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STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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August 3, 2023

Ann C. Schnitzer  
SFI Capital LLC/SFI Holding LLC  
11221 Pacific Highway SW  
Lakewood, WA 98499  
[acs@rainiercapitalgroup.com](mailto:acs@rainiercapitalgroup.com)

Re: **Ecology Request for Access at Vacant NE Fourth Plain Boulevard Property, Vancouver, Washington for the Environmental Remedial Investigation and Feasibility Study of the Milton's Dry Cleaners Site**

- **Site Name:** Milton's Dry Cleaners
- **Site Address:** 6721 E 4<sup>th</sup> Plain Blvd, Vancouver, Clark County, WA 98661
- **Facility Site ID:** 19779
- **Cleanup/Site ID:** 1834
- **Agreed Order:** DE4239 07/4-TC

Dear Ann Schnitzer:

The Washington State Department of Ecology (Ecology) is hereby requesting renewed access to the vacant property on NE Fourth Plain Boulevard, abbreviated legal description #7 J Jamison DLC .63A, Clark County Property Identification No. 161867000 (subject property), that is owned by SFI Holding LLC (SFI). Per Clark County Assessor records, SFI is the owner of the subject property. The purpose of access is to conduct remedial actions to address threats to human health and the environment caused by releases of hazardous substances from the former Milton's Dry Cleaners facility. Specifically, the actions requiring property access include collecting groundwater samples from the existing monitoring well for laboratory analysis.

**Ecology is requesting that SFI enter into an access agreement for the subject property with Patrick Milton and Geosyntec Consultants, Inc., for the purpose of collecting groundwater samples for laboratory analysis.** Ecology understands that an access agreement had previously been in place, but that it expired on December 31, 2021. Ecology anticipates that the collection of groundwater samples will be performed by environmental consultants from Geosyntec Consultants, Inc., and their subcontractors.

Ecology would not make this request unless we believed that protection of the public's and environment's health required such an action. Furthermore, Ecology has tried to allow the negotiations for property access to occur independently and allow time for representatives of Pat Milton and Geosyntec Consultants, Inc. to negotiate an extension of the expired access agreement with you that would best meet the interests of the parties and the affected property owner. **Since it appears that a resolution has not been reached in the negotiation of the extension of the expired access agreement, or a new agreement, Ecology must now be involved in the negotiations.**

### [Ecology's Authority to Require Access](#)

Ecology's authority for requiring access for site remedial actions on private property derives from the State's Model Toxics Control Act (MTCA) under chapter [70A.305](#)<sup>1</sup> of the Revised Code of Washington (RCW). MTCA governs the cleanup of sites contaminated with hazardous waste in Washington State. When contamination has come to be located at a property or a facility, the owner or operator of the facility is liable under MTCA. See RCW 70A.305.040(1)(a).<sup>2</sup> However, the term "owner or operator" under MTCA does not include persons in control of a property where hazardous substances have come to be located "solely as a result of migration of the hazardous substance . . . through the groundwater from a source off the property if:"

(C) The person does not engage in activities that . . . result in exposure of humans or the environment to the contaminated groundwater that has migrated onto the property; [and]

(D) **If requested, the person allows the department [Ecology], potentially liable persons who are subject to an . . . agreed order . . . , and the . . . contractors of each, access to the property to conduct remedial actions required by the department.** The person may attempt to negotiate an access agreement before allowing access; . . .

RCW [70A.305.020](#)<sup>3</sup>(22)(b)(iv)(C) and (D) (emphasis added). The above citation is informally referred to as the "plume clause."

Ecology has named Lila Rears and Pat Milton, the former property owner and former operator, respectively, of Milton's Dry Cleaners, as potentially liable persons under MTCA. Lila Rears and Pat Milton are parties to an Ecology agreed order that requires them to perform remedial

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<sup>1</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.305>

<sup>2</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.305.020>

<sup>3</sup> <https://apps.leg.wa.gov/rcw/default.aspx?cite=70A.305.020>

investigation and feasibility study at the Site. To allow this investigation to take place, they require access to your property. As defined in MTCA, a facility or site includes any area where a hazardous substance has been deposited or come to be located.<sup>4</sup> Your property is located within the Milton's Dry Cleaners Site.

## [Background Information](#)

### Remedial Investigation

On February 6, 2008, Ecology, Lila Rears, and Pat Milton entered into an Agreed Order (No. DE 4239 07/4-TC-S) for the Milton's Dry Cleaners Site. As noted above, the purpose of this Agreed Order is to complete a remedial investigation of the subsurface contamination associated with releases of hazardous substances from the Milton's Dry Cleaners Site. Pursuant to that Agreed Order, Lila Rear's and Pat Milton's environmental consultants are in the process of conducting a remedial investigation at the Site. One objective of the remedial investigation is to characterize the nature and extent of groundwater contamination associated at the Site. Implementation of the Treatability Study Work Plan is a new activity that will begin in late summer 2023. We will look at the data from the treatability study to help decide the best cleanup methods to use for the entire Site. As part of the remedial investigation for the Site, quarterly samples need to be taken from the well designated as MW-37bs, which is located on property owned by SFI. Ecology considers the well on your property to be important for monitoring groundwater throughout this investigation.

