

DEPARTMENT OF  
**ECOLOGY**  
State of Washington

**Fox Avenue Building LLC  
Agreed Order and Public  
Participation Plan**

**Responsiveness Summary**

**Public Comment Period  
Dec. 22 - Jan. 30, 2009**

Prepared by  
Sunny Becker  
Washington Department of Ecology  
3190 160<sup>th</sup> Ave. SE  
Bellevue, WA 98008

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## Background

The Washington Department of Ecology (Ecology) and the Fox Ave Building LLC., entered into an Agreed Order. The Agreed Order describes what Fox Avenue Building is required to do on the Site including:

- Perform an interim cleanup measure to control the discharge of the plume to the Lower Duwamish Waterway. This will be done using Enhanced Reductive Dechlorination (ERD) to stimulate naturally-occurring bacteria to degrade solvent contaminants in the plume.
- Do a source area data gap investigation to better identify the measures and cost needed to clean this area up.
- Collect vapor samples to find whether tetrachloroethylene (PCE) vapors are reaching the office part of the Fox Avenue Building facility. If so, evaluate restarting the existing soil vapor extraction (SVE) system to control vapor intrusion.
- Do a Supplemental Feasibility Study to evaluate cleanup alternatives and enable Ecology to select a cleanup action that will attain cleanup levels under state law within a reasonable restoration time frame.
- Prepare a draft Cleanup Action Plan (CAP) that documents the cleanup action selected by Ecology to address the contamination at the site.

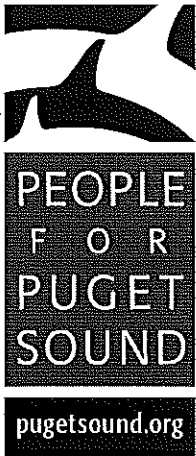
A public comment period was conducted Dec. 22 - Jan. 30, 2009 to solicit comments on the Agreed Order and Public Participation Plan.

## Summary of Ecology's Decision

Three comments were received during the comment period. Copies of the original comment are attached. This responsiveness summary provides Ecology's responses to their comments. These comments do not represent a substantial change to the Agreed Order and Public Participation Plan.

## **Comments Received and Ecology's Responses**

**See attached Heather Trim question and Ecology's response.**



January 30, 2009

Sunny Becker - Site Manager  
WA Department of Ecology  
Toxics Cleanup Program  
3190 160th Ave SE  
Bellevue, WA 98008  
Via email: hlin461@ecy.wa.gov

**RE: S Fox Avenue Building LLC (Fox Avenue Building) Site Agreed Order, Facility Site ID #: 2282**

To Sunny Becker,

We are writing to comment on the *S Fox Avenue Building LLC (Fox Avenue Building) Site Agreed Order*, dated December 22, 2008. The site is located at 6900 Fox Avenue South in Seattle.

People For Puget Sound is a nonprofit, citizens' organization whose mission is to protect and restore Puget Sound and the Northwest Straits.

Ecology is entering into a new Agreed Order with the current property owner, Fox Ave Building LLC. The Property is currently the location of an active chemical distribution warehouse (Cascade Columbia). The chemicals of known concern at this site are: tetrachloroethylene (PCE), trichloroethylene (TCE), and their associated degradation products (e.g., 1,2-dichloroethene and vinyl chloride), Pentachlorophenol (PCP), petroleum hydrocarbons, semi-volatile organic compounds (SVOCs), dioxins, and furans.

It is disappointing that the contaminants from this site have not been controlled and are reaching the Duwamish River in groundwater. This site has been investigated since 1989 and yet the groundwater has not been cleaned up.

People For Puget Sound requests to review the draft Supplemental Feasibility Study (FS) and draft Cleanup Action Plan for this site, at a minimum.

Thank you for the opportunity to comment. Please contact me with questions at (206) 382-7007 X215.

Sincerely,

Heather Trim  
Urban Bays and Toxics Program Manager

MAIN OFFICE	NORTH SOUND	SOUTH SOUND
911 Western Avenue, Suite 580 Seattle, WA 98104 tel • 206.382.7007 fax • 206.382.7006 email • people@pugetsound.org	407 Main Street, Suite 201 Mount Vernon, WA 98273 tel • 360.336.1931 fax • 360.336.5422 email • northsound@pugetsound.org	120 East Union Avenue, Suite 204 Olympia, WA 98501 tel • 360.754.9177 fax • 360.534.9371 email • southsound@pugetsound.org





STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Avenue SE • Bellevue, Washington 98008-5452 • (425) 649-7000

April 20, 2009

Ms. Heather Trim  
People for Puget Sound  
911 Western Avenue, Suite 580  
Seattle, WA 98104

Dear Ms. Trim:

**Re: Fox Avenue Agreed Order, Facility ID # 2282**

Ecology appreciates your comments on Ecology's proposed Agreed Order for the Fox Avenue site, dated January 30, 2009.

