



March 27, 2023

Via Email and U.S. Mail

Priscilla Tomlinson
Washington Department of Ecology
NWRO Toxics Cleanup Program
P.O. Box 330316
Shoreline, WA 98133

Re: City of Issaquah/Eastside Fire and Rescue - Joint Response to Preliminary Determination of Liability for Release of PFAS at Four Locations in Issaquah.

Dear Ms. Tomlinson:

The City of Issaquah (the City) and Eastside Fire & Rescue (EFR) respond jointly to the Washington Department of Ecology's (Ecology) January 11, 2023, Preliminary Determination of Liability for Release of Hazardous Substances letters (collectively, PLP letters). Ecology's PLP letters propose to find the City and EFR each liable under the Model Toxics Control Act ("MTCA") based on past firefighting training exercises using aqueous film-forming foam (AFFF) at the following locations:

- Eastside Fire & Rescue ("EFR") Headquarters at 175 Newport Way Northwest;
- Rainier Trail southwest of the City of Issaquah Police Station;
- Issaquah Valley Elementary School & Dodd Fields Park at 555 Northwest Holly Street; and
- Memorial Field at 105 2nd Avenue Northeast (collectively, the Sites).

Ecology alleges that the City's and EFR's AFFF uses at the Sites released perfluorooctane sulfonate (PFOS) and additional per- and polyfluoroalkyl substances (PFAS), which were recently designated as hazardous substances requiring cleanup under MTCA as the scientific and regulatory communities have discovered that many PFAS including PFOS pose a significant risk to human health and the environment, despite past assurances from the manufacturers that AFFF was safe.

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The City and EFR have chosen to respond jointly to Ecology's PLP letters in the spirit of cooperation, and we plan to continue to work collaboratively throughout the process. Additionally, both the City and EFR look forward to continuing collaboration with Ecology to address the contamination at these Sites in a manner that efficiently and effectively uses public funds to protect human health and the environment, as all three are public entities dedicated to serving the public interest.

The City and EFR are willing to enter a joint Agreed Order, without admitting liability and while reserving all their rights, claims, and defenses, to develop and implement a Remedial Investigation and Feasibility Study ("RI/FS") and potentially certain mutually agreed upon interim actions at the four Sites, as appropriate, to promptly and efficiently address PFAS contamination associated with these four sites. The City and EFR take this proactive step to further their cooperation with Ecology with the goal of promptly investigating the extent of the PFAS releases, leading to the design of efficient remedial strategies that will protect human health and the environment; however, the City and EFR would like to discuss deferring preparation of the Draft Cleanup Action Plan (DCAP) until the RI/FS work is completed, and complete the DCAP work under a future amendment to the Agreed Order.

The City and EFR believe that the investigative and pilot study work conducted thus far will benefit many other PFAS release sites in Washington. We hope Ecology will continue to provide financial assistance through applicable programs, including but not limited to the Model Toxics Control Capital Account, to continue to advance common goals.

In addition to the general reservation of rights above, the City and EFR specifically reserve the right to pursue any and all claims against the AFFF manufacturers who indicated their products were safe to use and discharge to the environment.

Furthermore, the City and EFR, with the intent of maintaining an accurate factual record and without changing their commitments above, wish to provide certain comments and clarifications regarding aspects of Ecology's Preliminary Determination of Liability letter.

Comments and Clarifications

The January 11, 2023, letter contains four bullet points summarizing alleged evidence supporting Ecology's designation of the City and EFR as PLPs. Those bullet points are based on information contained in five documents, three reports from consultants, EFR's Articles of Incorporation, and a Summary Report of PFOS Investigation provided by EFR to Ecology. The City and EFR reserve the right to dispute any assertions raised in those documents, but highlight the following points at this time:

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- Proposed Finding of Liability #1 in both PLP Letters – the City and EFR did not each conduct training at all four Sites: Ecology alleges that the City and EFR conducted firefighting training exercises with AFFF at each of the four Sites. The City contends it never trained at EFR Headquarters. EFR currently operates EFR Headquarters and participated in training and equipment maintenance activities at that location. Further, previous investigation results indicate that PFAS releases to groundwater at the EFR Headquarters location are likely comingled with PFAS releases to groundwater at the Issaquah Valley Elementary School & Dodd Fields Park location. However, the firefighting training exercises that were conducted at the Memorial Field and Rainier Trail locations were performed by firefighting entities other than EFR and prior to EFR's formation in 1999 through an interlocal agreement between multiple agencies. Accordingly, Ecology's statement in Proposed Finding #1 that the City and EFR conducted training exercises at all four locations is not factually accurate.
- Proposed Finding of Liability #2 in the City's PLP Letter – the City did not conduct training exercises at each of the four Sites: Ecology alleges that the City conducted firefighting training exercises with AFFF at each of the four Sites prior to EFR's formation. The City contends it never trained at EFR Headquarters.

Since learning of potential contamination in 2016, the City and EFR have been, and remain, committed to working cooperatively with Ecology to characterize and remediate this PFAS contamination in the Lower Issaquah Valley. We hope to continue this partnership throughout the cleanup process, starting with negotiating a joint Agreed Order with Ecology for the RI/FS to set expectations for deliverables in the next stage of technical characterization and investigation. Please keep the City and EFR apprised as to how we can be most efficient and helpful throughout this process.

Sincerely,



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Enclosures

cc: Ivy Anderson, Office of the Attorney General

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William Joyce, Hillis, Clark, Martin & Peterson P.S.