

WASHINGTON STATE DEPARTMENT OF ECOLOGY

In re:

BRMW Properties LLC

Facility Site ID: 99999840
Cleanup Site ID: 16992

WAC 173-340-330(6)(a)(i)
Petition to Remove
Contaminated Site Listing

Comes now BRMW Properties LLC, by and through its attorney Nichol A. Fletcher, and petitions the Department of Ecology (DOE) to remove Bob Raymer's Machine Works, situated at 16 Barnhill Road, Tonasket, WA 98855-9377, from the Contaminated Sites List. This Petition is made pursuant to WAC 173-340-330(6)(a)(i).

I. History

The DOE has listed the above-described property as a "Contaminated Site" for the reasons described in the "Initial Investigation Field Report" dated January 25, 2024 and the "Early Notice Letter" dated February 12, 2024. A true and accurate copy of the Field Report is attached herein as Exhibit A. A true and accurate copy of the Notice Letter is attached herein as Exhibit B. The substantive points in the Field Report are as follows:

1. In a discussion with Robert (Bob) Raymer, the owner of BRMW Properties LLC, on July 28, 2023 the Investigator notes that Bob acknowledged "that some used oil remains at the property and that there may have been releases." Bob further "expressed willingness to cooperate with Ecology to address the matter."
2. On his August 22, 2023 visit to the site, the Investigator noted that he "observed nine 55-gallon drums that contained varying amounts of used oil, adjacent to the south side of the building." He also "observed eight to ten 5-gallon buckets (w/ lids) that contained

1 varying amounts of used oil and one large storage container (estimated volume 275 gal)
2 that was about 40% filled.”

- 3 3. The Investigator informed Bob “that he is responsible for ensuring clean up of any
4 contaminated soil around two of the drum pallets where a release was observed.” That
5 sentence is the only mention of any discovered ‘release’, and there is no further detail or
6 information provided about the release.
- 7 4. Bob subsequently “performed a cleanup action by excavating the PCS which had an
8 estimated total volume of about 1.5 cubic yards. The PCS was disposed of at the
9 Okanogan Central Landfill Moderate Risk Waste Facility at 241 B&O Road, Okanogan.
10 Based on the weight tickets, the PCS weighed a total of 7210 lbs or 3.6 tons.”
- 11 5. After the cleanup, “the soil was tested for various contaminants to verify the sufficiency
12 of cleanup. Two soil samples were collected from a depth of about 24 inches...” and
13 analysis “were only performed on one sample which was the one with the greatest field
14 indications of contamination...”
- 15 6. The third and fourth pages of the report show that, based on subsequent testing of the site,
16 all tested contaminants were marked “B” for Below Cleanup Levels. The sheets mark “S”
17 for Suspected in the “Petroleum Diesel” x “Groundwater” and “Petroleum Other” x
18 “Groundwater” fields.
- 19 7. On the fifth page of the report, the section labeled “Specific confirmed contaminants
20 include:...” is left unfilled.
- 21 8. The Field Report notes that “Based on the analytical results, the remaining soil
22 concentrations are below their Method A CULs thus, the soil cleanup is likely sufficient.
23 However, there is some uncertainty on the adequacy of the cleanup based on the limited
24 sampling and the lack of groundwater sampling.”

1 9. Finally, the Field Report discussed the Investigator's reasoning for requiring additional
2 ground water sampling based on recommendations in "Section 6.9.1 in Ecology's
3 Guidance for Remediation of Petroleum Contaminated Sites" and concludes that the
4 "absence of suitable groundwater information and the low confidence provided by the
5 analytical result from one soil sample supports naming this release as a site. The
6 recommendation is to collect a water sample from the nearest access point at or near the
7 existing wellhead."

8 The Substantive points of the Notice Letter are as follows:

9 10. "The Department of Ecology (Ecology) received a report, dated June 26, 2023, about
10 potential contamination from hazardous substances."

