STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
*Northwest Regional Office • 3190 160th Ave SE • Bellevue, WA 98008-5452 • 425-649-7000*
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January 27, 2017

Ms. Carol Wiseman
Remediation Program Project Manager
Weyerhaeuser Company
220 Occidental Avenue South
Seattle WA 98104

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

- **Site Name:** Weyerhaeuser Everett Mill E
- **Site Address:** 515 East Marine View Drive, Everett, WA 98201
- **Cleanup Site ID:** 2903
- **Facility/Site ID:** 12
- **County Assessor's Parcel Number:** 29051600200500

Dear Ms. Wiseman:

Based on credible evidence, the Department of Ecology (Ecology) is proposing to find Weyerhaeuser Company (Weyerhaeuser) liable under the Model Toxics Control Act (MTCA), Chapter 70.105D RCW, for the release of hazardous substances at the Weyerhaeuser Everett Mill E facility (Site). Any person whom Ecology finds, based on credible evidence, to be liable is known under MTCA as a "potentially liable person" or "PLP."

This letter identifies the basis for Ecology's proposed finding and your opportunity to respond to that finding. This letter also describes the scope of your potential liability and next steps in the cleanup process at the Site. This letter does not affect that scope of liability already resolved by the consent decree entered in *Dep't of Ecology v. Weyerhaeuser Co.*, No. 98-2-08718-6 (Snohomish Cty. Super. Ct. Nov. 30, 1998) (Consent Decree). It does, however, supplement any prior notification of potential liability for the Site provided by Ecology to Weyerhaeuser.

**Proposed Finding of Liability**

Ecology is proposing to find Weyerhaeuser liable under RCW 70.105D.040 for the release of hazardous substances at the Site. This proposed finding is based on the following evidence and considerations:

1. Weyerhaeuser purchased the Site sometime before 1915 and filled it with sand dredged from the Snohomish River. In 1946 Weyerhaeuser leased the facility to the American Lumber and Treating Company, and subsequently to the Koppers Company. The Site was used for wood treatment from 1947 to 1963. Wood treatment processes included the use of creosote and creosote-petroleum solutions, Wolman salts (chromated copper arsenate), and "Minolith" fire retardant. Pentachlorophenol was reported used at the facility from approximately the mid-1950s until operations were discontinued in 1963. The Site operated as a maintenance facility from 1963 to 1984. Mill E was constructed in 1971 to process small log material. Mill E was dismantled in 1988. See Draft Remedial Investigation Report for Former Mill E/Koppers Facility, Everett, Washington, September 1994, p. 1-2 ff.)

2. Environmental investigations and cleanup were conducted subsequent to dismantling of Mill E. Cleanup was conducted under the Consent Decree. Cleanup included construction of a barrier wall surrounding an area of the Site where hazardous substances from log pressure-treating operations were discharged. The Consent Decree specifically excluded settlement for arsenic in soil and ground water located outside of the area surrounded by the barrier wall. (See p. 24, l. 21 ff.)

3. Cleanup actions were completed in 1999. Site monitoring has been conducted since then.

4. Weyerhaeuser sold the Site to M.A.P. #2 LLC (M.A.P. #2) in August 2005. The Site was then used by Pacific Topsoils, Inc. to store pallets. There is no known use of arsenic-containing hazardous substances at the Site by Pacific Topsoils, Inc. or M.A.P. #2.

5. Hence, Weyerhaeuser was the owner of the Site during the time hazardous substances were used at the Site, particularly the arsenic-containing hazardous substance chromated copper arsenate.

6. The presence of arsenic concentrations exceeding cleanup levels in soil and ground water outside the barrier wall, sediment, and seeps in the bank of the Snohomish River is documented in Figures 3-1 and 3-7 (soil) and in Tables G-4 (seeps), G-18A (ground water), and G-22 (sediment) of the Draft Remedial Investigation Report, referenced above. Maximum values were:

| | |
|---|---|
| Ground water, shallow: | 1770 in well HC-11 |
| Ground water, deep: | 24 µg/L in well HC-01D |
| Seeps: | 174 µg/L in seep sample SR-07 and 36 ug/L in SR-01 and SR-05 |
| Sediment: | 426 mg/kg in sediment sample SR-05, depth = 1 ft. |

Ground water, seep, and sediment sample locations are shown on Drawing 1 of the Draft Remedial Investigation Report. Ground water samples were collected in 1993. Seep and sediment samples were collected in 1992. The sources of seep water were not conclusively determined during the remedial investigation, but were thought to be a combination of ground water and river water dewatering from site soils during ebb tide. (See the Draft Remedial Investigation Report, §3.5.2, last paragraph on p. 3-11.)

