



**3DSYSTEMS™**

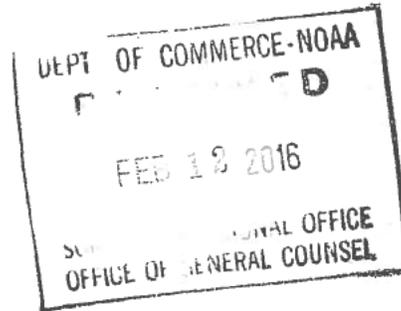
**ANDREW M. JOHNSON**  
INTERIM PRESIDENT AND CHIEF EXECUTIVE OFFICER,  
CHIEF LEGAL OFFICER AND SECRETARY

DIRECT DIAL: +1 803.326.4003

February 29, 2016

VIA E-MAIL (Laurie.Lee@noaa.gov)

Laurie J. Lee, Esq.  
NOAA Office of General Counsel  
Natural Resources Section  
501 W. Ocean Blvd., Suite 4470  
Long Beach, California 90802



RE: Lower Duwamish Property: Response of 3D Systems Corporation Concerning Moeller Design & Development, Inc.

Dear Ms. Lee:

We are responding to your letter dated January 29, 2016, which invites 3D Systems to join the Elliott Bay Trustee Council (the "Council") in planning for, participation in and funding a natural resource damage assessment ("NRDA") of the Lower Duwamish Waterway and the East and West Waterways of Harbor Island (the "Waterways"). Your letter notes potential injuries to natural resources in the Waterways that are under the trusteeship of the Council and attributable to releases of hazardous substances at and from the Harbor Island, Lower Duwamish Waterway and Lockheed West Superfund sites (the "Sites").

3D Systems denies that it has liability for releases at or from any of the Sites. Accordingly, it respectfully declines the Council's invitation to participate in the NRDA of the Waterways.

Sincerely,

Andrew M. Johnson

**3D Systems Corporation** | 333 Three D Systems Circle | Rock Hill, SC 29730 | USA

Tel: +1 803.326.3900 | [www.3dsystems.com](http://www.3dsystems.com) | NYSE: DDD **MANUFACTURINGTHEFUTURE**

Dear Ms. Lee, I write on behalf of Airgas-NorPac, Inc. ("Airgas") in response to your Notice of Intent of January 29, 2016, communicating the Elliott Bay Trustee Council's invitation to PRPs to participate in a Natural Resource Damage Assessment and Restoration ("NRDAR") at the Lower Duwamish Waterway Superfund Site (the "Site"), among others. I am the primary contact person for Airgas in connection with this Site. Because the facts of record do not establish that Airgas contributed to the release of hazardous substances at the Site that are alleged to have injured natural resources, as detailed in the July 2009 and November 2011 responses by Airgas to USEPA's original and supplemental CERCLA section 104(e) requests for this Site, Airgas respectfully declines your invitation to participate in the NRDAR at this time. Please do not hesitate to contact me if you wish to discuss this matter further or you have any questions in this regard. Sincerely, Cathleen M. Devlin  
Counsel to Airgas-NorPac, Inc.

**Cathleen M. Devlin | SAUL EWING LLP**

Centre Square West | 1500 Market Street, 38th Floor | Philadelphia, PA 19102



LASHER  
HOLZAPFEL  
SPERRY &  
EBBERSON

PLLC

ATTORNEYS AT LAW ■ 601 UNION STREET, SUITE 2600  
SEATTLE WA 98101-4000 / TELEPHONE 206 624-1230 / FAX 206 340-2563  
WWW.LASHER.COM

February 11, 2016

DIRECT LINE: (206) 654-2433  
EMAIL: holzapfel@lasher.com

Laurie J. Lee  
NOAA Office of General Counsel  
Natural Resources Section  
501 W. Ocean Blvd., Suite 4470  
Long Beach, CA 90802

Re: Notice of Intent, Lower Duwamish property: Alaska Fish Fertilizer Company  
King County Washington Tax Parcel(s): 7666702059, 7666702059,  
7666702059, 7666702071, 7666702071, 7666702071

Dear Ms. Lee:

Our law firm is in receipt of your letter to the Alaska Fish Fertilizer Company dated January 29, 2016 regarding the preliminary investigation for natural resource damages in the Lower Duwamish Waterway and the East and West Waterways of Harbor Island in Washington state. Alaska Fish Fertilizer Company has been out of business for more than a decade, and the registered agent to whom you sent this letter is deceased. To the best of my knowledge (without any duty of investigation or inquiry), there are no successor owners, operators or assets.

Very truly yours,

  
George S. Holzappel

GSH/dlm

DEPT. OF COMMERCE-NOAA  
RECEIVED

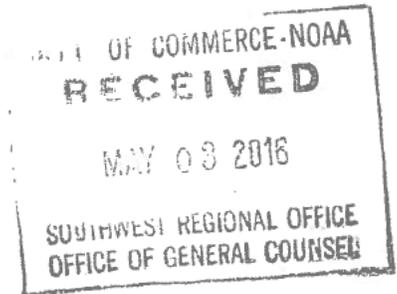
FEB 16 2016

SOUTHWEST REGIONAL OFFICE  
OFFICE OF GENERAL COUNSEL

ROBIE G. RUSSELL

ATTORNEY AT LAW

76 South Main Street  
Seattle, Washington 98104-2514  
Facsimile (206) 621-2104  
(206) 621-2102  
robielaw@gmail.com



Licensed in Washington  
and Idaho

Our Reference No  
2803/0002

April 27, 2016

Laurie J. Lee  
NOAA Office of General Counsel  
Natural Resources Section  
501 W. Ocean Blvd., Ste. 4470  
Long Beach, CA 90802  
Laurie.Lee@noaa.gov

Re: Response of Alaska Washington Building Materials Company to Lower Duwamish  
Notice of Intent

Dear Ms. Lee:

We are in receipt of your Lower Duwamish Notice of Intent letter dated March 29, 2016, and addressed to Ron Steinman, registered agent for Alaska Washington Building Materials Company, 4731 12th Avenue NE, Seattle, WA 98105, Tax Parcel Nos. 7327906685 and 7327906750.

The purpose of this letter is to advise you that our offices will be representing the foregoing party and will be looking forward to the opportunity to provide the necessary information to show that they are not responsible for any natural resource damages in connection with the Lower Duwamish Waterway and other associated sites.

Sincerely,

A handwritten signature in black ink, appearing to read "Robie G. Russell".

Robie G. Russell

RGR/glf

cc: Ron Steinman



FOSTER PEPPER PLLC

Direct Phone (206) 447-6267  
Direct Facsimile (206) 749-2090  
E-Mail LedeK@foster.com

May 2, 2016

**VIA ELECTRONIC MAIL ONLY**

Laurie J. Lee  
NOAA Office of General Counsel  
Natural Resources Section  
501 W. Ocean Blvd., Suite 4470  
Long Beach, CA 90802  
Laurie.Lee@noaa.gov

Re: American Life Inc. - LDW NRD Assessment

Dear Laurie:

We are responding to your March 29, 2016 letter addressed to the registered agent for American Life, Inc. ("American Life") regarding the property located at 6333 1<sup>st</sup> Avenue South in Seattle, Washington (the "Property"). In reply to NOAA's Notice of Intent, American Life responds that it intends to participate in preliminary discussions regarding the development of the type and scope of the Natural Resource Damage Assessment for the LDW and associated areas. American Life will not commit to paying for any phases of the injury assessment at this time – we will determine the best path forward after we learn more about the Trustees' plans and proposed course of action. In particular, American Life will pay close attention as to how the assessment process involves areas such as Harbor Island and Lockheed West, which have no connection to or relationship with the Property.

Foster Pepper PLLC will serve as the primary contact on behalf of American Life for NRDA matters. All future communications and notifications from NOAA or the NRDA Trustees should be sent to my attention in care of American Life.

American Life's position is provided without admission as to liability or waiver as to any available defenses to its position.

Sincerely,

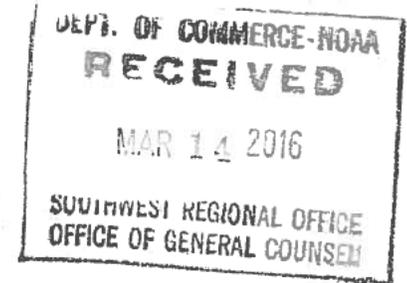
A handwritten signature in black ink, appearing to read 'Ken Lederman', written in a cursive style.

Ken Lederman

Cc: Client

Asteghik Khajetoorians  
asteghik.khajetoorians@millernash.com  
562.247.7621 direct line

March 11, 2016



VIA E-MAIL AND U.S. MAIL  
LAURIE.LEE@NOAA.GOV

Ms. Laurie J. Lee  
Natural Resources Section  
NOAA Office of General Counsel  
501 West Ocean Boulevard, Suite 4470  
Long Beach, California 90802

Subject: Notice of Intent, Lower Duwamish Property: ARCO Petroleum Products Company, King County Tax Parcels: 7666701680, 7666701867, 7666702900

Dear Ms. Lee:

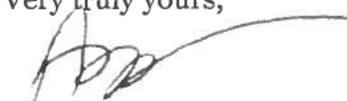
This is to acknowledge your letter of January 29, 2016 to Steve Goodman inviting ARCO Petroleum Products Company ("ARCO") to participate in a process to perform a natural resource injury assessment for the Lower Duwamish Waterway and the East and West Waterways. As an initial matter, Steve Goodman is an attorney at this law firm that represents ARCO and is not a potentially liable party.

ARCO respectfully declines the invitation. Sediment studies show that the PAHs near ARCO's facility do not exceed sediment quality standards, and that the primary sources of the PAHs are weathered creosote and atmospheric deposition of combustion products and not petroleum products released from ASTs. The Department of Ecology has determined that ARCO has not impacted sediments above levels that would cause adverse effects to aquatic life. ARCO notes that the 2009 HEA description of impacted sediments near the subject ARCO facility shows areas of impact that are associated with City of Seattle stormwater outfalls and from shipyards and shipbuilding activities, not from ARCO's activities. Thus, ARCO does not owe any natural resource damages and cannot justify the expense of participating in the injury assessment.

Ms. Laurie J. Lee  
March 11, 2016  
Page 2

ARCO will monitor the injury assessment process and reserves its right to later join the process. ARCO also reserves its right to assert any and all defenses, and the above discussion of technical considerations should not be construed as a waiver of other defenses. Please contact me if you have any questions.

Very truly yours,

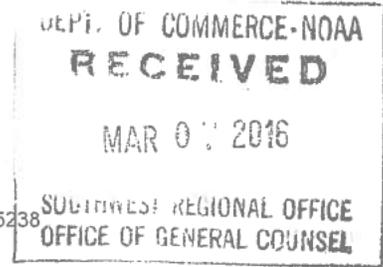
A handwritten signature in black ink, appearing to read 'Asteghik Khajetoorians', with a long horizontal flourish extending to the right.

Asteghik Khajetoorians

cc: Doug Reinhart, Esq. (via email)  
Steve H. Goodman, Esq. (via email)



**Ball Corporation**  
Packaging Operations  
9300 West 108th Circle, Broomfield, CO 80021-3682 (303)460-5530 Fax (303)460-5238



March 4, 2016

EHS16-L-046

Laurie J. Lee  
NOAA Office of General Counsel  
Natural Resources Section  
501 W. Ocean Blvd., Ste. 4470  
Long Beach, CA 90802

**RE: Natural Resource Damage Assessment**

Dear Ms. Lee,

Ball Corporation is in receipt of your letter of January 29, 2016 concerning the natural resource damage assessment of the Lower Duwamish site. Ball Corporation does not wish to participate in development of the Assessment Plan

Sincerely,

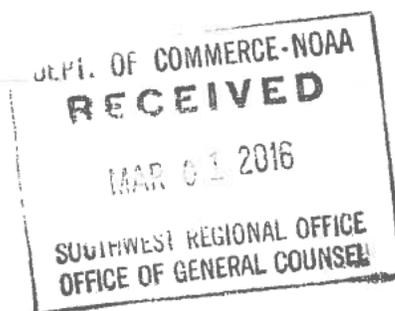
Kent Bickell  
Ball Corporation  
Manager, Environmental, Health & Safety  
Ball Corporation

Bcc: J. Bailey-Keown  
R. McClelland  
A. Musulin  
L. Pauley  
Lower Duwamish Superfund File

ROBIE G. RUSSELL

ATTORNEY AT LAW

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(206) 621-2102  
robielaw@gmail.com



Licensed in Washington  
and Idaho

Our Reference No.  
2802.0002

February 25, 2016

Laurie J. Lee  
NOAA Office of General Counsel  
Natural Resources Section  
501 W. Ocean Blvd., Ste. 4470  
Long Beach, CA 90802  
Laurie.Lee@noaa.gov

Re: Response of Bill's Mobile Service, LLC to Lower Duwamish Notice of Intent

Dear Ms. Lee:

We are in receipt of your Lower Duwamish Notice of Intent letter dated January 29, 2016, and addressed to Bill's Mobile Service, LLC, 7265 Second Avenue South, Seattle, WA 98108, Tax Parcel No. 6871200750.

The purpose of this letter is to advise you that our offices will be representing the foregoing party and will be looking forward to the opportunity to provide the necessary information to show that they are not responsible for any natural resource damages in connection with the Lower Duwamish Waterway and other associated sites.

Sincerely,

A handwritten signature in black ink, appearing to be "Robie G. Russell".

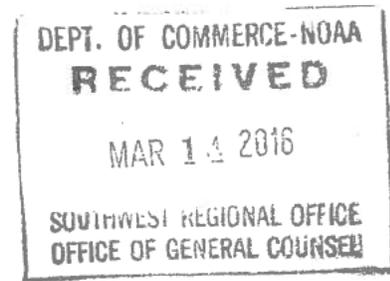
Robie G. Russell

RGR/glf

cc: Bill's Mobile Service, LLC

# Morgan Lewis

**James J. Dragna**  
Partner  
+1.213.680.6436  
jim.dragna@morganlewis.com



March 11, 2016

**VIA FEDEX AND E-MAIL: LAURIE.LEE@NOAA.GOV**

Laurie J. Lee  
NOAA Office of General Counsel  
Natural Resources Section  
501 W. Ocean Blvd., Suite 4470  
Long Beach, CA. 90802

Re: Notice of Intent, Lower Duwamish property: Bayer CropScience Inc.  
King County Washington Tax Parcel(s): 5422600060

Dear Ms. Lee:

I write on behalf of Bayer CropScience Inc. ("Bayer") in response to your January 29, 2016 letter regarding the Lower Duwamish Waterway Superfund Site (the "Site"), in which the Elliott Bay Trustee Council invites Bayer to participate in a process to perform an injury assessment for natural resource damages at or around the Site.

Bayer disputes that it has any liability for Site response costs or other damages, including without limitation natural resource damages, under the Comprehensive Environmental Response, Compensation, and Liability Act or the Model Toxics Control Act. As you know, the United States Environmental Protection Agency and the Washington Department of Ecology jointly issued an administrative order on consent to the parties primarily responsible for Site conditions, the City of Seattle, King County, the Port of Seattle, and The Boeing Company, collectively known as the "Lower Duwamish Waterway Group," requiring them to investigate the nature and extent of contamination and develop remedial alternatives for the Site. Conversely, Bayer does not believe that the brief operations of its predecessor in the vicinity of the Site gives rise to any potential responsibility on behalf of Bayer or its predecessors for Site cleanup costs or natural resource damages.

**Morgan, Lewis & Bockius LLP**

355 South Grand Avenue  
Suite 4500  
Los Angeles, CA 90071-3107  
United States

📞 +1.213.680.6400  
📠 +1.213.612.2501

Laurie J. Lee  
March 11, 2016  
Page 2

In light of the above, Bayer hereby declines to participate in the natural resource damage injury assessment. In the event you would like to discuss this matter further, please note that I will serve as Bayer's contact person for any future communications concerning the Site. Please feel free to contact me if you wish to discuss this matter in greater detail.

Sincerely,



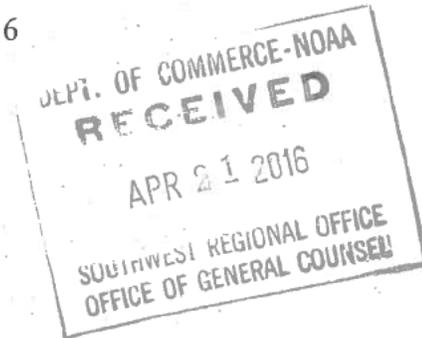
James J. Dragna  
JJD/DKB

cc: Chintan K. Amin



JOHANNESSEN & ASSOCIATES, P.S.  
ENVIRONMENTAL & CONSTRUCTION LAW

April 21, 2016



Via E-Mail Only

Laurie J. Lee, Attorney Advisor  
NOAA Office of General Counsel  
Natural Resources Section  
501 W. Ocean Blvd., Suite 4470  
Long Beach, CA 90802

Re: Notice of Intent, Lower Duwamish property: Bowhead Transportation Company, Inc.; King County Washington Tax Parcel 7327906685

Dear Ms. Lee:

Our firm represents Bowhead Transport Company, LLC and formerly represented the above-referenced entity, Bowhead Transportation Company, Inc. ("Bowhead Transportation"). I am writing in response to the Notice of Intent sent by the Elliott Bay Trustee Council ("Trustees") regarding the above-listed tax parcel, which bears a street address of 7410 5th Avenue South and which we refer to as "Parcel N". The Notice of Intent was directed to Bowhead Transportation and not to Bowhead Transport Company, LLC.

The Trustees' Notice of Intent is dated January 29, 2016, but was not received by Bowhead Transport Company, LLC until February 11, 2016. It took some time for the company to determine the nature of the Trustees' inquiry and to contact our firm to prepare a response. The purpose of this letter is to determine whether there is a basis for the Trustees' decision to issue the Notice of Intent to either Bowhead entity and whether the Trustees are asserting any potential natural resource damage ("NRD") liability against those entities in connection with the Lower Duwamish Waterway ("LDW").

By way of background, Bowhead Transportation Company, Inc. was a subsidiary of Bowhead Technical and Professional Services, Inc. Bowhead Transport Company, LLC was formed in approximately December 2005 and is a subsidiary of Bowhead Holding Company. Bowhead Technical and Professional Services, Inc. and Bowhead Holding Company are both wholly owned subsidiaries of the Ukpeagvik Iñupiat Corporation ("UIC"), an Alaskan Native Corporation. Bowhead Transportation Company, Inc. administratively dissolved on May 1, 2006.<sup>1</sup>

Contrary to the assertion made by the Trustees in the Notice of Intent, neither Bowhead Transportation Company, Inc. nor Bowhead Transport Company, LLC are potentially

<sup>1</sup> Any claims or potential claims that might have been asserted against the now dissolved Bowhead Transportation Company, Inc. are time barred pursuant to RCW 23B.14.340.

responsible parties ("PRPs") in connection with the LDW. Neither company received a General Notice Letter from the U.S. Environmental Protection Agency ("EPA") for the LDW. The only communication received was a Request for Information pursuant to CERCLA, Section 104(e) in 2009, which related to Parcel N and was directed to Bowhead Transportation Company, Inc. However, Bowhead Transportation Company, Inc. never operated on Parcel N. Bowhead Transport Company, LLC, however, did rent the building on Parcel N for two limited periods of time from March 2007 to June 2007 and from December 2007 to January 2008.

Bowhead Transport Company, LLC rented Parcel N on a month-to-month basis pursuant to an oral agreement with Boyer Towing, Inc. During its first occupancy of Parcel N in early 2007, it used the building located on the parcel to construct a 50 foot by 24 foot aluminum barge, which was later transported to Alaska. All work was constructed inside the building, with Bowhead Transport Company, LLC contracting with Boyer Towing to build the barge. From December 2007 to January 2008, Bowhead Transport Company, LLC contracted with Boyer Towing to paint and service a forklift and a bulldozer. All work took place inside the building at Parcel N. Starting in approximately January 2006 and continuing to the present, Bowhead Transport Company, LLC periodically ships freight in and out of the LDW using its vendor, Boyer Towing, Inc.

After the two Bowhead entities submitted their joint response to EPA's 104(e) request, EPA issued a supplemental 104(e) request to Bowhead Transportation Company, Inc. in August 2011, posing additional and clarifying questions, to which our firm responded on behalf of the Bowhead entities in November 2011. Thereafter, EPA did not issue a General Notice Letter to either entity and made the conscious decision to omit them from EPA's list of General Request recipients published in November 2012. Nor was either of the Bowhead entities listed on the list of recipients for EPA's second round of standalone General Notice Letters issued in 2012. As result, Bowhead Transportation Company, Inc. and Bowhead Transport Company, LLC are not included on EPA's updated December 2013 list of General Notice Letter Recipients and have never been identified as a PRP by EPA.

Until the receipt of this Notice of Intent from the Trustees, neither Bowhead Transportation Company, Inc. nor Bowhead Transport Company, LLC had ever been approached by the Trustees, been asked to participate in any NRD assessment, or been asked to negotiate or participate in any *de minimis* or non-*de minimis* settlement. In December 2009, the National Oceanic and Atmospheric Administration ("NOAA"), on behalf of the Trustees, issued letters to forty-four (44) property owners and businesses along the LDW. That letter notified those property owners of a natural resource damages claim that the Trustees were seeking to resolve. Neither of the Bowhead entities were a recipient of that letter.

At no time have either of the Bowhead entities received any notification from the Trustees that may have any alleged NRD liabilities. At no time has either company received a "liability determination," been informed of the potential to resolve any alleged liability as a *de minimis* party, been provided with an alleged injury allocation, or any other information that would have allowed it to assess its potential liabilities (if any) and/or to participate in any *de*

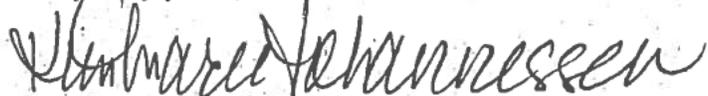
*minimis* NRD settlement. Based upon past discussions with the Trustees, our firm was under the impression that the Trustees did not intend to apportion or allocate liability to tenants of properties for which they would be making liability determinations. It was also our understanding that the Trustees did not envision including tenants in consent decrees negotiated between any of those property owners and the Trustees.

As noted above, any claims that might have been asserted against Bowhead Transportation Company, Inc. are long since barred by the statute of limitations applicable to dissolved corporations. We are unaware of any basis for allocating NRD liability to Bowhead Transport Company, LLC based on the less than six months of occupancy of Parcel or any of the activities conducted inside the building thereon. Kindly provide us with whatever new information was considered or relied upon by the Trustees that would be significant enough to warrant a determination that Bowhead Transport Company, LLC is or may be liable for natural resource damages.

