



DEPARTMENT OF
ECOLOGY
State of Washington

Response to Comments

**Prospective Purchaser Consent Decree
Remedial Investigation/Feasibility Study
Draft Cleanup Action Plan
SEPA Checklist & DNS
Public Participation Plan**

**Time Oil Bulk Terminal
Cleanup Site
Seattle, WA**

*Facility Site ID: 75486194
Cleanup Site ID: 14604*

September 2020

Publication and Contact Information

This document is available on the Department of Ecology's Time Oil Bulk Terminal website at: <https://apps.ecology.wa.gov/gsp/Sitepage.aspx?csid=14604>

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Response to Comments

Prospective Purchaser Consent Decree Remedial Investigation/Feasibility Study Report Draft Cleanup Action Plan Public Participation Plan SEPA Checklist and DNS

Time Oil Bulk Terminal Cleanup Site Seattle, WA

*Facility Site ID: 75486194
Cleanup Site ID: 14604*

Washington State Department of Ecology

Northwest Regional Office

Toxics Cleanup Program

Bellevue, Washington

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Comment Summary

From July 20 to August 18, 2020 the Department of Ecology solicited public comments on a Prospective Purchaser Consent Decree (PPCD), Remedial Investigation/Feasibility Study (RI/FS) Report, Draft Cleanup Action Plan (DCAP), Public Participation Plan (PPP), and a State Environmental Protection Act (SEPA) Checklist and Determination of Non-Significance (DNS) for the Time Oil Bulk Terminal Cleanup Site. Ecology also hosted an online public meeting on Thursday July 29, 2020.

Ecology received comments from five individuals during the 30-day comment period via Ecology's online comment form, emails and letters to the site manager, and formal comments submitted during the public meeting and hearing.

Table 1: List of Commenters

	First Name	Last Name	Submitted By
1	Miller	Myers	Individual
2	Kat	Blinkwitz	Individual
3	Francine	Walsh	Individual
4	Arthur	Day	Individual
5	Jim	Codling	Individual

Comments and Responses

Ecology has reviewed and considered all public comments received on these documents. Based on Ecology's evaluation of the comments, no significant changes were necessary for the documents and they are being finalized.

The public comments are presented below, along with Ecology's responses. The comments have been numbered for ease of reference in the response. Appendix A, page 10, contains the comments in their original format.

Comment from: Miller Myers

I'm concerned that the remediation work will result in toxic dust spreading through the Commodore Way neighborhood. What steps will be taken to prevent this from happening?

Response:

Ecology agrees that controlling dust will be important when soils at the property are excavated or treated. This aspect will be addressed in construction documents and health and safety plans, and will be monitored in accordance with the construction monitoring requirements.

In addition, cleanup actions under MTCA, Chapter 70.105D RCW, and its implementing regulations, Chapter 173-340 WAC, are required to comply with the substantive requirements of applicable permits, such as a City of Seattle grading permit. Any requirements applicable to a grading permit, or other applicable permits, would need to be complied with.

Likely dust control best management practices to be implemented during construction include using water trucks to spray dry exposed soil, using sweepers to control dust and soil tracking off-property, and minimizing the area of contaminated soil exposed during excavation. In addition, water or odor suppressing foam will be available if needed to make sure dust and contaminants are not released during excavation or soil mixing activities.

Comment from: Kat Blinkwitz

We recently received a pamphlet regarding the Time Oil Terminal Cleanup Site and an invitation for public comment. My neighborhood is near the site. My questions are this:

1. Who is TOC Terminal LLC?
2. What are they planning to do with the property?
3. By what date do they have to submit the bulk of the settlement (1.2 trillion) into the Cleanup Settlement Account?

I believe my neighbors and I need to know these basic facts before we can provide any substantive feedback to the draft cleanup plans. Thank you,

Response:

1. The Chicago firm Cantera Development Group, LLC will be purchasing the former Time Oil terminal property, and will then transfer ownership to TOC Seattle Terminal, LLC. This new LLC will own, clean up, and redevelop the former Time Oil terminal property.
2. Specific development plans have not yet been finalized, but are anticipated to include mixed use industrial/commercial buildings, consistent with current zoning.
3. All of \$ 1.5 million must be paid in full within four years of the sale of the former Time Oil terminal property.

