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STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
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March 4, 2020

1920 Tacoma Ave., LLC
Attn: Kathryn J Dobler (Manager)
3012 S 47th St, Ste 2
Tacoma, WA 98409

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

- **Site Name:** WA UW Tacoma Branch
- **Site Address:** 1900 Commerce, Tacoma, Pierce County, WA 98402
- **Facility/Site ID:** 1325
- **Cleanup Site ID:** 141
- **Parcel #:** 2019120131

Dear Kathryn J. Dobler:

On September 10, 2019, the Department of Ecology (Ecology) sent you written notice of our preliminary determination that 1920 Tacoma Ave., LLC is a potentially liable person (PLP) for a release of hazardous substances at the WA UW Tacoma Branch facility (Site). Ecology is not naming Kathryn J. Dobler in her individual capacity as a PLP.

On October 14, 2019, Ecology received your written notice disputing your status as a PLP. In addition, you provided information regarding other parties who may be liable for the release. Ecology will review this documentation and name additional parties as PLPs if credible evidence exists indicating their potential liability.

Your letter disputes Ecology's preliminary determination based on the following set of arguments: that an "innocent purchaser," "third party," or groundwater plume defense to liability may apply.

Innocent Purchaser Defense. Your letter has not provided sufficient information to establish by a preponderance of the evidence that the requirements for an innocent purchaser defense have been met. See Revised Code of Washington (RCW) 70.105D.040(3)(b).

Third Party Defense. In your letter, aside from asserting that 1920 Tacoma Ave., LLC would be able to avail itself of a third party defense if it was found to be a liable party, there is no discussion as to *how* 1920 Tacoma Ave., LLC meets the various requirements to qualify for that defense.

The [Model Toxics Control Act \(MTCA\)](#),¹ chapter 70.105D RCW, requires that the party who asserts that it qualifies for the third party defense shows how it meets all the required factors. That person must show that the release (or threatened release) of a hazardous substance was caused solely by an act or omission of a third party and that:

1. The third party is not an employee or agent or “one whose act or omission occurs in connection with a contractual relationship existing, directly or indirectly, with the person asserting the defense.”
2. The person asserting the defense “has exercised the utmost care with respect to the hazardous substance.”
3. The person asserting the defense exercised the utmost care against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions. See RCW 70.105D.040(3)(a)(iii).

1920 Tacoma Ave., LLC has failed to show any of the factors for the defense have been met.

Groundwater Plume Defense. Regarding the potential for a groundwater plume clause defense to MTCA liability, there is no discussion as to *how* a groundwater plume defense would apply to your case. MTCA requires that the person seeking to assert the defense demonstrates that it meets the requirements (RCW 70.105D.020(22)(iv)(A)-(C)).

It should also be noted that the groundwater plume defense will not apply if the person fails to cooperate with Ecology, when the agency is seeking access to property to conduct remedial actions and investigations. See RCW 70.105D.020(22)(iv)(D).

Based on available information, Ecology finds that credible evidence exists that 1920 Tacoma Ave., LLC is liable for a release of hazardous substances at the Site. On the basis of this finding, Ecology has determined that 1920 Tacoma Ave., LLC is a PLP with regard to the Site.

The purpose of 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 will contact you regarding the actions necessary for 1920 Tacoma Ave., LLC to bring about the prompt and thorough cleanup of hazardous substances at this Site.

¹ <https://fortress.wa.gov/ecy/publications/SummaryPages/9406.html>

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 of the Washington Administrative Code (WAC). Ecology's cleanup project manager for the Site is Thomas Middleton.

At this stage of the investigation, Ecology is requesting that you fill out and return the enclosed access agreement to allow Ecology and its contractors to conduct investigation activities on your property. These investigation activities will assist Ecology in defining the extent of contamination located on your property. These data will be used to finalize the Remedial Investigation/Feasibility Study at the Site and allow for proper selection of remedial alternatives. Ecology will be in contact with you regarding scheduling access to your property for the investigation work.

