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July 15, 2025

Sent via email and Certified Mail
Article No. 9589 0710 5270 1166 5855 20

Jeremy Schmidt
Toxics Cleanup Program, Eastern Regional Office
4601 North Monroe Street
Spokane, WA 99205

Re: *Response to Preliminary Determination of Liability at*
Spokane International Airport PFAS Site (Cleanup Site ID: 16774)

Dear Mr. Schmidt:

Spokane County (County) acknowledges receipt of the Washington State Department of Ecology's (Ecology) letter regarding the preliminary determination of liability for the Spokane International Airport PFAS Site (Site or SIA Site), dated June 13, 2025. Spokane County is a tenant in common owner of a parcel within the Site boundary.

As statutory legal counsel for Spokane County, I have been asked to respond to your letter.

The County appreciates Ecology's efforts to address the environmental and public health concerns associated with the use of aqueous film forming foam (AFFF) containing per- and polyfluoroalkyl substances (PFAS) at the Site. Spokane County is committed to environmental stewardship and to ensuring through cooperation with Ecology, the Spokane International Airport (SIA), and other stakeholders that the alleged contamination at the Site is addressed in a thorough, science-based investigation with an aim to protect the public from possible exposure to hazardous substances.

While the County seeks to fulfill its potential responsibilities related to the SIA Site, it was surprised to receive Ecology's letter for several reasons.

First, the County understood that Ecology had previously taken the position that SIA would be the only party to receive a PLP letter and, in fact, determined not to further explore additional PLPs.

Second, the County understands from its communications with SIA and the review of information publicly available about the history and investigation at the Site that SIA is following the schedule set forth in the Enforcement Order issued to SIA by Ecology on March 29, 2024, and that SIA has met all the milestones in the Enforcement Order. Because a full comprehensive investigation of the Site is underway and Ecology has approved all submittals to date, there is no reason to name additional PLPs at this time.

Third, because the Spokane Airport Board maintains and operates SIA under an Agreement with Spokane County and the City of Spokane and that Agreement gives the Spokane Airport Board full authority for the operation of all aspects of SIA, the County does not understand why Ecology believes the County needs to be named as a separate PLP.

Finally, identifying additional PLPs at this time is contrary to Ecology's *Policy 500A: Identification of Potentially Liable Persons* (established July 1, 1991, revised May 1, 2016; Publication Number: 16-09-051/052) (Policy). That Policy states that for sites where Ecology is supervising remedial actions by PLPs under an order, that Ecology *will search for and identify PLPs before entering into negotiations of an enforcement order*. Policy at p. 4-5. Ecology had credible information about other PLPs prior to issuing the Enforcement Order against SIA but did not search for and identify PLPs., in conflict with Policy 500A.

The County's Response to the Proposed Finding of Liability – the County challenges its status as a PLP and seeks clarification on Ecology's position.

In its letter, Ecology requests that the County provide a response to Ecology's preliminary determination that the County is a PLP at the Site. The County challenges the preliminary determination that it is a PLP for the reasons set forth below.

While the County has a role in ensuring a comprehensive investigation at the Site and possible future remediation activities by virtue of its partial ownership of a parcel at the Site, that does not mean that the County is necessarily a potentially liable party under MTCA (chapter 70A305 RCW). MTCA establishes that a person or entity, who would otherwise be liable under the statute, is not liable if the person or entity can show that the release of hazardous substances was caused solely by the act or omission of a third-party. RCW 70A.305.040(3)(a)(iii).

At the SIA Site, the alleged release of hazardous substances (PFAS) was solely caused by the companies that manufactured the AFFF products used at the Site that contain PFAS chemicals. These companies have been sued by the State of Washington for the contamination of resources "throughout Washington." The companies, referred to as the "Manufacturer Defendants" in the lawsuit are solely responsible for the alleged contamination at the SIA Site due to "PFAS contamination in Washington attributable in whole or in part to the aqueous film-forming foam

(AFFF)” they produced. (*State of Washington v. 3M Company et al.*, 2:23-cv-00926-RAJ, *Complaint*, ¶ 1.3, 1.4, 2.2). As the State of Washington alleges in the lawsuit against the Manufacturing Defendants, the companies knew about the dangers of the AFFF products they were producing and fraudulently concealed and misrepresented the safety of their products from the regulators, the public, and their customers, which includes SIA.

Because Spokane County can establish, as alleged by the State of Washington in its legal pleadings against the Manufacturing Defendants, that the Manufacturing Defendants caused the release or threatened release of hazardous substances at the Site, Spokane County, by virtue of RCW 70A.305.040(3)(a)(iii), is not a liable party and cannot be a PLP.

Furthermore, the County is not liable due to the fact that the Federal Aviation Administration (FAA) mandated the use of AFFF products at the Site and mandated that SIA regularly conduct training exercises with AFFF. The County’s authority at the Site is also limited by FAA restrictions, including through the FAA’s grant assurance program.

Identification of Other Potentially Liable Persons.

In its letter, Ecology encourages the County to identify other entities or persons who may be liable for the hazardous substances at the Site.

The Fairchild Air Force Base is a PLP due to the fact that it is located in close proximity to the Site, is a known long-time and frequent user of AFFF on its property and is currently conducting investigations into releases of PFAS on its property that may also be migrating off of Air Force Base property. The County understands that there is credible information suggesting that PFAS may have migrated from Fairchild AFB to the Site. While Ecology may not be able to take enforcement action against Fairchild AFB at this time due to legal limitations, there is no reason that Fairchild AFB cannot be named as a PLP. Naming Fairchild AFB as a PLP will help facilitate actions that need to be taken at the Site to protect public health.

Other previous owners of property at the Site should also be identified as PLPs, including the U.S. Army Corps of Engineers and the Air National Guard. The Joint Operating Agreement for the Airport between Spokane County and the City of Spokane (at section 2.1) in this regard states:

“It is recognized that the property of the Airport has been acquired at various times in various ways, including surplus property grant deeds from the United State of America, purchased through Federal Aviation Administration (FAA) or its predecessor, funds, and donations.”

In closing, Spokane County is committed to environmental stewardship and to working collaboratively with Ecology, the Spokane Regional Health District, the Spokane Airport Board, and other stakeholders to ensure that the alleged contamination at the SIA Site is investigated and remediated, if necessary, to protect the public. Our commitment is evidenced by Spokane County

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securing \$7.5 million in state funding to deploy Point-of-Entry Treatment (POET) systems to filter out PFAS contamination on the West Plains.

However, the County disputes the preliminary finding by Ecology that the County is a potentially liable party. Pursuant to Policy 500A, the County seeks “a meaningful opportunity to comment” on Ecology’s proposed action. I respectfully request a meeting with Ecology staff to further discuss the basis for the County’s designation as a potentially liable party, to provide additional credible information on other PLPs, and to explore appropriate roles and responsibilities among all involved entities, including federal agencies.

We look forward to meeting with the Department of Ecology to discuss this matter.

Thank you for your attention to this matter,



Matthew M. Folsom
Chief Civil Deputy
Spokane County Prosecutor’s Office–Civil Division