



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000

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January 29, 2020

Gary East
P&GE, LLC
6675 NE Windermere Road
Seattle, WA 98115-7942

Martin Penhallegon
P&GE, LLC
11255 Kirkland Way, Suite 300
Kirkland, WA 98033-6715

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

- **Site Name:** Go East Corp Landfill
- **Site Address:** 4330 108th Street SE, Everett, WA 98208
- **Cleanup Site ID:** 4294
- **Facility/Site ID:** 2708
- **County Assessor's Parcel Number:** 280521-004-002-00 (NW/4 of SE/4, Section 21, Township 28 North, Range 5 East, Willamette Meridian)

Dear Gary East and Martin Penhallegon:

On December 23, 2019, the Department of Ecology (Ecology) sent you written notice of our preliminary determination that P&GE, LLC is a potentially liable person (PLP) for a release of hazardous substances at the Go East Corp Landfill facility (Site). On January 13, 2020, Ecology received your written notice accepting your status as a PLP for the Site and your written comments to clarify factual statements in the Proposed Finding of Liability.

Based on available information, Ecology finds that credible evidence exists that P&GE, LLC is liable for a release of hazardous substances at the Site. On the basis of this finding, Ecology has determined that P&GE, LLC 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. You have already engaged with Ecology regarding the actions necessary for the P&GE, LLC to bring about the prompt and thorough cleanup of hazardous

Gary East and Martin Penhallegon

January 29, 2020

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substances at this Site. Failure to cooperate with Ecology or comply with MTCA in this matter could 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. Ecology's cleanup project manager for the Site, Alan Noell, will continue to work with you on determining actions necessary for the cleanup.

If you have any questions regarding this notice, please contact Alan Noell at 425-649-7015 or alan.noell@ecy.wa.gov.

Sincerely,



Peter Christiansen
Section Manager

Solid Waste Management Program, Northwest Regional Office

Enclosures

1. Preliminary Determination of Liability
2. PLP Waiver Form
3. PLP letter of clarification

By certified mail: [9171 9690 0935 0132 1891 68]

cc: Ken Lederman, Foster Garvey
Bruce Straughn, Snohomish Health District
Jon Thompson, Office of the Attorney General
Ecology Site File



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 23, 2019

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6675 NE Windermere Road
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Re: Preliminary Determination of Liability for Release of Hazardous Substances at the following Contaminated Site:

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Dear Gary East and Martin Penhallegon:

Based on credible evidence, the Department of Ecology (Ecology) is proposing to find P&GE, LLC liable under the Model Toxics Control Act (MTCA), Chapter 70.105D RCW, for the release of hazardous substances at the Go East Corporation facility (Site). Any person whom Ecology finds, based on credible evidence, to be liable is known under MTCA as a "potentially liable person" or "PLP."

This letter identifies the basis for Ecology's proposed finding and your opportunity to respond to that finding. This letter also describes the scope of your potential liability and next steps in the cleanup process at the Site.

Proposed Finding of Liability

Ecology is proposing to find P&GE, LLC liable under RCW 70.105D.040 for the release of hazardous substances at the Site. This proposed finding is based on the following evidence:

1. The Site is defined by the extent of releases or threatened releases of hazardous substances from a landfill at which solid wastes were disposed from approximately 1972 to 1983. The landfill is located in a ravine area in the north-central portion of Snohomish County Parcel 280521-004-002-00. The property is currently vegetated



with multiple streams present on the property on the west, south, and northeast sides of the landfill area. P&GE, LLC, is the current owner.

