

May 22, 2024

Mr. Barry Rogowski  
Program Manager  
Toxics Cleanup Program  
Washington State Department of Ecology (“Ecology”)

Dear Mr. Rogowski,

This letter is in response to your email dated May 17, 2024 (attached). In summary, since the gas release was first discovered at our property (Chevron, 7 E Rose St), we have been requested by all parties affected to move as quickly as possible to plan and conduct cleanup efforts – and we have done so responsibly every step of the way and to the best of our ability. We now understand that Ecology is requesting us to **stop** our efforts to clean up the contamination on our property. This letter outlines our decision to proceed towards removal of the contaminated soil and underground storage tanks (UST), our rationale based on state law, and implores Ecology to reengage with us in partnership to complete ALL necessary actions required as quickly as possible to protect human and environmental health in our community.

For additional background, we began communicating directly with Ecology (Mr. Acklam and Ms. Kercher) as early as December 2023 about the inevitability that our \$1 million pollution liability insurance policy would be exhausted before the required cleanup activities were completed. We have now reached that point, which should be no surprise to Ecology. Ecology has acknowledged for months that it would be required to take over the cleanup if and when Stillwater exhausted its financial resources, including insurance coverage. Our 16<sup>th</sup> Legislative District representatives (Sen. Dozier, Rep. Klicker and Rep. Rude) secured an additional \$500,000 for Ecology to use towards this project, in addition to the \$500,000 in federal funding Ecology identified early on. Despite these events, it appears Ecology is not willing to take over this project as needed, which puts human and environmental health at risk and will likely result in increased overall costs to the department.

MTCA RCW 70A.305.030(1)(i), cited in your email, legally requires “the department [to] allocate staffing and financial assistance in a manner that considers both the reduction of human and environmental risks **AND the land reuse potential and planning for the facilities to be cleaned up.**” Your citation left out the underlined portion of the statute which clearly supports our plan to prioritize steps towards the permanent cleanup and reuse of the property.

In addition, RCW 70A.305.030(1)(b) states that “in conducting, providing for, or requiring remedial action, **the department must give preference to permanent solutions to the maximum extent practicable...**”

As you know, Stillwater Holdings LLC (“Stillwater”) is proceeding with the required Interim Action scope of work that has been requested by Ecology. Due to the limited remaining funds from our pollution liability insurance policy, the Interim Action scope of work has been divided into two stages (“Stage 1” and “Stage 2”). Stage 1 will include *excavation and removal of an estimated 200 tons of contaminated soil* followed by the inspection and decommissioning of the UST tanks. The decommission will include complete evacuation of gasoline from the dispensers, piping, and tanks, followed by a triple rinse of the tanks, which will remove the presumed source and eliminate the possibility of recontamination. Per the statutes cited above, the law requires us to prioritize these **permanent solutions** over vapor and sump water mitigation, which are both less permanent and unrelated to facilitating the source property’s reuse and cleanup.

Stage 1 of the project is also responsive to Ecology's request in your email: "The tanks ...should have the product removed from them and [be] assessed as soon as possible." In fact, there is no other available untried method to "assess" the tanks other than proceeding with Stage 1. To recap, Stillwater has conducted internal tank monitor pressure testing, two rounds of line and tank pressure testing with two different contractors, helium pressure testing, and a video camera inspection of the tanks. All these tests have failed to provide conclusive evidence of the source of the leak. There are no other assessments available short of a physical inspection of the tanks themselves.

Your email also conveys Ecology's intent to proceed with "emergency contracting to fund, with state funds, the vapor and sump water mitigation issues to address the human and environmental risks." Given this plan, there is no reason for Stillwater to refrain from dedicating its remaining insurance funds towards Stage 1 of the Interim Action Plan. Additionally, it is unclear why Ecology is willing to exercise emergency contracting for vapor and sump water mitigation, but not for the Interim Action itself. This appears to be an entirely voluntary decision, not one that is dictated by statute.