7. In a letter from Ecology to Weyerhaeuser and M.A.P. #2 (South to Wiseman and Forman) dated December 8, 2016, (attached) Ecology informed Weyerhaeuser and M.A.P. #2 of new information that has become available to Ecology regarding arsenic in ground water and outfall discharges, and arsenic and mercury in sediment at the Site. The arsenic is present in concentrations that pose a threat to human health and the environment. The Consent Decree includes an express reopener to the covenant not to sue related to new information regarding factors previously not known to Ecology. *See* Consent Decree, Section XXVII.A.2. In addition, the Decree's covenant expressly excludes arsenic and soil contamination in soil and ground water located outside the vertical barrier wall constructed at the Site, with the state retaining all of its authority relative to such contamination. Under both of these provisions, Ecology has a current basis of enforcement against Weyerhaeuser. The letter directs Weyerhaeuser and M.A.P. #2 to prepare a draft Work Plan for incorporation into a new Order to assess the nature and extent of the contamination. Refer to the **Arsenic Concentrations in Ground Water, Outfall Discharges and Adjacent Sediment** and **Actions Required Under a New Order** sections of the letter for additional detail.

8. The integrity and location of the pipe discharging at the outfall referenced in Item 7 is unknown.

9. The only known use of arsenic at the Site is during the time of Weyerhaeuser's ownership. The Site was a natural tidal flat and adjacent undeveloped land along the Snohomish River prior to Weyerhaeuser ownership. During M.A.P. #2's ownership the only known use of the Site has been for pallet storage.

**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; or

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:

David L. South
NWRO Toxics Cleanup Program
3190 160th Avenue SE
Bellevue, WA 98008-5452

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 has notified the following additional persons that they are potentially liable for the release of hazardous substances at the Site:

1. M.A.P. #2 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**

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.

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. Pursuant to the Consent Decree, require Weyerhaeuser to submit for Ecology approval, and, once approved, implement, an addendum to the Consent Decree to

assess water levels in the lower sand aquifer at the Site and comparing those water levels to the water levels in the upper sand aquifer at the Site, as required by the Consent Decree. See attachment. Additional cleanup actions may be required as a result of this assessment.

2. Require submittal for Ecology approval, and, once approved, implementation, of a draft Work Plan for incorporation into a new Order to perform assessments detailed in the attachment. Ecology plans to enter a new Order to govern conduct of this work. The new Order will provide for additional cleanup actions as may be required depending upon the results of the assessments. Depending on Weyerhaeuser's and M.A.P. #2's willingness, this could either be an agreed order or an enforcement order.

For a description of the process for cleaning up a contaminated 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 contaminated sites. Please note that your cooperation in planning or conducting remedial actions at the Site is not an admission of guilt or liability.

**Contact Information**

If you have any questions regarding this letter or if you would like additional information regarding the cleanup of contaminated sites, please contact me at 425-649-7200 or david.south@ecy.wa.gov. Thank you for your cooperation.

Sincerely,

David L. South

David L. South
Cleanup Project Manager
Toxics Cleanup Program

Attachment (1)
Enclosures (2)

By certified mail: [9171 9690 0935 0132 2125 69]

cc: Sandra Forman, M.A.P. #2 LLC
Andy Fitz, Attorney General's Office
Sandra Matthews, Ecology
Ching-Pi Wang, Ecology
Bob Warren, Ecology

Attachment

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
*Northwest Regional Office • 3190 160th Ave SE • Bellevue, WA 98008-5452 • 425-649-7000*
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December 8, 2016

Ms. Carol Wiseman
Remediation Program Project Manager
Weyerhaeuser Company
220 Occidental Avenue South
Seattle WA 98104

Ms. Sandra L. Forman
M A P #2, LLC
805 80th Street SW
Everett WA 98203

**Re: Weyerhaeuser Mill E – Need for additional remedial actions**

- **Site Name:** Weyerhaeuser Everett Mill E
- **Site Address:** 515 East Marine View Drive, Everett WA 98201
- **Site Number:** 2903
- **Facility/Site No.:** 12

Dear Mss. Wiseman and Forman:

As you are aware, Ecology completed a five-year periodic review[1] of the Weyerhaeuser Everett Mill E Cleanup Site (Site) in June 2016. The review concluded:

- The cleanup actions completed at the Site appear to be protective of human health but not the environment.[2]
- Soils cleanup levels have not been met at the standard point of compliance for the Site; however, the cleanup action has been determined to comply with cleanup standards for soil since the long-term integrity of the containment system is ensured and the requirements for containment technologies are being met for the soil contamination.
- The Restrictive Covenant for the property is in place; however, given the other review findings, it may no longer be effective in protecting public health from exposure to hazardous substances and protecting the integrity of the cleanup action.

[1] Periodic Review, Weyerhaeuser Everett Mill E, June 2016. Available on Ecology's Weyerhaeuser Mill E website, https://fortress.wa.gov/ecy/gsp/Sitepage.aspx?csid=2903, see View Electronic Documents, Group: Technical Reports.

[2] This statement from the review is not wholly accurate because; as discussed below, arsenic concentrations at the ground water point of compliance, in water discharging from an outfall onsite and in sediment are not protective of either the environment or human health.