2. Go East Corporation purchased the 40.9-acre property from Rekoway, Inc. on February 1, 1980 (Snohomish County Recording No. 8002010259). Rekoway, Inc. had been operating a solid waste landfill on the property since approximately 1972. Go East Corporation accepted and actively managed solid waste at the landfill facility. Go East Corporation stopped accepting waste in the summer of 1983.
3. The Snohomish Health District (SHD) prepared a site hazard assessment (SHA) under MTCA on May 14, 2004. The SHA recommended future residential development of the site include implementation of a closure plan outlined in a May 24, 1999, Shannon and Wilson, Inc., proposal for Closure of the Go East Landfill. Beyond this recommendation, SHD recommended No Further Action (NFA) at the Site under MTCA. SHD subsequently issued a NFA letter on June 1, 2004, which stated Ecology had made a determination of NFA at this Site based on the SHA. The recommended closure plan in the SHA was never implemented. Further, the NFA letter stated Ecology reserved the right to initiate further investigation where new information is received indicating a potential/actual threat to human health and the environment through the release of hazardous substances.
4. PG&E, LLC acquired the property on which the landfill is located from Go East Corporation in May 2009 (Snohomish County Recording No. 200905210263, May 21, 2009).
5. P&GE, LLC is proposing to develop the property by consolidating the landfill area on the property from 9.6 acres to 6.4 acres; constructing a final landfill cover, stormwater facilities, and gas control trench; and subdividing and rezoning the property for the development of the Bakerview Plat Subdivision. The Bakerview Plat Subdivision includes 97 parcels zoned for Urban Low Density Residential housing, a roadway, and easements. The proposed landfill cap includes a stormwater flow control pond on top of the cap and a passive-to-active gas ventilation system along the periphery of the landfill. PACE Engineers, Inc. prepared the Go East Landfill Closure Plan (revised January 2018) on behalf of P&GE, LLC. The closure plan is recorded under Snohomish County Recording No. 201810230623, October 23, 2018.
6. The proposed landfill closure and subdivision development project requires a conditional use permit from Snohomish County Planning and Development Services (PDS) and a landfill permit from SHD. By agreement between PDS and SHD, PDS led the State Environmental Policy Act (SEPA) evaluation for the landfill closure and subdivision. PDS issued a Mitigated Determination of Non-Significance (MDNS) on August 29, 2014, based on SHD's conditional approval of the Go East Landfill Closure Plan (January 14, 2014). Following an appeal of the MDNS, on April 14, 2015, the Snohomish County Hearing Examiner remanded the application to PDS for further review on three topics—impacts of noise, air quality, and truck traffic. After

revision of the Go East Landfill Closure Plan (October 28, 2015), conditional approval of the closure plan by SHD (December 28, 2015), and third-party evaluations of dust and noise impacts (Golder Associates, August 5, 2016) and construction traffic (Gibson Traffic Consultants, Inc., August 3, 2016), PDS issued a new MDNS on May 7, 2017.

7. Kings Ridge Homeowners Association and The 108th St. Point Homeowners Association appealed the May 7, 2017, MDNS decision. The Hearing Examiner denied the homeowners associations' appeals and affirmed the MDNS. The Hearing Examiner stated SHD relies heavily on Ecology's review and resources, and that SHD will not issue a closure permit unless and until Ecology concurs with the proposed plan (Snohomish County Hearing Examiner Order No. 10-101204 SD/REZO, Amended Decision, February 14, 2018).
8. SHD issued Solid Waste Facility Permit No. SW-027 for the Go East Woodwaste Landfill on May 11, 2018. Permit No. SW-027 authorizes a Limited Purpose Landfill subject to WAC 173-350-400. The permit requires P&GE to close the landfill in accordance with the approved Go East Landfill Closure Plan (revised January 2018). The permit requires P&GE to submit final design drawings, construction specifications, and a construction quality assurance manual prior to beginning construction. Ecology's Solid Waste Management Program provides technical assistance to SHD for the authorization and oversight of this permit.
9. Ecology granted coverage under the Construction Stormwater General Permit in Permit No. WAR306901 to PACE Engineers under the Facility Site Name of Bakerview Everett on November 18, 2015, effective on September 18, 2018, for the Bakerview Plat Subdivision.
10. Kings Ridge Homeowners Association and The 108th St. Point Homeowners Association appealed SHD's issuance of Permit No. SW-027 to the Pollution Control Hearings Board (PCHB). The PCHB found the appellants had not met their burden to prove either the closure plan or the permit violated applicable landfill closure regulations. The PCHB stated additional design evaluation and components can be added in the detailed plans, specifications, and construction quality assurance plan, which will require regulatory approval (PCHB No. 18-042, June 5, 2019).
11. The SHD will modify Solid Waste Facility Permit No. SW-027 to address specific conditions in the PCHB ruling.
12. Snohomish County PDS will issue a land disrupting activity (LDA) permit for the initial rough/mass grading for the development after the finalization of an Agreed Order between Ecology and the PLP, and after the reissuance of Solid Waste Facility Permit No. SW-027.