11 11. "Ecology's initial investigation determined that petroleum hydrocarbons may exist in the
12 groundwater at the site. As a result, we added Bob Raymers Machine Shop to our
13 database as a state cleanup site that will need to be further investigated and/or cleaned up
14 pursuant to the Model Toxics Control Act (MTCA) requirements."

15 II. Analysis

16 Under WAC 173-340-330(6)(a)(i), a site may be removed from the contaminated site list
17 on written petition by the owner demonstrating that the listing is erroneous. This site listing
18 should be removed for error because (a) the initial investigation does not provide sufficient
19 evidence under applicable WACs to support placing a site on the Contaminated Sites List and,
20 alternately, (b) Petitioner has performed sufficient independent remediation.

21 a. **The Field Report does not provide specific evidence to support a finding that**
22 **there has been a release hazardous to human health or the environment, nor**
23 **does the Field Report describe the methodology used to reach such**
24 **conclusion.**

1 Where there has been a suspected release of hazardous materials, an initial investigation
2 shall be conducted by the DOE to determine, among other things, whether the release has
3 actually occurred, whether the release poses a threat to human health or the environment, and
4 whether further remedial action is necessary. See WAC 73-340-310(1). If it is determined that a
5 release has occurred posing a threat to human health or the environment, and that further
6 remedial action is necessary, the DOE shall perform a Site Hazard Assessment and Ranking
7 under WAC 73-340-320, list the site on the Contaminated Sites List, and make any initial
8 investigation report publicly available on the DOE website. See WAC 73-340-310(6)(e). At this
9 initial investigatory stage, it appears that the burden is placed on the DOE to investigate and find
10 evidence of a hazardous release/contamination prior to listing the site on the Contaminated Sites
11 List. See WAC 73-340-310. The burden then shifts to the owner to remediate or disprove the
12 finding of hazardous release/contamination if the owner wishes to remove the site listing. See
13 WAC 173-340-515.

14 Section 5 of "Ecology's Guidance for Remediation of Petroleum Contaminated Sites"
15 (hereinafter the "Guide") sets out standards for Investigators to follow to ensure reliable
16 identification of hazardous releases/contamination, and to provide guidance to owners so they
17 can be informed of the appropriate remedial action to take. Table 5.1 in the Guide describes
18 'qualitative' evaluations, such as "Visual Screening", to be of low quality and less desirable than
19 more data-driven options and cautions investigators that "some level of quality assurance" is
20 necessary for field screening methods. The Guide goes on to describe several testing methods
21 with varying levels of reliability and sets out benchmarks for determining the presence and
22 severity of contamination based on each test. Where soil contamination is suspected, in addition
23 to the Visual Screening test described in Section 5.3.1, the Investigator can conduct the Sheen
24 Test described in Section 5.3.2, the Jar Test described in Section 5.3.3, the Vapor Analysis
25 described in Section 5.3.4, use a Test Kit as described in Section 5.3.5, use the Chemical Sensors

1 described in Section 5.3.6, or use a Mobile Lab described in Section 5.4, in addition to other
2 procedures available to the Investigator to reliably determine the existence of a hazardous
3 release/contamination. Finally, the Guide notes that for "sites conducting independent remedial
4 actions" the Field Report should "document the field screening methods and decision criteria
5 used".

6 In the present case, there are two documents available on the Contaminated Sites List
7 under "Bob Raymers Machine Works": the "Early Notice Letter" informing Bob of the site
8 listing, and the "Initial Investigation Field Report", both of which are discussed in the History
9 section above. Considering that the WAC requires public disclosure of any initial investigation,
10 we shall consider the information disclosed in these documents to provide the complete basis for
11 the finding of hazardous contamination supporting the site listing.

