



February 7, 2024

Via E-Mail

Mr. Nick Acklam
VCP Unit Manager
Department of Ecology
Toxics Cleanup Program, Southwest Regional Office
PO Box 47775
Olympia, WA 98504-7775
nick.acklam@ecy.wa.gov.

RE: Grant County Ephrata Landfill

Dear Mr. Acklam:

Thank you for agreeing to meet with the City of Ephrata today to discuss funding to complete the remediation needed at the Grant County Ephrata Landfill Site. As you know, the funding sources for the cleanup have been three public agencies – the State of Washington, Grant County and the City. None of the industrial and private parties who disposed of the hundreds of barrels of toxic waste brought to the site in the 1970s have been identified as a Potentially Liable Party (“PLP”). The Ephrata City Council has asked me to provide the evidence it has been able to gather from public sources regarding the industries whose wastes were disposed of in our community. On behalf of the residents of our community, we are asking Ecology to use the information provided here, and its statutory and regulatory investigative and enforcement powers, to place the costs of protecting our community on the parties that sent their waste here, so that the public, including the state, does not continue to be the sole source of cleaning up toxic wastes dumped near our city by industrial polluters who have paid nothing toward the cleanup.

This letter is organized into the following sections:

- I. **Site Background:** A brief overview of the Site, including its historical context, nature of contamination, and relevant regulatory framework under the MTCA.
- II. **Credible Evidence Analysis:** This section discusses evidence supporting the liability of industrial polluters who contaminated our community.

I. SITE BACKGROUND

A. Summary of Landfill History.

1. History of Ownership and Operation.

The Site is located approximately three miles south of the City of Ephrata on the east side of Highway 28, in Grant County, in central Washington State.¹ The City operated the Landfill for only a short time, beginning in 1942, primarily on land it owned. It leased a portion of the landfill property from the Bureau of Reclamation.² The City continued to operate the Landfill until 1974,³ when Grant County leased the property from the City and took over its operations.⁴ The City continued to own portions of the Landfill until January 4, 1994, when it transferred ownership of the property to the County via quitclaim deed.⁵

Subsequently, the Bureau of Reclamation began leasing eighty acres of a southern portion of the Landfill property to Grant County, and that southern portion was transferred to the County in 1990. The County owns all the Landfill property today and has continuously owned these properties since 1994. Starting in the northwest section of the original landfill, filling expanded southward and eastward until the new landfill commenced operations in 2004. The original landfill was capped in 2008, and the new landfill is the primary solid waste disposal facility for the County.

2. Overview of Contamination.

In 1975, the County accepted 2,350 drums of industrial waste from Resource Recovery Inc., a hazardous waste management company operating in Seattle, Washington. Resource Recovery paid a fee to the County for each drum it brought to the site. The drums contained chlorinated solvents and paint waste. The County buried the drums in an unlined area at the northern end of the Landfill. Over the next 30 years, the drums deteriorated and released various hazardous substances, which migrated through the subsurface, contaminated groundwater beneath the Landfill, and migrated north of the Landfill. This waste polluted the groundwater in the P1 and P2 Zones, as well as the deeper Roza Aquifer. The P1 Zone is about 20 feet deep, the P2 Zone is about 40 deep, and the Roza Aquifer is between 60 and 100 feet deep. Figure 1, depicting the current extent of contamination, is included below.

The Supplemental FS, consistent with the RI reports, identifies the drums that the County accepted as the major contaminating source at the Site that has dominated the Site's impacts above the other ancillary sources like leachate and landfill gas from the Landfill, the Hole, and the maintenance shop.

¹ <https://www.grantcountywa.gov/257/Ephrata-Landfill>

² 09/29/2006 Agreed Order No. DE 3810 ([4847-5377-3742](#))

³ 1974 Bureau of Reclamation termination of City previous 1971 License to operate sanitary landfill ([REC000257](#)).

⁴ 08/13/1974 City and County Lease ([4862-9924-2762](#)).