We would also appreciate it if you would inform us as to whether the Trustees have assessed Bowhead Transport Company, LLC's share of alleged liability in the form of a discounted service acres per year ("dSAY") calculation or otherwise. At present, we have no information (nor does EPA, for that matter) that supports any finding that Bowhead Transport Company, LLC is or should be considered a PRP for the LDW or for any injuries to natural resources. We remain open to considering participation in a cooperative approach to conducting an injury assessment, if sufficient information can be provided to substantiate a claim of liability by the Trustees.

I look forward to receiving the requested information at your earliest convenience. If you have any questions or concerns regarding this response on behalf of Bowhead Transport Company, LLC, please do not hesitate to call me at (206) 632-2000 or e-mail me at [kmj@johanassoc.com](mailto:kmj@johanassoc.com).

Very truly yours,



Kim Maree Johannessen

/kmj

cc: Bowhead Transport Company, LLC

From: Michelle Briscoe <michelle@brooksapplied.com>  
Date: Mon, Feb 22, 2016 at 7:17 PM  
Subject: Response to Notice of Intent - Brooks Rand Ltd.  
To: "laurie.lee@noaa.gov" <laurie.lee@noaa.gov>

Dear Ms. Lee,

Today I received a Notice of Intent related to the Lower Duwamish property (King Co. WA tax parcel 7666702085). This notice identified by former company, Brooks Rand Ltd., as a potentially liable party that contributed to the release of hazardous substances into the environment at and from the Harbor Island, Lower Duwamish Waterway, and Lockheed West Superfund Sites (collectively "the Sites").

I think there has been a mistake. Brooks Rand, Ltd. (later renamed Brooks Rand Labs), which was located at 3958 6<sup>th</sup> Ave NW in Seattle from 1982-2015, is a small, privately-held analytical testing laboratory. We may have performed many analyses of samples from the Sites, but we have never been located near the Sites and we have never discharged hazardous substances to the environment.

Please consider this our formal notification that we do not believe we are responsible for any damage to the natural resources associated with the Sites. If you require further information to support our contention, please notify me of what information is needed.

[Note: In 2015, Brooks Rand Labs changes its name to Brooks Applied Labs and moved from Seattle to Bothell.]

Thank you.

Mostly Sincerely,

Michelle Briscoe  
President/CEO  
206-632-6206, ext. 117  
michelle@brooksapplied.com

**BROOKS APPLIED LABS**

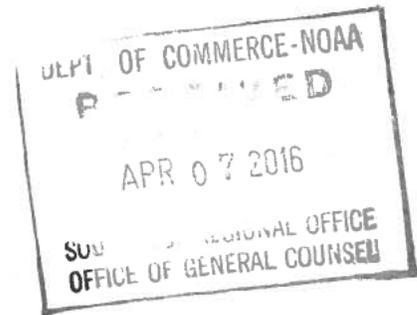
*Meaningful Metals Data and Advanced Speciation Solutions*

P: 206-632-6206 | F: 206-632-6017 | 18804 North Creek Parkway, Suite 100, Bothell, WA 98011, USA

**Important announcement:** We moved! The Seattle lab is now CLOSED. Please send samples to the Bothell address listed above. In case you missed it, read our announcement about Brooks Rand Labs merging with Applied Speciation and Consulting.

This electronic message transmission (including any attachments) is intended only for use by the addressee(s) named herein; it contains legally privileged and confidential information. If you are not the intended recipient, you are hereby notified that any dissemination, distribution, printing, or copying is strictly prohibited. If you have received this e-mail in error, please notify the sender and permanently delete any copies thereof.

HAPKE LAW OFFICE PLLC  
2640 Shoreland Drive South  
Seattle, WA 98144  
206.714.6444  
April 7, 2016



Ms. Laurie Lee  
National Oceanic and Atmospheric Administration  
Office of General Counsel  
Suite 4470  
501 West Ocean Boulevard  
Long Beach, CA 90802

Re: RE: Notice of Intent, Lower Duwamish property: Blaser Die Casting  
Co. King County Washington Tax Parcel(s): 1722801495

Dear Ms. Lee:

On behalf of Blaser Die Casting Co. ("Blaser"), I am responding to your request that Blaser inform your office whether Blaser will participate in the natural resource damages injury assessment that the Elliot Bay Trustees Council ("Trustees") is intending to perform at the Lower Duwamish Waterway, Harbor Island, and Lockheed West Superfund Sites.

Blaser fully supports the work of the National Oceanic and Atmospheric Administration ("NOAA") and the other Trustees in performing this injury assessment and restoring natural resources at the three Superfund sites. However, based on the facts and applicable law, as more fully explained below, Blaser does not have responsibility for natural resource damages at these three Superfund Sites.

1. Legal Framework

a. Causation Requirement- single plume.

The courts have interpreted CERCLA § 107 as requiring a different causation requirement for response cost claims than for natural resource damages claims. Generally, courts do not require plaintiffs seeking recovery of response costs to prove causation between the defendants' actions and the contamination being cleaned up at the site. However, courts require plaintiffs seeking recovery for natural resource damages to prove a causal link between the defendant's release of a hazardous substance and the injury to the resource. *Idaho v. Bunker Hill Co.*, 635 F. Supp. 665 (D. Idaho 1986); *In re Acushnet River and New Bedford Harbor*, 722 F. Supp. 893 (D. Mass. 1989) (Government must establish that defendant's releases were a contributing factor to injuries to the resource). Notably, this "contributory factor" test was adopted by the Ninth Circuit Court of Appeals in *Boeing v. Cascade Corp.*, 207 F.3d 1177 (9<sup>th</sup> Cir. 2000).

b. Causation requirement – commingled plume.

Furthermore, at sites where hazardous substances are commingled in a release as described below with regard to Blaser, the Trustees carry the burden of proving that a defendant's release is a contributing factor by itself to the injury and not a de minimis factor that would not have caused injury had it not been part of a commingled release. *Coeur D'Alene Tribe v. Asarco, Inc.*, 280 F. Supp. 2d 1094 (D. Idaho 2003). Under this test, the Court stated that the plaintiff would have to show that the defendant's release was the sole or proximate cause of the injury to the resource. *Id.*

## 2. Blaser Fact Summary

### a. Blaser Site Background

Blaser has occupied the current Blaser property, located at 5700 Third Avenue South in the Georgetown neighborhood of Seattle, since 1962. Blaser performed die casting using only zinc ingots, machine oil for lubrication, and water-based hydraulic lifts; Blaser has never used hazardous substances in its processes. Blaser's processes did not change substantially from 1962 until 2011 when die casting ceased. Since 2011, Blaser's operations have been exclusively warehousing. Activities include delivery, storage, and reloading of packaged materials. No containers of liquids are opened or stored that could spill and thus are not considered pollutant sources. Vehicular activity is minimal with 5-7 trucks per week and parking of 8-10 workers' vehicles daily. The Blaser facility is located approximately ½ mile from the Lower Duwamish Waterway. See attached Figure 1.

The geology at the Blaser property consists of alluvial silts and sands, and more recent fill. The two alluvial units correspond to one aquifer, which is divided into three sampling intervals for investigation purposes. The three intervals are the Water Table, Shallow, and Intermediate Intervals, which are defined by depths below ground surface.

The Blaser property is part of a larger, contaminated area known as the West of Fourth Avenue Site ("W4 Site"). The W4 Site is a group of contaminated groundwater plumes that were discovered after a company, PSC, began doing RCRA corrective action at its facility east of 4<sup>th</sup> Avenue and upgradient of the other three W4 Site parties, namely, Blaser, Capital Industries, and Art Brass Plating. The PSC plume, which is largely vinyl chloride in the W4 Site, extends southwest of the PSC facility and underlies the Blaser property and Capital properties. As a result, the Washington State Department of Ecology ("DOE") required PSC to do groundwater sampling on Blaser and Capital's facilities in 2004.

Both Blaser and Capital discovered non-PSC contamination on their respective properties and their own groundwater plumes. Art Brass discovered non-PSC contamination at its property at about this time. Consequently, DOE required the four W4 Site parties to enter into individual orders with DOE to perform remedial investigations ("RI"). The four parties completed their individual RIs and DOE approved all four RIs by the end of 2013. Blaser's RI can be downloaded at <http://www.pacificgroundwatergroup.com/clients/blaser/>.

All investigation and cleanup work being performed by Blaser and the other three parties at the W4 Site is being performed under and in compliance with Washington's state superfund statute, the Model Toxics Control Act, codified at Chapter 70.105D RCW.

b. Blaser Source Removal Activities

In 2005, a number of subsurface investigations in the Georgetown area identified a potential source of contamination near Blaser. In 2005, Blaser conducted an investigation of soil and groundwater around the building on its property and identified a soil trichloroethene ("TCE") source area and groundwater TCE plume. Blaser's environmental consultant, Pacific Groundwater Group ("PGG"), conducted a comprehensive investigation of the TCE release. Blaser never used TCE in its processes or brought it on-site. The source area was in soil/fill under the southwest corner of the building. The highest soil and groundwater concentrations in the TCE source area suggest that dense nonaqueous-phase liquid ("DNAPL") was not present in soil or groundwater.

Blaser completed a soil source control action at the Blaser building in January 2008. The source control action included removal of 1,200 tons of contaminated soil and 7,250 gallons of contaminated groundwater from the excavation at the southwest corner of the Blaser building. The source removal action included the excavation of soil within the groundwater by dewatering below the water table. The excavation was extended laterally until confirmation samples indicated that the source was removed or existing structures or utilities impeded further excavation. No residual soil exceeds RI-calculated soil remediation levels that are protective of surface water. Also, subsequent RI sampling shows that source control reduced groundwater concentrations by more than 90%. The RI summarizes the source control interim action and subsequent downgradient groundwater decreases. <http://www.pacificgroundwatergroup.com/clients/blaser/>

c. W4 Site Current Status

By December 2013, the DOE had approved each W4 Site party's individual RI report, and the four W4 parties began negotiating a joint order with DOE to perform the Feasibility Study ("FS") and draft Cleanup Action Plan ("CAP"). The W4 parties entered into this order with DOE in April 2014. To date, the W4 parties have completed all deliverables except the final FS and draft CAP, which are expected to be approved by DOE by the end of 2016 or early 2017.

Furthermore, Blaser and the other three W4 Site parties have been conducting groundwater monitoring since 2005, when the W4 Site investigation began. The W4 Site is part of the DOE's upland source control effort in coordination with EPA at the Lower Duwamish Waterway Superfund Site. Thus, the W4 Site cleanup is intended to prevent plume contaminants from reaching the Lower Duwamish Waterway's surface water and sediments.

d. Potential W4 Site or Blaser Pathway to the Lower Duwamish Waterway

Empirical data collected and modeling performed through individual RI work and joint fate and transport work in the draft FS submitted to the DOE—all evidence that there is currently not a complete pathway of exposure from contamination originating at the Blaser property. Any residual TCE at the Blaser source area, as observed to date, will continue to break down into vinyl chloride before reaching the Lower Duwamish Waterway. The data and modeling indicate that vinyl chloride may be commingled within the plumes originating from PSC, Blaser, and Capital; however, downgradient groundwater concentrations do not exceed surface water cleanup levels and are protective of Lower Duwamish surface water, sediments, and receptors. Based on Blaser's more than decade of groundwater monitoring and Blaser's removal of the TCE source, groundwater concentrations are unlikely to increase in the future after implementation of the cleanup alternative for the W4 Site, which is designed to ensure that plume contaminants do not reach the Lower Duwamish Waterway. See Site Unit 2 Feasibility Study Report – Draft 2/12/2016 at <http://clients.aspectconsulting.com/W4/>.

Aside from groundwater, the only other potential pathway of exposure from the Blaser property to the Lower Duwamish Waterway is the stormwater pathway. However, Blaser's stormwater system directly connects to the combined sanitary sewer and hence does not discharge to the Lower Duwamish Waterway. Rather, it flows to the King County wastewater treatment plant and the plant's discharge is into Puget Sound.

Moreover, as stated above, Blaser has never used or stored hazardous substances or petroleum products on its property. Blaser does not store any material on its property that is exposed to stormwater. The only stormwater generated from the Blaser property originates from the on-site building roof and its small parking lot, then drains into parking lot catch basins, and then runs directly to a combined sanitary sewer system.

Further, Blaser has in place a Stormwater Pollution Prevention Plan with Best Management Practices that it follows, including annual surface sweeping and cleanout of catch basins. Blaser has also cleaned all its stormwater lines from its property to where it connects with the sanitary sewer. PGG has completed an evaluation of Blaser's storm water compliance and PGG concluded that the Blaser facility qualifies for a "no exposure certification" under applicable storm water regulations, and thus it does not need to be under DOE's general industrial stormwater permit. PGG contacted DOE's Jeff Killelea who agreed that Blaser would be a likely candidate to receive a No Exposure Certification. PGG has applied for the No Exposure Certification, expected in June 2016. Although not required because Blaser's stormwater does not discharge to surface water, Blaser performs stormwater best management practices, following its Stormwater Pollution Prevention Plan. See <http://www.pacificgroundwatergroup.com/clients/blaser/>

Note: Blaser has only been named a Potentially Responsible Party at the Lower Duwamish Waterway Superfund Site. Further, as evidenced by the above Blaser Fact Summary, there is not any migration pathway or pathway of exposure between the Blaser property and the Harbor Island and Lockheed West Superfund Sites. The Blaser property is 8700 feet to East Waterway and 11,000 feet to West Waterway of the Harbor Island Superfund Site and 14,000 feet from the Lockheed West Superfund Site. Groundwater downgradient from the Blaser plume and the W4 Site commingled plume discharges only

to the Lower Duwamish Waterway, and not the Harbor Island and Lockheed West Superfund Sites. For all these reasons, Blaser does not have any natural resource damages responsibility at these two Superfund sites, and thus does not address these two Sites any further in this letter.

### 3. Application of the Relevant Natural Resource Damages Law to the Blaser Facts

In light of the relevant CERCLA provisions and case law discussed in Section 1 above, as applied to the facts here, Blaser does not have any legal responsibility for natural resource damages and the injury assessment at the Lower Duwamish Waterway Superfund Site ("Site").

First, there is no evidence that the release of a hazardous substance or oil from the Blaser property has reached the surface water or sediments in the Lower Duwamish Waterway. Chlorinated solvents, such as TCE, or its breakdown products, including vinyl chloride, have no complete pathway of exposure from the Blaser plume to the Site. Thus, there is no evidence of a causal link between the TCE release from the Blaser property and any injury to natural resources in the Lower Duwamish Waterway, nor is there any evidence that Blaser's TCE release was even a "contributory factor" to any injury to any Lower Duwamish natural resource, as required by *Boeing v. Cascade Corp.*, *supra*.

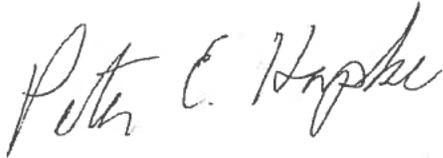
Further, for Blaser to have natural resource damages responsibility for commingled plume releases at the W4 Site, the Trustees carry the burden of proving that Blaser's TCE release by itself caused injury to a natural resource, apart from any contributory harm from other W4 Site parties who, along with Blaser, may have released oil or hazardous substances into a commingled plume. Stated differently, the Trustees must show that Blaser's TCE release is the sole and proximate cause of the injury to the natural resource. *Coeur d'Alene Tribe.*, *supra*.

In short, the Trustees cannot meet this essential element of a natural resource damages claim.

In sum, under either the single Blaser plume scenario or the W4 Site commingled plume scenario, there is no evidence of causation or pathway of exposure between Blaser's release and injury to a Site natural resource, as required by the applicable Department of Interior regulations.

Please do not hesitate to contact me if you wish to discuss Blaser's position in this matter. I am also willing to make Blaser's consultant, Janet Knox of PGG, available for a conference call or meeting should you have specific technical questions.

Very truly yours,

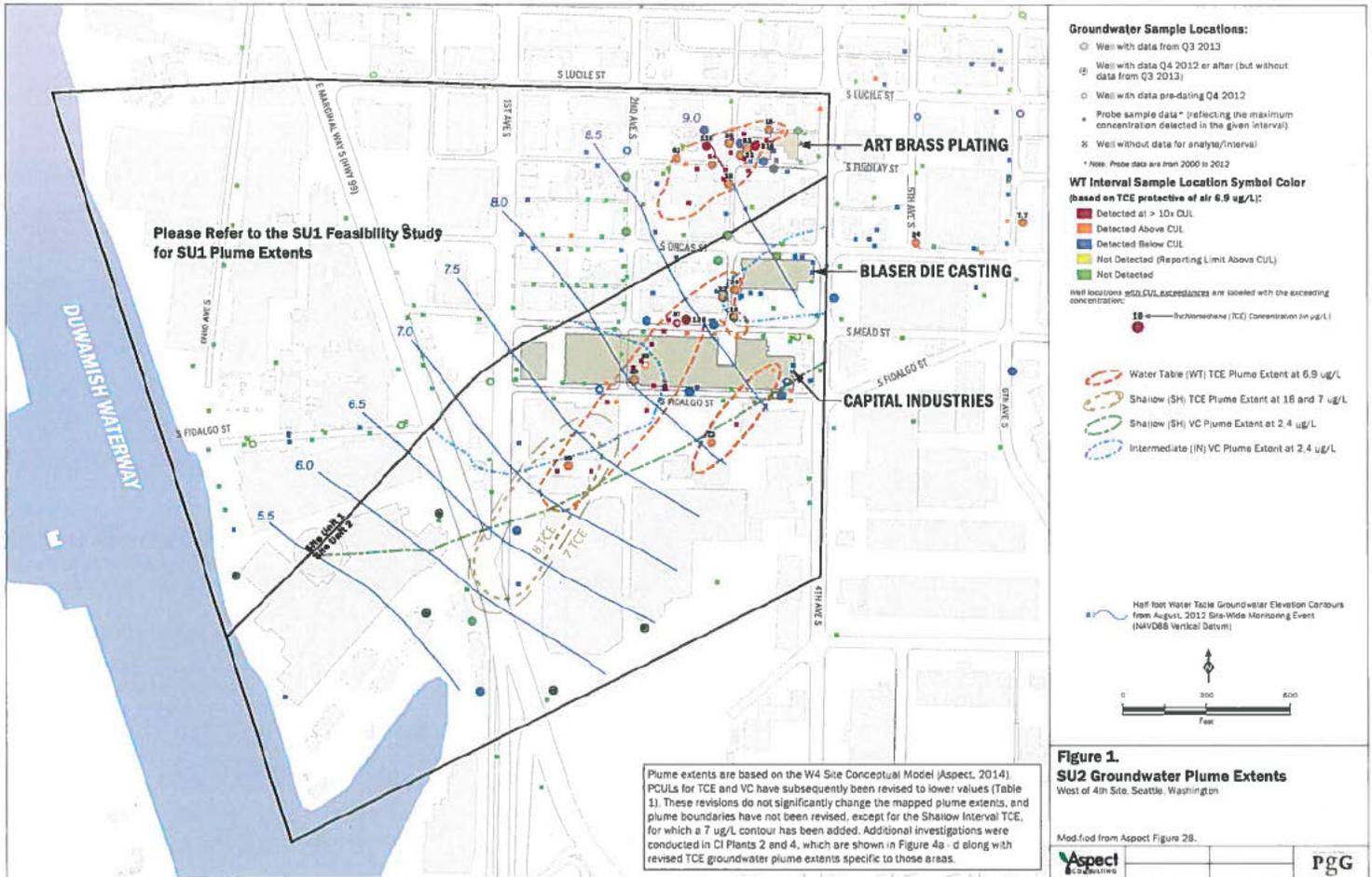
A handwritten signature in cursive script that reads "Peter E. Hapke". The signature is written in black ink and is positioned above the typed name.

Peter E. Hapke  
Hapke Law Office, PLLC

cc: Kevin Callan, Blaser

Janet Knox, LG, PGG

Attachments: Figure 1

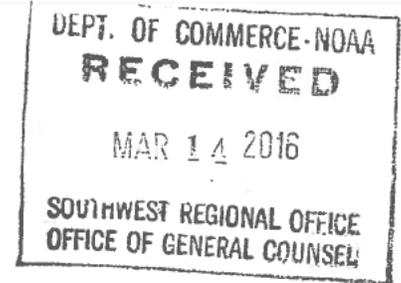




YARMUTH WILSDON PLLC  
ATTORNEYS AT LAW

Denise L. Ashbaugh  
DIRECT 206.516.3897  
dashbaugh@yarmuth.com

March 10, 2016



**EMAIL AND REGULAR MAIL**

Laurie J. Lee  
NOAA Office of General Counsel  
Natural Resources Section  
501 West Ocean Boulevard, Suite 4470  
Long Beach, CA 90802  
[Laurie.Lee@noaa.gov](mailto:Laurie.Lee@noaa.gov)

Re: Notice of Intent, Lower Duwamish Property: BNSF Railway  
Company – King County Washington Tax Parcel(s): 3770300190

Dear Ms. Lee:

This letter serves as BNSF Railway Company's ("BNSF") response to your letter dated January 29, 2016 (received on February 9, 2016) to Ms. Alyssa Moir at K&L Gates LLP which formally invites and notifies BNSF of its opportunity to participate in the development of the Natural Resources Damage Assessment of the Harbor Island, Lower Duwamish River, and Lockheed Superfund Sites. Yarmuth Wilsdon works with BNSF on environmental matters and has been asked to assist in respect to its identification as a potentially responsible party (PRP) at the Lower Duwamish Waterway Superfund Site. As such, please forward all further communications to my attention, while also copying Brooke Kuhl – BNSF Railway Company, 201 West Railroad Street, Suite 300, Missoula, Montana 59802.

We understand that the Notice of Intent was sent to BNSF as a potentially responsible party and/or because it was identified as a PRP for the Lower Duwamish River or Harbor Island site. BNSF disputes that it is an appropriate responsible party for alleged injury to the identified waterways and/or natural resources. It appears that the designated property in the Notice of Intent (which was acquired by Northern Pacific Railway Company in 1905 and divested by BNSF in 2014) consists solely of a small portion of former right-of-way. BNSF has no evidence or

T 206.516.3800  
F 206.516.3888

Ms. Laurie J. Lee  
NOAA Officer of General Counsel  
March 10, 2016  
Page 2

knowledge of any discharges and/or spill on this property, much less impacts that may have reached the waterways in question.

Despite BNSF's limited activities near the sites in question, including the property identified in your letter, BNSF has participated in some of the allocation processes only to find that they have been extraordinarily expensive, burdensome and not well-suited as an avenue of appropriate resolution for parties who have little if anything to do with the alleged injuries.