12 The total evidence provided in these documents to support a finding of hazardous
13 contamination is as follows: (i.) Bob verbally acknowledged an open-ended possibility of
14 contamination, which is understandable considering the nature of the services his business
15 provided and his lack of knowledge about what the site was used for prior to his ownership; (ii.)
16 there were nine 55-gallon drums of oil, ten sealed five-gallon buckets of oil, and one "large
17 storage container" about 40% full of oil located on the premises, all of which were contained
18 storage and for which no leakage is specifically noted; and (iii.) the investigator notes, without
19 more specifics, that "release was observed" on "two of the drum pallets". From the structure of
20 that sentence in the Field Report, it is not clear if the Investigator means to say the release was
21 observed on the pallets themselves, or near them. For the purpose of this discussion, without
22 more detail to rely on, we will assume the Investigator is referring to oil residue observed on the
23 wooden or plastic pallets which support the 55-gallon drums of oil, which keeps them level and
24 off the ground to prevent corrosion, spilling, and leakage. The Field Report does not identify
25 how the Investigator came to determine that the oil residue on the pallets indicated a release
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1 impacting the soil, rather than, for example, indicating only a small spill occurring while
2 transferring oil into the barrels that did not reach the soil, or indicating some prior use of the
3 pallet unrelated to its current use or situs.

4 Notably, the Field Report does not expressly identify that the investigator used any of the
5 evaluations suggested in the Guide, even those noted as qualitative and thus less reliable. The
6 Field Report also does not identify the decision criteria used to determine the presence of a
7 hazardous release/contamination. It can be inferred from the observation noted about the pallets
8 that the investigator might have performed the 'Visual Screening' test, but he does not note any
9 specific observations about, or examination of, the soil itself as described in Section 5.3.1 of the
10 Guide. He only notes a cursory observation about the two pallets without further explanation or
11 detail.

12 In sum, the only evidence of any contamination noted in the Field Report is that the
13 Investigator observed oil residue on two pallets which were each supporting a 55-gallon drum of
14 oil. No soil or water inspection or testing, qualitative or otherwise, was conducted to confirm the
15 suspected release/contamination, and no other evidence of actual release of/contamination with a
16 hazardous substance is provided. Therefore, the DOE has not met its burden under WAC 73-340-
17 310(1) to determine whether an actual release occurred that is hazardous to human health or the
18 environment, which is prerequisite to a site listing under WAC 73-340-310(6)(e). It does not
19 appear to be the intention of the MTCA, or the WACs implemented thereunder, to impose a
20 burden on a landowner to disprove the existence of a hazardous release/contamination where the
21 presence of a hazardous release/contamination has not been specifically identified and confirmed
22 using appropriate screening tests and diagnostic criteria.

23 **b. Petitioner took sufficient independent remedial action.**

24 The Field Report notes that, upon request of the Investigator, Bob undertook independent
25 remedial action pursuant to WAC 173-340-515. He removed 3.6 tons, or about 1.5 cubic yards,

1 of soil from the area where the Investigator suspected contamination to be present, samples were
2 taken (it is not clear from the Field Report by whom or by what means the samples were taken)
3 of the soil below the removed soil, and Bob backfilled the area with clean soil. The sample the
4 Investigator chose to analyze showed safe/acceptable levels of contaminants, and thus the report
5 notes that "soil cleanup is likely sufficient." Therefore, although there was no specific evidence
6 of contamination found by the Investigator to support the site listing, Petitioner has sufficiently
7 performed remedial action under WAC 173-340-515.

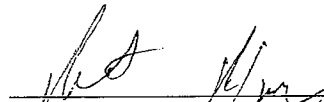
8 III. Conclusion

9 The initial investigation of the site did not confirm the existence of any release or
10 contamination hazardous to human health or the environment. Further, although such release or
11 contamination was not confirmed, Bob performed sufficient independent remedial action and
12 samples from the site showed no hazardous contamination. Therefore, on account of a lack of
13 basis established under WAC 73-340-310(6)(e) to support the site listing, or alternately on
14 account of sufficient independent remedial action under WAC 173-340-515, the site should be
15 removed from the Contaminated Sites List pursuant to WAC 173-340-330(6)(a)(i).

16 Respectfully submitted this 14 day of January, 2025,

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19 Nichol A. Fletcher, WSBA #61312
20 Attorney for BRMW Properties LLC
21 North Cascades Law Group
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Robert P. Raymer
Owner, operator, and agent
of BRMW Properties, LLC