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Confidential Settlement Discussion Correspondence

August 7, 2023

Mr. Nicholas Acklam
Section Manager
Toxics Cleanup Program, Eastern Regional Office
Washington Department of Ecology
Email: Nicholas.acklam@ecy.wa.gov

RE: Spokane International Airport Initial Response to the “Early Notice of Release of Hazardous Substances and Preliminary Determination of Liability for Release”

Dear Mr. Acklam:

I am the special environmental counsel to the Spokane International Airport (SIA or Airport). SIA disputes that the Washington Department of Ecology (Ecology) can confirm that any release of hazardous substances, as set forth in your July 6, 2023 correspondence, can be proved based on the information that you set forth in that correspondence. As a result, SIA requests that you retract your July 6 correspondence and remove the March 30, 2023 “toxics” listing of the Airport on the State’s website and the Spokane International Airport PFAS site listing.¹ In the alternative, the Airport welcomes a meeting with you related to the U.S. Military’s and the Airport’s mandated use of aqueous film forming foam (AFFF).

As explained further below, the Airport asserts the following problems or limitations associated with your findings in your July 6 correspondence, including: the source of the information is not known or its reliability cannot be proven; a week prior to your finding SIA had submitted a request for public records pursuant to chapter 42.56 RCW for related information that will not be answered by Ecology until late August at the earliest; nobody from Ecology has ever contacted the Airport about any past information collection efforts or to confirm any information in Ecology’s possession; the data you relied upon are incomplete; and Ecology is not in a position to “confirm” anything without more effort than what has occurred to date.

¹ <https://apps.ecology.wa.gov/cleanupsearch/site/16774> ;
<https://apps.ecology.wa.gov/facilitysite/FacilitySite/FacilitySiteReport/6332493>

SIA holds an operating certificate issued by the Federal Aviation Administration as a Class I commercial service airport under 14 CFR Part 139. Under these regulations the federal government mandated that Part 139 airports across the country spray AFFF containing PFAS on the ground during training exercises, to calibrate their firefighting equipment, during FAA inspections, and obviously during emergencies. Neither the federal government nor the manufacturers ever warned the airport industry, let alone SIA, that performing those functions for the past 40+ years could possibly (but not in all cases) cause significant contamination risk to the environment, airport employees, and others. The same has been true for the U.S. Military, as has been demonstrated and proven at Fairchild Air Force Base, upgradient from SIA. The wide-spread usage and disposal of PFAS-containing apart from but nearby airports also complicates source identification.

Your July 6 correspondence does not mention the source of the information other than it was received through the Environmental Report Tracking System “complaint.” The website merely references a “third party” that obtained information through a public records request. You have not provided any foundation or information that would support the reliability of this third-party complaint or its completeness. In your correspondence, you identify three older (2017-2019) reports that contain some monitoring results for PFAS. The website indicates that Ecology conducted an initial investigation to confirm that SIA had released hazardous substances to the environment.

During that “investigation,” nobody from Ecology ever contacted the Airport to confirm any data, whether additional data existed, the purpose for the monitoring activities, or any relevant and important information that the Airport ought to be able to provide before Ecology arbitrarily lists the Airport on its website. Furthermore, the investigation report identifies no inspection was conducted (Attachment A). The “investigation” merely restates that monitoring was conducted that found PFAS. Whose PFAS? Ecology jumps to the conclusion that it was the Airport’s PFAS, despite the nearby location of Fairchild AFB, the military use of PFAS at or near the Airport, other known or suspected sources of PFAS immediately adjacent to the Airport, etc. That is not an “investigation” but rather an arbitrary and capricious conclusion without appropriate foundation or evidence.

As you know, Ecology operates under a “Quality Management Plan” related to data quality. The most recent plan is from 2020.² That plan states that:

The ultimate purpose of the Quality Management Plan is to ensure, to the extent possible, that data generated by Ecology *or submitted to Ecology* are of known quality and usable for intended purposes. To this end, the Ecology quality system touches many aspects of agency operations including:

- Project planning (QAPPs).
- Document development (SOPs and reports), document control, and document standardization.
- Internal laboratory operations.
- Laboratory accreditation.

² <https://apps.ecology.wa.gov/publications/documents/2003014.pdf>

- *Data management and independent data validation.*
- Field sampling and analytical procedures, field auditing, and field proficiency.
- Other activities as appropriate.