Based on all of these reasons, and others, BNSF has determined not to participate at this time in the second step of the NRDAR process of the Natural Resource Damage Assessment of the Harbor Island, Lower Duwamish River, and Lockheed Superfund Sites. BNSF will continue to monitor and evaluate the Natural Resource Damage Assessment and Restoration of this area. In doing so, please continue to notify it of the process as it moves forward so that BNSF may continue to properly evaluate its involvement, if any.

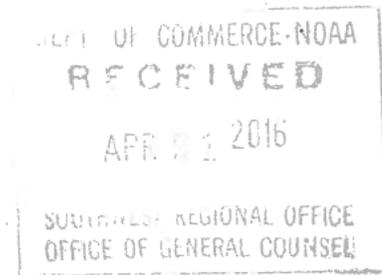
Sincerely,



Denise L. Ashbaugh

cc: Brooke Kuhl, Esq., BNSF Railway Company

April 14, 2016



Laurie J. Lee  
NOAA Office of General Counsel  
Natural Resources Section  
501 W. Ocean Blvd., Suite 4470  
Long Beach, CA 90802  
Laurie.Lee@noaa.gov

Re: Notice of Intent, Lower Duwamish property: Dick's Towing and Road Service  
King County Washington Tax Parcel: 0423049073

Dear Ms. Lee:

We represent Dick's Towing and Road Service Inc. in the above-referenced matter. We are in receipt of your letter dated March 29, 2016, regarding a natural resources damage assessment at the Lower Duwamish Waterway. Dick's Towing operates this parcel as a parking lot, and is unaware of any prior uses of the property which would have contributed to any contamination within the Lower Duwamish Waterway. Accordingly, our client does not wish to participate in the assessment planning and implementation proposed in your letter.

We would appreciate receiving any updates you have regarding the assessment process, and any findings which tend to demonstrate that Dick's is a potentially liable party for purposes of natural resources damages. You can reach the undersigned at:

Scott Sawyer  
Law Office of Daniel P. Mallove, PLLC  
2003 Western Avenue, Suite 400  
Seattle, WA 98121  
Telephone: (206) 239-9933  
E-mail: ssawyer@dpmlaw.com

Sincerely,

LAW OFFICE OF DANIEL P. MALLOVE, PLLC

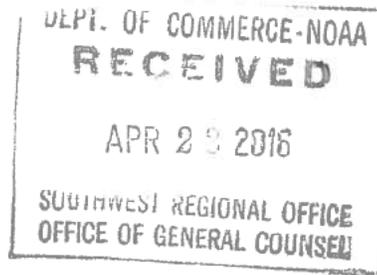
Scott R. Sawyer  
Attorneys for Dick's Towing and Road Service Inc.

SRS/mmk  
cc: Mike Bartolotti

April 27, 2016



Ms. Laurie J. Lee  
U.S. Department of Commerce  
NOAA Office of General Counsel  
Natural Resources Section  
501 West Ocean Boulevard, Suite 4470  
Long Beach, CA 90802



Via Email and UPS

Dear Ms. Lee,

We are in receipt of your letter dated March 29, 2016 to EAI Corporation inviting EAI to participate in the planning and development of an injury assessment in the Lower Duwamish Waterway and the East and West Waterways of Harbor Island ("the Assessment"). As a preliminary matter, and as we previously explained to the Environmental Protection Agency (see below), EAI no longer exists as it was merged out of existence in 2007. At that time, it was merged into Science Applications International Corporation (SAIC), which is now known as Leidos, Inc. (Leidos).

In January 2009, EAI received a request for information pursuant to section 104(e) of CERCLA for the Lower Duwamish Waterway Superfund Site, Seattle, Washington. On March 30, 2009, SAIC submitted a response to the U.S. EPA (Enclosure A). As described in the subject response letter, EAI's site activities (a roughly two year lease of a small amount of warehouse space from The Boeing Company that expired in January 2009), which were performed under a contract with the U.S. Marine Corps, were very limited in scope and nature. Therefore, we believe such activities could not have, and thus did not, pose a risk of or result in any release of hazardous substances that contributed to the injury of or harm to natural resources.

In light of the foregoing, Leidos declines your offer to participate in the development or performance of the Assessment.

However, we hereby request that all future communications and correspondence be addressed to:

Leidos, Inc.  
11955 Freedom Drive, Reston, VA 20190  
Attention: Gary Waggoner

Should you have questions or require additional information, please contact the undersigned at 571-526-6753 or [waggonerg@leidos.com](mailto:waggonerg@leidos.com).

Sincerely,

A handwritten signature in cursive script that reads "Gary Waggoner".

Gary Waggoner  
Environmental, Health and Safety Director



Mach 30, 2009

U.S. Environmental Protection Agency, Region 10  
Claire Hong, Remedial Project Manager  
Environmental Cleanup Office, ECL-111  
1200 Sixth Ave., Suite 900  
Seattle, Washington 98101

Dear Ms. Hong,

On January 30, 2009, EAI Corporation received a request for information pursuant to section 104(e) of CERCLA for the Lower Duwamish Waterway Superfund Site, Seattle, Washington. Science Applications International Corporation (SAIC) acquired Geo-Centers, Inc. and its subsidiaries on October 7, 2005. Prior to the acquisition, EAI Corporation was a wholly-owned subsidiary of Geo-Centers. On October 7, 2005, Geo-Centers, Inc. was merged into SAIC and EAI Corporation became a wholly-owned subsidiary of SAIC. EAI Corporation operated as a wholly-owned subsidiary of SAIC until its merger into SAIC effective as of December 29, 2007.

In accordance with this request SAIC has prepared a narrative response to each question asked in the enclosure of this request. Each answer is preceded with the number of the question to which it corresponds.

Written correspondence should be mailed to:

Science Applications International Corporation  
10260 Campus Point Drive  
San Diego, CA 92121  
Attention: Gary Waggoner

Should you have questions, please contact the undersigned at 858-826-4355.

Sincerely,

A handwritten signature in black ink that reads "Gary Waggoner". The signature is written in a cursive style with a large initial "G".

Gary Waggoner  
Vice President for Environmental,  
Health and Safety

COPY

**Responses To Enclosure Questions Section 104(e) Request - Lower Duwamish Waterway Superfund Site, Seattle, Washington**

I. Respondent Information

a. Science Applications International Corporation, 10260 Campus Point Dr., San Diego, CA, 92121.

EAI Ownership History:

On January 30, 2009, EAI Corporation received a request for information pursuant to section 104(e) of CERCLA for the Lower Duwamish Waterway Superfund Site, Seattle, Washington. Science Applications International Corporation (SAIC) acquired Geo-Centers, Inc. and its subsidiaries on October 7, 2005. Prior to the acquisition, EAI Corporation was a wholly-owned subsidiary of Geo-Centers. On October 7, 2005, Geo-Centers, Inc. was merged into SAIC and EAI Corporation became a wholly-owned subsidiary of SAIC. EAI Corporation operated as a wholly-owned subsidiary of SAIC until its merger into SAIC effective as of December 29, 2007.

b. Persons answering these questions on behalf of SAIC, include:

Gary Waggoner, Vice President for EH&S; 10260 Campus Point Dr., San Diego, CA 92121; 858-826-4355 (phone #), 858-826-4360 (fax #).

Kerry Quinn, Vice President, 50 Tech Parkway, Suite 201, Stafford, VA 22556; 540-657-5232 (phone #), 540-657-5220 (fax#)

c. Science Applications International Corporation, 10260 Campus Point Drive San Diego, CA 92121, Gary Waggoner, 858-826-4355 (phone#), 858-826-4360 (fax#).

d. EAI leased approximately 16,406 square feet of warehouse floor area in Boeing Building 2-40 with an address of 7755 East Marginal Way South, Tukwila, WA 98108 (Leased Location). The above address may be within one-half mile of the Site. The property was leased from the Boeing Company from November 1, 2006 to January 31, 2009. See Exhibit A for a copy of the leases covering the subject time period and the final surrender letter whereby Boeing Company acknowledged and agreed that the premises were surrendered by SAIC in the condition required by the lease.

e. See response to question 1.d. above.

f. EAI's business activities at the Leased Location were limited to storage of disaster response equipment and supplies under contract to the Marine Corps System Command.

g. EAI's activities were limited to storing disaster response equipment and supplies under contract to the Marine Corps System Command. Exhibit B provides a listing of representative items stored at the Leased Location. Other than use of ordinary office materials (computers, paper, writing utensils, etc.) there were no materials used or created by EAI's activities at the subject location.

h. N/A

---

## 2. Activities and Interests

- a. See Exhibit A.
- b. SAIC has no information in its possession on the information requested.
- c. SAIC has no information in its possession on past dredging or future planned dredging at the Site. Boeing Company is the Site owner.
- d. See response to question 1.f. and g. above.
- e. See response to question 1.f. and g. above.
- f. See response to question 1.f. and g. above.
- g. See response to question 1.f. and g. above.
- h. SAIC has no information in its possession on the information requested.
- i. SAIC has no information in its possession on the information requested.

## 3. Information About Others

- a. See response to 1.d. above with regard to our lease with Boeing Company.
- b. SAIC has no knowledge with regard to names and last known addresses of any tenants or lessees.
- c. See response to 1.b. above. Boeing Company would be anticipated to have the most significant information with regard to the development and use of the Site.

## 4. Financial Information

- a. SAIC objects to the question and the requested information has already been provided to the IRS. SAIC's Federal Tax Identification Number is 20-3562868. Please contact the IRS for the requested information.
- b. See our response to question 4.a. above.
- c. (i.-vi.) See our response to question 1.a. above concerning SAIC's acquisition, ownership, and merger of EAI.

## 5. Insurance Coverage

- a. A schedule of liability insurance policies is included as Exhibit C. If individual policy documents are necessary to support EPA's activities at the site, please highlight the information needed and we will provide requested copies.

- b. See response to question 5.a. above and Exhibit C.
- c. Marsh Risk and Insurance Services was the only insurance broker to place coverage for the Respondent during the time period being investigated.
- d. None related to this location.
- e. None related to this location.
- f. See response to question 5.a. above.
- g. All insurance policies are retained permanently at an offsite document storage facility.

6. Compliance with This Request

a.i. Jere Buffington (VP for Risk Management, SAIC), Agnes Cheng (Real Estate Attorney, SAIC), Michael Venegoni (Program Manager), as well as individuals identified in the response to question 1.b. above.

a. ii. 10260 Campus Point Drive, San Diego, CA 92121.

## DECLARATION

I declare under penalty of perjury that I am authorized to respond on behalf of Respondent and that the foregoing is complete, true, and correct.

Executed on March 30, 2009.

  
Signature

Gary Waggoner  
Vice President for Environmental, Health and Safety

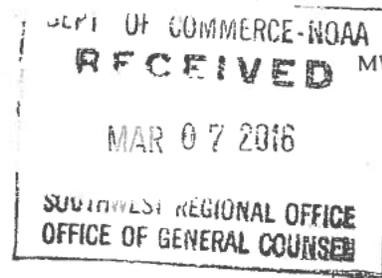
Mailing Address:

CT Corporation System  
Registered Agent for EAI Corporation  
1801 West Bay Dr. NW, Suite 206  
Olympia, WA 98502

EAI Corporation  
7755 East Marginal Way S  
Seattle, WA 98108-4002

February 29, 2016

Ms. Laurie J. Lee  
NOAA Office of General Counsel  
Natural Resources Section  
501 W. Ocean Blvd., Suite 4470  
Long Beach, CA 90802  
Laurie.Lee@noaa.gov



Mark W. Schneider  
MWSchneider@perkinscoie.com  
D +1.206.359.8627  
F +1.206.359.9627

**Re: Notice of Intent Letter to the Boeing Company  
King County, WA Tax Parcels #0003400021 & #0423049183**

Dear Ms. Lee:

I am writing in response to the Elliott Bay Trustee Council's Notice of Intent letter, dated January 29, 2016, regarding two Boeing-owned parcels in the Lower Duwamish Waterway, which correspond to tax parcels #0003400021 and #0423049183. According to the letter, Boeing may be potentially liable for natural resource damages because releases of hazardous substances from those parcels may have caused an injury to natural resources. As discussed below, Boeing has no liability for natural resource damages with respect to releases from either parcel.

In December 2010, Boeing signed a consent decree with various plaintiffs, including NOAA, which resolved Boeing's liability for natural resource damages with respect to a number of the Company's properties in the Lower Duwamish Waterway area. The consent decree specifically listed the second parcel identified in your January 29, 2016 notice of intent letter (#0423049183) as one of the properties covered by the decree. As a result, Boeing has resolved its liability regarding that parcel.

The other parcel listed in the notice of intent letter (#0003400021) is part of Boeing's Military Flight Center, a property that was not included in the 2010 consent decree. Boeing is actively investigating, monitoring, and controlling potential sources of pollutants at the Military Flight Center, including monitoring and abating stormwater discharges under that site's Industrial Stormwater General Permit. Additionally, although the Military Flight Center is at least 800 feet east of the Lower Duwamish Waterway, Boeing has removed PCBs from the site as a further safeguard to ensure that contamination from the Military Flight Center does not migrate to the waterway.

As you know, liability will be imposed only if a trustee establishes "injury to, destruction of, or loss of natural resources ... resulting from ... a release" for which a defendant is responsible. 42

U.S.C. § 9607(a)(4)(C) (emphasis added). This plain statutory language imposes liability only where (1) a party releases hazardous substances and (2) those releases are proven to cause injury to natural resources. See *Ohio v. United States Dep't. of Interior*, 880 F.2d 432, 470–72 (D.C. Cir. 1989) (upholding DOI regulations embodying traditional principles of causation that require a trustee to establish a causal link between the release for which the defendant is responsible and the injury to the natural resource). Traditional principles of causation require a plaintiff to show that the defendant's conduct was a "substantial factor in bringing about the harm." Restatement (Second) of Torts § 431(a). Boeing's fair share of liability for natural resource damages at the Duwamish Waterway thus can include only those damages substantially attributable to Boeing's releases of hazardous substances at the Military Flight Center.

There is no information to establish that releases of PCBs or other chemicals from the Military Flight Center caused natural resource damages. PCBs have been detected at the site in concrete joint materials (i.e., caulk) used in aircraft apron areas and in caulk placed between concrete tilt-up panels in two buildings at the south end of the site. The caulk in the apron areas likely is the result of repair work in the late 1960s or early 1970s. It is currently unclear when the caulk in the buildings was added. Over the past decade, Boeing has worked to eliminate PCBs at the Military Flight Center including removal of PCB containing caulk, excavation of contaminated soil, and re-siding of buildings.

Stormwater from the Military Flight Center enters a public storm drain line adjacent to East Marginal Way South—a line that ultimately discharges through the Norfolk CSO/SD outfall into the Lower Duwamish Waterway. That line collects, and the outfall discharges, stormwater from a very large drainage basin, containing many sources besides the Military Flight Center. Importantly, before stormwater from the aircraft apron areas at the Military Flight Center reaches the storm drain line, it has to pass through a series of contaminant-removing features, including oil/water separators, a drainage swale, a quarry spill flow dissipater, and pervious grass areas.

The majority of PCBs in caulking material at the Military Flight Center were found in the aircraft apron areas on the eastern portion of the site and in soil adjacent to apron areas; however, those PCB concentrations are not representative of the stormwater that the site discharged into the public storm drain line. Those elevated concentrations were detected in a swale and pervious grass areas at the site, both of which were effective in retaining such contamination. Any stormwater passing over them also would have had to go through an oil/water separator, which would also have settled out suspended solids. As a result, the site's discharges into the storm drain line would have had minimal solids content, and therefore would not have had significant concentrations of PCBs.

It is unlikely that material amounts of contamination from the Military Flight Center were discharged into the Duwamish. To the extent there were any such releases from the site, they would have been intermingled with releases from many other more significant sources that

discharged through the Norfolk CSO/SD outfall. The Military Flight Center is approximately 24 acres whereas the Norfolk outfall discharges stormwater from a drainage basin covering over 750 acres, and from a combined sewer service area covering over 4,900 acres. Approximately one-third of the land uses in those areas are industrial. The outfall has served as a discharge point for, among other sites, the King County International Airport, a section of Interstate 5, and properties used by the Affordable Auto Wrecking, Associated Grocers, Inc., Earle M. Jorgensen Company, Kenworth Motor Trucks, Monsanto Industrial Chemicals Company, Burlington Northern Santa Fe Railway, Union Pacific Railroad, and Northwest Auto Wrecking. Releases from some or all of those sites could have caused natural resources damages to the Duwamish.

Additionally, sampling conducted by Seattle Public Utilities ("SPU") since 2007 indicates that sources of PCBs are present throughout the entire Norfolk stormwater basin. SPU installed five sediment traps within the Norfolk stormwater basin (NST1 through NST5), only one of which would have captured some stormwater drainage from the Military Flight Center (NST5). Sampling conducted at those traps found elevated and variable concentrations of PCBs at all of those traps.<sup>1</sup> Moreover, this sampling data focused solely on stormwater and thus does not account for potential sources of PCBs collected by Norfolk's combined sewer system, which also would have been discharged through the outfall.

As the above discussion indicates, releases from the Military Flight Center were not a substantial factor in any injury to natural resources in the Lower Duwamish area, and any releases from the other parcel were covered by Boeing's 2010 consent decree with NOAA. Boeing thus submits it has no liability for natural resource damages with respect to Parcels #0003400021 and #0423049183. Regardless, I would like to continue to receive updates and correspondence relating to the cooperative injury assessment process.

Thank you.

Very truly yours,



Mark W. Schneider

MWS

Cc: The Boeing Company

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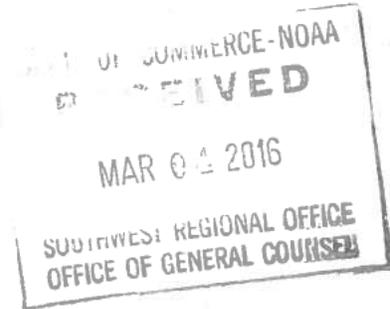
<sup>1</sup> The data collected by SPU are available in an Access database located at <https://fortress.wa.gov/ecy/gsp/DocViewer.ashx?did=46888>.



11021 34<sup>th</sup> Dr SE, Everett WA 98208  
425-338-9502

February, 19 2016

Laurie J. Lee  
NOAA Office of General Counsel  
Natural Resources Section  
501 W. Ocean Blvd., Suite 4470  
Long Beach, CA 90802



RE: Notice of Intent, Lower Duwamish property: Butler Construction  
King County Washington Tax Parcel(s): 666702375, 76667023707

NOAA Office of General Counsel, Laurie J Lee & Elliott Bay Trustee Council,

This letter is in response & serves as Notice from Davara Real Estate Solutions Inc. & Butler Construction LLC in regard to your letter of Notice of Intent regarding possible responsibility for potential injuries to the natural resources from Harbor Island, Lower Duwamish Waterway and Lockheed West Superfund Sites. Butler Construction, Butler Construction LLC & Davara Real Estate Solutions Inc. have not, nor ever have been located, nor provided services on Harbor Island, nor on the Lower Duwamish Waterway, nor on the Lockheed West Superfund Sites. Our companies have been located solely in Everett Washington since our original inception in July of 2004.

It appears that there was a separate Butler Construction Company that was possibly located on this site but does not have any relationship to any of our companies and are completely foreign to us.

We request that you cease any further Notices to us regarding any liability or requests for participation. We are not the correct company you should be sending notice too.

Sincerely,

Barbara Butler  
Secretary  
Davara Real Estate Solutions Inc.  
425-508-1615



DONALD J. VERFURTH  
DVERFURTH@GORDONREES.COM  
DIRECT DIAL: (206) 695-5111  
DIRECT FAX: (877) 634-3032

Admitted In: Washington  
Oregon

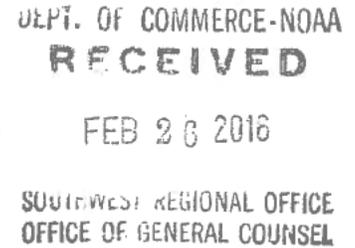
## GORDON & REES LLP

ATTORNEYS AT LAW  
701 5TH AVENUE, SUITE 2100  
SEATTLE, WA 98104  
PHONE: (206) 695-5100  
FAX: (206) 689-2822  
WWW.GORDONREES.COM

February 23, 2016

### VIA EMAIL AND US MAIL

Laurie J. Lee  
Attorney/Advisor  
Natural Resources Section  
NOAA Office of General Counsel  
501 W. Ocean Boulevard, Suite 4470  
Long Beach, CA 90802  
[Laurie.Lee@noaa.gov](mailto:Laurie.Lee@noaa.gov)



**Re: Notice of Intent, Lower Duwamish property: Capital Industries, Inc.  
King County Washington Tax Parcel(s): 1722801530, 1722801620,  
1722802255**

Dear Ms. Lee:

We are acknowledging your letter to me dated January 29, 2016 which we received on February 9, 2016. As you are aware I am counsel for Capital Industries, Inc. After careful consideration our client declines to participate in Natural Resource Damage Assessment, at this time.

If you have any questions, please do not hesitate to give us a call.

Very truly yours,

GORDON & REES LLP

  
Donald J. Verfurth

DJV:cjk

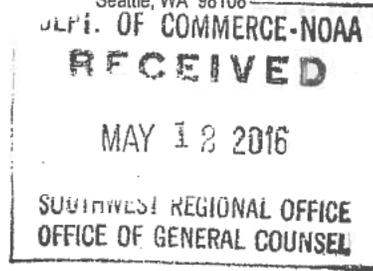
cc: Ronald Taylor

6887335v 1



Pacific Pile & Marine, LP  
700 South Riverside Drive  
Seattle, WA 98108

T 206 331-3873  
F 206 774-5958  
License # PACIFPM922J3



May 9, 2016

Laurie J. Lee  
NOAA Office of General Counsel  
501 W. Ocean Blvd., Suite 4470  
Long Beach, CA 90802

Regarding: Notice of Intent, Lower Duwamish property: Cascade Barge and Equipment King County Washington Tax Parcel(s): 7327906635, 7327906645

Ms. Lee,

This letter serves as Cascade Barge & Equipment's (Cascade) official notice of intention to dispute their responsibility for damage to natural resources associated with the Lower Duwamish Waterway.

Cascade Barge & Equipment leases tax parcel 7327906635 to Pacific Pile & Marine (PPM), who uses the former-residential house as storage for office furniture and archived paperwork. The building was purchased in 2008 and has only been used by PPM as a storage office since 2009 and could not reasonably contribute to the injury of natural resources.