⁵ 01/04/1994 Quitclaim Deed (City to County) ([4867-8092-9652](#)).

Multiple “hazardous substances” are present in the subsurface as a result of the releases from the drums. However, all of the contamination is located on County-owned property. The nearest drinking water well is approximately 1,200 feet northeast of the County’s property line.

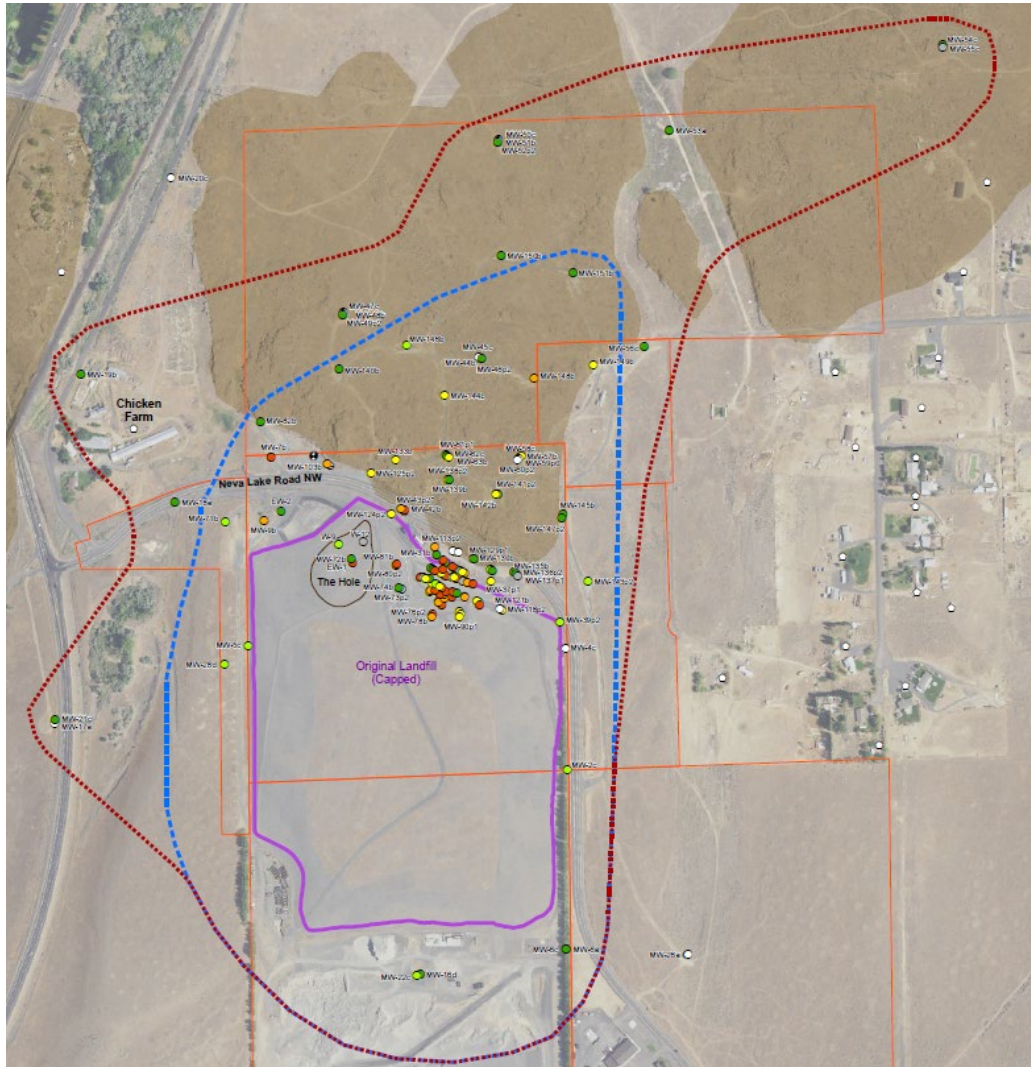


Figure 1: Site Overview

B. Summary of Regulatory History.

In October 2000, Ecology notified the City and County of their status as PLPs under the statute. In 2007, the City and County signed an Agreed Order (No. DE 3810) with Ecology. The Agreed Order required the PLPs to conduct a remedial investigation and feasibility study (“RI/FS”) at the Landfill. It also required the PLPs to remove the drums and the contaminated soils located in the drum source area; to extract and treat water from an area called “the Hole” where accumulated

