay Service at 711. People with speech disability may call TTY at 877-833-6341.

For Ecology Use Only

RESET FORM

Facility/Site Name: Family Fun Center

Cleanup Site ID: 385

VCP Project #: XN0027

Agreement

This document constitutes an Agreement between the State of Washington Department of Ecology (Ecology) and Eastwinds Investments, Inc. (Customer) to provide informal site-specific technical consultations under the Voluntary Cleanup Program (VCP) Expedited process. This Agreement applies to the Site identified above and associated with the following address: 7200 Fun Center Way, Tukwila.

The purpose of this Agreement is to facilitate independent remedial action at the Site. Ecology is entering into this Agreement under the authority of the Model Toxics Control Act (MTCA), chapter 70.105D Revised Code of Washington (RCW), and its implementing regulations, chapter 173-340 Washington Administrative Code (WAC). If a term in this Agreement is defined in MTCA or chapter 173-340 WAC, then that definition governs. Both parties agree to the terms of this Agreement and any interpretive guidance published by Ecology applicable to the administration of the Expedited VCP process.

Services Provided by Ecology

Upon request, Ecology agrees to provide the Customer informal site-specific technical consultations on the independent remedial actions proposed for or performed at the Site consistent with WAC 173-340-515(5). Those consultations may include assistance in identifying applicable regulatory requirements and opinions on whether the remedial actions proposed for or conducted at the Site meet those requirements.

Ecology may use any appropriate resource to provide the Customer with the requested consultative services. Those resources may include, but are not limited to, those of Ecology and the Office of the Attorney General. However, Ecology may not use independent contractors, unless the Customer provides Ecology with prior written authorization.

In accordance with RCW 70.105D.180, any opinions provided by Ecology under this Agreement are advisory only and not binding on Ecology. Ecology, the state, and officers and employees of the state are immune from all liability. Furthermore, no cause of action of any nature may arise from any act or omission in providing, or failing to provide, informal advice and assistance under the Expedited VCP process.

Payment for Services by Customer

The Customer agrees to pay all costs incurred by Ecology in providing the informal site-specific technical consultations requested by the Customer. Those costs may include the costs incurred by attorneys or independent contractors used by Ecology to provide the requested consultative services. Ecology must publish, and the Customer agrees to pay, all applicable fees, cost recovery rates, and pre-payment amounts.

Initial Pre-Payment

Upon signing this Agreement, Ecology must provide the Customer with a written invoice for the amount of the refundable, initial prepayment published by Ecology. The Customer must pay the required amount by the due date, which is thirty (30) calendar days after the invoice date. If Ecology has not received the initial prepayment by the due date, Ecology may terminate this Agreement and assign the debt, including cost-recovery charges and the Agreement Close Out Fee, to a collection agency under chapter 19.16 RCW. The Customer must pay all collection agency fees.

Monthly Cost Recovery Process & Subsequent Prepayments

Ecology must charge incurred costs against the Project's prepayment balance. Ecology must provide the Customer a monthly itemized statement of costs and the prepayment balance by the tenth day of each month. The invoice must include a summary of prepayments received, costs incurred, identity of staff involved, and amount of time staff spent on the Project.

If the Project's prepayment balance approaches or falls below the published prepayment threshold, Ecology may submit a written invoice to the Customer requesting submittal of a subsequent prepayment published by Ecology. The Customer must pay the required amount by the due date, which is thirty (30) calendar days after the invoice date. If Ecology has not received a subsequent prepayment by the due date, Ecology must issue a written notice of prepayment delinquency and stop work on the Project. If Ecology has not received a subsequent prepayment within seven (7) calendar days of the written notice, Ecology may terminate this Agreement.

Close Out Fee

The Customer agrees to pay the applicable close out fee published by Ecology upon termination of this Agreement. Ecology must charge the applicable close out fee against the Project's prepayment balance. If the prepayment balance is insufficient to cover the applicable close out fee, Ecology will invoice the Customer for the remaining amount. The payment of the invoiced amount is due immediately. Ecology may withhold any requested opinions until the applicable close out fee and any other costs incurred by Ecology are paid. If Ecology has not received payment within sixty (60) calendar days after the invoice date, Ecology may assign the debt to a collection agency under chapter 19.16 RCW. The Customer is responsible for paying all collection fees.

Refunds

Within forty-five (45) calendar days of Agreement termination, Ecology must charge all costs and the applicable close out fee, and then refund greater than ten dollars (\$10) to the Customer.

Reservation of Rights / No Settlement

This Agreement does not constitute a settlement of liability to the state under MTCA. This Agreement also does not protect a liable person from contribution claims by third parties for matters addressed by this Agreement.

The state does not have the authority to settle with any person potentially liable under MTCA, except in accordance with RCW 70.105D.040(4). Ecology's signature on this Agreement in no way constitutes a covenant not to sue or a compromise of any Ecology rights or authority.

Ecology reserves all rights under MTCA, including the right to require additional or different remedial actions at the Site, should Ecology deem such actions necessary to protect human health or the environment, and to issue orders requiring such remedial actions. Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the release or threatened release of hazardous substances at the Site.

Effective Date, Modifications, and Severability

The effective date of this Agreement is the date on which the Toxics Cleanup Program's Section Manager or delegated representative signs this Agreement. This Agreement may be amended by mutual agreement of Ecology and the Customer. Amendments must be in writing and are effective when the Toxics Cleanup Program's Section Manager or delegated representative signs them. If any provision of this Agreement proves to be void, that provision does not invalidate any other provision of this Agreement.

Termination of Agreement

Either party may terminate this Agreement without cause by sending written notice to the other party. The effective date of termination is the date Ecology sends notice to the Customer or the date Ecology receives notice from the Customer, whichever occurs first. Ecology's issuance of a No Further Action opinion for the Site constitutes written notice of termination of this Agreement.

Under this Agreement, the Customer is responsible only for costs incurred by Ecology before the effective date of termination and the applicable close out fee. However, termination of this Agreement does not affect any right Ecology may have to recover its costs under MTCA or any other provision of law.

Representations and Signatures

The Customer must have an ownership interest in or operate the facility or have a contractual right to purchase, redevelop, or reuse the facility. The undersigned hereby certifies that they are fully authorized to enter into this Agreement and to execute and legally bind the Customer to comply with this Agreement.

Customer

Eastwind Investments, Inc.

Name of Customer

Signature

Charles Musang Lee

Printed Name of Signatory

Owner

Title of Signatory

Date

Sep 14. 2022

State of Washington Department of Ecology

HQ Cleanup Section

Ecology Toxics Cleanup Program Section

Signature

Nicholas M. Acklam

Toxics Cleanup Program Section Manager Printed Name

11/10/2022

Date