



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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July 19, 2016

Silje M. Roalsvik  
RiverStone Claims Management, LLC  
250 Commercial Street, Suite 5000  
Manchester, NH 03101

RE: Pederson's Fryer Farms (PFF) Environmental Cleanup

Greetings Silje:

Welcome to what I have come to find is a complex project, both technically and administratively. It is due to the latter that I have not done much with this project for some time—we need to resolve several issues before we can move the project forward.

The current status of the project is that the Washington Department of Ecology (Ecology) has completed the investigation work at the Site, culminating in the development of a Cleanup Action Plan (CAP) that provides for the implementation of the final cleanup action(s) to be conducted at the PFF Site. The work completed up to this point has been done under an Ecology contract with Landau Associates, who have done a very good job of performing a remedial investigation / feasibility study (RI/FS) and developing a CAP that I have approved. The only thing left to do is to implement the CAP, which I have determined will result in a thorough cleanup of the Site.

One issue we have to resolve is establishing an access agreement with Tacoma Public Utilities (TPU). Part of the Site is within a right of way owned by TPU, in which there is a major municipal water line that must be protected. Ecology cannot sign on to the access agreement that they proposed, so we are dealing with that issue through the State Attorney General's Office (AGO).

There are some other issues we have to resolve with RiverStone Claims Management, LLC that are also impeding the progress of getting the work completed. I don't know how much you have been able to review the history of this project, but I will try to relate the issues we face at this time.

Based on the most recent communications I have had with RiverStone, it appears that there is approximately \$500,000 remaining in the benefits that were assigned by the court to be used to do the cleanup work. However, Ecology and the AGO have noted several incongruities in the way the court's Settlement Agreement & Assignment has been administered. I have requested information from

RiverStone in the past regarding some of these issues, but our questions and concerns were never adequately addressed. Please note the following issues that we need to resolve:

- As it's been some time since I've corresponded with RiverStone about this, I would like to know what the latest tally is regarding the remaining policy benefits assigned to the cleanup work.
- Ecology never received copies of the actual insurance policies addressed by the Settlement Agreement to review what coverages are provided and how they are conditioned. Ecology respectfully requests copies of the pertinent policies, which will be reviewed by the AGO.
- It is my understanding that there were originally six policies taken out by PFF, but only five were assigned under the Settlement Agreement to be used for the environmental cleanup of the PFF Site in Tacoma. Why was one of the policies not assigned to the cleanup? Is it somehow different than the other policies?
- PFF had another facility in Yakima that apparently needed environmental cleanup, and the insurance company contracted directly for that work to be performed utilizing the benefits from the policies assigned under the Settlement Agreement. My understanding is that the cost of that work in Yakima was approximately \$500,000. We question whether that was appropriate, given that the Settlement Agreement applies only to the PFF Site in Tacoma.
- There are a number of invoices that Ecology has sent to RiverStone that, based on advice from a consultant retained by RiverStone, have been protested. RiverStone has refused to pay for charges incurred conducting remedial action that RiverStone's consultant claimed was unnecessary. I question the validity of those protests due to the fact that the consultant has not seen all the data that I have used to approve the work that has been done, and has not, in fact, ever been to the Site to see the nature of the work being performed. I've spent many hours at this Site, as I do with all the sites that I manage, because that's what you have to do to get a site remediated properly. It is the sole purview of Ecology to approve (or not) cleanup work performed in the State of Washington under the Model Toxics Control Act (MTCA), Chapter 70.105D RCW, as is the case here.
- RiverStone has similarly refused to pay invoices that include costs incurred by the AGO. WAC 173-340-550(2) states: "Each person who is liable under Chapter 70.102D RCW is liable for remedial action costs incurred by the department. Remedial action costs are costs reasonably attributable to the site and may include costs of direct activities, support costs of direct activities, and interest charges for delayed payments." (Emphasis added) The Settlement Agreement states that the insurance company is required to pay "100% of all reasonably necessary future payment obligations of the Insured to investigate and/or remediate the contamination arising

from gasoline, diesel fuel, oil and fuel oil at the site." (Emphasis added) Because Ecology staff must obtain legal advice from the AGO to ensure that the project is compliant with MTCA, these costs are "reasonably necessary" as part of the investigation and remediation process. Therefore, they are required to be paid by the insurance company in this case as is required of all PLPs when reimbursing Ecology for remedial action costs. We are not treating the insurance company differently than any other party responsible for paying remedial action costs.

- The insurance company contracted directly with Environmental Partners Inc. (EPI) to do the remedial work on the Site prior to Ecology taking over the work. The insurance company subsequently decided they didn't like the work that EPI was doing and fired them. My understanding is that the costs paid to EPI amounted to approximately \$817,000. Since that work was deficient (and thus unnecessary) by the insurance company's account, why would the money paid to EPI not still be available for use in completing a proper remedial action? (This also goes to my point two bullets above regarding their attempt to provide oversight on a cleanup action from 3,000 miles away.)

Ecology requests your response to the questions and concerns expressed above by August 15, 2016. Please let me know if you have any questions or need any additional information or materials from me. I will keep you posted on events that unfold here. In addition to dealing with the access issue I noted above, Ecology will have to re-contract for the final work to be done under the CAP, as the original contract with Landau only applied to the RI/FS phase of the remedial action.

Sincerely,



*Marv Coleman, Cleanup Project Manager*

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MLC/ksc:Letter to riverstone

cc: Caroline Cress, Ecology AAG  
Andrew Smith, Ecology

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