refuse had reached the water table; to construct a final cover system over the waste disposal areas that were undergoing closure in 2005; and to manage landfill gas and control surface water.

C. Summary of Historical Agreements Between the City and County.

The City and County have entered into several agreements concerning the Site. Aspects of these agreements bear on the cleanup of the Site, as well as the allocation of costs. The key agreements between the City and County are as follows:

1974 Lease⁶ –The 1974 Lease from the City to the County included a license to use the City’s property as a sanitary landfill. The County was to take appropriate action to “avoid air and water pollution and conditions hazardous to public health and safety; and to protect adjacent land from undesirable side effects from its landfill operations.” The Lease also required the County to conduct its activities “in full compliance with the laws of the State of Washington, including the Solid Waste Management Act of 1969, and regulations of the State Department of Ecology to the extent applicable and with laws, regulations, and orders of the United States and other public authority affecting the same.” The County further agreed to indemnify the City “on account of all damages...arising out of or in any manner connected with the exercise by the County...of the privileges granted by this instrument.” Further the County “release[d] the City...from all damages which may result from the construction, operation, and maintenance of the solid waste disposal facility in connection with the County’s activities under this instrument, including damages which may occur as the result of seepage, floodage, or erosion from works constructed by the County.”

1989 Interlocal Agreement⁷ – The City entered into a 1989 Interlocal Agreement deeding the Landfill Site to the County. Under the terms of the 1989 Interlocal Agreement, the City agreed to be responsible for work that is directly related to the City’s operation of the Landfill prior to 1975.

II. CREDIBLE EVIDENCE ANALYSIS

A. Disposal Of Hazardous Wastes In 1975 At The Landfill.

Credible evidence suggests that the Boeing Co, and other manufacturers, primarily from the Seattle area, arranged for the disposal of hazardous waste at the Grant County Ephrata Landfill. With further investigation, there may be sufficient credible evidence to identify dozens of parties who arranged with Resource Recovery to dispose of their hazardous wastes in Grant County in 1975.⁸

⁶ 1974 Lease ([4892-3386-6763](#)).

⁷ 1989 Interlocal Agreement ([4829-4583-4670](#)).

⁸ The City does not concede that Boeing or other generators are “orphan shares.” To recover any portion of those shares from the City in a contribution action, the County would first have to prove that the shares are indeed “orphan.” Then the County would have to argue for the equitable allocation of those shares. The County would likely bear the vast majority, if not all of the share attributable to the generators because the County operated the landfill at the time the drums were accepted, and if there is insufficient evidence to pursue the generators, it would be attributable to the County’s failure to keep a record. *See United States v.*

B. Direct Evidence Showing that Industrial Manufacturers Arranged for the Disposal of Hazardous Wastes at the Landfill.

At Ecology's direction, contractors removed hundreds of barrels of hazardous wastes from unlined areas of the Landfill in 2008. Some of the drums had markings or stenciling that directly identified Boeing, while other markings reflect products that Boeing likely used during the 1970's.⁹

While nearly all of the drums were corroded from having been buried in the ground for over 30 years, a few bore the stenciling: "The Boeing Corp., Commercial Airplane, Building 1706, Auburn, Washington."¹⁰ Many other drums bore markings of companies and products that supplied the aircraft industry in the 1970's. The following list provides some examples of the companies whose names were found on drums found in the landfill and their connection to Boeing:

