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TRF Pacific
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Re: Status Update for Tiki Car Wash Cleanup Site

Dear Mr. Zabel and Mr. Exworthy,

The Washington Attorney General's Office (AGO) is writing this letter on behalf of the Department of Ecology (Ecology) to respond to your letter dated February 14, 2025 and the discussion between TRF, Tiki Car Wash, and Ecology on March 19, 2025. In the February letter and the March discussion, TRF asked Ecology to provide an update on the cleanup schedule and on the parties' liability for contamination from the Tiki Car Wash Site (Site).

Cleanup Schedule and Next Steps

As we discussed during the meeting, Ecology is responsible for completing the Remedial Investigation (RI), Feasibility Study (FS), and draft Cleanup Action Plan (dCAP) for the Site consistent with the Consent Decree amongst the parties dated March 9, 1993. Ecology plans to complete the RI, FS, and dCAP between September and October of 2025, allowing remedial work at the Site to begin in 2026. Ecology will continue to update TRF and Tiki Car Wash on its progress throughout 2025 and welcomes thoughts or recommendations from the parties on the cleanup at any time.

Tiki Car Wash is the sole potentially liable party (PLP) for the Site and is responsible for its releases of hazardous substances both on the Tiki Car Wash property and on TRF's Wilburton

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Crossing property (TRF Property). After Ecology completes the RI, FS, and dCAP, Ecology will proceed with remedial actions to address contamination at the Site, including contamination that migrated to the TRF property. Ecology does not anticipate requiring TRF to conduct any remedial activities at the Site, other than allowing continued access to the TRF Property as needed so that Ecology and the PLP can perform cleanup work. Ecology also appreciates TRF's full cooperation in addressing Tiki Car Wash's contamination issues thus far.

Applicability of the Plume Clause

During the March meeting and in its February letter, TRF also requested a determination from Ecology that TRF is not liable for contamination from the Site under MTCA's Plume Clause defense, codified at RCW 70A.305.020(22)(iv)(A-D). That statutory provision exempts a party from liability under MTCA if a hazardous substance comes to be located on that party's property "solely as a result of migration of the hazardous substance to the real property through the groundwater from a source off the property." In addition, the party asserting the Plume Clause defense must not have caused or contributed to the release of the hazardous substance, must not interfere with remedial actions at the Site, and must allow Ecology or PLPs to access its property for remedial work if requested.

While the Plume Clause may be a viable option for TRF, Ecology is not the appropriate entity to issue a final determination on whether a party qualifies for the Plume Clause defense. Instead, the party asserting the Plume Clause defense carries the burden of proof and a judge must determine that party's liability or lack thereof. However, Ecology can confirm the following facts that relate to the elements of the Plume Clause defense:

- **RCW 70A.305.020(022)(iv)(A):** The hazardous substance has not been used, placed, managed, or otherwise handled on the property in a manner likely to cause or contribute to a release of the hazardous substance that has migrated onto the property.

As of the date of this letter, Ecology is not aware of the use or release of hazardous substances on the TRF Property that are subject to cleanup at the Tiki Car Wash Site. Based on information obtained at the Site and in the record, contaminants appear to come solely from the Tiki Car Wash property and not from the TRF Property. Ecology assesses the TRF Property as downgradient from the Site, and thus there is no evidence of hazardous substance migration to the Site from TRF's Property.

- **RCW 70A.305.020(022)(iv)(B):** The person has not caused or contributed to the release of the hazardous substance.

As of the date of this letter, there is no evidence in Ecology's record to suggest that TRF has caused or contributed to contamination at the Site. Ecology has studied the source

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and movements of hazardous substances at the Site and is not aware of any activity on the TRF Property that would have contributed to contamination.

- **RCW 70A.305.020(022)(iv)(C)**: The person does not engage in activities that damage or interfere with the operation of remedial actions installed on the person's property or engage in activities that result in exposure of humans or the environment to the contaminated groundwater that has migrated onto the property.

As of the date of this letter, Ecology is not aware of any activities TRF has engaged in that would have damaged or interfered with remedial actions at the Site. To the contrary, TRF has fully cooperated with Ecology and the PLP on all investigative and remedial activities.

- **RCW 70A.305.020(022)(iv)(D)**: If requested, the person allows the department...access to the property to conduct remedial actions.

During the March 19, 2025 meeting between TRF, Tiki Car Wash, and Ecology, TRF confirmed that Ecology and the PLP could continue to access the TRF property to perform remedial actions. TRF has also allowed Ecology and the PLP to access the TRF property in the past to investigate contamination that migrated from the Tiki Car Wash property.

Conclusion

Ecology appreciates TRF's patience with this Site and its cooperation on investigative and remedial activities. Ecology is moving forward with the RI, FS, and dCAP and will provide updates on those processes as needed. Once those deliverables are complete, Ecology will begin remedial work to address contamination on both the Tiki Car Wash property and the TRF property. Finally, while Ecology cannot make a final determination that TRF qualifies for the Plume Clause, it can confirm that contaminants on the TRF property appear to have migrated from the Tiki Car Wash property and that TRF has done nothing to contribute to or be liable for such contamination. Please feel free to reach out to myself or Dale Myers with thoughts or questions about the Site at any time.

Sincerely,

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