- Ground water contamination does not appear to be met any point of compliance for arsenic, and this and other contaminants may be bypassing containment into the lower aquifer. Ground water samples collected during 2013 adjacent to an outfall at the Property exceed the cleanup levels for arsenic.

Based on these findings, the periodic review determined that the requirements of Consent Decree 98 2 08718 6 are no longer met[3] and reminded Weyerhaeuser that it has an ongoing responsibility to continue to inspect the Site to assure that the integrity of the remedy is maintained. M A P #2, LLC, a wholly-owned subsidiary of Pacific Topsoils, Inc., is the current owner of the Weyerhaeuser Mill E cleanup site. As such, M A P #2, LLC, is subject to the scope and limitations of the successor owner enforcement stay under RCW 70.105D.040(4)(c).

This letter describes in further detail the concerns identified in the periodic review. It then outlines the additional actions Ecology believes are necessary to address these concerns.

Ecology has two concerns regarding the integrity of the remedy, both with respect to arsenic. The first concern is the performance of the vertical barrier wall around the portion of the Site where high levels of contamination remained on-site. As outlined below, the measure for one of the primary objectives of the *Performance and Compliance Monitoring Plan*, which is an integral and enforceable exhibit to Consent Decree 98 2 08718 6, is not being monitored. As a result, Ecology is unable to determine whether the containment system (barrier wall and asphalt cap) is functioning as designed and as required under the Consent Decree.

The second concern regards high concentrations of arsenic in ground water outside the containment system in the upper and lower aquifers, arsenic in water discharging to the Snohomish River from an outfall south of the containment area, and arsenic and mercury in sediment adjacent to the outfall. The ground water concentrations appear to be distinct from the Everett Smelter Site and may be indicative of barrier wall failure. Further, the concentrations in ground water, outfall discharges, and Snohomish River sediment represent a previously unknown threat to human health and the environment.

**Vertical Barrier Wall Performance**

A vertical barrier wall was placed around a highly contaminated area of the Site. The purpose of the barrier wall is to contain ground water contaminated by highly contaminated soil within the area surrounded by the wall. The barrier wall is a 1,600 feet long GSE Gundwall® high-density polyethylene geomembrane. The Site is underlain by fill, an upper sand aquifer, an upper silt leaky aquitard, and a lower sand aquifer. The barrier wall is keyed into the silt aquitard. An

[3] Consent Decree 98 2 08718 6, between State of Washington Department of Ecology v. Weyerhaeuser Company, November 12, 1998. Available on Ecology's Weyerhaeuser Mill E website, https://fortress.wa.gov/ecy/gsp/Sitepage.aspx?csid=2903, see View Electronic Documents, Group: Legal. The Consent Decree was mistakenly referred to as the "Restrictive Covenant" in the conclusions of the June 2016 periodic review.

asphalt cap over the area surrounded by the barrier wall, and extending beyond the barrier wall, prevents precipitation from infiltrating into the contained area.

The Site cleanup is governed by Consent Decree 98 2 08718 6. Exhibit C of the Consent Decree is the *Cleanup Action Plan*, and Exhibit E is the *Performance and Compliance Monitoring Plan*.

Performance of the barrier wall is assessed by water level monitoring (see *Cleanup Action Plan*, §6.3, p. 23). The *Cleanup Action Plan* indicates water levels are to be measured at three piezometers installed inside the barrier wall and in three piezometers installed outside the barrier wall. All six are screened in the upper sand aquifer. If water levels inside the barrier wall are stable or decrease, the system is judged to be functioning normally. If water levels increase within the contained portion of the upper sand aquifer, the cap performance is to be evaluated and corrective actions implemented. The frequency of water level monitoring is to be increased. In addition, concentrations of the chemical constituents of concern are measured inside the barrier wall to determine changes in chemical concentrations within the barrier wall. Concentrations in ground water outside the wall are not measured.

The *Performance and Compliance Monitoring Plan* also has requirements for monitoring the performance of the barrier wall. It notes that the water elevations within the contained portion of the upper sand aquifer are expected to reach a new elevation in equilibrium with the average hydraulic head in the lower sand aquifer, and that this would significantly decrease the contaminant flux from the upper sand aquifer down into the lower sand aquifer (see p. 2 of the *Plan*). If water levels inside the wall decline and reach a new equilibrium at approximately the average elevation of the hydraulic head in the lower aquifer, it can be presumed that the containment system (barrier wall and asphalt cap) is functioning as designed. The water level differences between the upper aquifer inside the containment wall and the lower aquifer are not being monitored, because no piezometers are screened in the lower aquifer. Hence, the measure for one of the primary objectives of the *Performance and Compliance Monitoring Plan* is not being monitored. Table 2-1 of the *Performance and Compliance Monitoring Plan* explicitly states that long-term reductions in flux of indicator hazardous substances in deep ground water migrating to the river is to be measured by reduced hydraulic gradients between the shallow and deep aquifers, and that this performance metric is to be assessed by water level measurements. As a result, Ecology is unable to determine whether the containment system (barrier wall and asphalt cap) is functioning as designed and as required under the Consent Decree.

