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STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Southwest Region Office

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October 5, 2023

City of Tacoma Department of Public Works
Josh Diekmann, P.E.
Interim Public Works Director
Tacoma Municipal Building
747 Market St, Room 408
Tacoma, WA 98402

Re: Final Determination of Liability for Release of Hazardous Substances at the following Contaminated Site:

- **Site Name:** WA UW Tacoma Branch
- **Site Address:** 1900 Commerce, Tacoma, Pierce County, WA 98402
- **Facility/Site ID:** 1325
- **Cleanup Site ID:** 141

Dear Josh Diekmann:

On May 17, 2023, the Department of Ecology (Ecology) sent you written notice of our preliminary determination that the City of Tacoma is a potentially liable person (PLP) for a release of hazardous substances at the WA UW Tacoma Branch facility (Site).

On June 16, 2023, Ecology received your request to extend the response date to July 7, 2023, which was approved on June 21, 2023. Ecology received your written notice disputing your status as a PLP on July 7, 2023.

Your letter disputes Ecology's preliminary determination based on the following set of arguments: that the City sewer acts as a groundwater sink and lack of vapors within the sewer manholes indicates that the sewer is not a source of the contamination at the Site; and that the City is not liable for any passive migration of TCE contaminated groundwater via the storm sewer under South 19th Street under MTCA's "plume clause".

City sewers acting as a groundwater sink. Your letter notes that the sanitary sewer is not pressurized and is below the top of the water table and would thus act as a groundwater drain.

Also noted were the lack of vapors within the sewer and higher vapor concentrations outside the sewer that the city suggests is indicative of contamination is from upgradient sources.

The investigations conducted by UW-T's environmental consultant Geoengineers have identified numerous cracks of varying sizes in the sanitary sewer along Tacoma Avenue S. Geoengineers has noted the presence of chloroform in the groundwater collected from samples near the sanitary sewer which is an indicator for sanitary sewer leaks from chlorinated water. Borings advanced by GeoEngineers along the sewer indicate that PCE and TCE impacted soil detections begin immediately below the sewer (approximately 8 ft below ground surface [bgs]) and continue down through the contact silt and into the Qva deposits. Highest concentrations of TCE in soil were detected coincident with holes in the sanitary sewer system. There are also detections of impacted soils associated with holes in the sanitary sewer in locations where there are no potential upgradient sources (e.g., between SA 4/5 and SA 7).

Groundwater Plume Defense

Your letter claims that the City is not liable for any passive migration of TCE contaminated groundwater via the stormwater system along South 19th Street due to the City being exempt from the definition of "owner or operator" under MTCA as the contamination came to be located solely because of migration of the hazardous substance to the real property through the groundwater from a source off the property and not from the City's operation of the sewer system. RCW 70A.305D.020(22)(b)(iv).

Ecology continues to find the City to be a potentially liable person based on ownership and operation of the sanitary sewer system (current and past) which transported and released contaminated groundwater. As noted above, contamination was released from the City's system due to cracks and leaks – this was not merely passive migration of contaminated groundwater. Also, there is "no minimum level of hazardous substance . . . required to trigger MTCA liability." *Seattle City Light v. Dep't of Transportation*, 98 Wn.App. 165, 172 (1999) (internal quotation marks omitted). For the City to show that it is not liable under MTCA based on its ownership and operation of the sanitary sewer system, it would need evidence that the system was not responsible for *any* release of contamination.

Regarding the groundwater plume defense, for the City to not be considered a "owner or operator" under MTCA using the plume clause, substantial more information is needed than was included in your letter. As noted in MTCA, the person asserting the plume clause defense must make the demonstration – including that the hazardous substance has *not* been placed, managed, or otherwise handled in a manner likely to cause or contribute to a release, that the City did not cause or contribute to the release of the hazardous substance, and that the City did not engage in activities that result in exposure of humans or the environment to the

contaminated groundwater that migrated onto the property. Given information known to Ecology that the City's sewer system has cracks and leaks, and that credible evidence shows contaminated soil associated with holes in the sanitary sewer system, it is evident that the City *has* contributed to a release of contaminated groundwater – that it did not passively migrate but was directed and released by the City's system (intentional or not).

It should also be noted that the groundwater plume defense will not apply if the person fails to cooperate with Ecology or a PLP under an order when the agency/PLP is seeking access to property to conduct remedial actions and investigations. See RCW 70A.305.020(22)(iv)(D).

Based on available information, Ecology finds that credible evidence exists that the City of Tacoma is liable for a release of hazardous substances at the Site. Based on this finding, Ecology has determined that the City of Tacoma is a PLP regarding the Site.

The purpose of MTCA is to identify, investigate, and cleanup facilities where hazardous substances have been released. Liability for environmental contamination under MTCA is strict, joint and several (RCW 70A.305.040(2)). Ecology ensures that contaminated sites are investigated and cleaned up to the standards set forth in the MTCA statute and regulations.

Failure to cooperate with Ecology or comply with MTCA in this matter will result in Ecology employing enforcement tools as it deems necessary and appropriate. This includes, but is not limited to, the issuance of an administrative order. Failure to comply with such an order may result in a fine of up to \$25,000 per day and liability for up to three times the costs incurred by the state (RCW 70A.305.050(1)).

Your rights and responsibilities as a PLP are outlined in chapter 70A.305 RCW, and chapters 173-340 and 173-204 of the Washington Administrative Code (WAC). Ecology's cleanup project manager for the Site is Thomas Middleton.

Currently remedial investigation and feasibility study work is being done at the Site by the University of Washington-Tacoma (UW-Tacoma) under an agreed order. Ecology is requesting that City of Tacoma work with UW-Tacoma and the three other named potentially liable parties to jointly develop a feasibility study and draft cleanup action plan based on the remedial investigation work that has been conducted at the Site.

If you have any questions regarding this notice, please contact Thomas Middleton at (360) 407-7263 or thomas.middleton@ecy.wa.gov.

Sincerely,

A handwritten signature in blue ink that reads "Rebecca S. Lawson". The signature is written in a cursive style.

Rebecca S. Lawson, P.E., LHG
Section Manager
Toxics Cleanup Program
Southwest Region Office

RSL:at

By certified mail: 9489 0090 0027 6383 2220 66

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Ecology Site File