Cascade Barge & Equipment leases tax parcel 7327906645 to Pacific Pile & Marine (PPM), who uses the property as a storage yard for equipment and inert construction materials. All equipment is maintained and monitored to ensure fuel, oil, and grease is not returning to the Duwamish River. The property is also permitted and maintained through the Department of Ecology's Industrial Stormwater General Permit since 2015. The yard was only purchased by Cascade in 2008 and used by PPM as a storage yard since 2008 and could not reasonably contribute to the injury of natural resources.

Cascade would like to participate in the development of the Assessment Plan as the Duwamish River serves as our headquarters and home to many of our employees, however we are unsure if participation is still allowed if we contend our responsibility. Further, it is unclear what the costs would be to participate in the assessment. If it is just the cost of our own personnel attending meetings we would willingly take on such costs however if it is to pay for items beyond that we would choose to decline to participate in the development of the Assessment Plan.

Please respond at your earliest convenience to Wilbur "JC" Clark, who will serve as our primary contact.

Respectfully,

Wilbur "JC" Clark  
Pacific Pile & Marine, L.P.  
206-300-1312  
[jc@pacificpile.com](mailto:jc@pacificpile.com)

Date: Wed, Feb 17, 2016 at 1:04 PM

Subject: Notice of Intent, Lower Duwamish Property: CDM Constructors Inc.

To: "laurie.lee@noaa.gov" <laurie.lee@noaa.gov>

Ms. Lee:

The attached letter from you was forwarded to me for a reply. First, please be advised that our office has moved. The new address is in the footer to this email.

Can you give me more information regarding why CDM Constructors Inc. is receiving this letter? I have done some preliminary research online at the NOAA and EPA websites on these Superfund sites, and I can find no mention of CDM Constructors. Also, to the best of my knowledge, we have not received any prior correspondence related to these Superfund sites or the NRDA being performed by the Elliott Bay Trustee Council. It would be helpful to have some more information regarding CDM Constructors' relationship to these sites so that the company can make a more informed decision regarding our participation.

Feel free to email or call.

Thank you.

Jason

---

Jason Makofsky | Senior Counsel | CDM Smith

75 State Street, Suite 701 | Boston, MA 02109 | 617-452-6074 | makofskyjp@cdmsmith.com | cdmsmith.com

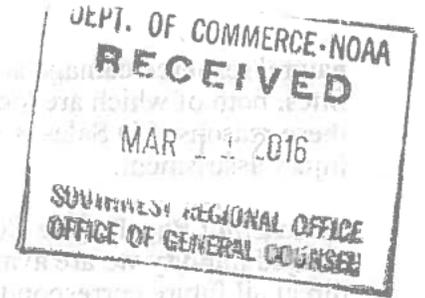
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 Duwamish Superfund Notice to Participate NOAA.pdf

445K

**CD Sales, LLC**

50 California St., 24<sup>th</sup> Fl.  
San Francisco, CA 94111



March 10, 2016

**VIA EMAIL (Laurie.Lee@noaa.gov) AND OVERNIGHT MAIL**

Laurie J. Lee  
NOAA Office of General Counsel  
Natural Resources Section  
501 W. Ocean Blvd., Suite 4470  
Long Beach, California 90802

**Re: Elliot Bay Trustee Council Notice of Intent: CDL Recycle, LLC  
King County Washington Tax Parcel: 2136200075**

Dear Ms. Lee:

This letter is submitted by CD Sales, LLC (formerly CDL Recycle, LLC (“CDL Recycle”)) (hereinafter “CD Sales”) in response to your correspondence dated January 29, 2016, which we received on February 9, 2016.

Your letter provides Notice of Intent to Perform a Natural Resource Damage Injury Assessment and Restoration in the Lower Duwamish Waterway and the East and West Waterways of Harbor Island. Your letter indicates that we are receiving this Notice because we may be a potentially liable party that has contributed to the release of hazardous substances that have injured natural resources.

In August 2011, the U.S. Environmental Protection Agency (“EPA”) issued an information request under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”) section 104(e) to CDL Recycle. In October 2011, CDL Recycle sent its response, specifying that beginning in or about January 2007, CDL Recycle leased a portion of the property at 7201 E. Marginal Way in Seattle, Washington (the “Property”) where it operated a construction materials recycling facility. CDL Recycle accepted only non-hazardous construction debris, for a fee, and then separated individual commodities for further sale to third-party recyclers. The primary commodities that it recovered were wood, metal, cardboard, aggregate material (concrete and brick), and drywall. CDL Recycle stopped operations and departed from the Property in November 2012. CDL Recycle has had no further operations at the Property since its departure in November 2012.

The documentation provided by CDL Recycle to EPA reflects nothing more than the normal operations of a non-hazardous resource recovery facility. Nevertheless, in November 2012, the EPA issued a general notice letter of potential liability pursuant to CERCLA section 107(a) for the Lower Duwamish Waterway Superfund Site to CDL Recycle. The General Notice Letter did not provide any specific basis for CDL Recycle’s alleged potential liability.

We are not aware of any reasonable basis to find that CDL Recycle’s former operations resulted in a disposal that would have contributed to a release of contaminants of concern into the Lower Duwamish Waterway contributing to any of the alleged natural resource damages. Similarly, we are unaware of any alleged nexus between CDL Recycle’s former operations and any potential

natural resource damage at or in the vicinity of the Lockheed West and Harbor Island Superfund Sites, both of which are located more than two miles from CDL's Recycle's former facility. For these reasons, CD Sales is declining your invitation to participate in the process to perform an injury assessment.

If the Elliot Bay Trustee Council continues to have a different perspective on CDL Recycle's alleged liability we are available to have a further discussion about the Council's request. Please direct all future correspondence relating to this matter to the following individuals:

**Derek Ruckman**, Vice President & Group Manager – Pacific Northwest Region, Recology  
117 S. Main Street, Suite 300, Seattle, WA 98104, 206-224-9536, [druckman@recology.com](mailto:druckman@recology.com)

**Ame LeCocq**, Group Environmental Manager – Pacific Northwest Region, Recology  
4044 North Suttle Road, Portland, OR 97217, 503-285-8777, [alecocq@recology.com](mailto:alecocq@recology.com)

**Estie Kus**, Senior Environmental Counsel, Recology  
50 California Street, 24<sup>th</sup> Floor, San Francisco, CA 94111, 415-875-1107, [ekus@recology.com](mailto:ekus@recology.com)

Please do not hesitate to contact me if you have any questions.

Very truly yours,



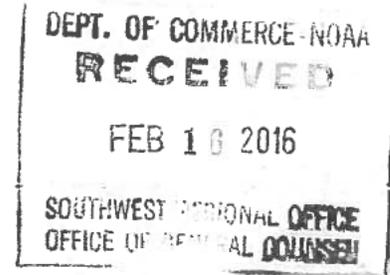
George P. McGrath  
Executive Vice President &  
Chief Operating Officer, CD Sales, LLC



February 11, 2016

Via Certified Mail

Laurie J. Lee  
NOAA Office of General Counsel  
Natural Resources Section  
501 W. Ocean Blvd., Suite 4470  
Long Beach, CA 90802



Dear Laurie:

RE: Notice of Intent, Lower Duwamish Assessment; your letter of January 29, 2016

The following is our reply to your letter inviting The Chemithon Corporation to participate and to pay for the process to assess possible environmental damage in the Lower Duwamish Waterway. The Chemithon Corporation has investigated the history of the property we occupy (parcel 1924049098 only) to the best of our ability using all available records and determined that we have not discharged harmful substances into the Lower Duwamish Waterway. For much of the time we have occupied this site all storm water and other waste water was discharged to the Seattle METRO sewer system. A detailed report of these findings has been submitted based on an information request we received. We have fully cooperated with authorities for all such mandatory requests. It remains our firm belief that The Chemithon Corporation has not been responsible for any release of significant hazardous substances into the Duwamish Waterway or for any damage to the environment of the Waterway. We understand that we have been listed as a potentially responsible party solely as a consequence of the address of our property. We do not wish to participate in this injury assessment process, and respectfully decline your invitation.

Respectfully,

THE CHEMITHON CORPORATION

Brian MacArthur, PhD  
Vice-President, Operations

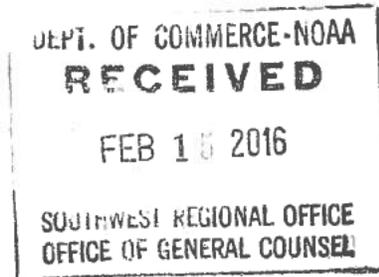
Cc. Frank R. Siderius, Registered Agent for The Chemithon Corporation; Burt Brooks, President



**Trevor C. Black**  
Senior Counsel, Environmental & Safety Law Group

February 15, 2016

Laurie J. Lee  
NOAA Office of General Counsel  
Natural Resources Section  
501 W. Ocean Blvd., Suite 4470  
Long Beach, CA 90802



RE: Notice of Intent, Lower Duwamish property: Chevron U.S.A. Inc.  
King County Washington Tax Parcel(s): 7666700465, 7666700510, 7666700515

Dear Ms. Lee,

Based on our review of the available records to date, it is Chevron's position that there is no nexus between Chevron's brief ownership of the property located at 4525 Diagonal Avenue South (comprised of the three parcels identified above) and the Harbor Island, the Lower Duwamish Waterway, and the Lockheed West Superfund Sites. Chevron previously stated this position and provided supporting documentation in its response to EPA's Lower Duwamish Waterway CERCLA 104(e) information request, dated December 1, 2010. Since Chevron has not contributed to the contamination, it is not subject to CERCLA liability. Consequently, Chevron declines the invitation to participate in the natural resource damages injury assessment.

If you have any questions, I may be reached at the contact information above.

Sincerely,

Trevor C. Black

Environmental & Safety Law Group  
Chevron Law Department  
Chevron Corporation  
6001 Bollinger Canyon Road, San Ramon, CA 94583  
Tel 925 842 9312 Mobile 925 548 9276 Fax 925 842 8595  
TrevorBlack@chevron.com



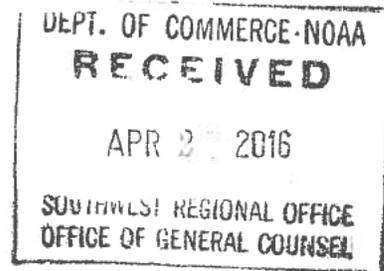
3501 Jamboree Road, Suite 230  
Newport Beach, California 92660

949 477 4729 Main  
949 477 9107 Fax

Via US Mail and Email

April 25, 2016

NOAA Office of General Counsel  
Natural Resources Section  
501 W. Ocean Blvd., Suite 4470  
Long Beach, CA 90802  
[Laurie.lee@noaa.gov](mailto:Laurie.lee@noaa.gov)



**RE: Notice of Intent - Lower Duwamish Property:  
CLPF - Seattle Distribution Center LP  
King County Washington Tax Parcel(s): 5367204080**

Dear Ms. Lee:

CLPF-Seattle Distribution Center LP ("CLPF"), owner of the above-referenced property with an address of 6701-6795 East Marginal Way South, Seattle, Washington 98109 ("Property"), received on March 30, 2016 a Notice of Intent ("NOI") concerning the Property, dated March 29, 2016. The NOI requested a response within 30 days of receipt, or April 29, 2016. Environmental Asset Services, Inc. (EASI), under contract to CLPF to coordinate the identification and resolution of any environmental issues of potential concern with respect to the Property, is submitting this letter in response to the NOI on behalf of CLPF.

According to the NOI, (copy attached), CLPF is receiving the NOI because CLPF has been identified as a potentially liable party that may have contributed to the release of hazardous substances that may have injured natural resources. The injuries are alleged to have occurred as a result of releases of hazardous substances into the environment at and from the Harbor Island, Lower Duwamish Waterway, and Lockheed West Superfund Sites ("Sites"). The Elliot Bay Trustee Counsel, consisting of trustees for the three sites under the Natural Resource Damage Assessment regulations at 43 C.F.R. Part 11, is inviting CLPF to participate in a cooperative process to perform an assessment of the alleged injury.

CLPF appreciates the trustees' efforts to communicate to area property owners. However, CLPF is not aware of any information to suggest that it bears any responsibility for the release of hazardous substances that may have occurred at or from the Sites or is in any way responsible for damages to natural resources associated with the Sites. As conveyed previously to the U.S. Environmental Protection Agency, Region 10, by letter dated May 23, 2008 in response to EPA's request for information under CERCLA Section 104(e), CLPF is unaware of any information that is indicative of a release to the Lower Duwamish Waterway Superfund Site from the Property. A copy of our previous response letter is attached

for your reference. Accordingly, CLPF respectfully declines the trustee's invitation to participate in the injury assessment process.

Please do not hesitate to contact me if you have any questions or need further information. I can be reached at (949) 477-4766 or via e-mail at [rchute@envassetsvcs.com](mailto:rchute@envassetsvcs.com).

Sincerely,  
**ENVIRONMENTAL ASSET SERVICES, INC.**



Robert Chute  
Vice President

cc: Mr. Neal Holdridge, EASI  
Ms. Sara Young  
Ms. Stacey Magee  
Ms. Fran Phillips  
Mr. Chuck Wiegman  
Ms. Krissy Bierlein

Enclosures



CORPORATION SERVICE COMPANY

## Notice of Service of Process

Transmittal Number: 14976998  
Date Processed: 03/31/2016

Primary Contact: Alice McAvoy  
Clarion Partners  
230 Park Avenue  
Floor 12th  
New York, NY 10169

Copy of transmittal only provided to: Stacey Magee

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|                           |  |
|---------------------------|--|
| Entity:                   | CLPF - Seattle Distribution Center, L.P.<br>Entity ID Number 2470848         |
| Entity Served:            | CLPF-Seattle Distribution Center LP  |
| Title of Action:          | United States Department of Commerce vs. Clpf-Seattle Distribution Center LP |
| Document(s) Type:         | Notice of Intent   |
| Nature of Action:         | Environmental  |
| Jurisdiction Served:      | Washington   |
| Date Served on CSC:       | 03/30/2016   |
| Answer or Appearance Due: | 30 Days  |
| Originally Served On:     | CSC  |
| How Served:               | Certified Mail   |
| Sender Information:       | Laurie J. Lee<br>562-980-4078  |

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Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

**To avoid potential delay, please do not send your response to CSC**  
*CSC is SAS70 Type II certified for its Litigation Management System.*  
2711 Centerville Road Wilmington, DE 19808 (888) 690-2882 | [sop@cscinfo.com](mailto:sop@cscinfo.com)



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
Office of General Counsel  
Suite 4470  
501 West Ocean Boulevard  
Long Beach, CA 90802

March 29, 2016

Via Certified Mail

Corporation Service Company  
Registered Agent for CLPF-Seattle Distribution Center LP  
300 DESCHUTES WAY SW STE 304  
Tumwater, WA 98501

RE: Notice of Intent, Lower Duwamish property: CLPF-Seattle Distribution Center LP  
King County Washington Tax Parcel(s): 5367204080

The Elliott Bay Trustee Council is beginning to develop an injury assessment for natural resource damages in the Lower Duwamish Waterway and the East and West Waterways of Harbor Island. You are receiving this Notice because you may be a potentially liable party that has contributed to the release of hazardous substances that have injured natural resources. The Elliott Bay Trustee Council is inviting you to participate in a cooperative process to perform the injury assessment.

The Elliott Bay Trustee Council (Trustees), described below, have concluded their preliminary investigation of potential injuries to natural resources under their trusteeship which have occurred as the result of releases of hazardous substances into the environment at and from the Harbor Island, Lower Duwamish Waterway, and Lockheed West Superfund Sites each of which was placed on the National Priorities List in 1983, 2001, and 2007, respectively (collectively "the Sites").

Elliott Bay Trustee Council (collectively referred to as "Trustees"):

- United States of America, on behalf of the United States Department of Commerce, acting through the National Oceanic and Atmospheric Administration ("NOAA"), and the United States Department of the Interior;
- The State of Washington ("the State") through the Washington State Department of Ecology;
- The Suquamish Tribe; and
- The Muckleshoot Indian Tribe.

This investigation has focused on releases from the Sites as a result of past industrial operations. Pursuant to the Natural Resource Damage Assessment Regulations, 43 C.F.R. Part 11, the Trustees for these three Sites completed a Pre-Assessment Screen which can be found in the Administrative Record for the Sites at [www.darrp.noaa.gov](http://www.darrp.noaa.gov).<sup>25</sup> The findings, conclusions, and determination therein are hereby adopted and fully incorporated in this Notice.

Information gathered by the Trustees and presented in the Pre-Assessment Screen form the basis of the Trustees' conclusions that the following criteria, as set forth in 43. C.F.R. § 11.23 (e), have been met:

61. A release of hazardous substances has occurred.
62. Natural resources for which the Trustees may assert trusteeship under CERCLA [Comprehensive Environmental Response, Compensation, and Liability Act of 1980] have been, or are likely to have been adversely affected by the release.
63. The quantity and concentration of the released hazardous substances is sufficient to potentially cause injury to natural resources for which the Trustees may assert trusteeship under CERCLA.
64. Data sufficient to pursue Natural Resource Damage Assessment are available or likely to be obtained at a reasonable cost.
65. Currently implemented and planned response actions are not expected to remedy the injury to natural resources without further action.

The Trustees have also completed a Programmatic Restoration Plan and Programmatic Environmental Impact Statement which is available at: [www.darrp.noaa.gov](http://www.darrp.noaa.gov).<sup>26</sup>

Based on all of the above, the Trustees will proceed with a Natural Resource Damage Assessment of the Harbor Island, Lower Duwamish River, and Lockheed Superfund Sites. This is your formal invitation and notification of your opportunity to participate in the development of the type and scope of the Assessment Plan and subsequently in the performance of the assessment. Also, potentially responsible parties who are interested in participating in the assessment planning and implementation are requested to pay for all phases of the injury assessment. Please note that if you believe you are not responsible for damage to natural resources associated with the Harbor Island, Lower Duwamish Waterway, and Lockheed West Superfund Sites, you will have an opportunity to offer facts and information that support your contention.

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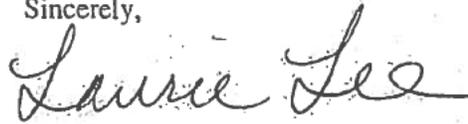
<sup>25</sup> Document title "Final Pre-Assessment Screen for the Lower Duwamish River. Elliot Bay Trustee Council, December 2, 2009" can be found under the About DARRP tab, in Case Documents, Northwest Section, using the Lower Duwamish River, WA link, Restoration Section, Preliminary Assessment.

<sup>26</sup> Document title "Final - Lower Duwamish River NRDA Restoration Plan and Programmatic Environmental Impact Statement (2013)" can be found under the About DARRP tab, in Case Documents, Northwest Section, using the Lower Duwamish River, WA link, Restoration Section, Programmatic Restoration Plan.

Please provide a response to this Notice within 30 days of your receipt of this letter indicating your intentions. Your response should provide a primary contact person and should be submitted as either a hard copy or email to:

Laurie J. Lee  
NOAA Office of General Counsel  
Natural Resources Section  
501 W. Ocean Blvd., Suite 4470  
Long Beach, CA. 90802  
Laurie.Lee@noaa.gov

Sincerely,

A handwritten signature in cursive script that reads "Laurie Lee".

Laurie J. Lee  
Attorney Advisor  
Natural Resources Section  
NOAA Office of General Counsel

# Frequently Asked Questions About The Notice of Intent to Conduct an Injury Assessment Letter

## Natural Resource Damage Assessment and Restoration

February 2016

This "Frequently Asked Questions" may answer many of your questions about the Notice of Intent to Perform an Injury Assessment letter that you received.

The purpose of the Natural Resource Damage Assessment and Restoration (NRDAR) is to restore natural resources to what they would have been if not for the release of hazardous substances, and to compensate for the loss of resources during the time that they were injured. Natural resource damages are authorized under federal and state laws (see page 2).

A release of hazardous substances can injure natural resources by:

- Harming land, water or sediment that provides habitat or other natural resource services.
- Injuring aquatic life, birds and wildlife.

### **Q: Who administers this NRDAR program?**

**A:** The CERCLA regulations call for a Trustee Council of federal, state, and tribal governments with natural resource trust responsibilities. The Elliott Bay Trustee Council is focused on the Superfund sites of the Lower Duwamish River, Lockheed West, and Harbor Island.

### **Q: Why am I being sent a Notice of Intent letter?**

**A:** The "Notice of Intent to perform an injury assessment" is a legal requirement under CERCLA to inform potentially responsible parties that the council is beginning an injury assessment. A potentially responsible party may be a past or current operator, transporter, or property owner that may have discharged hazardous substances. You are being sent this "Notice of Intent" because you may have been identified as a potentially responsible party for one of the Superfund sites in the Lower Duwamish River or Harbor Island areas. More than 100 parties have been notified including but not limited to the USEPA list of potentially responsible parties. The letter is also an official invitation to participate in and fund the assessment process if you choose.

### **Q: What is the process if I choose to participate in a cooperative assessment?**

**A:** The Trustee Council will encourage all parties that wish to participate in a cooperative assessment process to form a group and appoint spokespersons to work with the Trustee Council. The group and the Trustee Council will develop a cooperative assessment agreement that outlines how they will work together. In a cooperative assessment, the group will provide funding for assessment activities and have the opportunity to provide input on the assessment. Effective cooperation can lead to achieving timely and appropriate restoration. For more information about cooperative assessments see the website: <https://darrp.noaa.gov/getting-restoration/assessment>

### **MORE INFORMATION**

#### **Project Website:**

**Elliott Bay Trustee Council**

<http://www.darrp.noaa.gov/northwest/lowerduwamishriver/index.html>

#### **Contact Information**

Laurie Lee

NOAA Office of General Counsel

Phone (562) 980-4078

[Laurie.Lee@noaa.gov](mailto:Laurie.Lee@noaa.gov)

**Q: Am I required to respond to the Notice of Intent to Conduct Injury Assessment letter?**

**A:** No. This is an invitation to participate in a cooperative assessment process and a formal response is not mandatory. When the assessment process is complete, the Trustee Council will notify responsible parties of their opportunity to settle their NRDAR liability. Non-settling parties may be subject to litigation.

**Q: Have there been any settlements?**

**A:** Yes. There have been several early NRDAR settlements with the Trustee Council that created restoration sites on the Lower Duwamish River, including:

- 1991 settlement with City of Seattle and King County for stormwater and combined sewer overflow discharges.
- 2010 settlement with Boeing for contaminants from its facilities on the Duwamish.