Comment from: Francine Walsh

1. I oppose the fact that they are trying to cut corners. The Ecology's chosen clean up is to excavate and remove the contamination NOT try to Encapsulate it.
2. These sites have known TCE contamination which has been banned in most of the world since the 70's along with other awful long lasting contaminates. Read your own reports. This company should be made to do it right.
3. They are also being RELEASED with a settlement of liability with your Consent Decree, so who's going to pay when the encapsulation fails? We will- with our water. We are the ones who have to live with this once the developer is long gone.
4. It is quite insane to think that this is all to be done while there is KNOWN continued contamination from the Railroad company BNSf.
5. This plan is irresponsible to the community your are to serve. If this company is to be trusted to do the clean up, at least make them do it according to the recommendations of the Ecology's chosen clean up plan in the reports you post. Encapsulation is FAILURE waiting to happen and yet they propose it. Can you spell Hanford? Smells the same.
6. Do you remember that we are in an earthquake region?
7. Doing this wrong should be off the table. If they are indeed the experts they tout, they can do this right IF you require it. Please do.

Response:

1. With regard to “cutting corners”, Ecology acknowledges your concern with a cleanup that does not result in the removal of all contamination. However, we must operate within the scope of our authority, as defined by the Model Toxics Control Act (MTCA). One of the MTCA requirements is that the selected cleanup action use “permanent solutions to the maximum extent practicable” WAC 173-340-360(2)(a)-(b). To make this determination, a disproportionate cost analysis (DCA) is used per WAC 173-340-360(3). For this project, the DCA found that out of six alternatives evaluated, the selected alternative is the one that uses permanent solutions to the maximum extent practicable (Section 12.4 of the draft RI/FS). Note that Ecology worked closely with the prospective purchaser in identifying the six alternatives to be evaluated.

Based on the results of the DCA and consideration of other factors described in the Feasibility Study, Ecology chose the selected cleanup action for the Property. That choice is ratified in the Cleanup Action Plan prepared by Ecology, and includes complete removal (i.e., soil excavation) in portions of the Property, as well as a combination of different remedial actions (in-situ stabilization/solidification, capping, and in-place treatment) in other portions of the Property.

2. With regard to In-situ stabilization/solidification (ISS), this technology does not encapsulate the contaminant inside of a storage unit (like at Hanford), but mixes the contaminated soil into a solid matrix with a binder like cement. This process immobilizes

the contaminants, reducing their overall toxicity and ability to leach into groundwater. Areas treated through ISS will then be covered with pavement or building structures to prevent direct contact with the solidified mass, and to prevent rainfall from infiltrating and potentially leaching some of the contaminants. ISS is a proven technology used at many contaminated sites across the country. As a source of information please see this fact sheet from the U.S. Environmental Protection Agency for reference:

https://clu-in.org/download/Citizens/a_citizens_guide_to_solidification_and_stabilization.pdf.

3. With regard to the TCE and other contamination, the cleanup chosen by Ecology for this Site is specifically tailored to remove, immobilize, or treat this compound and others as a means of protecting human health and the environment. As noted above, the selected cleanup includes a combination of soil excavation, ISS, and groundwater treatment.

4. The Prospective Purchaser Consent Decree does, as you note, settle liability with the State of Washington. However, the settlement is specific to the liability the prospective purchaser will assume under MTCA once they purchase the Property, and allows the state to require additional work in certain circumstances. Currently, the prospective purchaser is not an owner or operator or have other known MTCA liability. Once they purchase the Property, they will voluntarily assume the MTCA liability as the property owner, with the goal of re-developing the property for beneficial use.

In addition, this settlement requires the prospective purchaser to clean up the Property following the Cleanup Action Plan and in accordance with the legal requirements of the Prospective Purchaser Consent Decree, all under Ecology oversight.

With regard to who will pay if the “encapsulation” fails, it should first be noted that the solidified soils are unlikely to break down, given that they will be rigid subsurface soil zones containing materials that will not decompose or otherwise weaken. As such, for soils, ISS failure is not expected.

However, it could be considered a failure if groundwater downgradient of ISS areas does not meet cleanup standards within 15 years, as outlined in the Cleanup Action Plan. If that were to occur, contingency provisions in the Cleanup Action Plan would come into effect and additional cleanup actions required. The party responsible for those additional cleanup actions would be the party legally bound by the Prospective Purchaser Consent Decree (or successor legal agreements in force at that time).

