



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

1250 W Alder St • Union Gap, WA 98903-0009 • (509) 575-2490

September 25, 2017

Mr. Shane DeGross
Manager Environmental Remediation
BNSF Railway Company
605 Puyallup Avenue
Tacoma, WA 98421

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 S. Railroad Avenue, Ellensburg
Facility/Site ID No.: 12832256
Cleanup Site ID No.: 4257

Dear Mr. DeGross:

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 BNSF Railway Company (BNSF) 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. BNSF Railway Company is listed as the current owner of parcel No. 216833 as shown by the records on the Kittitas County assessor’s site. A portion of parcel no. 216833 is directly adjacent to Smith KEM Ellensburg, Inc., a known contaminated site.
2. Releases of anhydrous ammonia occurred from rail cars operated or owned by BNSF Railway Company; or its predecessor, while the rail cars were situated on the spur track adjacent to the former Smith KEM Ellensburg facility located on parcel no. 226833. One substantial release of approximately 7,000 gallons occurred on May 10, 1987, as documented in the Ellensburg Daily Record. Other releases have occurred, some of which are recorded in the local newspaper.



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3. Nitrate is a chemical of concern associated with ammonia and it constitutes a hazardous substance, the release of which is subject to regulation under MTCA and possibly to other applicable state and federal laws depending on factors such as concentrations in environmental media. Besides being a groundwater contaminant, the presence of nitrate may influence the fate and transport of existing contaminants that may be present on the adjacent agribusiness property.
4. Other potential chemicals of concern may also have been released into the soil and/or the groundwater on the BNSF property from the transportation and/or handling of chemicals near the spur track. Other chemicals of concern may also be present as part of a commingled groundwater plume of contaminants that is known to exist on the Smith KEM Ellensburg, Inc. site and that may extend onto the BNSF property.

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
Department of Ecology
CRO - Toxics Cleanup Program
1250 W. Alder Street
Union Gap, WA 98903

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 may be potentially liable for the release of hazardous substances at the Site:

- Shell Oil Products US on behalf of Shell Oil Company
- Smith KEM Ellensburg, Inc.
- 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:

- Shell Oil Products US and Smith KEM Ellensburg, Inc. are parties to an existing Agreed Order for completion of a Remedial Investigation and Feasibility Study (RI/FS). Cooperation with these parties is required to allow them to complete the RI/FS.
- Cooperation includes the securing of access to BNSF property for assessment of the nature and extent of contamination related to the Smith KEM Ellensburg, Inc. site.

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

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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.

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 [91 7199 9991 7037 1451 1540]

cc: Allison Geiselbrecht, Floyd Snider
Koalani Kaulukukui, Office of the Attorney General, Ecology Division
Andrew King, Foster Pepper PLLC
Andrea Wing, Shell Oil Products US (SOPUS)