



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Eastern Region Office

4601 North Monroe St., Spokane, WA 99205-1295 • 509-329-3400

August 21, 2025

Matthew M. Folsom
Chief Civil Deputy
Spokane County Prosecutor's Office
1100 West Mallon Avenue
Spokane, WA 99260

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

- **Site Name: Spokane International Airport PFAS**
- **Site Address: 9000 W. Airport Dr., Spokane, WA 99204**
- **Cleanup Site ID: 16774**
- **Facility/Site ID: 6332493**
- **County Assessor's Parcel Number(s): 25310.9021**

Dear Matthew M. Folsom:

On June 13, 2025, the Department of Ecology (Ecology) sent you written notice of our preliminary determination that Spokane County is a potentially liable person (PLP) for a release of hazardous substances at the Spokane International Airport PFAS facility (Site). On July 15, 2025, the 30-day comment period on our preliminary determination expired the same day Ecology received your written comments. After considering your comments, Ecology is issuing this final determination of liability as detailed below.

Identifying Additional PLPs. The County's letter expressed surprise at Ecology's steps in naming additional PLPs for the Site. As noted under the Model Toxics Control Act, RCW 70A.305.020(26), Ecology provides notice and an opportunity to comment to any person whom the department finds, based on credible evidence, to be liable under RCW 70A.305.040. There is no limitation on when Ecology may notify a party they have been identified as a PLP. It is worth noting that Ecology's Policy 500A is guidance for use by Ecology staff, but the process set out in that document is not the only approach to PLP naming. Ecology has determined that naming additional PLPs now will facilitate cleanup of this contaminated site.

Third Party Defense. The County argues that it is not liable as the release of PFAS compounds at the Site was caused solely by the act of a third party, in particular the act of PFAS

manufacturers in placing PFAS compounds in the AFFF purchased by the Airport and used at the Site by Airport staff. Ecology does not believe that the County has shown that the requirements for a third party defense have been met.

The third party defense requires the person to show that the release of a hazardous substance was caused solely by an act or omission of a third party and that: (1) the third party is not an employee or agent or “one whose act or omission occurs in connection with a contractual relationship existing, directly or indirectly, with the person asserting the defense”; (2) the person asserting the defense “has exercised the utmost care with respect to the hazardous substance”; and (3) the person asserting the defense exercised the utmost care against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions. *See* RCW 70A.305.040(3)(a)(iii).

As the party asserting the defense, the County has the burden of proof of showing *the release* of the hazardous substance (e.g., PFAS compound) *was caused by the third party* (e.g., the PFAS manufacturer). The County’s theory that manufacturing a product which is then used/released by another party (i.e., Airport staff) yet still triggers the third party defense is not supported by any legal reasoning, court cases, or supporting documentation.

As the party asserting the defense, the County has the burden of proof and must show that the sole source of contamination is via a third party. “The third-party defense is triggered only by proving that the sole cause of contamination originated with an unrelated third-party, not that a third-party likely caused or contributed to the contamination.” *United States v. Puerto Rico Indus. Dev. Co. (PRIDCO)*, 368 F. Supp. 3d 326, 336 (D. Puerto Rico Mar. 25, 2019)¹. To support its theory, the County would need to show the third party (i.e., PFAS manufacturers) are the sole source of contamination.

The party asserting the defense must also show there is not a direct or indirect relationship with the alleged third party. The County has a direct relationship with the Spokane International Airport who bought and used AFFF, one of the sources of PFAS contamination at the Site. The Spokane International Airport is jointly owned by the City of Spokane and County of Spokane. The Airport is operated by the Spokane Airport Board. The Airport Board consists of seven members appointed by the City and the County. Three Board members are appointed by the City of Spokane, one of which is to be a member of the City Council; three are appointed by the County of Spokane, one of which is to be a member of the Board of County Commissioners; and the seventh is appointed jointly by the City and the County. The Board employs the Airport’s Chief Executive Officer (also subject to City and County approval). The Airport staff are organized into departments, which are managed by personnel appointed by and directly report to the CEO. The Airport staff purchased and used AFFF which included PFAS compounds. This

¹ MTCA is Washington’s analog to the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). *See Bird-Johnson Corp. v. Dana Corp.*, 833 P.2d 375, 377 (Wash. 1992). So a CERCLA case may be instructive on interpretation of MTCA requirements.

creates a link between the County and the alleged third party, so a third party defense would not be triggered.

In addition, the party asserting the defense must show that it exercised “the utmost care” with respect to the PFAS compounds. It should be noted that MTCA’s third party defense requires “utmost care” in contrast with the CERCLA third party defense which requires “due care” an arguably lesser standard. A party who delays cleanup, knowing that contamination is present, is not exercising due care. *See New York State Elec. & Gas Corp. (NYSEG) v. FirstEnergy Corp.*, 766 F.3d 212 (2nd Cir. 2014) where the court rejected a third party defense as due to the delay, more contamination was able to migrate. PFAS contamination was known to Spokane International Airport, and therefore the County as a member of the Airport Board, since sampling events occurred in 2017. However, Ecology was not informed of the contamination by either Spokane International Airport or the County until 2023. This delay in addressing the release of a hazardous substance does not show the County to have exercised “the utmost care” as required by the third party defense.

Identification of Other PLPs. The County has identified other entities which it claims are PLPs for the Site – in particular Fairchild Air Force Base, the U.S. Army Corps of Engineers, and the Air National Guard. While providing the names of entities which operated near or on the Airport property is helpful, Ecology would appreciate if the County could share any supporting documentation (e.g., purchase and sale agreements, lease documents, etc.) or data (e.g., groundwater samples, etc.) as credible evidence that those entities would be considered to be liable under RCW 70A.305.040.

Summary

Based on available information, Ecology finds that credible evidence exists that Spokane County is liable for a release of hazardous substances at the Site. On the basis of this finding, Ecology has determined that Spokane County is a PLP with regard to the Site.

The purpose of the Model Toxics Control Act (MTCA) is to identify, investigate, and clean up 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. Ecology has determined that it is in the public interest for remedial actions to take place at this Site. Ecology will contact you regarding the actions necessary for the Spokane County to bring about the prompt and thorough cleanup of hazardous substances at this Site. 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. Failure to comply 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)).

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Your rights and responsibilities as a PLP are outlined in Chapter 70A.305 RCW, and Chapters 173-340 and 173-204 WAC. Ecology's site manager for the Site, Jeremy Schmidt, will contact you with information about how Ecology intends to proceed with the cleanup.

If you have any questions regarding this notice, please contact Jeremy Schmidt at 509-724-1164 or jesc461@ecy.wa.gov.

Sincerely,



Nicholas Acklam

Section Manager

Toxics Cleanup Program, Eastern Regional Office

By certified mail: 9214 8901 9403 8328 8425 37

cc: Lisa Corcoran, Spokane International Airport
Ivy Anderson, Office of the Attorney General
Jeremy Schmidt, Ecology
Bri Brinkman, Ecology
Ecology Site File