5. Regarding the contamination on the upgradient BNSF parcel, there will be a separate Agreed Order between Ecology and BNSF for investigation and subsequent cleanup of that parcel. In the meantime, a subsurface wall treatment system will be constructed at the BNSF border that will intercept and treat contaminated groundwater flowing from the BNSF property onto the former Time Oil terminal property (Property).

6. Ecology is committed to protecting human health and the environment through cleaning up contaminated properties. As such, we have worked through the careful consideration and selection of a cleanup action for this Property. As noted above, Ecology’s selected

plan is presented in the Cleanup Action Plan. Also as noted above, the Cleanup Action Plan does not include encapsulation.

7. Ecology understands that earthquakes pose a risk for developments in the Puget Sound area. Therefore, the potential impact of earthquakes on elements of the cleanup will be evaluated in the Engineering Design Report. This report will be the next milestone document to be submitted to Ecology for review as the project moves into the design/construction phase.
8. Ecology acknowledges your concern with the selected cleanup alternative. The Cleanup Action Plan presents an alternative that meets the requirements in MTCA that include:
 - a. Compliance with cleanup standards
 - b. Compliance with applicable state and federal laws
 - c. Protection of human health and the environment
 - d. Provides for compliance monitoring
 - e. Use of permanent solutions to the maximum extent practicable
 - f. Provides for a reasonable restoration timeframe
 - g. Considers public concerns

(Please refer to the feasibility study if you would like to review how these requirements are met by the selected alternative)

Comment from: Arthur Day

I am a near-neighbor of the project. I have three comments regarding the documents that I have reviewed:

1) DNR Waterway Authorization: The documents reference the DNR Waterway Use Authorization 20-A10919, which was initiated in 1997 and was renewable for up to 24 years. This parcel includes the TOC fuel loading dock. The documents say that the purchaser will assume this authorization, but I have not yet found any information on how this dock will figure into the cleanup plan, or whether it is the purchaser's intent to try to make future use of the state waterway.

2) Surface water management. In the SEPA checklist, it is stated that after the cleanup, approximately 80% of the land will be covered with impermeable surfaces. It is further stated that stormwater management will be required for the site, but completely defers this action to a future development. However, the overall cleanup action is supposed to be independent of future proposals.

3) Wildlife. Herons make use of the TOC dock and some surrounding areas during their pre-nesting period. This should be taken into account in scheduling activities on the site.

Response:

1. The Cleanup Action Plan is for the upland portion of the former Time Oil Bulk Terminal and does not include the dock or in-water cleanup. The prospective purchaser will own the dock improvements and is intending to assume the DNR lease, but development plans or usage for the dock have not yet been determined. Any future development plans for the dock will be subject to a separate permitting and approval process.
2. The overall cleanup action is not completely independent of future proposals (i.e., development), because the cleanup plan includes capping most of the property with pavement or buildings to prevent stormwater infiltration and people from contacting contaminated soils. These hardscape features would be elements of the cleanup constructed during a future development phase. Most importantly, the capping must be done to protect human health and the environment even if development plans are delayed or otherwise uncertain, as the cap is part of the remedy.

Additionally, stormwater management, although not a specific element of the cleanup, will be required before and after development in accordance with City of Seattle codes and federal National Pollutant Discharge Elimination System (NPDES) regulations. In addition, a long-term maintenance plan that will be prepared for the Property (Soil and Remedial Element Management Plan) will include provisions for preventing soil erosion and transport to the storm drain system or directly to Salmon Bay (Section 6.1.8 of the Cleanup Action Plan).

3. Ecology recognizes the importance of the local heron nesting area and use of the Property and dock. As such, construction planning, permitting, and scheduling for the remedial action will consider the requirements and the regulations governing the nearby Great Blue Heron Management Area.

As discussed in the SEPA Checklist, The City of Seattle (in coordination with the Washington Department of Fish and Wildlife [WDFW]) has designated a Great Blue Heron Management Area west of the shoreline portion of the Property, within the Kiwanis Ravine. The Property is not within the Great Blue Heron Management Area, which includes a 197-foot year-round protection buffer and 300- and 500-foot seasonal buffers to protect nesting colonies of great blue heron. However, the Property may be located within the seasonal pre-nesting area buffers.