13. Pulte Homes of Washington, Inc. has an option to purchase the land on which the landfill is located from P&GE, LLC, in accordance with a Memorandum of Purchase and Sale Agreement (Snohomish Recording No. 201906130436, June 13, 2019).
14. Ecology prepared an initial investigation field report for the Site on June 13, 2019, and rescinded the June 1, 2004, NFA on June 18, 2019. As described in that report (1) concentrations of arsenic, manganese, iron, lead, and chromium in groundwater near the landfill exceed MTCA cleanup levels, (2) leachate seeps have been observed from the northeast slope of the landfill, and (3) evidence of buried drums has been observed on the northeast slope of the landfill. Subsequent to Ecology's June 18, 2019, rescission of the NFA opinion, soil samples collected from test pits in the peripheral solid waste areas were found to have concentrations of total petroleum hydrocarbons and polycyclic aromatic hydrocarbons in excess of MTCA soil cleanup levels. Therefore, when these peripheral waste areas are excavated for consolidation, there is a potential for underlying soil to contain residual hazardous substances at concentrations requiring remediation under MTCA. Ecology rescinded the 2004 NFA opinion because the closure plan referenced in the opinion was never implemented and there has been a release or threatened release of hazardous substances at the facility that potentially represents a threat to human health and the environment.

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; or
2. Challenge your status as a PLP by submitting written comments to Ecology within 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:

Alan Noell, PhD, PE
Washington State Department of Ecology
NWRO Solid Waste Management Program
3190 160th Avenue SE, Bellevue, WA 98008-5452

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 reserves the right to identify additional persons that are potentially liable for the release of hazardous substances at the Site, including past owner/operators, waste generators, and potentially future owners of impacted portions of the property.

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

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.

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:

1. WAC 173-350-900 (Remedial Action) defines the roles of Ecology and the SHD in implementing the remedial action at the Site.
2. Ecology recommends P&GE, LLC enter into an Agreed Order with Ecology.
3. PLPs may not conduct independent remedial actions after commencing discussions or negotiations for an agreed order or consent decree (WAC 173-340-515(2)).
4. The Agreed Order will specify requirements for an interim action, a remedial investigation work plan, a remedial investigation/feasibility study, and a draft cleanup action plan.
5. Public participation will be accomplished in a manner consistent with WAC 173-340-600.

Gary East and Martin Penhallegon
December 23, 2019
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For a description of the process for cleaning up a contaminated site under MTCA, please refer to the enclosed fact sheet.

Ecology's policy is to work cooperatively with PLPs to accomplish the prompt and effective cleanup of contaminated sites. Please note 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 contaminated sites, please contact me at 425-649-7015 or alan.noell@ecy.wa.gov. Thank you for your cooperation.

Sincerely,



Alan Noell, PhD, PE
Cleanup Project Manager
Solid Waste Management Program, Northwest Region

Enclosures

1. PLP Waiver Form
2. Focus: Model Toxics Control Act Cleanup Regulation: Process for Cleanup of Hazardous Waste Sites (Focus No. 94-129)

By certified mail: 9171 9690 0935 0233 1181 66

E-cc: Ken Lederman, Foster Garvey
Peter Christiansen, Ecology NWRO Solid Waste Management Program Supervisor
Tim O'Connor, LG, LHG, Ecology NWRO Solid Waste Management Program
Jon Thompson, Office of the Attorney General
Bruce Straughn, Snohomish Health District
Ecology Site File