**Arsenic Concentrations in Ground Water, Outfall Discharges and Adjacent Sediment**

Additionally, new information has become available to Ecology regarding arsenic in ground water and outfall discharges, and arsenic and mercury in sediment at the Site, that presents a previously unknown threat to the environment. The Site lies within the Lowland Area of the Everett Smelter Cleanup Site. The Lowland Area is an area delineated for remedial investigation of the nature and extent of the arsenic contamination associated with the Everett Smelter Cleanup

Site. The *Final Supplemental Remedial Investigation Report for the Everett Smelter Lowland Area*[4] (ES SRI Report) reports arsenic contamination in ground water outside the barrier wall in concentrations exceeding the Weyerhaeuser Mill E arsenic cleanup level (*Cleanup Action Plan*, p. 14) and the Everett Smelter preliminary cleanup level for protection of surface water in the Snohomish River (ES SRI Report, Table 5-4), both of which are 5 µg/L. This contamination has not been identified as being related to Everett Smelter contamination.

Arsenic concentrations in ground water in piezometer PZ-3B (upper aquifer), outside the barrier wall and adjacent to the Snohomish River were measured for four quarters in 2013. Concentrations ranged from 5.8 µg/L to 31 µg/L (see ES SRI Report Figures 6-8 through 6-11). Arsenic concentrations in well LLMW-20D, adjacent to PZ-3B and screened in the lower aquifer, ranged from 8.7 µg/L to 34.2 µg/L in the four quarters measured in 2013 (see ES SRI Report Figures 6-13 to 6-16). ES SRI Report Figures 9-2 and 9-3 indicate contamination in the upper and lower aquifers at the PZ-3B/LLMW-20D locations was not identified to be the result of smelter operations. Samples from wells in the lower aquifer upgradient of Mill E and downgradient of the smelter do not have concentrations that exceed the cleanup levels.

Hence, it appears arsenic in ground water at the point of compliance at the Snohomish River exceeds the cleanup level of 5 µg/L. In addition, arsenic concentrations are elevated in shallow aquifer ground water in PZ-1B with respect to arsenic concentrations in upgradient wells LLMW-18S and LLMW-21S, farther upgradient from the barrier wall (see ES SRI Report Figure 6-8 through 6-11). Deep aquifer ground water in well LLMW-19D, adjacent to the upgradient side of the barrier wall, and outside the wall, is elevated with respect to wells LLMW-18D and LLMW-21D, which are farther upgradient from the barrier wall. (See ES SRI Report Figures 6-13 to 6-16). This may be indicative of barrier wall failure.

The ES SRI Report also reports data obtained from outfalls, seeps, stormwater solids and sediment along the Snohomish River adjacent to the Everett Smelter Site. Outfall LLO-07 is on the Site south of the containment area (See ES SRI Report Figure 6-24). The dissolved arsenic concentration in water discharging from the outfall was 542 µg/L in Spring 2013. This is well in excess of both the National Recommended Water Quality Criteria and National Toxics Rule standards for protection of human health for marine waters of 0.14 µg/L. It is well in excess of the ground water cleanup level set in the *Cleanup Action Plan* of 5 µg/L. Adjacent outfalls have concentrations of 39.9 µg/L for LLO-06 (south of LLO-07) and 0.8 µg/L for LLO-05 (north of LLO-07).

Sediment sample LLSD-19, collected below outfall LLO-07 had an arsenic concentration of 837 mg/kg (ES SRI Figure 6-22). This is well above both the Sediment Cleanup Objective of 57 mg/kg and the Cleanup Screening Level of 93 mg/kg (See WAC 173-204-562, Table III). Other sediment samples collected north and south of the Site had arsenic concentrations in the range of 10 to 19 mg/kg.

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[4] *Final Supplemental Remedial Investigation Report, Everett Smelter Lowland Area*, February 8, 2016. Available on Ecology's Everett Smelter website, https://fortress.wa.gov/ecy/esp/Sitepage.aspx?csid=4298, see view Electronic Documents, Group: Technical Reports.

Sediment sample LLSD-19 also had a mercury concentration higher than adjacent samples. The LLSD-19 mercury concentration was 0.16 mg/kg. Adjacent samples had mercury concentrations of 0.04 and 0.07 mg/kg. This compares to the sediment cleanup objective (SCO) of 0.41 mg/kg and the sediment cleanup screening level (CSL) of 0.59 mg/kg (WAC 173-204-562, Table III). The SCO and CSL are for protection of the benthic community. The mercury preliminary sediment cleanup level for the Snohomish River identified in ES SRI Report Table 5-7 is 0.07 mg/kg. This is based on the protection of ecological receptors and adjusted upward to the mercury background concentration.

Both the arsenic concentrations in water discharging from outfall LLO-07 and the arsenic and mercury concentrations in sediment at LLSD-19 are new information regarding the nature or quantity of hazardous substances at the Site.