Fox Avenue is located in an industrial area near the Duwamish River and has been used as a chemical distribution center for decades. Since 1989, when Ecology started the cleanup process at the site, various cleanup technologies have been applied at the site. These cleanup efforts included soil vapor extraction system, groundwater pump and treat, and in situ chemical oxidation. Unfortunately, all the cleanup efforts tried to date have failed to achieve Model Toxics Cleanup Account cleanup levels. Ecology is committed to continue working with the property owner to implement other cleanup alternatives in an effort to meet MTCA cleanup levels.

If you have more questions, please call me at (425) 649-7187.

Sincerely,

A handwritten signature in black ink that reads "Sunny Becker".

Sunny Becker  
Toxics Cleanup Program, NWRO

sb/kp







See attached [langforjc12@juno.com](mailto:langforjc12@juno.com) question and Ecology's response.

**Comments:**

**From:** langforjc12@juno.com [mailto:langforjc12@juno.com]

**Sent:** Tuesday, December 23, 2008 3:08 PM

**To:** Lowe, Ann (ECY)

**Subject:** Re: Ecology News Release: Agreements set cleanup plans for site near Duwamish Waterway

12-23 Sir: Ever hear of the admonition--if it isn't hurting anything , leave it alone. Or is this a program designed to pay your salaries and soak the public?

**Response:**

Ecology appreciates your comments on Ecology's proposed Agreed Order for the Fox Avenue site. Ecology believes that the solvent contamination from the Fox Avenue site is causing harm to human health and the environment. Ecology will continue to work with the property owner to reduce the contamination.

If you have more questions, please call me, Sunny Becker, at (425) 649-7187.

**See attached John Houlihan question and Ecology's response.**

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FEB 05 2009

DEPT. OF ECOLOGY  
TCP-NWRO

# HOU LIHAN LAW

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3401 EVANSTON AVENUE N., SUITE C, SEATTLE, WA 98103  
P. 206.547.5052 F. 206.547.1958 C. 206.714.0296 [JOHN@HOULIHAN-LAW.COM](mailto:JOHN@HOULIHAN-LAW.COM)

January 30, 2009

**VIA EMAIL &**  
**U.S. MAIL**

Ms. Sunny Becker  
Site Manager  
Washington Dept. of Ecology  
Toxics Clean-Up Program  
3190 160<sup>th</sup> Avenue, S.E.  
Bellevue, WA 98008

**RE: FOX AVENUE BUILDING, LLC / SITE ID # 2282: SEATTLE BOILER  
WORKS, INC. COMMENTS ON PROPOSED AGREED ORDER**

Dear Ms. Becker:

As you know, I represent Seattle Boiler Works, Inc. ("SBW") and the owners of the SBW property. The SBW property is located down-gradient of the Fox Avenue Building, LLC site (the "Site") and is being impacted by the migration of contaminants from the Site onto the SBW property. This letter sets forth my clients' comments on the proposed Agreed Order in response to Ecology's Notice of and Call for Public Comments dated December 22, 2008. Please include these comments in the administrative record for the Site.

SBW has both technical and general comments. First, please see the attached memoranda from URS Corp. dated December 15, 2008 and January 28, 2009 which set forth SBW's technical comments concerning the proposed "pilot study" of Enhanced Reductive Dechlorination ("ERD") for the source area silts at the Site. Please note that URS recently received raw data from some of the initial data gap investigation conducted on the Site and the SBW property in December and January.

In particular based on URS's review of the proposed ERD pilot test and the recent data regarding the more extensive distribution of VOCs in the deep soils (down to an astonishing 70 feet bgs in the source areas at the Site), SBW is now convinced that the ERD technology will be ineffective in the source area silts. While Ecology has agreed to the implementation of the pilot test, we understand that Ms. Becker is similarly



questioning of the potential for the ERD technology to work in the source areas. URS suggests and SBW concurs, that extensive source area excavation and/or in-situ thermal remediation such as electrical resistance heating is necessary and appropriate. The current data from the recent MIP investigation fully supports elimination of the pilot study and moving quickly to a robust remedy selection for the source areas.