Furthermore, Ecology's intention to prioritize "limited state funds...[to] first be allocated to vapor and sump water mitigation, and other issues deemed appropriate by Ecology, before addressing UST removal" is inconsistent with the statutory requirements cited above, which clearly direct prioritization of the Interim Action Plan over other issues due to the project's permanency and advancement towards property reuse and cleanup.

Moreover, your email states "the greatest current risks at the site are the human and environmental risks associated with vapor mitigation and sump water mitigation." We disagree with this statement, as removing the *source* of the contamination is just as important as addressing the effects of the source contamination.

Ecology's current intention to "follow its state contracting process, including competitive solicitation..." is unnecessary and will irresponsibly lead to increased delays and costs to the overall cleanup efforts. RCW 39.26.125(1) allows Ecology to bypass competitive solicitation for "emergency contracts", just as your email indicates the department will do to maintain vapor and sump water mitigation efforts. Additionally, RCW 39.26.125(7) exempts Ecology from utilizing competitive solicitation when "the director determines that a competitive solicitation process is not appropriate or cost-effective."

Per my email to Nick Acklam and Beth Kercher on May 15<sup>th</sup> (attached), our selected contractor, Ultra Northwest, Inc. ("Ultra"), has indicated that a delay in signing the Stage 2 contract will result in increased costs for the storage of pilings. If there is a lengthy delay between the completion of Stage 1 and the initiation of Stage 2, all contractors have reserved the right to update pricing to reflect changes in cost of labor, fuel, materials, and subcontractors. As a result, Ecology's decision not to do a competitive solicitation in this case would be justified as both "appropriate" and "cost effective," in compliance with state law.

To summarize, Ecology's decision not to sign the Stage 2 contract in short order is clearly a voluntary decision that will inevitably result in increased costs to the department, in addition to unnecessarily delaying the cleanup efforts. **We urge you to reconsider this decision.**

Please note that Stillwater has already completed an exhaustive competitive solicitation for the Interim Action scope of work (Stage 1 and Stage 2), under the advisement of Aspect Consulting. We requested bids from the following companies:

- Anderson Environmental Contracting, LLC
- Central Service, Inc.
- Granite Petroleum

- NWESTCO
- Pacific Environmental Services
- TLM One, Inc.
- Ultra Northwest, Inc.

Granite Petroleum and Ultra Northwest were the two finalists after multiple rounds of bidding. Ultra's bid was approximately \$30,000 less expensive than Granite Petroleum. In addition, Ultra was by far the most responsive and timely throughout the bidding process vs. any other contractor. As you know, Ultra has deep experience in doing this work and is backed by many reliable references for similar projects.

If Ecology were to choose to repeat a competitive solicitation now, which is unnecessary, it is very likely to receive bids that are *higher* than the Stage 2 contract that we have presented to the department, both because of the delays mentioned above and the well-known dynamic in the marketplace that Ecology typically receives higher pricing from contractors than private parties.

Lastly, it is imperative that we move forward expeditiously with Stage 1 to facilitate inspection of the tanks, which is our only remaining hope to secure approval for our business loss insurance claim with our insurer. We understand other neighboring businesses, including the Marcus Whitman, are in the same position. The insurer has insisted that the claim will not be approved without a precise verification of the source and location of the leak. Our business has suffered ongoing and unsustainable financial losses since the beginning of this crisis in September 2023. We are in default on our business loan, maxed out on our credit cards, running out of cash quickly, and facing imminent bankruptcy. Our only hope to continue to remain a viable business is to inspect the tanks as soon as possible and recover some of our business losses from the insurer.

**If we go out of business, we will be unable to apply for the Pollution Liability Insurance Agency (PLIA) Financial Assurance program.** We have confirmed with PLIA that this program is launching soon and is highly likely to provide \$1 million in additional funding towards the cleanup efforts at this site. Our understanding is also that the owner of the contaminated site is the *only eligible applicant* for this funding, though funds may be used for third party costs if any funds remain following cleanup. It is in Ecology's interest for this funding to be accessed to assist with closing the funding gaps, and therefore it is also in Ecology's interest for our business to remain viable for as long as possible.