**Additional Remedial Actions Required**

The above considerations indicate the following additional remedial actions are needed at the Site.

**Action Required Under Consent Decree 98 2 08718 6**

The following action is required pursuant to Consent Decree 98 2 08718 6:

- Assess the vertical hydraulic gradient between the upper aquifer within the contained area and the lower sand aquifer. This is required to assess whether the water levels inside the containment wall have reached a new equilibrium at approximately the hydraulic head in the lower aquifer, a requirement of the *Performance and Compliance Monitoring Plan* (Exhibit E of the CD, §2.3).

Weyerhaeuser's failure to perform water level measurements to assess hydraulic gradients between the shallow (upper sand) and deep (lower sand) aquifers, as provided for in *Performance and Compliance Monitoring Plan* Table 2-1, last row, means Weyerhaeuser is not undertaking the identified monitoring approach for assessing a key performance objective of the remedy (long-term reductions in flux of indicator hazardous substances in deep ground water migrating to the river). This monitoring should be instituted under the existing terms of the Consent Decree. Ecology proposes that the monitoring specifics be defined pursuant to Section 2.3.2 of the *Performance and Compliance Monitoring Plan,* which provides that the Plan is to be evaluated, and potential changes discussed, every five years after its issue date (October 8, 1998). *See* Consent Decree, Exhibit E, §2.3.2, last paragraph. The specified monitoring is necessary to assess whether the performance objectives of the remedy are being met under the Consent Decree. *See* WAC 173-340-360(2)(a)(iv) (final cleanup action under Model Toxics Control Act (MTCA) must include compliance monitoring).

Please prepare for Ecology review a draft addendum to the *Performance and Compliance Monitoring Plan* to provide for monitoring water levels in the lower sand aquifer and comparing

those levels to water levels in the upper sand aquifer inside the containment wall. This comparison will be used to assess whether the Performance Objective of long-term reductions in the flux of indicator substances in deep ground water migrating to the river specified in Consent Decree Exhibit E, Table 2-1 is being met.

**Actions Required Under a New Order**

Consent Decree 98 2 08718 6, §XXVII, Covenant Not to Sue provides that the covenant is not applicable to the arsenic and soil contamination in soil and ground water located outside the vertical barrier wall constructed at the Site. The state retains all of its authority relative to such arsenic contamination. Ecology believes the following actions to investigate arsenic contamination outside the containment area should be conducted under a new administrative order. Depending on Weyerhaeuser's and M A P, LLC's willingness, this could either be an agreed order or an enforcement order.

- Assess arsenic concentrations in the upper and lower sand aquifers outside the barrier wall and whether they would be projected to flow past the ground water point of compliance at the property boundary adjacent to the Snohomish River (CAP, p. 14, 59/102) in either the upper or lower sand aquifers. This is required because new information has become available to Ecology as a result of investigations associated with remedial activities at the Everett Smelter Lowland.

- Assess the source of water discharging from Outfall LLO-07. Assess arsenic concentrations over time and the source of arsenic contamination in water discharging from Outfall LLO-07. This is required because new information has become available to Ecology regarding the nature and quantity of hazardous substances at the Site that presents a previously unknown threat to human health or the environment as a result of investigations associated with remedial activities at the Everett Smelter Lowland.

- Assess the extent of arsenic- and mercury contaminated sediment surrounding sediment sample LLSD-19, and the source of the contamination. This is required because new information has become available to Ecology regarding the nature and quantity of hazardous substances at the Site that presents a previously unknown threat to human health or the environment as a result of investigations associated with remedial activities at the Everett Smelter Lowland.

Prepare for Ecology review a draft Work Plan for incorporation into a new order to perform the above assessments.

**Next Steps**

Ecology would like to meet with you by January 13, 2017, to discuss a plan and schedule for preparing the draft addendum and draft work plan. Please provide me a list of available dates.

Let me know if attorneys will be attending and I will select a date on which my attorney can attend.

Call me if you have any questions at 425-649-7200.

Sincerely,

David L South

David L. South
Senior Engineer
Toxics Cleanup Program

By Certified Mail [9171 9690 0935 1320 2122 17] Ms. Carol Wiseman
[9171 9690 0935 0132 2122 24] Ms. Sandra Forman

cc: Andy Fitz, Attorney General's Office, via email
Janusz Bajsarowicz, Pacific Topsoils, Inc., via email

# PLP Waiver Form

Name: _____
Weyerhaeuser Company
220 Occidental Avenue South
Seattle WA 98104

Pursuant to WAC 173-340-500 and WAC 173-340-520(1)(b)(i), I, _____, a duly authorized representative of M.A.P. #2 LLC, do hereby waive the right to the thirty (30) day notice and comment period described in WAC 173-340-500(3) and accept status of M.A.P. #2 LLC as a Potentially Liable Person at the following contaminated site:

- **Site Name:** Weyerhaeuser Everett Mill E
- **Site Address:** 515 East Marine View Drive, Everett, WA 98201
- **Cleanup Site ID:** 2903
- **Facility/Site ID:** 12
- **County Assessor's Parcel Number:** 29051600200500

By waiving this right, Weyerhaeuser Company makes no admission of liability.