Second, SBW has several general comments concerning the proposed Agreed Order. Many of SBW's comments were conveyed to Ecology and the Attorney General's office during our meeting with you and Allyson Zipp on November 25, 2008. As we requested in November, Ecology must adopt a more expedited path to final remedy selection for this Site.

While SBW is hopeful that an effective remedy can be identified for the Site, especially in light of the permanganate in-situ chemical oxidation failure, SBW is very concerned that a viable final remedy will not be identified in time to allow it to be implemented before Fox Avenue's remediation funding is exhausted or expires. In particular, Fox Avenue is funding the investigation and remediation via a \$15,000,000 environmental cost cap policy issued by AIG Environmental. That insurance policy expires in early 2013 or upon exhaustion of the \$15 Million in limits. SBW's concern lies not necessarily with the exhaustion of limits but rather with the expiration of the policy term – after which Fox Avenue's primary and potentially sole source of funding for the investigation and remediation will be gone.

The current schedule does not contemplate a Draft Clean-Up Action Plan being submitted until March 2010. The proposed schedule is not viable in light of the 2013 AIG policy expiration. The current schedule does not allow adequate time for implementation of the selected remedy prior to expiration of the AIG policy. Moreover, the well publicized financial instability of AIG weighs heavily in favor of mandating prompt, robust remedial actions while AIG is still capable of funding such work.

Consequently, Ecology must mandate the prompt identification of a robust remedy for the Site (e.g. excavation, electrical resistance heating). Otherwise, there is a substantial risk that the funding for an effective remedy that addresses not only the source areas but also the impacts existing on the SBW property will not be available.

The proposed schedule for delivery of a RI/FS and Draft CAP must be accelerated. We believe that the RI/FS and draft CAP should be mandated for no later than mid-2009 (e.g. June or July). SBW strongly believes that a final CAP must be in place by September or October 2009 with remedy implementation no later than January 2010 to afford more time to perform actual clean-up prior to expiration of the AIG policy.



Ms. Becker

1/30/2009

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While additional certainty regarding the exact location of the source areas would be of interest, after 15 plus years of study we believe that there is adequate data on which to structure a robust source area remedy and an overall Site remedy including SBW's property. Given the structure of Fox Avenue's funding, time is of the essence.

Finally, SBW is unwilling at this point to agree to a conditional point of compliance for the Site at the Duwamish waterway. As such, the Draft and final CAP for the Site must provide for remediation of SBW property to concentrations below MTCA Method A for all of the contaminants of concern.

SBW appreciates the opportunity to submit these comments and is available to further discuss these comments and concerns at Ecology's convenience. If you have any questions, please do not hesitate to contact me.

Sincerely,

*John J. Houlihan, Jr.*

John J. Houlihan, Jr.

cc: Craig Hopkins

Roy Elliott







STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Avenue SE • Bellevue, Washington 98008-5452 • (425) 649-7000

April 20, 2009

Mr. John Houlihan  
Houlihan Law  
3401 Evanston Avenue N, Suite C  
Seattle WA 98103

Dear Mr. Houlihan:

**Re: Fox Avenue Agreed Order, Facility ID # 2282**

Ecology received your letter dated January 30, 2009 and attached technical memorandum by URS dated December 15, 2008 and January 28, 2009, respectively. Ecology appreciates your comments on the proposed Agreed Order for the Fox Avenue site.

Ecology agrees that the Enhanced Reductive Dechlorination (ERD) pilot test for the source area will not proceed as proposed in the draft Agreed Order (AO), based on the existing and new data recently collected by Floyd Snider. Ecology will continue to work with Fox Avenue to evaluate other cleanup alternatives for the source area.

Ecology also agrees to shorten the proposed cleanup schedule. Ecology believes it is feasible that a draft Feasibility Study report can be completed in August 2009 and a draft Cleanup Action Plan (CAP) in November 2009.

Ecology will discuss the point of compliance issue with Seattle Boiler Works and other down gradient property owners when drafting the CAP.

If you have more questions, please call me at (425) 649-7187.

Sincerely,

Sunny Becker  
Toxics Cleanup Program, NWRO

sb/kp



