



Responsiveness Summary
for
Agreed Order DE9240 and Enforcement Order 9406
for a Focused Feasibility Study and Ongoing Interim Actions at the
Pasco Sanitary Landfill Site

Public Comment Period August 20 through September 19, 2012

Prepared by
Washington State Department of Ecology
Eastern Regional Office
Toxics Cleanup Program
Spokane, WA

October 2012

Pasco Sanitary Landfill Site Focused Feasibility Study Responsiveness Summary

The Washington Department of Ecology conducted a public comment period from August 20 through September 19, 2012 for the Agreed Order and Enforcement Order requiring a Focused Feasibility Study and ongoing Interim Actions to be completed at the Pasco Sanitary Landfill Site.

The scope of work for the new Agreed Order and Enforcement Order requires the Potentially Liable Persons (PLPs) to complete a Focused Feasibility Study (FFS) at the site. The FFS develops and evaluates cleanup alternatives for the site. The new Orders also require analysis, and ongoing operation, maintenance, and monitoring of Ecology-approved interim actions. Extension of interim actions and monitoring activities conducted in conformance with the previous Agreed Order 1324 are necessary to maintain the protection of human health and the environment from the release or threatened release of hazardous substances at the Site.

The purpose of this Responsiveness Summary is to document Ecology's response to one comment letter sent to Ecology during the public comment period. Ecology would like to thank the commenter for his letter. However, no changes to the Agreed Order or Enforcement Order are being made based on the letter received.

The Responsiveness Summary is organized as follows:

- Introduction
- Letter Received
- Ecology's General Response

Introduction

The Washington State Department of Ecology prepared a draft Agreed Order DE9240 and draft Enforcement Order DE9406 to support the completion of new and ongoing environmental cleanup work at the Pasco Landfill NPL Site (Site). The Pasco Sanitary Landfill is a contaminated site requiring cleanup in accordance with, and under the authority of the Model Toxics Control Act (MTCA) Chapter 70.105D RCW, and the implementing regulations, Chapter 173-340 WAC.

A Remedial Investigation/Feasibility Study was completed in the late 1990s. Additionally, interim action cleanup work has been occurring under legal Orders activated in June 2000. Potentially Liable Persons (PLPs) have been performing the required work since 2000 in accordance with two separate Agreed Orders DE 00TCPER-1324 and DE 00TCPER-1326 and two separate Enforcement Orders DE 00TCPER-1325 and DE 00TCPER-1327.

The new Agreed Order and Enforcement Order require the PLPs to perform an updated technical evaluation of cleanup options at the Site called a Focused Feasibility Study. The Orders also require the PLPs to operate, maintain and monitor the existing interim cleanup systems until a decision is reached regarding a final cleanup remedy for the Site.

Letter Received: September 19, 2012 from PPG Industries, Inc. (letter submitted on behalf of PPG by Mr. Peter T Stinson, Attorney-at-Law, Dickie, McCamey & Chilcote, P.C.)



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September 19, 2012

Mr. Chuck Gruenenfelder, L.G., L.Hg
State of Washington
Department of Ecology
4601 N. Monroe Street
Spokane, WA 99205-1295

RE: Enforcement Order No. DE 9406 (Pasco Landfill) – Comments Letter

Mr. Gruenenfelder:

Washington Department of Ecology has published notice that it intends to enter an Agreed Order with 32 potentially liable parties (“PLPs”) at the Pasco Landfill in Pasco, Washington (“the Site”). The Agreed Order (“the AO”) requires those parties to conduct a Focused Feasibility Study (“FFS”) to evaluate potential remedial alternatives to address soil and groundwater contamination at the Site. Ecology has also published notice that it intends to issue Enforcement Order No. DE 9406 (“the EO”) to several additional PLPs that declined to enter the AO containing parallel requirements. Included among the PLPs presently identified in the EO is PPG Industries, Inc. (“PPG”). This letter is submitted on behalf of PPG in response to the proposed Enforcement Order.

As an initial matter, PPG objects to the Enforcement Order on the grounds that PPG was not served with a copy of the order or provided notice once the public comment period was commenced. Instead, PPG later learned that the comment period had been initiated through the undersigned counsel’s on-line investigation. Despite this chronology, Ecology denied PPG’s request for a short extension of the comment period, thereby depriving PPG of a sufficient opportunity to consider this matter and necessitating only a preliminary, partial response at this time.

As discussed in further detail below, PPG also strenuously objects to its inclusion in the EO given its miniscule waste contribution. In addition, through substantial commitments to prior response activities, PPG has already paid far in excess of its fair share of Site response costs. Accordingly, PPG requests that Ecology refrain from including PPG in the EO. In the meantime, PPG is attempting to reach an amicable resolution of its

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potential Site liability with parties expected to perform the FFS (and any acceptable remedial measures). PPG believes this approach is best designed to achieve a final cleanup of the Site along with an equitable allocation among the PLPs.

1. PPG's Relative Waste Contribution to the Site

PPG's only alleged connection to the Site is a single invoice/shipment of miscellaneous sacks and 5-gallon pails delivered to the Site in July 1973. PPG has no records that describe the contents of these containers; nor is it aware of any evidence establishing that they contained hazardous substances. Indeed, when responding to Ecology's Preliminary Notice of Potential Liability, PPG explained that the containers may well have been empty. See November 12, 1991, letter from J. Karas.¹ Insofar as the containers may not have been empty, any remaining contents may have consisted primarily of potassium chloride, a naturally occurring salt that has agricultural as well as food processing and medicinal applications (e.g., treatment of low blood levels of potassium). While we have not reviewed in any detail the various environmental reports and associated data related to the Site, PPG has no reason to believe that material of this nature presents any health or environmental risks or has otherwise required the expenditure of cleanup costs.