_____ _____
Signature Date

Relation to the Site: Owner/Operator

WASHINGTON STATE DEPARTMENT OF ECOLOGY

# Focus

## Model Toxics Control Act Cleanup Regulation: Process for Cleanup of Hazardous Waste Sites

In March of 1989, an innovative, citizen-mandated toxic waste cleanup law went into effect in Washington, changing the way hazardous waste sites in this state are cleaned up. Passed by voters as Initiative 97, this law is known as the Model Toxics Control Act, chapter 70.105D RCW. This fact sheet provides a brief overview of the process for the cleanup of contaminated sites under the rules Ecology adopted to implement that Act (chapter 173-340 WAC).

### How the Law Works

The cleanup of hazardous waste sites is complex and expensive. In an effort to avoid the confusion and delays associated with the federal Superfund program, the Model Toxics Control Act is designed to be as streamlined as possible. It sets strict cleanup standards to ensure that the quality of cleanup and protection of human health and the environment are not compromised. At the same time, the rules that guide cleanup under the Act have built-in flexibility to allow cleanups to be addressed on a site-specific basis.

The Model Toxics Control Act funds hazardous waste cleanup through a tax on the wholesale value of hazardous substances. The tax is imposed on the first in-state possessor of hazardous substances at the rate of 0.7 percent, or $7 per $1,000. Since its passage in 1988, the Act has guided the cleanup of thousands of hazardous waste sites that dot the Washington landscape. The Washington State Department of Ecology's Toxic Cleanup Program ensures that these sites are investigated and cleaned up.

### What Constitutes a Hazardous Waste Site?

Any owner or operator who has information that a hazardous substance has been released to the environment at the owner or operator's facility and may be a threat to human health or the environment must report this information to the Department of Ecology (Ecology). If an "initial investigation" by Ecology confirms further action (such as testing or cleanup) may be necessary, the facility is entered onto either Ecology's "Integrated Site Information System" database or "Leaking Underground Storage Tank" database. These are computerized databases used to track progress on all confirmed or suspected contaminated sites in Washington State. All confirmed sites that have not been already voluntarily cleaned up are ranked and placed on the state "Hazardous Sites List." Owners, operators, and other persons known to be potentially liable for the cleanup of the site will receive an "Early Notice Letter" from Ecology notifying them that their site is suspected of needing cleanup, and that it is Ecology's policy to work cooperatively with them to accomplish prompt and effective cleanup.

November 2007 (revised) Focus No. 94-129 printed on recycled paper

## Who is Responsible for Cleanup?

Any past or present relationship with a contaminated site may result in liability. Under the Model Toxics Control Act a potentially liable person can be:

- A current or past facility owner or operator.
- Anyone who arranged for disposal or treatment of hazardous substances at the site.
- Anyone who transported hazardous substances for disposal or treatment at a contaminated site, unless the facility could legally receive the hazardous materials at the time of transport.
- Anyone who sells a hazardous substance with written instructions for its use, and abiding by the instructions results in contamination.

In situations where there is more than one potentially liable person, each person is jointly and severally liable for cleanup at the site. That means each person can be held liable for the entire cost of cleanup. In cases where there is more than one potentially liable person at a site, Ecology encourages these persons to get together to negotiate how the cost of cleanup will be shared among all potentially liable persons.

Ecology must notify anyone it knows may be a "potentially liable person" and allow an opportunity for comment before making any further determination on that person's liability. The comment period may be waived at the potentially liable person's request or if Ecology has to conduct emergency cleanup at the site.

## Achieving Cleanups through Cooperation

Although Ecology has the legal authority to order a liable party to clean up, the department prefers to achieve cleanups cooperatively. Ecology believes that a non-adversarial relationship with potentially liable persons improves the prospect for prompt and efficient cleanup. The rules implementing the Model Toxics Control Act, which were developed by Ecology in consultation with the Science Advisory Board (created by the Act), and representatives from citizen, environmental and business groups, and government agencies, are designed to:

- Encourage independent cleanups initiated by potentially liable persons, thus providing for quicker cleanups with less legal complexity.
- Encourage an open process for the public, local government and liable parties to discuss cleanup options and community concerns.
- Facilitate cooperative cleanup agreements rather than Ecology-initiated orders. *Ecology can, and does, however use enforcement tools in emergencies or with recalcitrant potentially liable persons.*

## What is the Potentially Liable Person's Role in Cleanup?

The Model Toxics Control Act requires potentially liable persons to assume responsibility for cleaning up contaminated sites. For this reason, Ecology does not usually conduct the actual cleanup when a potentially liable person can be identified. Rather, Ecology oversees the cleanup of sites to ensure that investigations, public involvement and actual cleanup and monitoring are done appropriately. Ecology's costs of this oversight are required to be paid by the liable party.