The pre-nesting area will be confirmed by a biologist as part of the project planning and design. Existing regulations provide that the pre-nesting area should not exceed ambient noise levels during pre-nesting season, which is from January 1 to March 31. The consulting biologist will determine the need for further heron noise disturbance measures during the permitting stage of the project. While noise reduction measures may be necessary, physical impacts to great blue heron habitat are not anticipated given the industrial/developed nature of the Property.

During the planning and design phase, Ecology will also confirm that the prospective purchaser has identified the substantive requirements of all applicable permits (City of Seattle, Ecology for Shoreline Management Act) and other state and federal natural resource agencies (e.g., U.S Fish and Wildlife Service, U.S. Army Corps of Engineers), including any requirements to protect wildlife in the area. Ecology will enforce all substantive requirements during implementation of the cleanup action.

Comment from: Jim Codling

1. Hi so what was the outcome of this meeting, Is there a prospective buyer interested?? *(Submitted 8/17/2020)*
2. The article in the times regarding the meeting on the time oil property clean up ? Is the owner coming back into the deal ?? Thanks *(Submitted 8/19/2020)*
3. Who is the property care giver for the action? *(Submitted 8/19/2020)*
4. So who is the caretaker of the property care taker... or a phone number for hm/her *(Submitted 8/26/2020)*
5. Hi just read all the paper work and descriptions on the time oil site etc. this is very well done and mostly accurate not sure who your resources were but not bad,, Jim codling 1968 to 2006 mgr. *(Submitted 8/26/2020)*

Response:

1. A new company, TOC Seattle Terminal, LLC will be purchasing the property from the bankruptcy Trustee, and cleaning it up in accordance with a legal agreement signed with the State of Washington.
2. The current owner of the property is in bankruptcy and will not, to our knowledge, be involved in this property in the future once the prospective purchaser is the legal owner.
3. A Trustee for the bankruptcy court is currently responsible for the property as part of the bankruptcy proceedings.
4. Thank you for your kind words. And here is the information you asked for on the Trustee, as posted by the U.S. Bankruptcy Court:

Edmund J. Wood
E-mail: ewood1@aol.com
Phone: (206) 623-4382
Fax: (206) 224-4895

Public Outreach Summary

Ecology's public involvement activities related to the Time Oil Bulk Terminal Cleanup Site 30-day comment period (July 20 – August 18, 2020) included:

- **Fact Sheet:**
 - US mail distribution of a fact sheet providing information about the cleanup site documents and the public comment period to approximately 7,900 people including neighboring businesses and other interested parties. Fact sheets were scheduled to arrive in mailboxes by Friday, July 17, 2020.

- **Legal Notices:**
 - Publication of one display ad in *The Seattle Times*, dated Friday, July 17, 2020.

- **Site Register:**
 - Publication of 3 notices in Ecology's Toxics Cleanup Site Register:
 - Comment Period and Meeting:
 - July 16, 2020
 - July 30, 2020
 - August 13, 2020
 - Visit [Ecology's Site Register website](#)¹ to download PDFs.

- **Media Coverage:**
 - A news release was sent to the Associated Press, *Puget Sound Business Journal*, Crosscut, *Seattle Times*, Seattle P-I, KUOW, KNKX, KIRO Radio, KOMO Radio, KOMO-TV, KING-TV, KIRO-TV, and KCPQ-TV

- **Social Media:**
 - **Twitter:** On July 16, 2020 – Northwest Region @ecyseattle posted tweets connecting readers for information on the Time Oil Bulk Terminal Site comment period, the public meeting/hearing, and how to submit comments.

- **Websites:**
 - Announcement of the public comment period and posting of the fact sheet, and associated documents for review on [Ecology's Time Oil Bulk Terminal Website](#)²
 - The Time Oil Bulk Terminal Site comment period was featured on [Ecology's home webpage](#)³ beginning the week of July 13, 2020 in the "Public Input & Events" section.

- **Document Repositories:**
 - Due to Covid 19, Ecology could only provide electronic options for these documents.