In conclusion, we will begin Stage 1 of the Interim Action on May 28<sup>th</sup> and we implore Ecology to reconsider its refusal to execute Stage 2 of the project as soon as possible, based on all the reasons outlined in this letter.

Please feel free to contact me at any time with any questions you may have.

Best regards,

Ben Kleban  
Owner  
Stillwater Holdings LLC  
(504) 756-5577

Cc: Ms. Laura Watson, Director, Ecology  
Ms. Heather Bartlett, Deputy Director, Ecology  
Mr. Nick Acklam, Section Manager, Ecology

Ms. Beth Kercher, Project Manager, Ecology  
Mr. Christer Loftenius, Acting Supervisor, Ecology  
Mr. Jason Cocks, UST Inspector, Ecology  
Sen. Perry Dozier, 16<sup>th</sup> Legislative District  
Ms. Tiffani Sanné, Legislative Assistant, Sen. Perry Dozier, 16<sup>th</sup> Legislative District  
Rep. Mark Klicker, 16<sup>th</sup> Legislative District  
Ms. Reni Michael, Senior Legislative Assistant, Rep. Mark Klicker, 16<sup>th</sup> Legislative District  
Rep. Skyler Rude, 16<sup>th</sup> Legislative District  
Ms. Tammi Petty, Legislative Assistant, Rep. Skyler Rude, 16<sup>th</sup> Legislative District  
Mr. Tom Scribner, Mayor, City of Walla Walla  
Ms. Elizabeth Chamberlain, City Manager, City of Walla Walla

Ms. Victoria Banks, Assistant Attorney General, Ecology Division  
Mr. Ki Bealey, Public Works Director, City of Walla Walla  
Mr. Brent Beecher, Attorney, Lasher Holzapfel Sperry & Ebberson  
Ms. Carla Brock, Senior Project Manager, Aspect Consulting  
Mr. John Busherd, Branch Manager, Clean Harbors  
Mr. Martin Clubb, Owner and Managing Winemaker, L'Ecole No.41  
Mr. Jacob Coburn, Property Manager, Marcus Whitman  
Mr. Lamarquise Dixon, Clean Harbors  
Mr. Bob Francis, Deputy Mayor, City of Walla Walla  
Mr. Preston Frederickson, Development Services Director, City of Walla Walla  
Mr. Michael Gatewood, National General Adjuster, Sedgwick  
Mr. Chuck Hill, President, Columbia Hospitality Real Estate (Marcus Whitman)  
Mr. Howard Jensen, Attorney, Veris Law Group  
Mr. Bob Joyce, Attorney, HCMP  
Mr. Peter Kingston, Principal Geologist, Farallon Consulting  
Mr. Fred "John" Knowles, Fire Chief, City of Walla Walla  
Mr. Brenden Koch, Communications Manager, City of Walla Walla  
Mr. Ken Lederman, Partner, McCullough Hill  
Mr. Jonathan Malland, Senior Planner, City of Walla Walla  
Mr. Thomas Morin, Vice President and Principal Geologist, TRC Companies  
Ms. Leah Rohan, Environmental Engineer, City of Walla Walla  
Mr. Sam Rudnick, Owner, 106 2<sup>nd</sup> St.  
Mr. Stephen Tan, Partner, Cascadia Law Group  
Mr. Derek Threet, Assistant Attorney General, Ecology Division

*P.S. Please note that we acknowledge the draft of the Stage 2 contract shared with Ecology, which completes the required Interim Action Plan, incorrectly refers to Ecology as an "Owner." This can be easily edited and replaced with the correct terminology.*

**From:** [Rogowski, Barry \(ECY\)](#)  
**To:** [Ben Kleban](#)  
**Cc:** [Acklam, Nicholas \(ECY\)](#); [Threet, Derek \(ATG\)](#); [Kercher, Beth \(ECY\)](#)  
**Subject:** RE: Stillwater Chevron - Interim Action Stage 2 Contract  
**Date:** Friday, May 17, 2024 12:32:06 PM  
**Attachments:** [Draft STAGE 2 - Ultra Stillwater Interim Action Contract - BK-KZ edits.docx](#)  
[Draft STAGE 2 - Attachment A Interim Action Bid Schedule REV 1 240515.docx](#)