- **Stauffer Chemicals, Aero Safe:**¹¹ Aero Safe is an aircraft hydraulic fluid produced by Stauffer Chemicals in the mid-1970s. The product was tested in Boeing 737s.
- **Monsanto Chemical Company:**¹² Boeing specifications from the 1950s required the use of a Monsanto product, "Skydrol 500 Hydraulic Fluid," which was a "phosphate-ester type synthetic fire resistant hydraulic fluid." Boeing's Chemical Warning Label Index from 1960 listed Monsanto's Type IV Hydraulic Fluid in the Trade Name Materials section. A technical bulletin for Skydrol, Type IV Fire Resistant Hydraulic Fluids from 2003 referred to Boeing and Boeing specifications that recommended the use of Skydrol.
- **Chevron HyJet III & IV, Phosphate Ester Fire-Resistant Aircraft Hydraulic Fluid:**¹³ An advertisement from 1972 described this product as "Chevron HyJet III, the fire resistant hydraulic fluid that's approved for the Boeing 747."

Many of the drums appeared to contain paint and paint sludge.¹⁴ Some of the drums contained high concentrations of reactive cyanide, which is used in industrial metal plating, such as the plating that Boeing conducted in the 1970's.¹⁵

C. Evidence that Resource Recovery Transported the Drummed Waste to the Landfill.

Kramer, 953 F. Supp. 592, 595 (D. N.J. 1997) (ruling that the inability "to assign an ideal measure of monetary responsibility to an otherwise responsible party" gives rise to an "orphan share"); Lyondell Chem. Co. v. Occidental Chem. Corp., 608 F.3d 284, 303 (5th Cir. 2010) (stating that orphan shares are equitably apportioned among the "available, solvent, and responsible parties").

⁹ Companies/Products Identified by Drum Stenciling ([4813-8574-8142](#)).

¹⁰ Drum 1398 (Boeing) ([4871-8056-7715](#)); Drum 1559a (Boeing) ([4867-2823-8243](#)).

¹¹ Drum 409_1 (Stauffer Chemicals) ([4883-8099-0627](#)); Drum 76 (Stauffer Chemicals) ([4855-9400-6691](#)).

¹² Drum 522 (Monsanto) ([4854-0349-3539](#)); Drum 712b (Monsanto) ([4891-4546-8067](#)).

¹³ Drum 676 (Chevron HyJet III) ([4892-6939-6899](#)); Drum 676a (Chevron HyJet III) ([4859-3079-6451](#)).

¹⁴ Letter from Steven Jones to Washington Attorney General's Office at 5 (July 18, 2008) ([4842-0196-1390](#)).

¹⁵ Id.

Historical evidence, including Grant County Health Board minutes¹⁶ and a newspaper article,¹⁷ indicate that waste was brought to the Landfill by Resource Recovery. Circumstantial evidence indicates that the drums may have originally been earmarked for the industrial waste disposal facility owned and operated by Resource Recovery from 1972 to 1974 at the Pasco Sanitary Landfill near Pasco, Washington (the “Pasco Facility”). The Pasco Facility stopped accepting waste at the end of 1974;¹⁸ subsequently, Resource Recovery negotiated with Grant County for the disposal of the same waste streams that Resource Recovery’s customers had dumped in Pasco, including waste from Boeing. Resource Recovery was working in this same time frame to build a new, long-term waste disposal facility at the Landfill.¹⁹ A September 19, 1975 letter from Ralph Hasper, Director of Environmental Health Services at Grant County Health District, confirms that the Board of Health approved the disposal of the drums at the Landfill that Resource Recovery brought to the Site.²⁰

D. Resource Recovery Handled Boeing’s Waste, and the Same Type of Waste Disposed of at the Pasco Landfill from 1972-1974 was Later Sent to Grant County in 1975.