**Q: What is the NRDAR process?**

**A:** There are 3 major steps in the NRDAR process: 1. Preliminary assessment, 2. Injury Assessment/Restoration Planning, and 3. Restoration Implementation.

For more information about NRDAR see the website <https://darrp.noaa.gov/getting-restoration/natural-resource-damage-assessment>

**Q: What is an injury assessment?**

**A:** Under NRDAR, "injury" is defined as adverse change in a natural resource or impairment of a natural resource service. For example, a hazardous substance release that causes disease or death in fish may be considered an injury. In an injury assessment, the Trustees identify the injuries to natural resources and their services and use that information to determine the need for and amount of restoration. Information from the remedial investigation is used, but additional studies may also be needed.

**Q: How is this different than what USEPA and Ecology are doing in the Lower Duwamish River under CERCLA and MTCA?**

**A:** These are completely separate processes that may overlap in time. USEPA has responsibility for overseeing the sediment cleanup in the Superfund sites. Ecology has responsibility for overseeing the upland cleanups and controlling sources that may cause recontamination in the Lower Duwamish River. NRDAR is about restoring natural resources that have been injured. Even after the cleanup is completed, NRDAR laws require restoration to compensate for the time that the natural resources were affected by hazardous substances.

**Federal and State Laws for NRDAR:**

**CERCLA:** Comprehensive Environmental Response, Compensation and Liability Act U.S.C. §9607

**MTCA:** Model Toxics Control Act 70:105d RCW

**OHSSPRA:** Oil & Hazardous Substance Spill Prevention and Response Act RCW 90.56

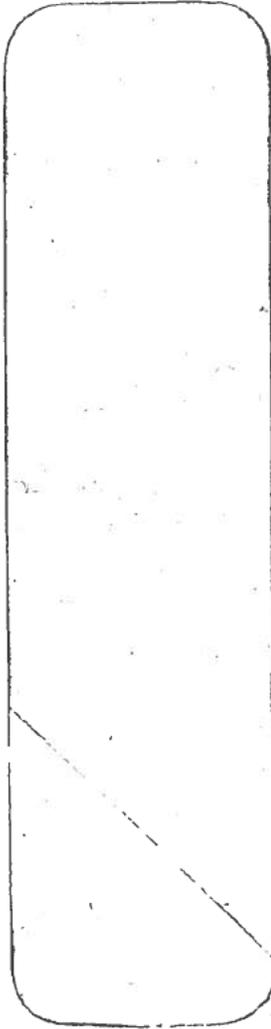
**OPA:** Oil Pollution Act 33 U.S.C. § 2701

**U.S. DEPARTMENT OF COMMERCE**  
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

OFC OF GENERAL COUNSEL  
501 W. OCEAN BLVD. #4470  
LONG BEACH, CA 90802

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98501771979



Via US Mail

May 23, 2008

United States Environmental Protection Agency, Region 10  
Claire Hong, Remedial Project Manager  
Environmental Cleanup Office, ECL-111  
1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101

**RE: Request for Information Pursuant to Section 104(e) of CERCLA for the  
Lower Duwamish Waterway Superfund Site, Seattle, Washington**

Dear Ms. Hong:

The property owner representative of CLPF-Seattle Distribution Center LP received a request for information on March 25, 2008. According to the information request, the respondent has 60 days or until May 25, 2008 to provide answers to the information request answers.

The Section 104(e) information request has been filled out to the best of our ability. Please note that both Section 4 – Financial Information and Section 5 – Insurance Coverage are both viewed as confidential business information. We will respond to the information request questions posed in both Sections 4 and 5 under separate and confidential cover, if EPA determines we are a party of interest after the reviewing the pertinent environmental information provided.

Please note that none of the information provided appears to be indicative of a release to the Lower Duwamish Waterway Superfund Site. As such we respectfully request that after EPA has performed a thorough review of the information provided, that the property owner is provided a letter from the EPA stating that this property is not considered to be a responsible party and that no further action is required.

Please let me know if you need any further information at this time. I can be reached at (949) 477-4766 or via e-mail at [rchute@trammellcrow.com](mailto:rchute@trammellcrow.com).

Sincerely,  
TRAMMELL CROW COMPANY

Robert Chute  
Project Manager  
Environmental Asset Services, Inc.

Enclosures – USEPA CERCLA Section 104(e) Information Request form w/ document book

cc: Mr. Neal Holdridge, EASI/TCC  
Ms. Stacey Magee, ING  
Ms. Fran Phillips  
Mr. Chuck Wiegman, JSH

N:\Team-Environment\04-TIP\Clarion-National\Clarion Market Areas\26 Seattle\SEA006 Seattle Distribution Center\CERCLA INFO REQUEST\SEA006\_CERCLA Info Request Response\_050608.doc

4 Park Plaza, Suite 700 • Irvine, CA 92614  
(949) 477-4700 • (949) 477-9107 Fax

**RESPONDENT RESPONSE TO EPA INFORMATION REQUEST**

CLPF – Seattle Distribution Center LP

6701 East Marginal Way, Seattle, WA 98108 (the “Property”)

**1. Respondent Information**

a. Provide the full legal name and mailing address of the Respondent.

|                                     |
|-------------------------------------|
| CLPF-Seattle Distribution Center LP |
| c/o ING Clarion Partners            |
| Ms. Stacey Magee                    |
| Asset Director                      |
| 3141 Hood Street, Suite 700         |
| Dallas, TX 75219                    |
|                                     |

b. For each person answering these questions on behalf of Respondent provide:

|  |   |
|--|---|
| i. full name;  | Mr. Neal Holdridge  |
|  |   |
| ii. title;   | Sr. Vice President, Environmental Mgr.  |
|  |   |
| iii. business address; and                           | Environmental Asset Services, Inc.<br>4 Park Plaza, Suite 700<br>Irvine, CA 92614 |
|  |   |
| iv. business telephone number and FAX machine number | 949.477.4719<br>949.477.9107  |

|  |   |
|--|---|
| i. full name;  | Mr. Robert Chute  |
|  |   |
| ii. title;   | Project Manager   |
|  |   |
| iii. business address; and                           | Environmental Asset Services, Inc.<br>4 Park Plaza, Suite 700<br>Irvine, CA 92614 |
|  |   |
| iv. business telephone number and FAX machine number | 949.477.4766<br>949.477.9107  |

|  |   |
|--|---|
| i. full name;  | Ms. Stacey Magee  |
|  |   |
| ii. title;   | Asset Director  |
|  |   |
| iii. business address; and                           | ING Clarion Partners<br>3141 Hood Street, Suite 700<br>Dallas, TX 75219 |
|  |   |
| iv. business telephone number and FAX machine number | 214.647.4925<br>214.647.4901  |

## RESPONDENT RESPONSE TO EPA INFORMATION REQUEST

CLPF – Seattle Distribution Center LP

6701 East Marginal Way, Seattle, WA 98108 (the "Property")

|  |  |
|--|--|
|  |  |
|--|--|

- c. If Respondent wishes to designate an individual for all future correspondence concerning this Site, please indicate here by providing that individual's name, address, telephone number and fax number.

|          |   |
|----------|---|
| Name:    | Mr. Robert Chute                          |
| Address: | 4 Park Plaza, Suite 700, Irvine, CA 92614 |
| Phone:   | 949.477.4766                              |
| Fax:     | 949.477.9107                              |

|          |   |
|----------|---|
| Name:    | Mr. Neal Holdridge                        |
| Address: | 4 Park Plaza, Suite 700, Irvine, CA 92614 |
| Phone:   | 949.477.4719                              |
| Fax:     | 949.477.9107                              |

|          |   |
|----------|---|
| Name:    | Ms. Stacey Magee                              |
| Address: | 3141 Hood Street, Suite 700, Dallas, TX 75219 |
| Phone:   | 214.647.4925                                  |
| Fax:     | 214.647.4901                                  |

- d. State the dates during which Respondent held any property interests at or within one-half mile of the above mentioned address.

|                            |
|----------------------------|
| August 25, 2004 to present |
|----------------------------|

- e. State the dates during which Respondent conducted any business activity at or within one-half mile of the above mentioned address.

|                            |
|----------------------------|
| August 25, 2004 to present |
|----------------------------|

- f. Describe the nature of Respondent's business activities at the above mentioned address or within one-half mile of that address.

|                   |
|-------------------|
| Real Estate Owner |
|-------------------|

- g. In relation to your answer to the previous question, identify all materials used or created by your activities at the above mentioned address, including raw materials, commercial products, building debris and other wastes.

|  |
|--|
| Real Estate Owner – Not Applicable (N/A) |
|  |

- h. If Respondent, its parent corporation, subsidiaries or other related or associated companies have filed for bankruptcy, provide:

- i. the U.S. Bankruptcy Court in which the petition was filed;  

|                      |
|----------------------|
| Not Applicable (N/A) |
|----------------------|

## RESPONDENT RESPONSE TO EPA INFORMATION REQUEST

CLPF – Seattle Distribution Center LP  
6701 East Marginal Way, Seattle, WA 98108 (the “Property”)

- ii. the docket number of such petition;
- iii. the date the bankruptcy petition was filed;
- iv. whether the petition is under Chapter 17 (liquidation), Chapter 11 (reorganization), or other provision; and
- v. a brief description of the current status of the petition.

### 2. Site Activities and Interests

- a. Provide all documents in your possession regarding the ownership or environmental conditions of the property mentioned above, including, but not limited to, copies of deeds, sales contracts, leases, blueprints, “as-builts” and photographs.

- A) **Request for Information Pursuant to Section 104(c) of CERCLA for the Lower Duwamish Waterway Superfund Site, Seattle, Washington.**
- B) **Rent Roll – Seattle Distribution Center**
  - 12/31/04
  - 12/31/05
  - 12/31/06
  - 12/31/07
- C) **Tenant Environmental Review conducted at Seattle Distribution Center**
  - Tetra Tech, Inc. Tenant Inspection Report 2<sup>nd</sup> Quarter 2006, dated 06/20/06
  - Tetra Tech, Inc. Tenant Inspection Report 3<sup>rd</sup> Quarter 2006, dated 08/11/06
  - EASI Environmental Audits Comments for 6755 E. Marginal Way South (Borracchini Foods), dated 12/18/06
  - EASI Environmental Audits Comments for 6795 E. Marginal Way South (Washington Asian Trading), dated 12/18/06
  - EASI Environmental Audits Comments for 6731 E. Marginal Way South (Rosella’s Fruit & Produce Company), dated 12/18/06
  - EASI Environmental Audits Comments for 6703 E. Marginal Way South (Ace Tank), dated 01/02/07
  - Tetra Tech, Inc. Tenant Inspection Report 1<sup>st</sup> Quarter 2007, dated 06/25/07
  - EASI Environmental Audits Comments for 6795 E. Marginal Way South (Washington Asian Trading), dated 07/11/07
  - EASI Environmental Audits Comments for 6731 E. Marginal Way South (Rosella’s Fruit & Produce Company), dated 07/11/07
  - Tetra Tech, Inc. Tenant Inspection Report 3<sup>rd</sup> Quarter 2007, dated 08/17/07
  - EASI Environmental Audits Comments for 6703 E. Marginal Way South

## RESPONDENT RESPONSE TO EPA INFORMATION REQUEST

CLPF – Seattle Distribution Center LP

6701 East Marginal Way, Seattle, WA 98108 (the “Property”)

(Ace Tank), dated 10/30/07

- EASI Environmental Audits Comments for 6705 E. Marginal Way South (Longview Fibre Company), dated 11/07/07
- Tetra Tech, Inc. Tenant Inspection Report 1st Quarter 2008, dated 02/01/08
- EASI Environmental Audits Comments for 6755 E. Marginal Way South (Borracchini Foods), dated 03/12/08
- EASI Environmental Audits Comments for 6795 E. Marginal Way South (Washington Asian Trading), dated 03/12/08
- EASI Environmental Audits Comments for 6731 E. Marginal Way South (Rosella’s Fruit & Produce Company), dated 03/12/08

### **D) Letter of Reliance for Seattle Distribution Center**

- PES Environmental, Inc. letter, dated 08/18/04
- PES Environmental, Inc. fax copy, sent 08/20/04

### **E) Tenant Leases for Seattle Distribution Center**

- Borracchini Foods Lease Confirmation
- Longview Fibre Paper and Packaging, Inc.
- North Coast Electric Company
- CLPF-Seattle Distribution Center, L.P.
- Rosella’s Fruit & Produce, Inc.
- SCS, LLC
- Ace Tank & Equipment
- Washington Asian Trading Company
- Union Pacific Distribution Services
- Washington Asian Trading Company (Hoa Ying TC)
- Former tenant lease – Facility Services, Inc. (FSI)
- Former tenant lease - Fujitec America, Inc.

### **F) ALTA/ACSM Land Survey (Map in pocket)**

- 6701 E. Marginal Way, Seattle, WA

### **Closing Index – SDC –(Compact Disk in pocket)**

- Sales Contract
- Bill of Sale
- Special Warranty Deed
- Assignment and Assumption of Lessor’s Interest in Leases
- Assignment of Warranties, Guaranties and Service Contracts
- Seller’s Closing Certificate
- Seller’s FIRPTA Certificate
- Real Estate Excise Tax Affidavit
- Notice to Tenants
- Final Escrow Disbursement Statement
- ALTA Owner’s Policy
- Property Management Agreement
- Seller Affidavit and Indemnity by Owner – Extended Coverage Policies
- Escrow Instruction Letter

**RESPONDENT RESPONSE TO EPA INFORMATION REQUEST**

**CLPF – Seattle Distribution Center LP  
6701 East Marginal Way, Seattle, WA 98108 (the “Property”)**

**G) Property Condition Assessments – Marx/Okubo**

- Storm Sewer Easement Research, dated 08/13/04
- Engineering Assessment, dated 04/05/04
- Property Condition Assessment, dated 07/28/04

**H) Environmental Site Assessment – PES Environmental, Inc.**

- Phase I Environmental Site Assessment, Seattle Distribution Center, dated 06/14/04

**All information listed above is provided in a binder labeled SDC CERCLA information request. The binder has a table of contents for ease of use.**

- b. Provide information on the condition of the property when purchased; describe the source, volume and content of any fill material used during the construction of the buildings, including waterside structures such as seawalls, wharves, docks or marine ways.

Property was fully developed with two buildings when purchased August 25, 2004

- c. Provide information on past dredging or future planned dredging at this site.

No information is available on past dredging activities at the Property, if any. No future dredging activities are planned for the Property, at this time.

- d. Provide a brief summary of the activities conducted at the site while under Respondent’s ownership or operation. Include process diagrams or flow charts of the industrial activities conducted at the site.

Real Estate Owner – Not Applicable (N/A)

- e. Provide all documents pertaining to sale, transfer, delivery, disposal of any hazardous substances, scrap metals and/or recyclable materials to this property.

To the best of our knowledge, there are no documents pertaining to sale, transfer, delivery, disposal of any hazardous substances, scrap metals and/or recyclable materials to this property.

- f. Provide all information on electrical equipment used at the facility, including transformers or other electrical equipment that may have contained polychlorinated biphenyls (PCBs).

To the best of our knowledge, there are no documents pertaining to storage or use of electrical equipment at the facility, including transformers or other electrical equipment that may have contained polychlorinated biphenyls (PCBs).

## RESPONDENT RESPONSE TO EPA INFORMATION REQUEST

CLPF – Seattle Distribution Center LP  
6701 East Marginal Way, Seattle, WA 98108 (the "Property")

- g. Provide information on the type(s) of oils or fluids used for lubrication of machinery or other industrial purposes, and any other chemicals or products which are or may contain hazardous substances which are or were used at the facility for facility operations.

- Please see the following documents which have inventories of materials utilized at each tenant space observed by a third party environmental consultant on behalf of the property owner which are found in the CERCLA information request binder under Tab C:
- Tetra Tech, Inc. Tenant Inspection Report 2<sup>nd</sup> Quarter 2006, dated 06/20/06
- Tetra Tech, Inc. Tenant Inspection Report 3<sup>rd</sup> Quarter 2006, dated 08/11/06
- Tetra Tech, Inc. Tenant Inspection Report 1<sup>st</sup> Quarter 2007, dated 06/25/07
- Tetra Tech, Inc. Tenant Inspection Report 3<sup>rd</sup> Quarter 2007, dated 08/17/07
- Tetra Tech, Inc. Tenant Inspection Report 1<sup>st</sup> Quarter 2008, dated 02/01/08

- h. Provide any site drainage descriptions, plans or maps that include information about storm drainage which includes, but is not limited to, above or below surface piping, ditches, catch basins, manholes, and treatment/detention or related structures including outfalls. If available, also include information about connections to sanitary sewer.

Please see attached ALTA/ACSM Land Survey (Map in pocket under Tab F) for 6701 E. Marginal Way, Seattle, WA.

- i. With respect to past site activities, please provide copies of any stormwater or drainage studies, including data from sampling, conducted at these properties. Also provide copies of any Stormwater Pollution Prevention or Maintenance Plans or Spill Plans that may have been developed for different operations during the Respondent's occupation of the property.

To the best of our knowledge, there are no documents pertaining to any stormwater or drainage studies, including data from sampling, conducted at this property with respect to past site activities.

### 3. Information About Others

- a. Describe any business relationship you may have had regarding this property or operations thereon with the following entities:

- i. Almonetto & Sons,

Previous sub-tenant of Rosella's Fruit and Produce Company in 1996. Rosella's Fruit and Produce Company is currently a tenant of the Property.

- ii. D&J Property LLC,

Not Applicable (N/A) – Owner has no knowledge of this company.

- iii. Key Mechanical Co., and

Not Applicable (N/A) – Owner has no knowledge of this company.

**RESPONDENT RESPONSE TO EPA INFORMATION REQUEST**

**CLPF – Seattle Distribution Center LP  
6701 East Marginal Way, Seattle, WA 98108 (the “Property”)**

iv. **Schnitzer Investment Corp.**

Former Property owner and property management company.

b. Provide the names and last know address of any tenants or lessees, the dates of their tenancy and a brief description of the activities they conducted while operating on the above mentioned site including, but not limited to, the following entities:

i. **Campbell Chain/Cooper Tools,**

Former tenant of the property. Noted to be occupying in 1996.  
6755 East Marginal Way – Building B.

ii. **Food Buying Service,**

Former tenant of the property. Noted to be occupying in 1996.  
6765 East Marginal Way – Building B

iii. **FSI, a Division of MBI systems,**

Former tenant of the property. Noted to be occupying in 2004.  
6719 East Marginal Way – Building A

iv. **Fujitec America, Inc.,**

Former tenant of the property. Noted to be occupying in 2004.  
6703 East Marginal Way – Building A

v. **Hoa Ying Trading Corp.,**

Former tenant of the property. Noted to be occupying in 2004.  
6795 East Marginal Way – Building B

vi. **Kasen Motorsports,**

Former tenant of the property. Noted to be occupying in 2004. Actually called Kaseca Motorsports. Tenant defaulted on lease and abandoned premises.  
6767 East Marginal Way – Building B

vii. **Longview Fibre Company,**

Current tenant of the property.  
6705 East Marginal Way – Building A

viii. **Rosella’s Fruit & Produce,**

Current tenant of the property.  
6731 East Marginal Way – Building A

ix. **SCS Refrigerated Services, and**

Current tenant of the property.  
6701 East Marginal Way – Building A

x. **Summit Brokerage, Inc.**

Former tenant of the property. Noted to be occupying in 1996.  
6779 East Marginal Way – Building B

c. If not already provided, identify and provide a last known address or phone number for all persons, including Respondent’s current and former employees or agents, other than attorneys, who have knowledge or information about the generation, use, purchase, storage, disposal, placement or other handling of hazardous materials at, or transportation of hazardous materials to or from, the Site.

**RESPONDENT RESPONSE TO EPA INFORMATION REQUEST**

**CLPF – Seattle Distribution Center LP  
6701 East Marginal Way, Seattle, WA 98108 (the “Property”)**

|   |
|---|
| Ms. Janet Munro, Schnitzer, Investment Mgr. [REDACTED] (former pm)              |
| Ms. Carolyn J. Stewart, Schnitzer, Assoc. Investment Mgr [REDACTED] (former pm) |
| Ms. Christine Hanhart, Schnitzer, Investment Coord. [REDACTED] (former pm)      |

**4. Financial Information**

- a. Provide true and complete copies of all federal income tax documents, including all supporting schedules, for 2002, 2003, 2004, 2005, 2006 and 2007. Provide the federal Tax Identification Number and, if documentation is not available, explain why in detail.

|  |
|--|
| The property was purchased August 25, 2004, as such we do not have federal income tax documents for 2002 and 2003. We will respond to this request under separate and confidential cover if EPA determines we are a party of interest. |
|  |
|  |

- b. Provide the Respondent’s financial interest in, control of, or that the Respondent is a beneficiary of any assets (in the U.S. or in another country) that have not been identified in your federal tax returns or other financial information to be presented to the EPA. If there are such assets, please identify each asset by type of asset, estimated value and location.

|   |
|---|
| We will respond to this request under separate and confidential cover if EPA determines we are a party of interest. |
|   |
|   |

- c. If Respondent is, or was at any time, a subsidiary of, otherwise owned or controlled by, or otherwise affiliated with another corporation or entity, the describe the full nature of each such corporate relationship, including but not limited to:

- i. a general statement of the nature of the relationship, indicating whether or not the affiliated entity had, or exercised, any degree of control over the daily operations or decision-making of the Respondent’s business operations at the Site;

|   |
|---|
| We will respond to this request under separate and confidential cover if EPA determines we are a party of interest. |
|   |

- ii. the dates such relationship existed;

|   |
|---|
| We will respond to this request under separate and confidential cover if EPA determines we are a party of interest. |
|---|

- iii. the percentage of ownership of Respondent that is held by such other entity(ies);

|   |
|---|
| We will respond to this request under separate and confidential cover if EPA determines we are a party of interest. |
|---|

**RESPONDENT RESPONSE TO EPA INFORMATION REQUEST**

**CLPF – Seattle Distribution Center LP**  
6701 East Marginal Way, Seattle, WA 98108 (the “Property”)

- iv. for each such affiliated entity provide the names and complete addresses of its parent, subsidiary, and otherwise affiliated entities, as well as the names and addresses of each such affiliated entity’s officers, directors, partners, trustees, beneficiaries, and/or shareholders owning more than five percent of that affiliated entity’s stock;

|   |
|---|
| We will respond to this request under separate and confidential cover if EPA determines we are a party of interest. |
|   |
|   |
|   |

- v. provide any and all insurance policies for such affiliated entity(ies) which may possibly cover the liabilities of the Respondent at the Site; and

|   |
|---|
| We will respond to this request under separate and confidential cover if EPA determines we are a party of interest. |
|   |
|   |

- vi. provide any and all corporate financial information of such affiliated entities, including but not limited to total revenue or total sales, net income, depreciation, total assets and total current assets, total liabilities and total current liabilities, net working capital (or net current assets), and net worth.

|   |
|---|
| We will respond to this request under separate and confidential cover if EPA determines we are a party of interest. |
|---|

**5. Insurance Coverage**

- a. Provide copies of all property, casualty and/or liability insurance policies, and any other insurance contracts referencing the site or facility and/or Respondent’s business operations (including, but not limited to, Comprehensive General Liability, Environmental Impairment Liability, Pollution Legal Liability, Cleanup Cost Cap or Stop Loss Policies). Include, without limitation, all primary, excess, and umbrella policies which could be applicable to costs of environmental investigation and/or cleanup and include the years such policies were in effect.

|  |
|--|
| We view our insurance policy as confidential business information. We will respond to this request under separate and confidential cover if EPA determines we are a party of interest. |
|--|

- b. If there are any such policies from question “5a” above which existed, but for which copies are not available, identify each such policy by providing as much of the following information as possible:

- i. the name and address of each insurer and of the insured;

|   |
|---|
| We view our insurance policy as confidential business information. We will respond to this request under separate and confidential cover if EPA |
|---|

**RESPONDENT RESPONSE TO EPA INFORMATION REQUEST**

**CLPF – Seattle Distribution Center LP  
6701 East Marginal Way, Seattle, WA 98108 (the "Property")**

determines we are a party of interest.

ii. the type of policy and policy numbers;

We view our insurance policy as confidential business information. We will respond to this request under separate and confidential cover if EPA determines we are a party of interest.

iii. the per occurrence policy limits of each policy; and

We view our insurance policy as confidential business information. We will respond to this request under separate and confidential cover if EPA determines we are a party of interest.

iv. the effective dates for each policy.

