



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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February 23, 2017

Dave McEntee, Vice President
Simpson Timber Company
1301 5th Avenue, Suite 2700
Seattle, WA 98101

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

- **Site Name:** Oakland Bay and Shelton Harbor Sediments
- **Site Address:** Mason County, Washington
- **Cleanup Site ID:** 13007
- **Facility/Site ID:** 18051

Dear Mr. McEntee:

On November 22, 2016, the Department of Ecology (Ecology) sent you written notice of our preliminary determination that Simpson Timber Company (Simpson Timber) is a potentially liable person (PLP) for a release of hazardous substances at the Oakland Bay and Shelton Harbor Site. On December 22, the 30-day comment period on our preliminary determination expired. On December 22, Ecology received your written comments, which included a statement that Simpson does not contest Ecology's proposed finding of PLP status for Simpson Timber.

Your letter also included several comments and a request that Ecology reissue the preliminary letter with some suggested revised wording. We note your comments about the language in the preliminary letter and have placed your letter in the site file. However, the process set forth in the Model Toxics Control Act (MTCA) regulation (WAC 173-340-500(3) and (4)) does not include provisions for reissuing the preliminary letter. We find that your comments do not provide new information that would change Ecology's determination that there is credible evidence for identifying Simpson Timber as a PLP for this site, and therefore we are providing this final determination letter. We will have more flexibility for negotiating language in the Agreed Order that we are negotiating with you. We will be responding to your comments on the draft of the order shortly and look forward to reaching a mutual agreement through that process.

Response to Comments

There are a few points in your comment letter for which I would like to provide some clarifications and/or responses:

Your letter states that the clinker found in the vicinity of the Navy Railroad along Shelton Creek was not disposed of, but was used as ballast for the railroad. We are not aware of any information indicating the railroad berm was built upon clinker. Our review of historic maps and aerial photos show that the railroad was built across the undeveloped tideflat in the mid-1940's. Joyce Mercuri reviewed historic Washington Department of Transportation aerial photos for the site vicinity (notes from her review were provided to you via email on December 13, 2016). Photos beginning in 1961 show Shelton Creek had been re-routed to flow alongside the south side of the rail line. Photos between 1961 and 1978 show extensive land disturbance in the footprint of the current location of the visible ash material (between the railroad and the creek), which indicates to us that the material was brought to that location after construction of the railroad. Also, if the material is a source of hazardous substance releases, it is still of concern under the Model Toxics Control Act whether it was originally placed as railroad ballast or not.

Your letter expressed concern about the lack of specificity about the chemicals present at levels of concern as described in Paragraph 9 of Ecology's preliminary PLP letter. Paragraph 9 states that sediments at the Site exceed "applicable chemical and toxicity criteria for protection of human health and the environment." I acknowledge that the preliminary letter did not provide enough specificity and I am providing some additional detail here.

Dioxin/Furan chemical mixtures, as measured in terms of toxicity equivalence quotient (dioxin TEQ), is the major chemical that has been found at the site at levels of concern for human health. While it is true that a final numeric cleanup value for dioxin TEQ would not be established until a Cleanup Action Plan is developed, the criteria we refer to in the preliminary PLP letter means the human health risk limits under the Sediment Management Standards (Chapter 173-204 WAC) (SMS). Under the SMS, the Sediment Cleanup Objective for protection of human health (WAC 13-204-564) is a concentration "...for which the upper bound on the estimated lifetime excess cancer risk for individual carcinogens is less than or equal to one in one million..."

When determining risk from ingestion of seafood, even extremely small concentrations of dioxin are calculated to pose a higher than one in one million excess cancer risk, given the high cancer potency factor of dioxin. Calculated concentrations are virtually always below the laboratory quantitation limit, the natural background concentration of dioxin in Puget Sound of 4 parts per trillion¹, or both. Under the SMS, the sediment cleanup objective is set at the higher of the calculated risk value, the natural background concentration, or the lab quantitation limit. Concentrations of dioxin TEQ throughout the site are well above the Puget Sound background concentration and typical practical quantitation limits, which is the basis for our statement that sediments exceed applicable chemical criteria.

The toxicity criteria that were referred to in Paragraph 9 of Ecology's preliminary PLP letter are the marine sediment biological criteria under WAC 173-204-562(3). This statement was based on larval and polychaete bioassay failures from tests conducted during the Oakland Bay Sediment Investigation published in 2010.

Your letter asks for clarification of a statement in the preliminary PLP letter which said that "Ecology intends to initiate discussions with Simpson which may result in an agreed order to implement

¹ Sediment Cleanup Users Manual II, Ecology publication 12-09-057, March 2015

cleanup of the Site.” You correctly point out that Ecology has currently initiated discussions with Simpson to address a part of the site; specifically, a proposed sediment cleanup unit within the site, which would include Shelton Harbor west of the inner harbor line.

Determination of PLP status

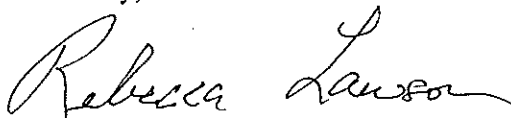
Based on available information, Ecology finds that credible evidence exists that Simpson Timber is liable for a release of hazardous substances at the Site. On the basis of this finding, Ecology has determined that Simpson Timber is a PLP with regard to the Site.

The purpose of the Model Toxics Control Act (MTCA) is to identify, investigate, and cleanup facilities where hazardous substances have been released. Liability for environmental contamination under MTCA is strict, joint and several (RCW 70.105D.040(2)). Ecology ensures that contaminated sites are investigated and cleaned up to the standards set forth in the MTCA statute and regulations. Ecology has determined that it is in the public interest for remedial actions to take place at this Site. Ecology and Simpson Timber are currently in discussions to negotiate an agreed order for remedial activities in the Shelton Harbor unit of the Site.

Failure to cooperate with Ecology or comply with MTCA in this matter will result in Ecology employing enforcement tools as it deems necessary and appropriate. This includes, but is not limited to, the issuance of an administrative order. Failure to comply with such an order may result in a fine of up to \$25,000 per day and liability for up to three times the costs incurred by the state (RCW 70.105D.050(1)). Your rights and responsibilities as a PLP are outlined in Chapter 70.105D RCW, and Chapters 173-340 and 173-204 WAC.

We look forward to working with Simpson on this Site. The next step is for us to continue to finalize the above-mentioned agreed order. Joyce will be providing our response to your suggested revisions shortly. If you have any questions regarding this notice, please contact Joyce at (360) 407-6260 or Joyce.Mercuri@ecy.wa.gov.

Sincerely,



Rebecca Lawson, P.E., LHG
Section Manager
Toxics Cleanup Program, Southwest

By certified mail: (91 7199 9991 7037 0238 2510

cc (via email only):

Kathryn Navarro, Simpson
Betsy Stauffer, Simpson
Jay Manning, Cascadia Law
Tanya Barnett, Cascadia Law
Jon Thompson, Office of the Attorney General
Joyce Mercuri, Cleanup Project Manager
Ecology Site File