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Mr. Kleban,

MTCA, RCW 70A.305.030(1)(i) legally requires that, "The department must allocate staffing and financial assistance in a manner that considers both the reduction of human and environmental risks...". "This does not preclude the department from allocating resources to a facility based solely on human or environmental risks." The greatest current risks at the site are the human and environmental risks associated with vapor mitigation and sump water mitigation. The UST tanks do not currently pose an imminent human or environmental risk at this site, as the source of the release has been identified and that tank has been taken out of service. The tanks may pose a risk in terms of a future release due to their age and should have the product removed from them and assessed as soon as possible. Ecology is working on emergency contracting to fund, with state funds, the vapor and sump water mitigation issues to address the human and environmental risks. This will be top priority, and the limited state funds available will first be allocated to vapor and sump water mitigation, and other issues deemed appropriate by Ecology, before addressing UST removal.

The Stage 2 contract was negotiated by Stillwater Holdings. Ecology is not a party to the contract. The Stage 2 contract misrepresents Ecology as an "owner." Ecology is not an "owner" of your property. Ecology will not assume responsibility for the Stage 2 contract. Ecology will make the determination of when and how to address the UST tanks using state funds in an Ecology led cleanup at the appropriate time as determined by the department. Ecology will follow its state contracting process, including competitive solicitation contract to address other cleanup needs, such as the UST tanks, at the appropriate time and when more funding may be available.

The draft Agreed Order is no longer an appropriate legal instrument to proceed with because Stillwater Holdings has indicated that it cannot fulfill the terms of the draft Agreed Order. Ecology has consulted with the Attorney General's Office regarding our legal options with respect to how to proceed.

Again, Ecology will not assume responsibility for the Stage 2 contract and will not sign the contract.

Thank you,

Barry Rogowski  
Program Manager  
Toxics Cleanup Program, Ecology  
(360) 407-7226  
Cell : (360) 485-3738

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**From:** Acklam, Nicholas (ECY) <nack461@ECY.WA.GOV>

**Sent:** Wednesday, May 15, 2024 2:34 PM

**To:** Threet, Derek (ATG) <derek.threet@atg.wa.gov>; Rogowski, Barry (ECY) <brog461@ECY.WA.GOV>

**Subject:** Fwd: Stillwater Chevron - Interim Action Stage 2 Contract

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**From:** Ben Kleban <[ben@benkleban.com](mailto:ben@benkleban.com)>

**Sent:** Wednesday, May 15, 2024 11:01 AM

**To:** Acklam, Nicholas (ECY) <[nack461@ECY.WA.GOV](mailto:nack461@ECY.WA.GOV)>; Kercher, Beth (ECY) <[BKER461@ECY.WA.GOV](mailto:BKER461@ECY.WA.GOV)>

**Cc:** Carla Brock <[Carla.Brock@aspectconsulting.com](mailto:Carla.Brock@aspectconsulting.com)>

**Subject:** FW: Stillwater Chevron - Interim Action Stage 2 Contract

### External Email

Nick and Beth,

Attached is a slightly revised version of the stage 2 contract – just a refinement of the scope between stage 1 and 2.

Please see Kyle’s note below re: potential delays. The risk of DOE not acting quickly here is not only delays to the completion of the project but likely higher costs.

Please advise on what is needed to move this contract forward to signature ASAP.

Thank you,

Ben

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**From:** Kyle Zender <[kylez@ultra-inc.com](mailto:kylez@ultra-inc.com)>

**Sent:** Wednesday, May 15, 2024 8:31 AM

**To:** Ben Kleban <[ben@benkleban.com](mailto:ben@benkleban.com)>

**Subject:** Stillwater Chevron - Interim Action Stage 2 Contract

Good morning Ben,

Attached please find a copy of the contract for the Stillwater Chevron Interim Action Stage 2 contract and Attachment A.