We view our insurance policy as confidential business information. We will respond to this request under separate and confidential cover if EPA determines we are a party of interest.

c. Identify all insurance brokers or agents who placed insurance for the Respondent at any time during the period being investigated, as identified at the beginning of this request, and identify the time period during which such broker or agent acted in this regard.

We view our insurance policy as confidential business information. We will respond to this request under separate and confidential cover if EPA determines we are a party of interest.

d. Identify all communication and provide all documents that evidence, refer, or relate to claims made by or on behalf of the Respondent under any insurance policy in connection with the site. Include any responses from the insurer with respect to any claims.

We view our insurance policy as confidential business information. We will respond to this request under separate and confidential cover if EPA determines we are a party of interest.

e. Identify any previous settlements with any insurer in connection with the site, or for any claims for environmental liabilities during the time period under investigation. Include any policies surrendered or cancelled by the Respondent or insurer.

We view our insurance policy as confidential business information. We will respond to this request under separate and confidential cover if EPA determines we are a party of interest.

f. Identify any and all insurance, accounts paid or accounting files that identify Respondent's insurance policies.

**RESPONDENT RESPONSE TO EPA INFORMATION REQUEST**

**CLPF – Seattle Distribution Center LP  
6701 East Marginal Way, Seattle, WA 98108 (the “Property”)**

|  |
|--|
| We view our insurance policy as confidential business information. We will respond to this request under separate and confidential cover if EPA determines we are a party of interest. |
|  |
|  |

g. **Identify Respondent’s policy with respect to document retention.**

|  |
|--|
| We view our insurance policy as confidential business information. We will respond to this request under separate and confidential cover if EPA determines we are a party of interest. |
|  |
|  |
|  |

6. **Compliance with This Request**

a. Describe all sources reviewed or consulted in responding to this request, including, but not limited to:

i. the name and current job title of all individuals consulted;

|  |
|--|
| Mr. Chuck Wiegman, Director                    |
| Ms. Nikki Anderson, Assistant Property Manager |
| Ms. Janet Munro, Investment Manager            |
| Ms. Stacey Magee, Asset Director               |
| Mr. Neal Holdridge, Senior Vice President      |
| Mr. Robert Chute, Project Manager              |

ii. the location where all documents reviewed are currently kept.

|   |
|---|
| Documents for this property are not centrally located. Portions of the files pertaining to this property can be found in New York, NY and/or, Dallas, TX and/or, Seattle, WA and/or Irvine, CA. |
|   |
|   |
|   |

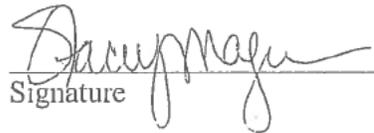
**RESPONDENT RESPONSE TO EPA INFORMATION REQUEST**

**CLPF – Seattle Distribution Center LP  
6701 East Marginal Way, Seattle, WA 98108 (the "Property")**

**DECLARATION**

I declare under penalty of perjury that I am authorized to respond on behalf of Respondent and that the foregoing is complete, true, and accurate.

Executed on 5/22, 2008

  
Signature

Ms. Stacey Magee  
Type or Print Name

Asset Director  
Title

Mailing Address:

CLPF-Seattle Distribution Center LP  
c/o Ms. Stacey Magee  
3141 Hood Street, Suite 700  
Dallas, TX 75219

With a copy to:

CLPF-Seattle Distribution Center LP  
c/o Environmental Asset Services, Inc.  
4 Park Plaza, Suite 700  
Irvine, CA 92614-8560

# SDC Section 104 (e) CERCLA Information Request

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CLPF – Seattle Distribution Center LP  
6701 East Marginal Way S, Seattle, WA 9818

- A) **Request for Information Pursuant to Section 104(e) of CERCLA for the Lower Duwamish Waterway Superfund Site, Seattle, Washington**
- B) **Rent Roll – Seattle Distribution Center**
- 12/31/04
  - 12/31/05
  - 12/31/06
  - 12/31/07
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# SDC Section 104 (e) CERCLA Information Request

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CLPF – Seattle Distribution Center LP  
6701 East Marginal Way S, Seattle, WA 9818

### C) Tenant Environmental Review conducted at Seattle Distribution Center (cont.)

- EASI Environmental Audits Comments for 6731 E. Marginal Way South (Rosella's Fruit & Produce Company), dated 07/11/07
- Tetra Tech, Inc. Tenant Inspection Report 3<sup>rd</sup> Quarter 2007, dated 08/17/07
- EASI Environmental Audits Comments for 6703 E. Marginal Way South (Ace Tank), 10/30/07
- EASI Environmental Audits Comments for 6705 E. Marginal Way South (Longview Fibre Company), dated 11/07/07
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### D) Letter of Reliance for Seattle Distribution Center

- PES Environmental, Inc. letter, dated 08/18/04
- PES Environmental, Inc. fax copy, sent 08/20/04

### E) Tenant Leases for Seattle Distribution Center

- Borracchini Foods Lease Confirmation
- Longview Fibre Paper and Packaging, Inc.
- North Coast Electric Company
- CLPF-Seattle Distribution Center, L.P.
- Rosella's Fruit & Produce, Inc.
- SCS, LLC

# SDC Section 104 (e) CERCLA Information Request

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CLPF – Seattle Distribution Center LP  
6701 East Marginal Way S, Seattle, WA 9818

### E) Tenant Leases for Seattle Distribution Center (cont.)

- Ace Tank & Equipment
- Washington Asian Trading Company
- Union Pacific Distribution Services
- Washington Asian Trading Company (Hoa Ying TC)
- Former tenant lease – Facility Services, Inc. (FSI)
- Former tenant lease - Fujitec America, Inc.

### F) ALTA/ACSM Land Survey (Map in pocket)

- 6701 E. Marginal Way, Seattle, WA

### Closing Index – SDC –(Compact Disk in pocket)

- Sales Contract
- Bill of Sale
- Special Warranty Deed
- Assignment and Assumption of Lessor's Interest in Leases
- Assignment of Warranties, Guaranties and Service Contracts
- Seller's Closing Certificate
- Seller's FIRPTA Certificate
- Real Estate Excise Tax Affidavit
- Notice to Tenants
- Final Escrow Disbursement Statement
- ALTA Owner's Policy
- Property Management Agreement
- Seller Affidavit and Indemnity by Owner – Extended Coverage Policies
- Escrow Instruction Letter

### G) Property Condition Assessments – Marx/Okubo

- Storm Sewer Easement Research, dated 08/13/04
- Engineering Assessment, dated 04/05/04
- Property Condition Assessment, dated 07/28/04

# **SDC Section 104 (e) CERCLA Information Request**

## **H) Environmental Site Assessment – PES Environmental, Inc.**

- Phase I Environmental Site Assessment, Seattle  
Distribution Center, dated 06/14/04

**U.S. EPA**  
**CERCLA SECTION 104(e)**  
**INFORMATION REQUEST**

Respondent: Representative of CLPF-Seattle Distribution  
Center LP  
c/o Environmental Asset Services, Inc.

Site: Lower Duwamish Waterway, Seattle, WA

CLPF-Seattle Distribution Center LP  
6701 East Marginal Way S  
Seattle, WA 98108

King County  
Parcels: 5367204080

Date: 2004 to Present

CERTIFIED MAIL™



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UNITED STATES POST  
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0000850404  
MAILED FROM



3501 Jamboree Road, Suite 230  
Newport Beach, California 92660

NOAA Office of General Counsel  
Natural Resources Section  
501 W. Ocean Blvd., Suite 4470  
Long Beach, CA 90802

Attn: Laurie Lee

WED 22 FEB 2006 11:18 AM  
Los Angeles 90005



100 N. 35<sup>th</sup> Street • Seattle, WA 98103

JOHN T. (J.T.) COOKE  
ATTORNEY  
JT@HOULIHANLAW.COM

February 29, 2016

**Via First-Class Mail & Email (Laurie.Lee@noaa.gov)**

Laurie J. Lee  
NOAA Office of General Counsel  
Natural Resources Section  
501 W. Ocean Blvd., Suite 4470  
Long Beach, CA 90802

**RE: NOAA'S Notice of Intent to ConGlobal Industries, Inc.**

Dear Ms. Lee:

We represent ConGlobal Industries, Inc. ("CGI"). We are in receipt of your letter dated January 29, 2016 requesting that CGI participate in a cooperative process to perform an injury assessment for the Lower Duwamish Waterway and the East and West Waterways of Harbor Island ("Sites"). CGI may be interested in a cooperative NRD assessment for the Sites; however, we need additional information to come to an informed decision on whether to participate.

Please keep us informed of the process as additional details become available. Future correspondence regarding this matter may be directed to my attention.

Sincerely,

A handwritten signature in black ink, appearing to read 'John Cooke'.

John (JT) Cooke  
Attorney for ConGlobal Industries, Inc.

Cc: Client (via email)

**From:** Perovich, Steven @ Seattle  
**Sent:** Monday, April 04, 2016 10:29 AM  
**To:** 'laurie.lee@noaa.gov'  
**Cc:** Carr, Paul @ Seattle  
**Subject:** Notice of Intent / Lower Duwamish / Copper Door Investors / Parcel 5367202085

Hi Laurie!

This email is redundant to my voicemail, but I thought this might be easier for you to respond to.

I received your letter dated March 29, 2016 regarding The Elliott Bay Trustee Council injury assessment process. The letter states that we "may be a potentially liable party", but we have no reason to believe we have contributed to pollution in or around the Duwamish. When we purchased this property in 2006, we conducted a Phase I study which came back showing the property to be clean. The primary use of the property has been as a tavern/bar for over 55 years, and I believe the property was undeveloped prior to that time. In addition to the bar tenant, we have a 500 square foot space that has been rented to a number of small businesses over the years, and some yard space rented to a company who has stored road signs there since we purchased the property.

If you could please call or write an explanation of why we've been included in this process, I would be very grateful.

Thank you in advance for your time!

Warm regards,

Steve

PS – The cc above is to my partner on the property, Paul Carr.

Steven M. Perovich | First Vice President  
CBRE | Healthcare Properties Group  
1420 5th Avenue, Suite 1700 | Seattle, WA 98101  
T 206.292.6059 | F 206.292.6033 | C 206.799.0179  
steven.perovich@cbre.com | [www.cbre.com/steven.perovich](http://www.cbre.com/steven.perovich) | [www.ClinicSpace.com](http://www.ClinicSpace.com)

Brokerage Services | Strategic Consulting



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# THOMAS M. KILBANE

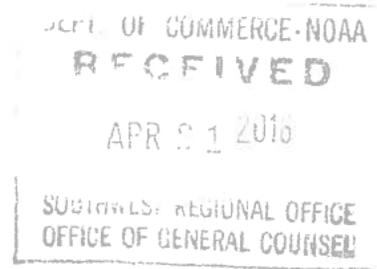
ATTORNEY  
AT LAW  
PLLC

8164 NE Yeti Lane  
Bainbridge Island, WA 98110  
tom@kilbanelaw.com  
www.kilbanelaw.com  
Tel: 206.484.1307  
Fax: 206.842.9768

April 11, 2016

**COPY VIA EMAIL ([Laurie.Lee@noaa.gov](mailto:Laurie.Lee@noaa.gov))**  
**ORIGINAL VIA US MAIL**

Laurie J. Lee  
NOAA Office of General Counsel  
Natural Resources Section  
501 W. Ocean Blvd., Suite 4470  
Long Beach, CA 90802



RE: Lower Duwamish Waterway Superfund Site – Natural Resource Damage Assessment –  
Initial Response and Notice of Change in Contact Information for Ener-G Foods, Inc.

Dear Ms. Lee:

My law firm is now representing Ener-G Foods, Inc. (Ener-G Foods) in the matter referred to above, in place of Miller Nash Graham & Dunn (formerly Graham & Dunn). I am writing to provide: (1) an initial response to your letter to Ener-G Foods dated January 29, 2016, and received at Ener-G Foods' registered address on about February 10, 2016, and (2) updated contact information for any future communications with Ener-G Foods regarding this matter.

Your letter indicated that it was in reference to the following subject:

RE: Notice of Intent, Lower Duwamish property: Sam Wyld Flour Co.  
King County Washington Tax Parcel(s): 001800113

Based on my brief initial review, there appears to be some confusion regarding the referenced corporate entity and property that are the intended subjects of your letter and Ener-G Foods' relationship to them. I will be out of the country for the next few weeks, but following my return I intend to look into this matter further and to provide further information if appropriate.

In any event, Ener-G Foods denies that it is or may be a potentially liable party who has contributed to the release of hazardous substances that have injured natural resources, and Ener-G Foods contends that it is not responsible for any damage to natural resources associated with the Lower Duwamish Waterway Superfund Site.

Laurie J. Lee, NOAA Office of General Counsel  
April 11, 2016  
Page 2

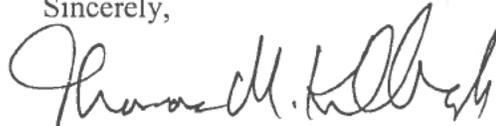
Please address any future correspondence, notices, and other written communications (other than service of original process) intended for Ener-G Foods regarding this matter as follows:

Sam Wylde III  
President  
Ener-G Foods, Inc.  
5960 1st Ave S  
Seattle, WA 98108

with a copy to:

Thomas M. Kilbane  
Attorney at Law PLLC  
8164 NE Yeti Lane  
Bainbridge Island, WA 98110

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas M. Kilbane". The signature is fluid and cursive, with the first name being the most prominent.

Thomas M. Kilbane  
Attorney at Law PLLC

cc: Sam Wylde III, President, Ener-G Foods  
Cely Cleto, General Manager, Ener-G Foods

From: **Russell,Emily** <Emily.Russell@eaglepicher.com>

Date: Fri, Apr 1, 2016 at 1:02 PM

Subject: Your letter of January 29th, 2016

To: "laurie.lee@noaa.gov" <laurie.lee@noaa.gov>

Dear Laurie-

Our former president received a letter regarding King County Washington Tax Parcels on January 29<sup>th</sup>, 2016. It is addressed to EaglePicher Industries. We were sold off from EaglePicher Industries in 2010. Our company, EaglePicher Technologies, LLC, never owned any property in Washington State. That entity is now called EP Management and their address is:

Colleen M. Hitchins

Director, Business Administration

**EPMC Holdings Corporation**

801 W. Ann Arbor Trail

Suite 220

Plymouth, MI 48170

phone: 248-703-8164 (cell) 313-749-5512 (office)

fax: 313-749-5501

email: colleen.hitchins@epcorp.com

If you have any questions, please feel free to contact me.

Emily S. Russell

Senior Counsel

**EaglePicher Technologies, LLC**

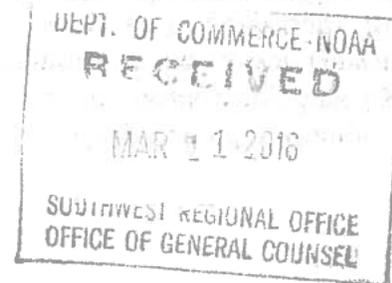
(417) 208-1919

(417) 623-3818

March 8, 2016

**VIA U.S. MAIL AND EMAIL**

Laurie J. Lee  
Attorney Advisory  
Natural Resources Section  
NOAA Office of General Counsel  
501 W. Ocean Blvd., Suite 4470  
Long Beach, CA 90802



Re: *Response to January 29, 2016 Notice of Intent*

Dear Ms. Lee:

We represent the Ford Motor Company (Ford) and are responding on Ford's behalf to your Notice of Intent (NOI) letter of January 29, 2016. Ford appreciates the work being done by the Elliott Bay Trustee Council to investigate natural resource injuries at the Lower Duwamish Waterway and the East and West Waterways of Harbor Island (collectively the LDW Site). Please be advised however, that Ford has determined that it is not responsible for the release of hazardous substances into the LDW Site and that it is therefore not responsible for causing any injury to natural resources associated with the LDW Site.

As requested by the Elliott Bay Trustee Council, Ford wishes to offer facts and information in support of its contention that it is not a liable party for natural resource injury associated with the LDW Site. Toward that end, we offer the following information so that the trustees may understand the historical context of Ford's operations at King County Washington Tax Parcel No. 3573200975 (the Property).

**A. Operational History**

1. Construction of the Ford Assembly Plant on the Property began in February 1931, and was completed in about January 1932. Operation of the automobile assembly plant began in May of 1932, with only 252 cars being manufactured in the first month. The assembly operation *did not* include manufacturing; rather, all parts were received from other Ford facilities, and then assembled inside the Plant.

2. Due to the Great Depression and the resulting decline in demand for automobiles, Ford terminated automobile assembly operations seven (7) months later, in November of 1932. A total of less than 2,000 automobiles were assembled at the Plant between May to November 1932.

722739.1/028540.00001

3. Following the termination of automobile assembly operations, the Property was used as a sales office and parts and automobile distribution center. By June 1941, Ford's operations on the Property were limited to storing parts for automobiles and as the headquarters for Ford executives.

4. Ford sold the Property to the U.S. Government on September 5, 1941. Thereafter Ford retained the right to continue to use approximately 30,000 square feet of office space at the former Plant until March, 1942.

5. Ford owned the Property at 4735 East Marginal Way South for a period of 11 years, from 1930 through 1941. However, as noted above, the Property only operated as an assembly plant for a seven (7) month period, from May 1932 to November 1932. Thereafter, Ford used the Property as a parts and automobile distribution center and sales office.

6. In sum, Ford assembled less than 2,000 automobiles during a seven (7) month period in 1932, which was more than 80 years ago. The assembly of automobiles involves painting parts and automobile bodies, and then putting them together. No industrial manufacturing operations ever took place. Further, the equipment was brand new at the time, so the likelihood of leaks and equipment failures were minimal. After assembly operations ceased, in November 1932, Ford's operations were limited to receiving, storing, and shipping automobiles and parts, and providing office space for Ford salesmen.

#### **B. Technical Presentation**

Notwithstanding the fact that Ford did not contribute any hazardous substances to the LDW Site, and, therefore, did not cause any injury to natural resources associated with the LDW Site, Ford did retain an expert and directed that expert to assume for the purpose of his technical report that a release of hazardous substances had in fact taken place during the seven (7) month period that the Ford plant operated from May to November, 1932. The conclusions of this analysis were as follows:

There is no evidence that historic discharges from the Ford Property from 1930 – 1941 resulted in releases of hazardous materials. Any such materials would have been deposited in sediments in close proximity to the outfall during that period. Those sediments would be located in place at approximately 6.0 feet depth interval below the present day riverbed based on estimated sediment deposition rates. Potential pollution generating activities during Ford's operation at the site are limited to the Ford Plant construction (1931) and a 7-month period of vehicle assembly operations in 1932. Sediment deposition within Slip 1 during that period (i.e. 1931-1932) would have resulted in a layer of sediment less than 2 inches thick located at a depth of approximately 6 ft. below the present day riverbed elevation. Sediment deposition at the outfall occurs at a rate exceeding 2 cm/year and, as a result, any materials discharged during the twelve (12) years of

Laurie J. Lee  
March 8, 2016  
Page 3

Ford's business activities into Slip 1 would have been buried under approximately 6.0 feet of material deposited in Slip 1 during the 74 year period from 1941 to the present date.

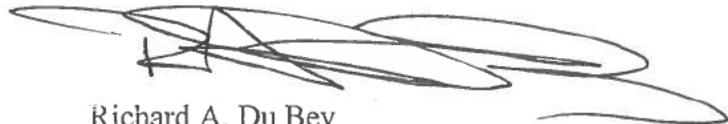
In 1975, a PCB spill occurred that resulted in the release of PCBs into Slip 1. In 1976, a response action by EPA resulted in dredging that removed an average of 0.75 feet of surface sediment from an area that included most of Slip 1. However, that dredging action would not have excavated deep enough to remove sediments deposited between 1930 – 1941 leaving such deeper undisturbed sediments from 2.5 – 3.0 feet below the post-dredge surface.

In 1976, surface sediments were determined by EPA to be clean, and PCB concentrations were found to be below present day SMS standard for PCB. In particular, the northern portion of Slip 1, inclusive of the potential extent of any effects from the outfall that conveyed surface water from the Ford Property, showed no exceedances compared to SMS for all chemicals and toxicity. In 2014, the ROD (EPA 2015) showed these same sediments to be clean based on 2006 samples. Additional samples collected and analyzed in 2015 (Integral 2015) documented that these same sediments remain clean with respect to SMS. The selected remedy for Slip 1, published by EPA in 2014, includes a combination of enhanced natural recovery and monitored natural recovery for the northern portion, and majority, of the Slip 1 area. (Shane Cherry Consulting, Inc., Lower Duwamish Waterway Sediment Dynamics at Slip 1 – Technical Memorandum (March 7, 2016) at Pages 4-5).