¹<https://fortress.wa.gov/ecy/publications/UIPages/PublicationList.aspx?IndexTypeName=Program&NameValue=Toxics+Cleanup&DocumentTypeName=Newsletter>

² <https://apps.ecology.wa.gov/gsp/Sitepage.aspx?csid=14604>

³ <https://ecology.wa.gov/>

- **Public Meeting:**
 - Ecology held an online public meeting on Wednesday July 29, 2020 from 6:00 to 8:00 p.m. Approximately 15 members of the public attended.
 - Ecology staff presented about the Time Oil Bulk Terminal Project and answered questions throughout the presentation.
 - Five formal public comments were submitted during the comment period.

Next Steps

After review of public comments, Ecology is finalizing all the public review documents. Once the documents are finalized the cleanup process will move forward at the site. The immediate next steps will include lodging the legal documents with the court, conducting an additional field investigation to help guide design work, and preparing an Engineering Design Report.

Appendices

Appendix A. Public Comments in Original Format

Miller Myers

I'm concerned that the remediation work will result in toxic dust spreading through the Commodore Way neighborhood. What steps will be taken to prevent this from happening?

Response to Comments: Time Oil Bulk Terminal Cleanup Site

From: Kat B <katb902@gmail.com>
Sent: Tuesday, July 28, 2020 9:20 AM
To: Adams, Mark (ECY) <MADA461@ECY.WA.GOV>
Subject: Time Oil Terminal Cleanup Site

THIS EMAIL ORIGINATED FROM OUTSIDE THE WASHINGTON STATE EMAIL SYSTEM - Take caution not to open attachments or links unless you know the sender AND were expecting the attachment or the link

Mr. Adam:

We recently received a pamphlet regarding the Time Oil Terminal Cleanup Site and an invitation for public comment. My neighborhood is near the site . My questions are this:

Who is TOC Terminal LLC?

What are they planning to do with the property?

By what date do they have to submit the bulk of the settlement (1.2 trillion) into the Cleanup Settlement Account?

I believe my neighbors and I need to know these basic facts before we can provide any substantive feedback to the draft cleanup plans.

Thank you,
K Blinkwitz
206 283-3289
katb@gmail.com

FRANCINE WALSH

I oppose the fact that they are trying to cut corners. The Ecology's chosen clean up is to excavate and remove the contamination NOT try to Encapsulate it. These sites have known TCE contamination which has been banned in most of the world since the 70's along with other awful long lasting contaminates. Read your own reports. This company should be made to do it right. They are also being RELEASED with a settlement of liability with your Consent Decree, so who's going to pay when the encapsulation fails? We will- with our water. We are the ones who have to live with this once the developer is long gone. It is quite insane to think that this is all to be done while there is KNOWN continued contamination from the Railroad company BNSf. This plan is irresponsible to the community your are to serve. If this company is to be trusted to do the clean up, at least make them do it according to the recommendations of the Ecology's chosen clean up plan in the reports you post. Encapsulation is FAILURE waiting to happen and yet they propose it. Can you spell Hanford? Smells the same. Do you remember that we are in an earthquake region? Doing this wrong should be off the table. If they are indeed the experts they tout, they can do this right IF you require it. Please do.

Respectfully,
Francine Walsh

Arthur Day

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3) Wildlife. Herons make use of the TOC dock and some surrounding areas during their pre-nesting period. This should be taken into account in scheduling activities on the site.

From: Jim Codling <jjmc@motoroilsupply.com>
Sent: Wednesday, August 19, 2020 9:30 AM
To: Adams, Mark (ECY) <MADA461@ECY.WA.GOV>
Subject: RE: time oil

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The article in the times regarding the meeting on the time oil property clean up ?
is the owner coming back into the deal ??

Thanks

.who is the property care giver for the action ?

Jim codling 206 669 6654

From: Adams, Mark (ECY) [<mailto:MADA461@ECY.WA.GOV>]
Sent: Monday, August 17, 2020 11:09 AM
To: Jim Codling
Subject: RE: time oil

Jim:

Sorry but I'm not clear on what you are asking. Which meeting are you referring to? Mark

From: Jim Codling <jjmc@motoroilsupply.com>
Sent: Monday, August 17, 2020 11:05 AM
To: Adams, Mark (ECY) <MADA461@ECY.WA.GOV>
Subject: time oil

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Hi so what was the outcome of this meeting,