



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

15 W Yakima Ave, Ste 200 • Yakima, WA 98902-3452 • (509) 575-2490

October 31, 2014

Smith KEM Ellensburg, Inc.  
c/o Mr. Andy Erickson  
PO Box 774  
Ellensburg, WA 98926

**Re: Notice of Potential Liability under the Model Toxics Control Act for the Release of Hazardous Substances at the following Hazardous Waste Site:**

- Site Name: Smith KEM Ellensburg
- Site Address: 200 Railroad Avenue, Ellensburg
- Assessor's Parcel No.: 226833
- Facility/Site ID No.: 12832256

Dear Mr. Erickson:

Under the Model Toxics Control Act (MTCA), chapter 70.105D RCW, which governs the cleanup of hazardous waste sites in Washington State, the Department of Ecology (Ecology) may identify persons that it finds are liable for the release of hazardous substances at a site. Before making such a finding, Ecology must provide persons with notice and an opportunity to comment on the proposed finding. Any person whom Ecology finds, based on credible evidence, to be liable is known as a "potentially liable person" or "PLP".

**Proposed Finding of Liability**

Based on credible evidence, Ecology is proposing to find Smith KEM Ellensburg, Inc. liable under RCW 70.105D.040 for the release of hazardous substances at the Smith KEM Ellensburg facility (Site). This proposed finding is based on the following evidence:

1. According to the information in the Ecology site files, Smith KEM Ellensburg, Inc. has operated the facility at 200 Railroad Avenue since at least 1975 when it was incorporated as an agribusiness.
2. According to a Groundwater Sampling Report conducted by Nth Degree Environmental Engineering Solutions and dated August 25, 2014 evidence of

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pesticide contamination is present in groundwater samples. These pesticides include lindane, chlordane, dieldrin, endosulfan II and endrin aldehyde. One or more of these pesticides exceed cleanup levels under applicable state and federal law (WAC 173-340, WAC 246-290-310 and 40 CFR 141.61).

3. Organochlorine pesticides are persistent organic pollutants that bioaccumulate in the food chain and in human and animal tissue. A release of organochlorine pesticides poses a risk to human health and the environment.

### **Opportunity to Respond to Proposed Finding of Liability**

In response to Ecology's proposed finding of liability, you may either:

1. Accept your status as a PLP without admitting liability and expedite the process through a voluntary waiver of your right to comment. This may be accomplished by signing and returning the enclosed form or by sending a letter containing similar information to Ecology;
2. Challenge your status as a PLP by submitting written comments to Ecology within thirty (30) calendar days of the date you receive this letter; or
3. Choose not to comment on your status as a PLP.

Please submit your waiver or written comments to the following address:

John Mefford  
CRO - Toxics Cleanup Program  
15 W. Yakima Avenue, Suite 200  
Yakima, WA 98902

After reviewing any comments submitted or after 30 days if no response has been received, Ecology will make a final determination regarding your status as a PLP and provide you with written notice of that determination.

### **Identification of Other Potentially Liable Persons**

Ecology will be notifying the following additional persons that they may be potentially liable for the release of hazardous substances at the Site:

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1. Shell Oil Products US
2. Ad Gro, LLC

If you are aware of any other persons who may be liable for the release of hazardous substances at the Site, Ecology encourages you to provide us with their identities and the reason you believe they are liable. Ecology also suggests you contact these other persons to discuss how you can jointly work together to most efficiently clean up the Site.

### **Responsibility and Scope of Potential Liability**

Please note that Ecology may either conduct or require PLPs to conduct remedial actions to investigate and clean up the release of hazardous substances at a site. PLPs are encouraged to initiate discussions and negotiations with Ecology and the Office of the Attorney General that may lead to an agreement on the remedial action to be conducted.

Please also note that each liable person is strictly liable, jointly and severally, for all remedial action costs and for all natural resource damages resulting from the release of hazardous substances at a site. If Ecology incurs remedial action costs in connection with the investigation or cleanup of real property and those costs are not reimbursed, then Ecology has the authority under RCW 70.105D.055 to file a lien against that real property to recover those costs.

### **Next Steps in Cleanup Process**

In response to the release of hazardous substances at the Site, Ecology intends to conduct the following actions under MTCA:

1. Initiate discussions to pursue cleanup. Different options exist and Ecology is willing to set up a meeting to discuss these options.

For a description of the process for cleaning up a hazardous waste site under MTCA, please refer to the enclosed fact sheet.

Ecology's policy is to work cooperatively with PLPs to accomplish the prompt and effective cleanup of hazardous waste sites. Please note that your cooperation in planning or conducting remedial actions at the Site is not an admission of guilt or liability.

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**Contact Information**

If you have any questions regarding this letter or if you would like additional information regarding the cleanup of hazardous waste sites, please call me at (509) 454-7836. Thank you for your cooperation.

Sincerely,



John Mefford  
CRO - Toxics Cleanup Program

Enclosures: 2

By certified mail: 7009 2250 0004 4950 5002

cc: Ms. Beth Flowers, SOPUS  
Ms. Carol Campagna, SOPUS  
Mr. Jeff Slothower, Lathrop, Winbauer, Harrel, Slothower & Denison, LLP