Ford appreciates the opportunity to respond to the Elliott Bay Trustee Council and to present the factual and technical basis supporting Ford's position that it has no potential liability for natural resource injury at the LDW Site.

Sincerely,

SHORT CRESSMAN & BURGESS PLLC

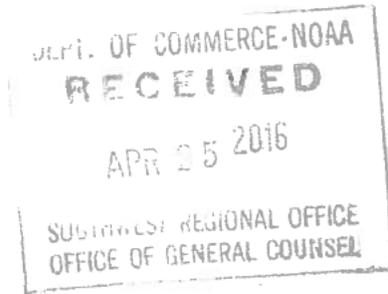
A handwritten signature in black ink, appearing to read "Richard A. Du Bey", is written over the printed name. The signature is somewhat stylized and overlaps the text.

Richard A. Du Bey

RAD:ms



JOYCE ZIKER  
PARKINSON



Tod Gold  
Direct Dial: 206.957.5953  
Email: tgold@jzplaw.com

April 21, 2016

Laurie J. Lee  
NOAA Office of General Counsel  
Natural Resources Section  
501 W. Ocean Blvd., Suite 4470  
Long Beach, CA 90802

**Re: Lower Duwamish Waterway  
Fox Avenue Building's Response to Elliott Bay Trustee Council's Notice of Intent**

Dear Laurie:

This letter is written on behalf of Fox Avenue Building, LLC ("Fox Avenue") in response to your letter to Robert Code dated March 29, 2016. Mr. Code appreciated notification of the Elliott Bay Trustee Council's ("Trustee Council") Notice of Intent to perform a Natural Resource Damage Assessment ("NRD Assessment").

Fox Avenue has been working cooperatively and proactively with the Department of Ecology for many years on an extensive investigation and cleanup of its property near the Lower Duwamish Waterway. The property has been well characterized. Neither Fox Avenue's current operations nor historical releases prior to Fox Avenue's ownership of its property impacted natural resources in the Lower Duwamish Waterway.

Nonetheless, Fox Avenue is interested in cooperating with the Trustee Council and would appreciate any information you may have at this time regarding the schedule, scope, estimated cost of and next steps for the NRD Assessment.

Very truly yours,

JOYCE ZIKER PARKINSON, PLLC

Tod Gold

cc: Client

February 29, 2016

Mark W. Schneider  
MWSchneider@perkinscoie.com  
D. +1.206.359.8627  
F. +1.206.359.9627

Ms. Laurie J. Lee  
NOAA Office of General Counsel  
Natural Resources Section  
501 W. Ocean Blvd., Suite 4470  
Long Beach, CA 90802  
Laurie.Lee@noaa.gov

**Re: Notice of Intent, Lower Duwamish property: GATX - Kinder Morgan; King  
County Washington Tax Parcel: 7666701710**

Dear Ms. Lee:

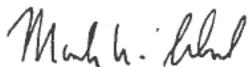
Kinder Morgan is in receipt of your January 29, 2016 letter regarding the Natural Resource Damage Assessment in the Lower Duwamish Waterway and the East and West Waterways of Harbor Island. Kinder Morgan would like to continue its earlier settlement discussions with the Trustees and will request an opportunity to meet with the Trustees. In the meantime, Kinder Morgan would appreciate receiving additional information about the proposed assessment process.

In response to your inquiry, Kinder Morgan's primary contact for matters involving natural resource damages in the Lower Duwamish Waterway and East and West Waterways of Harbor Island is:

Mark W. Schneider  
1201 Third Avenue, Suite 4900  
Seattle, WA 98101-3099  
(206) 359-8627  
MWSchneider@perkinscoie.com

I will be in touch with you again in the near future to schedule a call or meeting to discuss a potential settlement. I also would like to continue to receive updates and correspondence related to this matter.

Sincerely,



Mark W. Schneider

MWS:am

36157-0016/130057528.1

HAPKE LAW OFFICE PLLC  
2640 Shoreland Drive South  
Seattle, WA 98144  
206.714.6444

May 4, 2016

Ms. Laurie Lee  
National Oceanic and Atmospheric Administration  
Office of General Counsel  
Suite 4470  
501 West Ocean Boulevard  
Long Beach, CA 90802

RE: Notice of Intent, Lower Duwamish property: GDS Holding Company  
King County Washington Tax Parcel(s): 7666703460

RE: Notice of Intent, Lower Duwamish property: Global Diving and Salvage, Inc.  
King County Washington Tax Parcel(s): 7666702059, 7666702590, 7666703460

Dear Ms. Lee:

On behalf of GDS Holding Company and Global Diving and Salvage, Inc. ("Global Diving"), I am responding to your request that Global Diving inform your office whether Global Diving will participate in the natural resource damages injury assessment that the Elliot Bay Trustees Council ("Trustees") is intending to perform at the Lower Duwamish Waterway, Harbor Island, and Lockheed West Superfund Sites (collectively, the "Sites").

Global Diving fully supports the work of the National Oceanic and Atmospheric Administration ("NOAA") and the other Trustees in performing this injury assessment and restoring natural resources at the sites. However, based on the facts and applicable law, as more fully explained below, Global Diving does not have responsibility for natural resource damages at the Sites.

1. Legal Framework

The courts have interpreted CERCLA § 107 as requiring a different causation requirement for response cost claims than for natural resource damages claims. Generally, courts do not require plaintiffs seeking recovery of response costs to prove causation between the defendants' actions and the contamination being cleaned up at the site. However, courts require plaintiffs seeking recovery for natural resource damages to prove a causal link between the defendant's release of a hazardous substance and the injury to the resource. *Idaho v. Bunker Hill Co.*, 635 F. Supp. 665 (D. Idaho 1986); *In re Acushnet River and New Bedford Harbor*, 722 F. Supp. 893 (D. Mass. 1989) (Government must establish that defendant's releases were a contributing factor to

injuries to the resource). Notably, this “contributory factor” test was adopted by the Ninth Circuit Court of Appeals in *Boeing v. Cascade Corp.*, 207 F.3d 1177 (9<sup>th</sup> Cir. 2000).

## 2. Global Diving Fact Summary

GDS Holding Company (“GDS”) was a non-operating affiliate of Global Diving. GDS merged into Global Diving effective January 1, 2009 and thus GDS no longer exists as a separate entity. As a result, this letter addresses the operations of Global Diving at its main facility located at 3840 Marginal Way SW in Seattle. Global Diving uses a few other properties close to this facility, but they are either offices or used for storage of Global Diving equipment, such as vehicles, boats, trailers, or booms, and thus these satellite properties are not discussed in this letter.

Global Diving has operated at its main location since 1997, and there are three operational functions performed there: commercial diving, marine construction services and environmental clean-up and response services. Equipment needed for these three operations is stored, maintained and repaired in a warehouse on the west side of Marginal Way across from the property.

Maintenance and repair work at this warehouse Site sometimes use various hydraulic fluids, motor oils, aerosol lubricants, paints and multi weight greases. No other chemicals or products containing hazardous substances are used. As a result of this periodic repair and maintenance, a small quantity of wastes, such as lubricating oils, hydraulic fluids, gasoline, diesel, paint and cleaning solvent are generated and properly stored until they are removed and disposed of on a regular basis by a licensed third party waste disposal contractor.

Occasionally underwater lightering and salvage operations performed by Global Diving at off-site locations will generate waste that needs hazard categorization for disposal. Occasionally, this waste is temporarily stored at the 3840 Marginal Way, S.W. property within permitted allowances and then transported and disposed of by a licensed third party contractor.

Apart from the small quantity of hazardous waste occasionally generated by Global Diving described above, Global Diving does not store, transport or deliver any hazardous substances at the property. Global Diving is not aware of any release of a hazardous substance, originating from its property, into the soil or ground water. The Lower Duwamish Waterway is more than 400 feet away from the nearest point of the property. Furthermore, since Global Diving is also an Environmental Cleanup Contractor, there are Spill Plans in place, including a Spill Prevention Control and Counter-Measures Plan.

Concerning storm water at the property, a wash bay that collects wastewater from maintenance and repair work is inside the warehouse. This wash bay is covered and connected only to the oil water separator via a catch basin within the warehouse. This cleaned water from the wash bay is sent directly to the sanitary sewer system. The wash bay does not have catch basins attached to it.

At the property parking lot there are storm drains that collect rainwater and that connect to the drainage system of adjacent businesses and passes through an oil water separator on their property, thence into the Lower Duwamish Waterway. These parking lot catch basins at the Global Diving property are cleaned yearly by MarVac.

Notably, Global Diving has not been named a Potentially Responsible Party ("PRP") by the U.S. Environmental Protection Agency at any of the Sites.

3. Application of the Relevant Natural Resource Damages Law to the Global Diving Facts

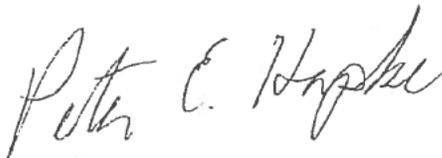
In light of the relevant CERCLA provisions and case law discussed in Section 1 above, as applied to the facts here, Global Diving does not have any legal responsibility for natural resource damages and the injury assessment at any of the Sites.

There is no evidence of any complete migration pathway or pathway of exposure between a release of hazardous substances or petroleum at the Global Diving property and an injury to a natural resource at any of the Sites. Thus, there is no evidence of a causal link between the Global Diving property and any injury to natural resources at any of the Sites. Nor is there any evidence that any hazardous substance or petroleum originating from the Global Diving property was even a "contributory factor" to any injury to any natural resource at the Sites, as required by *Boeing v. Cascade Corp., supra*. In short, the Trustees cannot meet this causal nexus essential element of a natural resource damages claim.

In sum, there is no evidence of causation or a pathway of exposure between Global Diving's facility operations and injury to a natural resource at any of the Sites, as required by the applicable U.S. Department of Interior regulations and relevant case law.

Please do not hesitate to contact me if you have any questions or wish to discuss Global Diving's position in this matter.

Very truly yours,



Peter E. Hapke  
Hapke Law Office, PLLC

cc: Tim Beaver, Global Diving  
John Graham, Global Diving

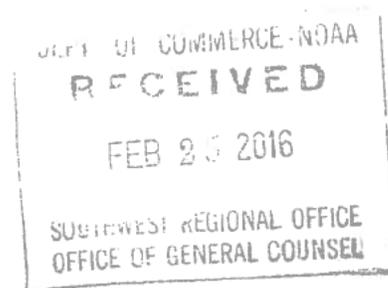


## MARTEN LAW

February 22, 2016

Via Electronic and Certified Mail

Laurie J. Lee  
NOAA Office of General Counsel  
Natural Resources Section  
501 W. Ocean Blvd., Suite 4470  
Long Beach, CA 90802  
Laurie.Lee@noaa.gov



RE: Notice of Intent, Lower Duwamish property: General Construction  
Company King County  
Tax Parcel 7666703440

Dear Ms. Lee:

This letter responds to your January 29, 2016 letter to General Construction Company concerning the injury assessment for natural resource damages in the Lower Duwamish Waterway in Seattle, Washington ("the Site"). This firm represents General Construction Company ("GCC" or "the current GCC"), a Washington corporation that was formed in 2001. For the reasons set forth below, GCC is not a potentially responsible party under CERCLA or a potentially liable party under MTCA with respect to the Site. Consequently, GCC (1) declines the invitation to join in the assessment process and (2) requests that it be removed from any further consideration by the Trustees with respect to the Site.

GCC is not a current owner/operator, transporter, or arranger at the Site. GCC is a general contractor that provides construction services to marine and industrial clients. GCC maintains a construction yard at 3838 West Marginal Way SW (Parcel 7666703440) for maintaining and storing the equipment to provide these services. The property is owned by and leased from the Port of Seattle, the property owner. Structures on the property consist of three office buildings, a warehouse, three shops (welding shop, old shop, and carpenters shed), a paint room, oil house, used oil shed, fuel shed/compression room, and multiple areas designated for equipment storage. The office buildings are fully enclosed buildings used for administrative activities. Permanent structures on the property are owned by the Port of Seattle. The majority of the yard is paved. Stored equipment may include cranes, man lifts, forklifts, boats, and metal.

GCC does not fall into any of the categories of potentially responsible parties under 42 U.S.C. § 9607(a). GCC is not a generator of hazardous substances, and

has never arranged for the disposal of hazardous substances at the Site or at any facility within the Site on behalf of itself or its clients. GCC is not a "person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of" under 42 U.S.C. § 9607(a)(2) or a person "who owned or operated [a] facility at the time of disposal or release of the hazardous substances" under RCW 70.105D.040(b). GCC operates on leased property, and has never owned real property within the Site. GCC is also not an operator as defined in MTCA and CERCLA. GCC has no data or information which indicates the presence of any hazardous substance on its leased property, and there is nothing in its operations that makes the release, threatened release, or disposal of hazardous substances from those operations or its construction yard likely or even plausible.

EPA has recognized that GCC does not fall into the CERCLA categories of potentially responsible parties. On May 22, 2012, EPA sent a General Notice Letter to Kiewit Construction Company for a corporation named General Construction Company. The current GCC, although associated with the Kiewit group of companies, is not and never has been a subsidiary of Kiewit Construction Company (currently named "Kiewit Infrastructure Co."). Information as to GCC's formation and corporate history was provided to EPA in response to three separate information requests under section 104(e) of CERCLA. In response to that information, EPA reevaluated its notice of general liability and determined that the current GCC "was not the correct recipient of the General Notice Letter intended for the pre-1996 General Construction Company." See Exhibit 1. To the extent that GCC received the invitation to participate in the allocation process because it received the 2012 General Notice Letter, the allocating parties should acknowledge that EPA sent that letter in error, and remove GCC from any further consideration in the allocation process.

GCC is not a successor to a past owner/operator, transporter or arranger at the Site.

There have been several entities in Washington named "General Construction Company" since at least the 1950s. The current GCC is not a successor to any other previous entity that may have done business under the name "General Construction Company." The current GCC was formed in 2001 through a statutory merger with a prior Delaware corporation, also called "General Construction Company." The prior Delaware entity was formed in 1996 by several employees by means of an asset purchase from Fletcher General, Inc. Fletcher General, Inc. had also operated an entity called "General Construction Company" for some period of time in the 1980s and 1990s.

GCC is not in possession of any information indicating that any of these entities are potentially responsible parties with respect to the Site, but at any rate, the current GCC did not assume any of the liabilities of the pre-1996 entities.

Laurie J. Lee  
February 22, 2016  
Page 3

The Washington State Court of Appeals has held that GCC is not a successor to the pre-1996 entities. In *Martin et al v. Dematic et al*, a copy of which is attached as Exhibit 2, Division One of the Washington Court of Appeals affirmed that in Washington, a corporation purchasing another corporation's assets generally does not become liable for the debts and liabilities of the selling corporation unless the purchaser expressly or impliedly agrees to assume liability. Exhibit 2 at 7. The court then upheld the language in the 1996 asset purchase agreement which specifically excluded "[a]ll obligations or liabilities of the Business, Seller or any of its Affiliates of any nature whatsoever, arising with respect to any acts, actions, omissions, or events occurring prior to July 1, 1996." *Id.* at 9-11. GCC is not responsible for any liabilities which any of the prior companies associated with the "General Construction Company" name may have with respect to the Site, and should be removed from the Trustee's list of parties who may be responsible for any alleged natural resource damages at the Site.

For all of these reasons, GCC declines to participate in the injury assessment process. GCC requests written confirmation that it received this invitation in error.

Thank you for your consideration of this information. Please let us know if you have any questions.

Very truly yours,



Linda R. Larson

Enclosures:

- Exhibit 1: Letter from Aaron Lambert to Linda R. Larson dated December 4, 2012
- Exhibit 2: Unpublished opinion in *Martin et al. v. Dematic et al.*, Washington Court of Appeals  
Division One No. 68132-0-1 (October 14, 2013)

cc: Mary Carnazzo

# Exhibit 1



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101-3140



DEC 04 2012

OFFICE OF  
ENVIRONMENTAL CLEANUP

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

Linda R. Larson  
Marten Law  
1191 2nd Avenue, Suite 2200  
Seattle, Washington 98101

Re: General Notice of Potential Liability Pursuant to Section 107(a) for the Lower Duwamish Waterway Superfund Site, Seattle, Washington

Dear Ms. Larson:

On May 22, 2012, the USEPA sent a General Notice Letter of Potential Liability to Kiewit Construction Company for a corporation named General Construction Company. EPA reviewed information received from Keiwit Corporation on October 1, 2012, which helped to clarify the relationship between Kiewit Corporation and a corporation in existence until approximately 1996 named General Construction Company. Based on this new information, EPA has determined that Kiewit Corporation was not the correct recipient of the General Notice Letter intended for the pre-1996 General Construction Company.

Please contact Alex Fidis at the EPA Region 10 Office of Regional Counsel, (206) 553-4710, if you have any questions concerning this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Aaron Lambert", with a long horizontal flourish extending to the right.

Aaron Lambert  
Environmental Protection Specialist  
Remedial Cleanup Program  
Site Cleanup Unit 3

# Exhibit 2

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

NINA L. MARTIN, individually and  
as Personal Representative of the  
ESTATE OF DONALD R. MARTIN,  
RUSSELL L. MARTIN, THADDEUS J.  
MARTIN, and JANE MARTIN,

Appellants,

v.

DEMATIC dba/fka RAPISTAN, INC.,  
MANNESMANN DEMATIC, and  
SIEMENS DEMATIC; GENERAL  
CONSTRUCTION COMPANY,  
WRIGHT SCHUCHART HARBOR  
COMPANY, WRIGHT SCHUCHART,  
INC.; FLETCHER GENERAL, INC.,  
and FLETCHER CONSTRUCTION  
COMPANY NORTH AMERICA and  
FLETCHER BUILDING, LTD.,

Respondents.

NO. 68132-0-1

DIVISION ONE

UNPUBLISHED OPINION

FILED: October 14, 2013

2013 OCT 14 09:50

LEACH, C.J. — Donald Martin suffered a fatal injury while working at a Kimberly Clark paper plant. His wife and children (collectively "the Martins") appeal the trial court's summary dismissal of their claims against General Construction Company (General Construction) and Fletcher Construction Company North America (FCCNA). General Construction cross appeals, challenging the trial court's denial of two summary judgment motions.

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Because General Construction did not assume liability for the Martins' claims and the statute of limitations barred the claims against FCCNA, we affirm the trial court's dismissal of Martins' claims against General Construction and FCCNA. Because a trial court's decision denying a motion for summary judgment does not constitute a final judgment, we do not address General Construction's cross appeal.

#### FACTS

On August 13, 2004, a component of Tissue Machine No. 5 (TM5) at Kimberly Clark's Everett paper plant fatally crushed Donald Martin. The TM5 was installed as part of a large construction project in 1981 when Scott Paper owned the plant. Wright Schuchart Harbor Co. (WSH) erected the TM5.

The parties dispute WSH's identity and ownership history. General Construction asserts the following history. At the time of the TM5 installation, Wright Schuchart Inc. owned WSH. In 1987, Fletcher Construction Company Ltd., a subsidiary of FCCNA, purchased Wright Schuchart Inc. At the time, FCCNA was a subsidiary of Fletcher Challenge, a multinational corporation involved in industrial construction. In 1993, Fletcher Challenge merged numerous subsidiaries, including WSH, into a single company, Fletcher General Inc. Fletcher General succeeded to WSH's preexisting liabilities.

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In 1996, senior management of Fletcher General formed GC Investment Co. for the purpose of acquiring the majority of Fletcher General's assets. To complete this acquisition, Fletcher General transferred these assets to a wholly owned subsidiary, General Construction, and in exchange received all the outstanding stock of General. Fletcher General sold this stock to GC Investment. Their stock purchase agreement incorporated as exhibits a memorandum of transfer of assets for capital contribution purposes and two memoranda of assumption of liabilities executed by Fletcher General and General Construction to accomplish the asset transfer to General Construction. Both the stock purchase agreement and the memoranda of assumption of liabilities, in virtually identical language, defined and allocated "assumed liabilities," which General Construction acquired, and "excluded liabilities," which Fletcher General retained. Fletcher General agreed to indemnify General Construction for excluded liabilities.

In 2001, Fletcher General and Fletcher Construction Company Ltd. merged into FCCNA. Following the merger, General Construction and FCCNA agreed that FCCNA would continue to exist until at least 2006 and maintain a minimum bond or level of assets to cover its potential liabilities. FCCNA filed a certificate of dissolution on June 26, 2007.

FCCNA asserts that "Wright Schuchart Harbor Joint Venture," a "separate and distinct corporate legal entity" from Wright Schuchart Inc. or Wright Schuchart Company, installed TM5.<sup>1</sup> In interrogatories, Ronald Johnson, FCCNA's records custodian, stated,

The entities which previously comprised of Wright Schuchart Harbor Joint Venture had changed their names as necessary and were transferred to Sprague Resources Corporation as dividends by June 30, 1987 prior to the sale of Wright Schuchart, Inc. to Fletcher. Thus, these entities were not included in the sale of Wright Schuchart, Inc. to Fletcher in October 1987.

Johnson also testified that the joint venture "would be labeled Wright Schuchardt [sic] Harbor, a joint venture, or sometimes it was labeled just Wright Schuchardt [sic] Harbor. And that joint venture was owned by several different entities, which did not include Wright Schuchardt, [sic] Incorporated."<sup>2</sup>

On June 29, 2007, the Martins filed this wrongful death and survival action against defendants that the Martins alleged were responsible for Mr. Martin's death, including "General Construction Company dba/fka Wright Schuchart Harbor Company." The complaint did not name FCCNA as a defendant. On October 19, 2007, General Construction answered the Martins' complaint and asserted third party claims against Fletcher General and Fletcher Pacific

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<sup>1</sup> FCCNA did not raise this argument in its motion to dismiss, but the court referred to it in granting the dismissal.

<sup>2</sup> The record does not contain the equipment erection contract. We do not resolve the conflicting histories but use "WSH" to refer to whichever entity installed the TM5.

Construction Company Ltd. (Fletcher Pacific). On December 11, 2009, General Construction moved for summary judgment, asserting that it was not liable as a successor to WSH. The trial court denied the motion on March 16, 2010.

The Martins filed an amended complaint on January 22, 2010, joining FCCNA as a defendant. In its answer to the amended complaint, FCCNA raised the statute of limitations as an affirmative defense.

On April 8, 2010, the Martins moved for summary judgment to establish General Construction's liability as a successor to WSH and Fletcher General. The court denied this motion. On October 1, 2010, General Construction filed a renewed motion for summary judgment based on the lack of successor liability. The trial court granted this motion and denied the Martins' subsequent motion for reconsideration.

