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October 30, 2015

VIA FIRST CLASS U.S. MAIL
AND ELECTRONIC MAIL
dale.myers@ecy.wa.gov

Dale Myers
Department of Ecology
Toxics Cleanup Program
3190 160th Avenue SE
Bellevue, WA 98008

Re: Response to October 1, 2015 Notice of Potential Liability
Site Name: Maint PKG Lot (Chevron #209335)
Address: 1225 N. 45th Street, Seattle, WA 98103
County Assessor's Parcel Number 7821200275
Facility / Site No.: 70996824
Cleanup Site No.: 6537
VCP ID No.: NW2220
Responding Entity: Seattle Housing Authority

Dear Mr. Myers:

We represent the Seattle Housing Authority ("SHA") in response to the October 1, 2015 Notice of Potential Liability (the "Notice") under the Model Toxics Control Act ("MTCA") for the site described above (the "Site"). We submit this response to challenge SHA's status as a potentially liable party ("PLP").

No Basis for SHA's Liability under MTCA

The Notice's proposed findings provide no basis for MTCA liability against SHA. None of the hazardous substances that have been identified at the Site are alleged to have originated during SHA's period of ownership. Namely, TPH-g, TPH-d, BTEX, and LNAPL are all associated with petroleum-related uses, associated with the service station and service garage that were operated on the Site by Standard Oil Company and Chevron prior to SHA's acquisition. SHA did not continue those uses during its ownership.

In addition to SHA's lack of association with Standard Oil Company's and Chevron's service station and service garage, none of the proposed findings indicates any evidence that any other hazardous substance "disposal" or "release" occurred during SHA's ownership. Without a potential finding that SHA "disposed" of or "released" hazardous substances during its ownership, SHA cannot be liable under MTCA. *See* RCW 70.105D.040(1)(b) (MTCA liability limited to persons who "owned or operated the facility *at the time of disposal or release* of the hazardous substances") (emphasis added).

1. No "disposal" occurred during SHA's ownership.

Under MTCA, the "disposal" of hazardous substances occurs by "discarding . . . throwing away . . . putting, placing, transferring, distributing, discharging, discarding, delivering, abandoning, depositing, injecting, dumping, and spilling." *Modern Sewer Corp. v. Nelson Distrib., Inc.*, 125 Wn. App. 564, 571, 109 P.3d 11 (2005). Here, the alleged disposal activities occurred prior to SHA's acquisition.

2. No "release" occurred during SHA's ownership.

Under MTCA, a "release" requires some active conduct or direct introduction of a hazardous substance into the environment. *See* RCW 70.1050.020(32) (release requires "entry" of a hazardous substance into the environment). Here, there is no evidence that SHA is associated with any such active or direct release. And, passive migration—the movement of previously released contamination through soil or groundwater due to natural forces—is not a "release" for purposes of establishing MTCA liability. *See Taliesen v. Razore Land Co*, 135 Wn. App. 106, 135, 144 P.3d 1185 (2006) (leaving undisturbed the trial court's conclusion that passive migration does not constitute "release" under MTCA); *accord Carson Harbor Village, Ltd. v. Unocal Corp.*, 270 F.3d 863, 879 (9th Cir. 2001), *cert. denied*, 535 U.S. 971 (2002) ("passive migration" is not a release under CERCLA, 42 U.S.C. § 9601 *et seq.*). Thus, even if the disposal that occurred prior to SHA's ownership led to later passive migration of the hazardous substances, it does not provide a basis for SHA's MTCA liability.

Ongoing Inquiry; Reservation of Rights

SHA commenced an inquiry in response to the Notice, but such inquiry is ongoing and subject to the discovery of supplemental information, including the identification of other PLPs at the Site. Nothing in this response is intended as an admission of any fact or legal conclusion or any waiver of rights. SHA expressly reserves all rights in response to the Notice and regarding any potential liability under MTCA.

Conclusion

In sum, the Notice provides no basis for the potential liability of SHA under MTCA. SHA respectfully requests that Ecology confirm in writing that it has removed SHA from the Site's PLP list.

Sincerely,

Leslie Clark