With respect to waste volume, even if the referenced containers were full, PPG's overall contribution was minute when compared to the reported total volume accepted at the Site. According to Ecology's findings set forth in both the Enforcement and Agreed Orders (§ V. G), the following waste volumes were accepted for disposal at the five specified industrial disposal "Zones": A - 35,000 drums (or 1,925,000 gallons); B - 5,000 drums (275,000 gallons); C & D - (3,000,000 gallons); and E - 11,000 tons -- for a combined total of 5,200,000 gallons and 11,000 tons. (The municipal landfill wastes are not included in these calculations.) Converting these figures to pounds yields an estimated total volume of **65,316,000** pounds received at the Site.² PPG's reported contribution, in contrast, would not have exceeded **31,598** pounds.³ A comparison of these two figures easily demonstrates that PPG's overall waste contribution was no more than a small

¹ PPG has not included the various informational sources referenced in this letter since they all originate from or are otherwise available in Ecology's files. Each of these sources is incorporated herein by reference. Should you wish to obtain additional copies, please let me know and we will provide them to you.

² This analysis assumes a standard conversion rate of one gallon equaling 8.33 pounds and one ton equaling 2,000 pounds as follows: 5,200,000 gallons × 8.33 pounds + 11,000 tons × 2,000 pounds = 65,316,000 pounds.

³ The 605 five-gallon pails would equal 25,198 pounds (605 × 5 × 8.33 = 25,198). Conservatively assuming an 80-pound capacity, the 80 reported "sacks" would yield 6,400 pounds (80 × 80 = 6,400). Combined, these two figures would derive a grand total of 31,598 pounds – again assuming all the referenced containers were full.

fraction of a single percentage point when compared to the total wastes accepted at the Site ($31,598 \div 65,316,000 = 0.00048\%$).⁴

2. PPG's Participation in Site Response Activities

Despite its minimal nexus to the Site, PPG participated in two PLP-funded efforts to address Site conditions. In 1992 PPG, together with approximately 20 other PLPs, entered an Agreed Order with Ecology to perform a Phase I Remedial Investigation ("RI") to identify the nature and extent of Site contamination. Along with 38 other PLPs, in 1994 PPG also conducted a Phase II RI and Feasibility Study ("RI/FS") to further define and characterize the Site contamination and develop and evaluate potential remedial measures. PPG incurred approximately \$90,000 toward Site response costs, including remedial measures involving soil vapor extraction and NoVOCs systems.

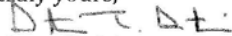
3. Negotiations with IWAG

Despite its nominal waste contribution and significant expenditures toward Site cleanup, after receiving the Agreed Order, PPG contacted the PLP group (known as "IWAG") that has since entered the Agreed Order. In addition to undertaking the FFS, PPG understands that IWAG intends to negotiate and implement an acceptable future remedy. Further, PPG has been advised that IWAG is formulating a Site-wide cash-out proposal to PPG and other PLPs that did not sign the AO. While IWAG intended to present its proposal last summer, the proposal has been delayed and will likely not be forthcoming before the EO is issued. PPG believes that a reasonable cash-out resolution represents the most efficacious vehicle for achieving an equitable and final resolution among the PLPs while also fostering Site cleanup.

In conclusion, PPG's miniscule waste contribution, its cooperation/participation in prior Site activities, its efforts to reach an appropriate resolution with the parties expected to implement the FFS and any future remedial measures, and timing constraints related to the impending cash-out proposal all counsel in favor of PPG being excluded from the Enforcement Order. PPG respectfully requests that Ecology refrain from issuing the Enforcement Order against PPG.

⁴ There can be no dispute that waste contribution at this level is "insignificant," thereby making PPG eligible for a *de minimis* settlement under RCW 70.105D.040(4)(a). Insofar as Ecology proceeds to include PPG in any Enforcement Order, PPG renews its previous request that Ecology entertain a *de minimis* settlement with PPG.

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Very truly yours,

Peter T. Stinson

PTS/rs

cc: John A. Level - Washington Assistant Attorney General
Steven F. Faeth - PPG, Corporate Counsel EHS
David W. Weber - PPG, Senior Remediation Engineer

Ecology's General Response to the letter:

Thank you for your letter. The purpose of a public comment period is to receive comments specific to the document(s) out for comment. PPG's September 19, 2012 letter did not raise questions or comments about the content of the Agreed Order DE9240, Enforcement Order DE9406, associated Exhibits, or work to be performed which were the focus of the comment period.

After careful consideration of PPG's letter, Ecology determined that no changes to Agreed Order DE9240, Enforcement Order DE9406, or the associated Exhibits were needed.

Additionally, Ecology sent PPG a letter dated January 11, 2012 notifying PPG of its status as a Potentially Liable Person (PLP). The letter also provided PPG an opportunity to comment on the draft Agreed Order during a negotiation process taking place prior to the public comment period. Ecology also notified PPG that parties who did not sign the Agreed Order would likely receive an Enforcement Order. PPG remains identified as a PLP for the Pasco Sanitary Landfill site.

Questions regarding de minimis waste contribution and payment of costs are not related to the nature of this public comment period.