I have emailed our drilling contractor about the latest development with DOE. They understand have put a hold on the H pile material with their supplier through June. That locks up the H pile for a while. We would need a subcontract within a week or two to get them on-site in the middle of June. They are actively searching for other work now since they do not have a contract and firm date to start

work. They also mentioned that their price may have to change due to piling storage fees and if they get other work soon. Also, depending on the length of delay in between the Stage 1 and Stage 2, we reserve the right to update our pricing to reflect changes in costs, i.e., labor, fuel , materials, subcontractors, etc.

Thank you.

Kyle Zender

Ultra Northwest, Inc.

cell: 360-739-2208

email: [kylez@ultra-inc.com](mailto:kylez@ultra-inc.com)

**From:** [Acklam, Nicholas \(ECY\)](#)  
**To:** [Ben Kleban](#)  
**Cc:** [carla.brock@aspectconsulting.com](mailto:carla.brock@aspectconsulting.com); [Threet, Derek \(ATG\)](#); [Banks, Victoria F \(ATG\)](#); [Level, John A \(ATG\)](#); [Rogowski, Barry \(ECY\)](#); [Kercher, Beth \(ECY\)](#); [kylez@ultra-inc.com](mailto:kylez@ultra-inc.com)  
**Subject:** FW: Transitions  
**Date:** Thursday, May 9, 2024 11:35:43 AM  
**Importance:** High

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Hi Ben,

Thank you for your email regarding proposed project transitions at the Site; however, Ecology does not accept the terms of your proposal. Ecology has been evaluating the remaining items that require the most urgent attention to **protect human health and the environment** along with the remaining insurance funding. At this time, Ecology is requesting that Stillwater Holdings use remaining insurance funds to continue addressing vapor and water contamination issues, as these issues present the greatest risk for potential immediate threats to human health and the environment. In particular, these issues include vapor mitigation and sump water treatment and disposal at both the Marcus Whitman Hotel and Building 106.

Thank you for your on-going and continued commitment to this cleanup.

Nick

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**From:** Ben Kleban <ben@benkleban.com>  
**Sent:** Tuesday, May 7, 2024 3:13 PM  
**To:** Acklam, Nicholas (ECY) <nack461@ECY.WA.GOV>; Kercher, Beth (ECY) <BKER461@ECY.WA.GOV>  
**Cc:** Carla Brock <Carla.Brock@aspectconsulting.com>  
**Subject:** Transitions

External Email

Nick and Beth,

Please be advised that we do not have any more resources available to continue any projects except for stage 1 of the interim action project and will need the DOE to assume responsibility for all other projects.

We need the DOE to issue a contract ASAP to take over the management of the Clean Harbors work for the Hotel. We believe RCW 39.26.125(7) gives the DOE the authority to do this quickly. I am issuing written notice to Clean Harbors today that I am terminating the contract between Stillwater Holdings and Clean Harbors.

In addition, I have directed Aspect to immediately pause on ALL their activities and will be



informing the Hotel and 106 building owners later this afternoon. The planned Aspect activities that will be put on hold include the following:

1. The vapor intrusion assessment at the Hotel, which was scheduled to start the week of 5/20. This work was in the final planning and coordination stages.
2. Permanent Hotel ventilation. Aspect's next step was to propose some pilot testing to the Hotel for discussion.
3. The Hotel sump water treatment system. The design report is finished – I have asked Aspect to forward it to the DOE.
4. The 106 Building sump ventilation. Aspect engaged a remediation contractor to visit the Site to look at the details for installing and hooking up the fan and they are awaiting a cost estimate.
5. The 106 Building permanent sump water treatment system. Aspect has been working with Clear Water Systems on the permanent treatment system design.

Aspect has completed groundwater sampling and is awaiting results. They will compile the results into data tables, once received, and share them with the group. This work report will be completed and forwarded to the DOE when ready.

Thank you as always for your ongoing partnership and collaboration on this work. Please confirm you are in receipt of this update and will be moving forward with assuming control of these projects as soon as possible.

Thank you,

Ben