When contamination is confirmed at the site, the owner or operator may decide to proceed with cleanup without Ecology assistance or approval. Such "independent cleanups" are

allowed under the Model Toxics Control Act under most circumstances, but must be reported to Ecology, and are done at the owner's or operator's own risk. Ecology may require additional cleanup work at these sites to bring them into compliance with the state cleanup standards. Most cleanups in Washington are done independently.

Other than local governments, potentially liable persons conducting independent cleanups do not have access to financial assistance from Ecology. Those who plan to seek contributions from other persons to help pay for cleanup costs need to be sure their cleanup is "the substantial equivalent of a department-conducted or department-supervised remedial action." Ecology has provided guidance on how to meet this requirement in WAC 173-340-545. Persons interested in pursuing a private contribution action on an independent cleanup should carefully review this guidance prior to conducting site work.

## Working with Ecology to Achieve Cleanup

Ecology and potentially liable persons often work cooperatively to reach cleanup solutions. Options for working with Ecology include formal agreements such as consent decrees and agreed orders, and seeking technical assistance through the Voluntary Cleanup Program. These mechanisms allow Ecology to take an active role in cleanup, providing help to potentially liable persons and minimizing costs by ensuring the job meets state standards the first time. This also minimizes the possibility that additional cleanup will be required in the future – providing significant assurances to investors and lenders.

Here is a summary of the most common mechanisms used by Ecology:

- **Voluntary Cleanup Program**: Many property owners choose to cleanup their sites independent of Ecology oversight. This allows many smaller or less complex sites to be cleaned up quickly without having to go through a formal process. A disadvantage to property owners is that Ecology does not approve the cleanup. This can present a problem to property owners who need state approval of the cleanup to satisfy a buyer or lender.

  One option to the property owner wanting to conduct an independent cleanup yet still receive some feedback from Ecology is to request a technical consultation through Ecology's Voluntary Cleanup Program. Under this voluntary program, the property owner submits a cleanup report with a fee to cover Ecology's review costs. Based on the review, Ecology either issues a letter stating that the site needs "No Further Action" or identifies what additional work is needed. Since Ecology is not directly involved in the site cleanup work, the level of certainty in Ecology's response is less than in a consent decree or agreed order. However, many persons have found a "No Further Action" letter to be sufficient for their needs, making the Voluntary Cleanup Program a popular option.

- **Consent Decrees:** A consent decree is a formal legal agreement filed in court. The work requirements in the decree and the terms under which it must be done are negotiated and agreed to by the potentially liable person, Ecology and the state Attorney General's office. Before consent decrees can become final, they must undergo a public review and comment period that typically includes a public hearing. Consent decrees protect the potentially liable person from being sued for "contribution" by other persons that incur cleanup expenses at the site while facilitating any contribution claims against the other persons when they are responsible for part of the cleanup costs. Sites cleaned up under a consent decree are also exempt from having to obtain certain state and local permits that could delay the cleanup.

- ***De Minimus* Consent Decree:** Landowners whose contribution to site contamination is "insignificant in amount and toxicity" may be eligible for a de minimus consent decree. In these decrees, landowner typically settle their liability by paying for some of the cleanup instead of actually conducting the cleanup work. Ecology usually accepts a de minimus settlement proposal only if the landowner is affiliated with a larger site cleanup that Ecology is currently working on.
- **Prospective Purchaser Consent Decree:** A consent decree may also be available for a "prospective purchaser" of contaminated property. In this situation, a person who is not already liable for cleanup and wishes to purchase a cleanup site for redevelopment or reuse may apply to negotiate a prospective purchaser consent decree. The applicant must show, among other things, that they will contribute substantial new resources towards the cleanup. Cleanups that also have a substantial public benefit will receive a higher priority for prospective purchaser agreements. If the application is accepted, the requirements for cleanup are negotiated and specified in a consent decree so that the purchaser can better estimate the cost of cleanup before buying the land.
- **Agreed Orders:** Unlike a consent decree, an agreed order is not filed in court and is not a settlement. Rather, it is a legally binding administrative order issued by Ecology and agreed to by the potentially liable person. Agreed orders are available for remedial investigations, feasibility studies, and final cleanups. An agreed order describes the site activities that must occur for Ecology to agree not to take enforcement action for that phase of work. As with consent decrees, agreed orders are subject to public review and offer the advantage of facilitating contribution claims against other persons and exempting cleanup work from obtaining certain state and local permits.

## Ecology-Initiated Cleanup Orders

Administrative orders requiring cleanup activities without an agreement with a potentially liable person are known as **enforcement orders**. These orders are usually issued to a potentially liable person when Ecology believes a cleanup solution cannot be achieved expeditiously through negotiation or if an emergency exists. If the responsible party fails to comply with an enforcement order, Ecology can clean up the site and later recover costs from the responsible person(s) at up to three times the amount spent. The state Attorney General's Office may also seek a fine of up to $25,000 a day for violating an order. Enforcement orders are subject to public notification.