### Previous Access Agreement Expiration and Negotiations

Ecology appreciates your willingness to previously enter into an access agreement for the environmental investigation. However, this access agreement expired on December 31, 2021. One of the conditions in this agreement was that if Ecology required continued sampling of the well installed on the subject property "then the parties will work together in good faith to extend the Termination Date." **Ecology has questions whether SFI has worked in good faith to extend the access agreement. This uncertainty is based on the following facts:**

1. Rather than simply extending the date of the access agreement, SFI denied Geosyntec's request to sample the well on March 17, 2022 and informed Geosyntec on April 13, 2022 that SFI wants to have "further discussions" before allowing further access.
2. On May 18, 2022, SFI sent an email to Milton's attorney pointing out that the access agreement has expired and that this "presents an opportunity to revisit the need for Geosyntec to continue collecting groundwater on SFI's property." SFI also made it clear in the email that they would like the well to be decommissioned in June because they see "no apparent reason to continue collecting or analyzing groundwater samples" from

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<sup>4</sup> WAC 173-340-200.

the well. SFI requested that Milton's attorney "push Ecology for a decision" regarding the well.

3. Geosyntec forwarded the above email to Ecology on May 20, 2022, and Ecology responded to Geosyntec on May 24, 2022, that **MW-37bs needs to stay on a quarterly sampling schedule**. Ecology's email was forwarded to SFI by Milton's attorney on May 25, 2022. On May 31, 2022, SFI acknowledged receipt and states that they will respond after conferring with client.
4. SFI did not respond until October 2, 2022, after they were prompted by Milton's attorney. Instead of extending the date of the current agreement, SFI responded with a proposed amendment to the access agreement premised on reimbursement of "reasonable attorney fees and consulting costs it incurs associated with access" – the proposed amount was \$12,000. Milton's attorney responded on October 7, 2022 that the amendment is not acceptable because of its structure and the excessive demand for reimbursement.
5. On February 13, 2023, Milton's attorney sent an email to SFI that offered to pay SFI \$4,000 in past costs (with no mention of future costs) for an extension through 2025. SFI's attorney acknowledged receipt of this email on February 14, 2023.
6. SFI and Milton's attorneys had a call on May 17, 2023, to discuss adding reimbursement of future expenses to the new access agreement.
7. After being prompted by Milton's attorney on May 30 and June 8, and Ecology on June 15, SFI responded on June 21 with a redline access agreement. Under this new version, SFI is requiring Milton to reimburse past costs of \$17,000 and future costs of up to \$10,000.

Ecology views the latest SFI demand for \$27,000 in past and current costs as excessive and unnecessary for allowing access for groundwater monitoring of a single well on an undeveloped lot. **It is Ecology's opinion that SFI has not been cooperative with expediting access but instead demonstrated a pattern of delaying in responding and has chosen to make increasing demands to leverage access.**

### [Ecology's Request to You](#)

Under MTCA, Chapter 70A.305 RCW, Ecology may identify persons that it finds are liable for the release of hazardous substances at a site. Today's letter is not a "Notice of Potential Liability" to SFI for the Milton's Dry Cleaners Site. Rather, it is an opportunity for you to meet Ecology's investigation needs by engaging in good faith access negotiations to allow for the necessary monitoring of contaminated groundwater at the Site. Refusal by SFI to allow access will jeopardize its ability to avail itself to liability protection under the "plume clause" cited above.

**Within fourteen (14) days of receipt of this letter, please notify Ecology in writing (at my address and/or via email) of your willingness to negotiate the current proposed access agreement in good faith.**

If you have any questions about this letter, please feel free to contact me at (360) 890-0059 or [steve.teel@ecy.wa.gov](mailto:steve.teel@ecy.wa.gov). Alternatively, if you are represented by an attorney, you may have your attorney contact Assistant Attorney General John Level of the Attorney General's Office at (360) 586-6753. Ecology is also willing to meet with you, or your representatives, and discuss the nature of the sampling and other planned work, or other issues associated with our request. If you are not the current owner of this property, we apologize for sending this request. If this is the case, please contact Ecology as soon as possible and notify us that you are not the appropriate party.

Sincerely,



Steve Teel, LHG  
Cleanup Project Manager/Hydrogeologist  
Toxics Cleanup Program  
Southwest Regional Office

By certified Mail: 9489 0090 0027 6339 2998 07

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Ecology Site File