Ecology's "investigation" does not seem to have followed its Quality Management Plan principles. Further, in addition to the public records request that SIA submitted to Ecology before your letter was received, it has identified additional data that help to provide insight that should have been reviewed by Ecology during its "investigation" and before it "confirmed" that the Airport released hazardous substances. Once it receives responsive information from Ecology – currently estimated to be available perhaps by the end of this month – SIA would welcome a meeting with Ecology to discuss its PFAS data and how to move forward with Ecology in a collaborative approach, not unnecessary threats of enforcement and litigation. The Airport can explain the available data, the purpose for their collection, and what we believe the results tell us. The Airport is conducting additional activities to better understand the impacts that could have resulted from the federal government's (and State's) mandates related to AFFF activities. SIA believes that Ecology owes the Airport such an opportunity to meet before it is listed on Ecology's website or formally regulated in ways that are inconsistent with or counter to how commercial airports operate and provide critical public services.

In addition to Ecology deviating from its own prescribed process, it is important to point out further inconsistencies in which and how Ecology determined its findings:

The investigation report dated May 12, 2023, identifies that an "Early Notice Letter need(s) to be sent" (Attachment A). The first time the Airport heard that an investigation for PFAS was being conducted was reading it in the Spokesman Review on June 5, 2023 (Attachment B).

The second correspondence indicating "known PFAS contamination" on Airport property was through a land segregation (Business Park Binding Site Plan) review. A letter dated June 29, 2023 (Attachment C) was addressed to an Assistance Planner at the City of Spokane and highlighted a Toxics Cleanup Program. The letter contains multiple instances in which Ecology engages in pure speculation without any facts to support such actions. We believe that these reckless statements by Ecology have removed all economically beneficial use of this property and may constitute a taking of the subject property that the Airport was seeking to sell.

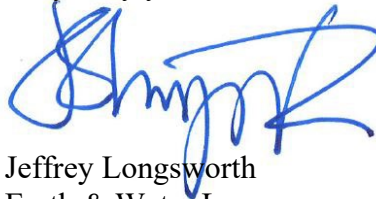
The third correspondence indicating "significant PFAS contamination" was through another land segregation (McFarlane Binding Site Plan) review. A letter dated July 6, 2023 (Attachment D) was address to the Director of Planning and Engineering at the Airport and states "If contamination is found on the subject parcel, current and future owners may be liable for remedial actions to address the associated contamination. Should field screening or sampling data indicate a release has occurred or is present at the subject parcel it must be reported to Ecology in accordance with WAC 173-340-300." There is absolutely no evidence that Ecology has from the Airport that its land is contaminated by PFAS at this location or even by what source such contamination could originate even if it is found to be present and this also constitutes a potential taking of another parcel of land that the Airport is actively trying to sell.

The Ecology's website identifies an individual page for the "Spokane International Airport PFAS" regarding "Groundwater Contamination Confirmed...". Under that web link, and as of August 7, 2023, Ecology has posted "relevant" technical reports associated with the Ecology's findings. One of the documents Ecology references is a report titled "Spokane International Airport PFAS – 2023 Land Treatment Site Management Plan (Attachment E)". Please note that this is NOT the correct title to the report and is NOT associated to PFAS. Hopefully this was made in error and not a manipulation of a document by Ecology to fit its current predetermined and aggressively punitive narrative and approach regarding the Airport. The correct title of the report is "Spokane International Airport - 2023 Land Treatment Site Management" (Attachment F) and is associated to reporting required under the Ecology's Permit By Rule (Permit No. ST0045499) for spent aircraft deicing fluids collected from airlines and cargo operators when applied during freezing or near freezing conditions which is required by the Federal Aviation Administration.

In closing, the Airport takes its role in providing public services and its responsibilities to the local community very seriously. Unnecessary and unfounded negative actions against it can damage its reputation and community role as well as harm the Airport economically. Ecology's "investigation" and arbitrary conclusions and public statements and other public actions taken to date in this case also have negative impacts that could have been avoided and should be avoided from this point forward. The Airport would like to reverse that course and enter into a more collaborative relationship with Ecology that can serve both parties' interests and obligations. SIA respectfully requests that Ecology remove the SIA-related PFAS information from its website until the parties have had a chance to meet face-to-face as well as to refrain from making any further damaging public statements either to the media or as well as to other public and private parties engaged in the subdivision and sale of Airport property.

If you have any questions, please contact the undersigned.

Very truly yours,



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Attachments:

- A – Ecology Investigation Report, dated May 12, 2023
- B – Spokesman Review Newspaper Article, dated June 5, 2023
- C – Letter from Ecology to the City of Spokane, dated June 29, 2023
- D – Letter from Ecology to the Airport, dated July 6, 2023
- E – Ecology Website, as of August 7, 2023
- F – Spokane International Airport – 2023 Land Treatment Site Management Plan

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