## Financial Assistance

Each year, Ecology provides millions of dollars in grants to local governments to help pay for the cost of site cleanup. In general, such grants are available only for sites where the cleanup work is being done under an order or decree. Ecology can also provide grants to local governments to help defray the cost of replacing a public water supply well contaminated by a hazardous waste site. Grants are also available for local citizen groups and neighborhoods affected by contaminated sites to facilitate public review of the cleanup. See Chapter 173-322 WAC for additional information on grants to local governments and Chapter 173-321 WAC for additional information on public participation grants.

## Public Involvement

Public notices are required on all agreed orders, consent decrees, and enforcement orders. Public notification is also required for all Ecology-conducted remedial actions.

Ecology's Site Register is a widely used means of providing information about cleanup efforts to the public and is one way of assisting community involvement. The Site Register is published every two weeks to inform citizens of public meetings and comment periods, discussions or negotiations of legal agreements, and other cleanup activities. The Site Register can be accessed on the Internet at: www.ecy.wa.gov/programs/tcp/pub_inv/pub_inv2.html.

## How Sites are Cleaned Up

The rules describing the cleanup process at a hazardous waste site are in chapter 173-340 WAC. The following is a general description of the steps taken during the cleanup of an average hazardous waste site. Consult the rules for the specific requirements for each step in the cleanup process.

***1. Site Discovery:*** Sites where contamination is found must be reported to Ecology's Toxics Cleanup Program within 90 days of discovery, unless it involves a release of hazardous materials from an underground storage tank system. In that case, the site discovery must be reported to Ecology within 24 hours. At this point, potentially liable persons may choose to conduct independent cleanup without assistance from the department, but cleanup results must be reported to Ecology.

***2. Initial Investigation:*** Ecology is required to conduct an initial investigation of the site within 90 days of receiving a site discovery report. Based on information obtained about the site, a decision must be made within 30 days to determine if the site requires additional investigation, emergency cleanup, or no further action. If further action is required under the Model Toxics Control Act, Ecology sends early notice letters to owners, operators and other potentially liable persons inviting them to work cooperatively with the department.

***3. Site Hazard Assessment:*** A site hazard assessment is conducted to confirm the presence of hazardous substances and to determine the relative risk the site poses to human health and the environment.

***4. Hazard Ranking:*** The Model Toxics Control Act requires that sites be ranked according to the relative health and environmental risk each site poses. Working with the Science Advisory Board, Ecology created the Washington Ranking Method to categorize sites using data from site hazard assessments. Sites are ranked on a scale of 1 to 5. A score of 1 represents the highest level of risk and 5 the lowest. Ranked sites are placed on the state Hazardous Sites List.

***5. Remedial Investigation/Feasibility Study:*** A remedial investigation and feasibility study is conducted to define the extent and magnitude of contamination at the site. Potential impacts on human health and the environment and alternative cleanup technologies are also evaluated in this study. Sites being cleaned up by Ecology or by potentially liable persons under a consent decree, agreed order or enforcement order are required to provide for a 30 day public review before finalizing the report.

***6. Selection of Cleanup Action:*** Using information gathered during the study, a cleanup action plan is developed. The plan identifies preferred cleanup methods and specifies cleanup standards and other requirements at the site. A draft of the plan is subject to public review and comment before it is finalized.

***7. Site Cleanup:*** Actual cleanup begins when the cleanup action plan is implemented. This includes design, construction, operation and monitoring of cleanup actions. A site may be taken off the Hazardous Sites List after cleanup is completed and Ecology determines cleanup standards have been met.

## For More Information / Special Accommodation Needs

If you would like more information about the state Model Toxics Control Act, please call us toll-free at **1-800-826-7716**, or contact your regional Washington State Department of Ecology office listed below. Information about site cleanup, including a listing of ranked hazardous waste sites, is also accessible through our Internet address:
http://www.ecy.wa.gov/programs/tcp/cleanup.html

- **Northwest Regional Office** **425/649-7000**
  (Island, King, Kitsap, San Juan, Skagit, Snohomish, Whatcom Counties)
- **Southwest Regional Office** **360/407-6300**
  (Southwestern Washington, Olympic Peninsula, Pierce, Thurston and Mason Counties)
- **Central Regional Office** **509/575-2490**
  (Benton, Chelan, Douglas, Kittitas, Klickitat, Okanogan, Yakima Counties)
- **Eastern Regional Office** **509/329-3400**
  (Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Lincoln, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman Counties)

*If you need this publication in an alternative format, please contact the Toxics Cleanup Program at (360) 407-7170. Persons with a hearing loss can call 711 for the Washington Relay Service. Persons with a speech disability can call 877-833-6341.*

**Disclaimer Notice:** This fact sheet is intended to help the user understand the Model Toxics Control Act Cleanup Regulation, chapter 173-340 WAC. It does not establish or modify regulatory requirements.