Boeing was one of Resource Recovery’s primary customers for the Pasco Facility.²¹ A 1973 letter from ChemPro, Resource Recovery’s parent company, to Boeing indicates that ChemPro had handled Boeing’s “flammable liquid sludges, oils and oil sludges and other miscellaneous chemicals,” and were disposing of the unusable portions of these chemicals at the Pasco Facility.²² Further, in a 1974 Valuation of Economic Viability, Boeing is listed as Resource Recovery’s second highest source of revenue.²³ Finally, in a Grant County Planning Commission Meeting held on September 3, 1975, Mr. Kimberly, Resource Recovery’s President, indicated that much of the waste Resource Recovery intended to manage at the Landfill, should it be granted a permit, would include “a lot of paint cans from...Boeing.”²⁴

There was a family connection between the operators of the Pasco and Grant County landfill. Larry Dietrich managed the Pasco Landfill. Larry recommended the Grant County Landfill to Resource Recovery as an alternative disposal location for some of Resource Recovery’s customers after the Pasco Facility closed.²⁵ Dan and Bob Kimberly negotiated the disposal contract for

¹⁶ Grant County Health District Board Meeting Minutes (Sep. 17, 1975) ([4840-1190-6990](#)).

¹⁷ Nearly 2,000 Barrels Buried at Landfill, Columbia Basin Herald (Mar. 24, 1986) ([4814-0200-3118](#)).

¹⁸ Pasco Landfill National Priorities List Site, Draft Final Focused Feasibility Study at 9 ([4889-7569-9021](#)).

¹⁹ Seattle Firm Eyes Ephrata for Waste Recycling Site, Grant County Journal (Aug. 25, 1975) ([4818-5498-7950](#)).

²⁰ Letter from Ralph Hasper to Dan Dietrich (Sep. 9, 1975) ([4824-9239-1086](#)).

²¹ See Letter from Guy Gregory, Toxics Cleanup Section, Department of Ecology, to Boeing Company re: Notice of Potential Liability for the Release of Hazardous Substances under the Model Toxics Control Act (May 30, 1991) ([4877-8212-3683](#)).

²² Letter from Ronald West, President, ChemPro, to John Rockwood, Boeing Company (Jan. 25, 1973) ([4861-4241-2963](#)).

²³ Resource Recovery Corporation Valuation of Economic Viability of Hazardous Waste Disposal and Recovery Site in the State of Washington (Apr. 3, 1974) ([4857-3700-7267](#)).

²⁴ Grant County Planning Commission Minutes at 7 (Sept. 3, 1975) ([4818-5570-7054](#)).

²⁵ Memorandum of Dan Dietrich Interview at 1-2 (April 17, 2008) ([4830-5396-7790](#)).

hazardous wastes to be brought to Grant County's Landfill. Bob told Dan that the drums contained Boeing paint sludge which had accumulated after the Pasco Facility closed. Many of the drums did include paint and paint sludge which corroborates Dan's statement.²⁶

Mr. Kimberly indicated that the drums came from Resource Recovery's typical customers and that Boeing was one of the primary customers, with much of Boeing's waste consisting of paint sludge stripped off of aircraft prior to final painting.²⁷ Mr. Kimberly indicated that other primary customers included the Puget Sound Naval Shipyard PSNS.

III. Conclusion

The City has already paid \$5.9 million in remedial action costs and should not be expected by the State to continue to shoulder cleanup costs of toxic wastes it neither disposed of at the site, permitted to be disposed of, or created in the first place. The remaining work should be funded, at least in large part, by the waste generators who arranged for the disposal of the drums. The City asks for Ecology to use its statutory and regulatory powers to identify the perpetrators of the pollution that has harmed our community, instead of relying wholly on public funds for the remediation of the Landfill.

Thank you,



Ray Towry
City Administrator

Cc: City Council
Grant County Council

²⁶ Ecology Phase I Site Inspection Report at 2 (Feb. 2, 1987) ([4821-3364-4974](#)).

²⁷ Memorandum of Bob Kimberly Interview at 3 (Mar. 4, 2009) ([4822-6196-4206](#)).