



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 18, 2019

ARE-Seattle 33 LLC
c/o Ken Lederman
Foster Garvey PC
1111 3rd Ave, Ste 3000
Seattle, WA 98101

Re: Early Notice Letter Regarding a Release of Hazardous Substances:

- **Site Name:** 701 Dexter
- **Site Address:** 701 Dexter Ave N, Seattle, WA 98109
- **Facility/Site ID:** 78082
- **Cleanup Site ID:** 15112
- **County Assessor's Parcel ID:** 2249000245

Dear ARE-Seattle 33 LLC:

The Department of Ecology (Ecology) received a report, dated 9/17/19, about potential contamination from hazardous substances. We have investigated the release or threatened release of hazardous substances to identify impacts to human health and the environment, as required under Chapter 70.105D Revised Code of Washington (RCW). Ecology maintains a database of known or suspected contaminated sites that will need remedial actions to meet requirements under the Model Toxics Control Act (MTCA Chapters 70.105D RCW and 173-340 WAC). This state law has the requirements necessary for the cleanup of contaminated sites that can threaten human health and the environment.

During the investigation, Ecology determined that contamination exists. As a result, we added this property to our database as a state cleanup Site that will need to be cleaned up pursuant to MTCA.

Ecology assigned Cleanup Site Identification (CSID) Number 15112. You can find site information and electronic records for this site at <https://fortress.wa.gov/ecy/gsp/SiteSearchPage.aspx?csid=15112>.

This letter or inclusion in our database of state cleanup sites does not mean that Ecology has made a determination about potential liability for cleanup under MTCA. Ecology's policy is to work cooperatively with individuals to accomplish prompt and effective cleanups.



ARE-Seattle 33 LLC

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Your cooperation with Ecology in planning or conducting remedial actions is not an admission of guilt or liability. Please note, all remedial actions must follow the requirements of state laws. Completing a remedial action without meeting the requirements of MTCA may lead to additional cleanup work or formal oversight by Ecology.

If a remedial action does not occur on this property, Ecology will likely require a more detailed investigation at a future time. Investigation typically consists of additional testing for contamination, including soil and groundwater sampling.

For questions regarding this letter or copies of the Model Toxics Control Act regulations and statute, please contact Donna Musa at (425) 649-7136 or donna.musa@ecy.wa.gov.

Sincerely,



Louise Bardy
Voluntary Cleanup Unit Supervisor
Toxics Cleanup Program, NWRO

Enclosures (2): A – Site Data Summary
 B – Focus: Model Toxics Control Act Cleanup Regulation: Process for
 Cleanup of Hazardous Waste Sites (#94-129)

By certified mail: 9171 9690 0935 0136 9542 81

Cleanup Site Details

Cleanup Site ID: 15112

Cleanup Site ID: 15112 Facility/Site ID: 78082 UST ID: N/A [Site Page](#) [Site Documents](#) [View Map](#)
 Cleanup Site Name: 701 Dexter [Glossary](#)
 Alternate Names: 701 Dexter

LOCATION
 Address: 701 DEXTER AVE N City: SEATTLE Zip Code: 98109 County: King
 Latitude: 47.62571 Longitude: -122.34287 WRIA: 8 Legislative District: 36 Congressional District: 7 TRS:

DETAIL
 Status: Awaiting Cleanup NFA Received? No Is PSI site? No
 Statute: MTCA NFA Date: N/A Current VCP? No Past VCP? No
 Site Rank: N/A NFA Reason: N/A Brownfield? No
 Site Manager: Northwest Region Responsible Unit: Northwest Active Institutional Control? No

CLEANUP UNITS					
Cleanup Unit Name	Unit Type	Unit Status	Resp Unit	Unit Manager	Current Process
701 Dexter	Upland	Awaiting Cleanup	NW	Musa, Donna	No Process

ACTIVE INSTITUTIONAL CONTROLS						
Instrument Type	Restriction Media	Restrictions/Requirements	Date	Recording Number	Recording County	Tax Parcel
There are no current Institutional Controls in effect for this site.						

AFFECTED MEDIA & CONTAMINANTS						
MEDIA						
Contaminant	Soil	Groundwater	Surface Water	Sediment	Air	Bedrock
Halogenated Solvents		C			C	
Metals - Other	B	B				
Non-Halogenated Solvents					C	
Petroleum-Other	B	B				

Key:
 B - Below Cleanup Level C - Confirmed Above Cleanup Level RA - Remediated-Above
 S - Suspected R - Remediated RB - Remediated-Below

SITE ACTIVITIES			
Activity	Status	Start Date	End Date/Completion Date
Site Discovery/Release Report Received	Completed		9/17/2019
Non-LUST Ind Report Received	Completed		11/27/2019
Initial Investigation / Federal Preliminary Assessment	Completed		12/9/2019



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.

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.

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- **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.

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.

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.

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.