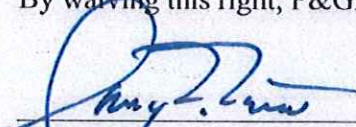
PLP Waiver Form

Gary East
P&GE, LLC
6675 NE Windermere Road
Seattle, WA 98115-7942

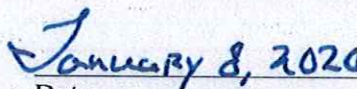
Pursuant to WAC 173-340-500 and WAC 173-340-520(1)(b)(i), I, Gary East, a Co-Manager of P&GE, LLC, do hereby waive the right to the thirty (30) day notice and comment period described in WAC 173-340-500(3) and accept status of P&GE, LLC as a Potentially Liable Person at the following site:

- Site Name: Go East Corp Landfill
- Site Address: 4330 108th Street SE, Everett, WA 98208
- Cleanup Site ID: 4294
- Facility/Site ID: 2708
- Snohomish County Assessor's Parcel Number: 280521-004-002-00

By waiving this right, P&GE, LLC makes no admission of liability.



Gary East
Co-Manager of P&GE LLC



Date

Relation to the Site: Owner



1111 Third Avenue
Suite 3000
Seattle, WA 98101

Main: 206.447.4400
Fax: 206.447.9700
foster.com

Direct Phone: 206.447.6267
Fax: 206.749.2090
ken.lederman@foster.com

January 13, 2020

VIA EMAIL & U.S. MAIL

Alan Noell, PhD, PE
Solid Waste Management Program
Department of Ecology, Northwest Regional Office
3190 160th Ave SE
Bellevue, WA 98008-5452
Alan.noell@ecy.wa.gov

**Re: Preliminary PLP Status and Waiver
Go East Corp Landfill Site
4330 108th Street SE, Everett, WA 98208
Cleanup Site ID 4294
Facility Site ID 2708**

Dear Dr. Noell:

On behalf of P&GE, LLC, the current owner and operator, we are providing an executed waiver of Preliminary PLP Status for the Go East Corp Landfill Site ("Site"). We look forward to working with you on next steps in the cleanup process.

We are providing this letter to clarify some of the factual statements in the "Proposed Finding of Liability" section of your December 23, 2019 letter regarding Ecology's preliminary determination of liability. We believe some of the statements are inaccurate. As such, P&GE LLC's acceptance of PLP status should not be construed as agreement or an admission regarding these statements. Specifically:

- Paragraph 13
 - Pulte Homes of Washington ("Pulte") has an option to purchase only the area of the Property outside of the future landfill limits area of the Site. The future landfill limit area will not be purchased by Pulte.
- Paragraph 14
 - The initial investigation field report issued by Ecology on June 13, 2019 relied heavily on inaccurate information provided by a 3rd party. Ecology is fully aware of the extensive and accurate environmental information provided for this Site as part of the development of the current Ecology-approved Landfill Closure Plan.
 - The concentrations of arsenic, manganese, iron, lead, and chromium in groundwater in excess of MTCA cleanup levels were detected in areas upgradient of the Site. There is no evidence or indication that these detections are the result of releases of hazardous substances on or from the Site.

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- The leachate seep(s) near the toe of the northeast slope of the landfill is upslope and upgradient of the sampling and testing performed to date, which has demonstrated no adverse impacts to groundwater or surface water from the former landfill.
- The information provided by a 3rd party included one photo of one alleged drum. Despite our best efforts, we have never been able to locate this drum and we question whether it is actually located at the Site.
- We believe the excavation of peripheral waste areas for consolidation in the future landfill limit area will remove all contaminated soils above MTCA cleanup standards from areas outside the future landfill limit area. We will be performing extensive sampling and analysis to confirm that fact.

Thank you for allowing us to correct the factual record in this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

FOSTER GARVEY PC



Ken Lederman
Principal

Cc: P&GE, LLC