



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47600 • Olympia, Washington 98504-7600 • 360-407-6300

September 7, 2023

Leonard Berman
P.O. Box 776
3126 Hill Street
Everett, WA 98201
lberman@everettsteel.com

Re: Technical Assistance for the following contaminated site

Site Name: Everett Steel Scrapyard
Site Address: 33rd St 34th Street and BNRR ROW, Everett, WA 98201
Facility Site ID: 71351
Cleanup Site ID: 3561
VCP Project ID: NW3190

Dear Leonard Berman:

The Washington State Department of Ecology (Ecology) received your request for technical consultation pursuant to WAC 173-340-515(5) on your Cleanup Action Completion Report for the Everett Steel Scrapyard (Site) under the Voluntary Cleanup Program (VCP).¹ On July 28, 2023, Ecology requested additional documents from you. You responded the same day, submitting the requested documents to Ecology. This letter provides our opinion regarding the sufficiency of your independent cleanup. We are providing this opinion under the authority of the [Model Toxics Control Act \(MTCA\)](#),² [chapter 70A.305](#) Revised Code of Washington (RCW).³

Issue Presented and Opinion

Ecology consulted with Brett Feldhahn, Region 10 PCB Coordinator, Environmental Protection Agency (EPA) since polychlorinated biphenyls (PCBs) are regulated both by Federal and State authorities. The Federal authorities are enforced by the EPA under the Toxic Substances Control Act (TSCA) and that enforcement authority cannot be delegated to a State.

¹ <https://ecology.wa.gov/Spills-Cleanup/Contamination-cleanup/Voluntary-Cleanup-Program>

² <https://apps.ecology.wa.gov/publications/SummaryPages/9406.html>

³ <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.305>

Brett Feldhahn, provided the following information and requested that it be shared with the facility:

- It appeared that any improper landfill disposal of PCB remediation waste happened too long ago for EPA to further investigate.
- The recent PCB remediation waste disposal at the Roosevelt Regional Landfill was okay provided that the landfill was notified of the PCB concentrations prior to disposal. Bulk (soil) PCB remediation wastes with a PCB concentration of <50 parts per million (ppm) may be disposed of in a Subtitle D landfill provided the notification requirements of 40 CFR 761.61(a)(5)(i)(B)(2)(iv) are met.
- The bulk remediation waste cleanup level for unrestricted use under TSCA is 1 ppm PCBs without further conditions for most sites. If the facility leaves waste in place >1 ppm PCBs, then they may have remaining obligations under TSCA. Leaving waste in place that exceeds the cleanup levels at 40 CFR 761.61(a)(4)⁴ without EPA approval constitutes an unauthorized disposal and a potential violation of TSCA.
- The EPA does not agree that it was reasonable for the facility to state that the PCB concentrations were below regulatory levels. The question specifically references 40 CFR Part 761 (see 40 CFR 761.3 “PCB remediation waste”)⁵, not the State’s MTCA Method A-Industrial cleanup level.
- It is the owner’s/operator’s responsibility to contact the EPA if there are potential PCB concerns at their property.

Next Steps

- Submit to Ecology evidence that the landfill was notified of the PCB concentrations prior to disposal. The documents you submitted to Ecology on July 28, 2023, satisfy this request.
- Contact Brett Feldhahn 206-553-2899 or feldhahn.brett@epa.gov to determine if there are remaining obligations under TSCA or obtain EPA approval for leaving waste in place that exceeds the cleanup levels at 40 CFR 761.61(a)(4). Provide the approval or obligations to Ecology.

⁴ [https://www.ecfr.gov/current/title-40/chapter-I/subchapter-R/part-761/subpart-D#p-761.61\(a\)\(4\)](https://www.ecfr.gov/current/title-40/chapter-I/subchapter-R/part-761/subpart-D#p-761.61(a)(4))

⁵ [https://www.ecfr.gov/current/title-40/chapter-I/subchapter-R/part-761/subpart-A/section-761.3#p-761.3\(PCB%20remediation%20waste\)](https://www.ecfr.gov/current/title-40/chapter-I/subchapter-R/part-761/subpart-A/section-761.3#p-761.3(PCB%20remediation%20waste))

Limitations of the Opinion

Opinion does not settle liability with the state

Liable persons are strictly liable, jointly and severally, for all remedial action costs and for all natural resource damages resulting from the release or releases of hazardous substances at the Site. This opinion does not:

- Resolve or alter a person's liability to the state.
- Protect liable persons from contribution claims by third parties.

To settle liability with the state and obtain protection from contribution claims, a person must enter into a consent decree with Ecology under RCW 70A.305.040(4).

Opinion does not constitute a determination of substantial equivalence

To recover remedial action costs from other liable persons under MTCA, one must demonstrate that the action is the substantial equivalent of an Ecology-conducted or Ecology-supervised action. This opinion does not determine whether the action you proposed will be substantially equivalent. Courts make that determination. See RCW 70A.305.080 and WAC 173-340-545.

Opinion is limited to proposed cleanup

This letter does not provide an opinion on whether further remedial action will actually be necessary at the Site upon completion of your proposed cleanup. To obtain such an opinion, you must submit a report to Ecology upon completion of your cleanup and request an opinion under the VCP.

State is immune from liability

The state, Ecology, and its officers and employees are immune from all liability, and no cause of action of any nature may arise from any act or omission in providing this opinion. See RCW 70A.305.170.

Contact Information

Thank you for choosing to clean up the Site under the VCP. As you conduct your cleanup, please do not hesitate to request additional services. We look forward to working with you.

For more information about the VCP and the cleanup process, please visit our webpage⁶. If you have any questions about this opinion, please contact me at christopher.maurer@ecy.wa.gov or 360-407-7223.

Sincerely,



Christopher Maurer, P.E
Toxics Cleanup Program
Headquarters Section

cc by email: Janet Knox, Mott McDaniel, janet.knox@mottmac.com
Brett Feldhahn, EPA Region 10, feldhahn.brett@epa.gov
Amy Hargrove, Ecology, amy.hargrove@ecy.wa.gov
Ecology Site File

⁶ <https://www.ecy.wa.gov/vcp>