If you have any questions regarding this notice, please contact Thomas Middleton at (360) 407-7263 or thomas.middleton@ecy.wa.gov.

Sincerely,



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

Enclosure: Access Agreement

By certified mail: 9489 0090 0027 6092 9868 91

cc: Mark E. Holcomb, Morton McGoldrick PLLC
Ivy Anderson, Office of the Attorney General (by email w/o enclosure)
Thomas Middleton, Ecology (by email, w/o enclosure)
Andy Smith, P.E., Ecology (by email w/o enclosure)
Ecology Site File

ACCESS AGREEMENT

Between the

Washington State Department of Ecology

and

1920 Tacoma Ave, LLC

The Washington State Department of Ecology (Ecology) and 1920 Tacoma Ave, LLC, agree to following terms and conditions of this Access Agreement:

1. Ecology is responsible for the investigation and remediation of hazardous waste sites in Washington pursuant to the Model Toxics Control Act (MTCA), chapter 70.105D Revised Code of Washington (RCW) and chapter 173-340 Washington Administrative Code (WAC).
2. Upon reasonable notice (unless an emergency prevents such notice), Ecology may exercise the power to enter upon any property to conduct investigations of a release of a hazardous substance, and to conduct remedial actions (including investigations) to remedy releases of hazardous substances. RCW 70.105D.030(1)(a) & (b); WAC 173-340-800.
3. 1920 Tacoma Ave, LLC is the owner/operator of a site on which a release of hazardous substances has occurred. The Site is known as the WA UW Tacoma Branch (Site). The legal description of the property is: Pierce County Parcel 2019120131: Section 05 Township 20 Range 03 Quarter 44 BURNS & BLINNS ADD COMB FOR TAX PURPOSES ONLY DESC AS L 6 THRU 22 B 1912 TOG/W E 10 OF ALLEY ABUTT THEREON VAC BY ORD 17033 COMB OF 003-0 THRU 010-0 & 012-0 & 013-0 SEG 2015-0240 JP 12/10/14 JP.
4. 1920 Tacoma Ave, LLC has been designated as a “potentially liable person” for the Site. RCW 70.105D.020(21); .040.
5. By signing this Access Agreement, 1920 Tacoma Ave, LLC grants full access rights to Ecology and/or any authorized representative of Ecology for the purpose of investigating and remediating the release of hazardous substances at the Site.
6. 1920 Tacoma Ave, LLC agrees to indemnify, defend, and save and hold harmless the State of Washington, its employees, and agents from any and all claims or causes of action for death or injuries to persons or for loss or damage to property to the extent arising from or on account of acts or omissions of 1920 Tacoma Ave, LLC, its officers, employees, agents, or contractors in entering into this agreement or that may occur in the course of Ecology accessing the property pursuant to this agreement. However, 1920 Tacoma Ave, LLC shall not indemnify the State of Washington, defend, nor save nor hold harmless its employees and agents from any claims or causes of action to the extent arising out of the negligent acts or omissions of the State of Washington, or the employees or agents of the State, in entering into this agreement or accessing the property pursuant to this agreement.

7. Ecology and 1920 Tacoma Ave, LLC may mutually amend this Access Agreement. Any amendments shall not be binding on either party unless such amendments are in writing and signed by an authorized representative of each party.
8. Ecology hereby reserves its right to file an action, if necessary, against 1920 Tacoma Ave, LLC or any other "potentially liable person" to recover the remedial actions costs incurred by Ecology for any investigative and remedial actions at the Site. RCW 70.105D.050(3); WAC 173-340-550.
9. This Access Agreement between Ecology and 1920 Tacoma Ave, LLC contains all the terms and conditions agreed upon by and between the parties. No other understandings, verbal or otherwise, regarding the subject matter of this agreement shall be enforceable on any of the parties.

Department of Ecology
Rebecca S. Lawson, P.E., LHG
Section Manager
Toxics Cleanup Program
Southwest Regional Office

Signature

Date

1920 Tacoma Ave, LLC
Kathryn J. Dobler, Manager

Signature

Date

Printed Name