On November 23, 2010, FCCNA moved to dismiss, arguing that "the statute of limitations for plaintiffs' claims against this defunct corporation had expired by January 2010 when FCCNA was added as a party to this lawsuit." The court granted the motion on January 13, 2011, and denied the Martins' subsequent motion for reconsideration. It concluded that the Martins' amended complaint did not relate back to the date of the original complaint under CR 15(c). The Martins appeal, and General Construction cross appeals.

### STANDARD OF REVIEW

We review summary judgment orders de novo, engaging in the same inquiry as the trial court.<sup>3</sup> Summary judgment is proper if, viewing the facts and reasonable inferences in the light most favorable to the nonmoving party, no genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law.<sup>4</sup> A genuine issue of material fact exists if reasonable minds could differ about the facts controlling the outcome of the litigation.<sup>5</sup>

In reviewing summary judgment orders, we consider supporting affidavits and other admissible evidence based upon the affiant's personal knowledge.<sup>6</sup> "A party may not rely on mere allegations, denials, opinions, or conclusory statements, but, rather must set forth specifics indicating material facts for trial."<sup>7</sup> We review the denial of a motion for reconsideration for abuse of discretion.<sup>8</sup>

### ANALYSIS

The Martins raise two sets of issues. First, the Martins assert that General Construction assumed successor liability for WSH's torts under the stock

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<sup>3</sup> Michak v. Transnation Title Ins. Co., 148 Wn.2d 788, 794, 64 P.3d 22 (2003).

<sup>4</sup> CR 56(c); Michak, 148 Wn.2d at 794-95.

<sup>5</sup> Hulbert v. Port of Everett, 159 Wn. App. 389, 398, 245 P.3d 779, review denied, 171 Wn.2d 1024 (2011).

<sup>6</sup> Int'l Ultimate, Inc. v. St. Paul Fire & Marine Ins. Co., 122 Wn. App. 736, 744, 87 P.3d 774 (2004).

<sup>7</sup> Int'l Ultimate, Inc., 122 Wn. App. at 744.

<sup>8</sup> Brinnon Grp. v. Jefferson County, 159 Wn. App. 446, 485, 245 P.3d 789 (2011) (citing Lilly v. Lynch, 88 Wn. App. 306, 321, 945 P.2d 727 (1997)).

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purchase agreement and memoranda of assumption of liabilities. Second, the Martins assert that the statute of limitations does not bar their claims against FCCNA because those claims did not accrue until the Martins discovered FCCNA's identity as WSH's successor, that the filing and serving of the original summons and complaint tolled the statute of limitations, and that the amended complaint related back to the date of the original complaint for purposes of the statute of limitations. We disagree.

#### Successor Liability

The Martins claim that General Construction "expressly assumed liability for tort claims such as those alleged by the Martin family under the terms of the Stock Purchase Agreement and the two Memoranda of Assumption of Liabilities" with Fletcher General, WSH's successor. In Washington, a corporation purchasing another corporation's assets generally "does not, by reason of the purchase of assets, become liable for the debts and liabilities of the selling corporation."<sup>9</sup> This rule does not apply if "the purchaser expressly or impliedly agrees to assume liability."<sup>10</sup> Martin claims that this exception applies here.

The stock purchase agreement stated that General Construction would, as of the organization date, assume "all of the Assumed Liabilities to which Seller

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<sup>9</sup> Creech v. AGCO Corp., 133 Wn. App. 681, 684, 138 P.3d 623 (2006) (citing Hall v. Armstrong Cork, Inc., 103 Wn.2d 258, 261, 692 P.2d 787 (1984)).

<sup>10</sup> Creech, 133 Wn. App. at 684 (citing Hall, 103 Wn.2d at 261-62).

was subject as of the Organization Date." (Emphasis added.) The agreement also stated that, at closing, General Construction "shall assume from Seller all additional Assumed Liabilities to which Seller becomes subject between the Organization Date and the Closing Date." The organization date was October 10, 1996, and the closing date was October 17, 1996. The stock purchase agreement required General Construction to deliver two separate "memorand[a] of assumption of liabilities" at closing, one effective as of the organization date and the other effective as of the closing date.

The stock purchase agreement defined "assumed liabilities":

"Assumed Liabilities" means the obligations, liabilities and expenses of Seller or General included in clauses (i) through (ix) below, except to the extent any such obligations, liabilities and expenses are covered by insurance, held by Seller with respect to events occurring prior to Closing, in which case they shall constitute Excluded Liabilities:

.....  
(iii) All extraordinary liabilities of Seller or General incurred outside the ordinary course of business of Seller or General after July 1, 1996 and that are not accounted for as project costs under any Pre 7/23 Bonded Jobs in accordance with Seller's existing project accounting practices, including, without limitation:

(A) all liabilities and obligations arising out of, resulting from, or relating to claims, whether founded upon negligence, strict liability in tort, and/or other similar legal theory, seeking compensation or recovery for or relating to injury to person or damage to property with respect to the operation of the Business;

.....

provided, that, the Assumed Liabilities shall not include any extraordinary liabilities of Seller incurred by Seller after the Closing with respect to the portion of the Business retained by Seller, or any other activities of Seller unrelated to the Business.

The agreement also defined "excluded liabilities," which included "[a]ll obligations or liabilities of the Business, Seller or any of its Affiliates of any nature whatsoever, arising with respect to any acts, actions, omissions, or events occurring prior to July 1, 1996."

Both memoranda of assumption of liabilities defined "assumed" and "excluded" liabilities similar to the stock purchase agreement. The memoranda also stated,

General Construction Company . . . does hereby assume and accept from Fletcher General, Inc., . . . the liabilities and obligations described on the attached Schedule A (the "Assumption," the liabilities and obligations described on attached Schedule A being the "Assumed Liabilities"). No assumption or acceptance of the liabilities or obligations described on attached Schedule B (the "Excluded Liabilities") is intended or is hereby effected.

The Martins argue that the phrase "to which Seller was subject" in the stock purchase agreement description of assumed liabilities includes "inchoate or contingent future liabilities." They assert, "The Organization Date Memorandum of Assumption of Liabilities . . . does not limit the assumption to only those liabilities incurred between July 1, 1996, and the Organization or Closing Dates." The Martins contend, "To harmonize these provisions of the agreement and give

effect to all of them," the stock purchase agreement "should be understood as applying to the organizational phase of the transaction rather than closing, . . . and the meaning of the phrase 'subject to' should be understood as including both existing and future liabilities."

General Construction claims that it assumed only "(1) liabilities to which Fletcher General was subject as of October 10, 1996 (the Organization Date), and (2) additional liabilities to which Fletcher General became subject between October 10, 1996 (the Organization Date) and October 17, 1996 (the Closing Date)." Because Mr. Martin died in 2004, General Construction did not assume liability for his death.

We conclude that General Construction did not assume liability for the Martins' claims. Because Mr. Martin's injuries occurred in 2004, Fletcher General was not subject to these claims at any time before the closing of the stock sale. Thus, the Martins' claims do not satisfy the definition of "assumed liabilities." The Martins offer no authority to support their contrary interpretation.

Additionally, if we accept the Martins' construction of the phrase "to which Seller was subject," their claims fall squarely within the definition of "excluded liabilities." This definition included as "excluded liabilities" "[a]ll obligations or liabilities of the Business, Seller or any of its Affiliates of any nature whatsoever,

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arising with respect to any acts, actions, omissions or events occurring prior to July 1, 1996.”

The “act” that gave rise to the Martins’ claims was the installation of a defective component of the TM5, which occurred in 1981. From 1996 until 2008, General Construction performed certain services “related to TM5 or in the area of TM5 at the direction of Kimberly Clark.” But the Martins offer no evidence showing that WSH or General Construction performed any work on or after July 1, 1996, that contributed to Mr. Martin’s death. Therefore, General Construction did not assume the liability, and the trial court properly granted summary judgment on this claim and denied the Martins’ motion for reconsideration.

#### Statute of Limitations

The Martins also challenge the dismissal of their claims against FCCNA based upon the three-year statute of limitations for personal injury actions, RCW 4.16.080(2). Mr. Martin’s injuries occurred on August 13, 2004. The Martins filed their original complaint on June 29, 2007, within the three-year limitation period, but did not file their amended complaint joining FCCNA as a defendant until January 22, 2010, well outside the three-year limitation period.

The Martins challenge the court’s dismissal on three grounds: (1) the claims did not accrue against FCCNA until the Martins discovered that FCCNA was WSH’s successor, (2) filing the initial summons and complaint and serving

the other defendants tolled the statute of limitations under RCW 4.16.170, and (3) the amendment naming FCCNA relates back to the filing date of the original complaint under CR 15(c) because the amendment merely corrected a misnomer and FCCNA had actual notice of the complaint within the limitations period. We affirm the dismissal and also the denial of the Martins' motion for reconsideration.

The Martins assert that their claims against FCCNA did not accrue until they discovered FCCNA's identity as a successor to WSH. They allege that they first learned FCCNA was a successor in December 2009 when General Construction filed a motion for summary judgment stating that FCCNA "had succeeded the liabilities of WSH." The Martins argue that FCCNA's identity as a successor to WSH was "obscure" because of "a series of complex and non-public mergers and acquisitions over an extended period of time."

The statute of limitations is an affirmative defense.<sup>11</sup> The party asserting the defense—here, FCCNA—bears the burden of proving facts that establish it.<sup>12</sup> In Washington, when a delay occurs between the time of an injury and the plaintiff's discovery of that injury, the court may apply the discovery rule.<sup>13</sup> This rule tolls the date of accrual "until the plaintiff knows or, through the exercise of

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<sup>11</sup> Brown v. ProWest Transp. Ltd., 76 Wn. App. 412, 419, 886 P.2d 223 (1994) (citing Haslund v. City of Seattle, 86 Wn.2d 607, 620, 547 P.2d 1221 (1976)).

<sup>12</sup> Brown, 76 Wn. App. at 419 (citing Haslund, 86 Wn.2d at 620-21).

<sup>13</sup> Giraud v. Quincy Farm & Chem., 102 Wn. App. 443, 449, 6 P.3d 104 (2000) (citing Crisman v. Crisman, 85 Wn. App. 15, 20, 931 P.2d 163 (1997)).

due diligence, should have known all the facts necessary to establish a legal claim."<sup>14</sup> A plaintiff asserting this discovery rule must show that he or she could not have discovered the relevant facts earlier.<sup>15</sup> The jury determines whether the plaintiff meets this burden, unless the facts are susceptible of only one reasonable interpretation.<sup>16</sup>

The Martins cite Orear v. International Paint Co.<sup>17</sup> to support their argument. But Orear was a products liability case where the connection between the plaintiff's latent injury and the allegedly defective product was "difficult to trace."<sup>18</sup> Here, the connection between the injury and its cause is clear.

In In re Estates of Hibbard,<sup>19</sup> our Supreme Court held that the discovery rule applies only to claims "in which the plaintiffs could not have immediately known of their injuries due to professional malpractice, occupational diseases, self-reporting or concealment of information by the defendant" and to "claims in which plaintiffs could not immediately know of the cause of their injuries."<sup>20</sup>

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<sup>14</sup> Giraud, 102 Wn. App. at 449 (citing Crisman, 85 Wn. App. at 20; Allen v. State, 118 Wn.2d 753, 758, 826 P.2d 200 (1992)).

<sup>15</sup> Giraud, 102 Wn. App. at 449-50 (citing G.W. Constr. Corp. v. Prof'l Serv. Indus., Inc., 70 Wn. App. 360, 367, 853 P.2d 484 (1993)).

<sup>16</sup> Giraud, 102 Wn. App. at 450 (citing Goodman v. Goodman, 128 Wn.2d 366, 373, 907 P.2d 290 (1995)).

<sup>17</sup> 59 Wn. App. 249, 796 P.2d 759 (1990).

<sup>18</sup> Orear, 59 Wn. App. at 256.

<sup>19</sup> 118 Wn.2d 737, 749-50, 826 P.2d 690 (1992).

<sup>20</sup> Schwindt v. Commonwealth Ins. Co., 94 Wn. App. 504, 509 n.10, 972 P.2d 570 (1999), rev'd on other grounds by 140 Wn.2d 348, 997 P.2d 353 (2000).

Where Washington courts have applied the rule, the plaintiff has lacked the means or ability to ascertain that a legal cause of action accrued.

FCCNA's identity as a successor was a matter of public record when the Martins filed their initial complaint. Despite the Martins' allegation that "[n]one of the records refer[s] to WSH, let alone connect[s] the dots between WSH and FCCNA," an examination of the documents suggests otherwise. The record contains the articles of incorporation of Wright Schuchart Inc., dated May 27, 1976; the articles of amendment changing name from Wright Schuchart Inc. to Fletcher General Inc., dated March 1, 1993; and the articles of merger of Fletcher General Inc. into Fletcher Construction Company North America, dated March 29, 2001. Additionally, an article published in The Seattle Times newspaper in 1993, as well as a page on General Construction's web site, describe WSH's corporate history. Because the Martins were on inquiry notice that FCCNA was a successor, we decline to apply the discovery rule and conclude that the Martins' claim began to accrue from the time of Mr. Martin's accident.

The Martins also argue that filing their initial complaint and summons and serving the other defendants tolled the statute of limitations under RCW 4.16.170. Accordingly, the Martins claim, their amended complaint naming FCCNA was timely.

RCW 4.16.170 states, "For the purpose of tolling any statute of limitations an action shall be deemed commenced when the complaint is filed or summons is served whichever occurs first." After filing the complaint, the plaintiff "shall cause one or more of the defendants to be served personally, or commence service by publication within ninety days."

The Martins cite Sidis v. Brodie/Dohrmann, Inc.,<sup>21</sup> a case that involved multiple defendants, to support their assertion. In Sidis, our Supreme Court held that, under RCW 4.16.170, serving one named defendant tolls the statute of limitations regarding any unserved named defendant.<sup>22</sup> The Sidis court stated that the case did not concern unnamed defendants.<sup>23</sup> In dictum, it noted that "in some cases, if identified with reasonable particularity, 'John Doe' defendants may be appropriately 'named' for purposes of RCW 4.16.170."<sup>24</sup> The Martins argue that we should apply the dictum in Sidis as law, asserting that Iwai v. State,<sup>25</sup> a Division Three case, and Bresina v. Ace Paving Co.,<sup>26</sup> a Division Two decision, support this approach.

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<sup>21</sup> 117 Wn.2d 325, 815 P.2d 781 (1991).

<sup>22</sup> Sidis, 117 Wn.2d at 329.

<sup>23</sup> Sidis, 117 Wn.2d at 331.

<sup>24</sup> Sidis, 117 Wn.2d at 331.

<sup>25</sup> 76 Wn. App. 308, 884 P.2d 936 (1994).

<sup>26</sup> 89 Wn. App. 277, 948 P.2d 870 (1997).

In Iwai, the court declined to extend the holding in Sidis to “unnamed ‘John Doe’ defendants,”<sup>27</sup> and it did not explicitly discuss or cite the dictum in its opinion. The court explained, “[E]ven in jurisdictions which permit a fictitious name practice it is not universally held that the statute of limitations is tolled until the true identity of the defendant is discovered.”<sup>28</sup> Nonetheless, Division Three concluded in Iwai that a “broad designation of John Doe Defendants allegedly ‘negligent or otherwise responsible’” did not identify the later-named defendant sufficiently to justify tolling the statute of limitations.<sup>29</sup>

In Bresina, the plaintiff served at least one named defendant before the statute of limitations expired but filed an amended complaint substituting Ace Paving for unnamed defendant “ABC Corporation” after it expired.<sup>30</sup> The court stated that it was not clear whether Iwai rejected the Sidis dictum or whether Division Three “assumed the validity of the Sidis dictum while holding that its requirements were not met by Iwai’s description” of the unnamed defendant.<sup>31</sup> In Bresina, Division Two applied the latter approach and “assume[d] that a plaintiff can toll the period for suing an unnamed defendant by timely filing and serving a named defendant—if, but only if, the plaintiff identifies the unnamed defendant

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<sup>27</sup> Iwai, 76 Wn. App. at 312.

<sup>28</sup> Iwai, 76 Wn. App. at 312 (quoting Mergenthaler v. Asbestos Corp. of Am., 500 A.2d 1357, 1363 n.11 (Del. Super. Ct. 1985)).

<sup>29</sup> Iwai, 76 Wn. App. at 312.

<sup>30</sup> Bresina, 89 Wn. App. at 279.

<sup>31</sup> Bresina, 89 Wn. App. at 281-82.

with 'reasonable particularity' before the period for filing suit expires."<sup>32</sup> The court determined that the plaintiff's description of the unnamed defendant did not identify the defendant with "reasonable particularity."<sup>33</sup> It reasoned that the plaintiff could have obtained the name by proper investigation or by filing a complaint and seeking discovery.<sup>34</sup> The court explained that a major factor in determining "reasonable particularity" is

the nature of the plaintiff's opportunity to identify and accurately name the unnamed defendant; if a plaintiff identifies a party as "John Doe" or "ABC Corporation," after having three years to ascertain the party's true name, it will be difficult to say, at least in the vast majority of cases, that the plaintiff's degree of particularity was "reasonable."<sup>35</sup>

The plaintiff offered no reason for failing to obtain Ace Paving's true name during the limitations period.<sup>36</sup> No published Division One decision has addressed this issue.

The Martins argue that RCW 23B.11.060(1) "confirm[s] the identity of interest between the merged corporation and its successor, so that following merger, naming the merged corporation in a lawsuit is equivalent to describing the surviving corporation with reasonable particularity." They state that they "[do] not seek to impose liability" under this statute but cite the law "to illustrate the

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<sup>32</sup> Bresina, 89 Wn. App. at 282.

<sup>33</sup> Bresina, 89 Wn. App. at 282.

<sup>34</sup> Bresina, 89 Wn. App. at 282.

<sup>35</sup> Bresina, 89 Wn. App. at 282.

<sup>36</sup> Bresina, 89 Wn. App. at 282.

identity of interest between a predecessor and successor corporation and how the reasonable particularity standard of Sidis has been satisfied.”

Under RCW 23B.11.060(1)(d), when a merger takes effect, “[a] proceeding pending against any corporation party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased.” This statute allows a plaintiff’s action against a defunct entity to continue if the lawsuit was pending at the time of the merger. The Martins’ action was not pending at the time of any merger. The most recent merger occurred in 2001, three years before Mr. Martin’s death, when Fletcher General merged with FCCNA. The Martins cite no authority demonstrating that identifying a defunct corporation well after the statute of limitations expired, and long after a merger took place, constitutes “reasonable particularity.”

Because the Martins neither named FCCNA as a defendant in the original complaint nor served the company, serving the named defendants did not toll the statute of limitations as to FCCNA. No court in Washington has explicitly stated that the Sidis dictum is law or recognized the statute of limitations as being tolled as to a defendant who is neither named in the complaint nor served within the limitations period. The filing of the initial complaint did not toll the three-year statute of limitations.

The Martins also claim that their amended complaint naming FCCNA was timely because the amendment related back to the date of the original complaint for purposes of the statute of limitations under CR 15(c). When reviewing a trial court's determination of relation back, we look to whether the requirements of CR 15(c) have been met.<sup>37</sup> "Some opinions do refer to abuse of discretion as the standard for reviewing a decision under CR 15(c), probably because the issue often arises in connection with a motion for leave to amend."<sup>38</sup> This case does not concern whether the court properly granted the Martins' motion for leave to amend its complaint.

CR 15(c) states, "Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading." When an amended complaint adds or substitutes a new party, the amended complaint relates back to the date of the original complaint if the party seeking to amend proves that it has satisfied three conditions:<sup>39</sup> (1) the new party received notice of the institution of the action so

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<sup>37</sup> Perrin v. Stensland, 158 Wn. App. 185, 193, 240 P.3d 1189 (2010).

<sup>38</sup> Perrin, 158 Wn. App. at 192. The parties dispute the correct standard of review.

<sup>39</sup> Segaline v. Dep't of Labor & Indus., 169 Wn.2d 467, 476-77, 238 P.3d 1107 (2010) (citing Foothills Dev. Co. v. Clark County Bd. of County Comm'rs, 46 Wn. App. 369, 375, 730 P.2d 1369 (1986)).

that he or she will not be prejudiced in making a defense on the merits;<sup>40</sup> (2) the new party knew or should have known that but for a mistake concerning the proper party's identity, the plaintiff would have brought the action against him or her;<sup>41</sup> and (3) the plaintiff's delay in adding the new party was not due to "inexcusable neglect."<sup>42</sup> "[I]nexcusable neglect exists when no reason for the initial failure to name the party appears in the record."<sup>43</sup> It includes delay due to "a conscious decision, strategic or tactic."<sup>44</sup> Whether the party seeking to amend its complaint satisfies these conditions is an issue of fact.<sup>45</sup>

"CR 15(c) is to be liberally construed on the side of allowance of relation back of an amendment that adds or substitutes a new party after the statute of limitations has run, particularly where the opposing party will be put to no disadvantage."<sup>46</sup> But when applying CR 15(c), the court must protect the new

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<sup>40</sup> Segaline, 169 Wn.2d at 476-77 (citing CR 15(c)).

<sup>41</sup> Segaline, 169 Wn.2d at 477 (citing CR 15(c)).

<sup>42</sup> Segaline, 169 Wn.2d at 477 (citing Stansfield v. Douglas County, 146 Wn.2d 116, 122, 43 P.3d 498 (2002)). "Adding a new party requires a showing that it was not due to 'inexcusable neglect' because amendment of a complaint is not intended to serve as a mechanism to circumvent or extend a statute of limitations." Segaline, 169 Wn.2d at 477 n.9.

<sup>43</sup> Segaline, 169 Wn.2d at 477 (alteration in original) (internal quotation marks omitted) (quoting Stansfield, 146 Wn.2d at 122).

<sup>44</sup> Segaline, 169 Wn.2d at 477 (quoting Stansfield, 146 Wn.2d at 121).

<sup>45</sup> Segaline, 169 Wn.2d at 477.

<sup>46</sup> Perrin, 158 Wn. App. at 194.

defendant's due process rights—"an opportunity to be heard at a meaningful time and in a meaningful manner."<sup>47</sup>

Here, the parties do not dispute that the claims the Martins asserted in the amended complaint arose out of the same conduct, transaction, or occurrence set forth in the original pleading. The Martins cite Bailey v. Innovative Management & Investment, Inc.<sup>48</sup> and Mitchell v. CFC Financial LLC,<sup>49</sup> cases outside this jurisdiction, to argue that their amended complaint related back because the amendment did not add a new party but merely corrected a misnomer.

The Martins filed the amended complaint approximately three years after the statute of limitations expired. The trial court assumed the Martins could establish that FCCNA received notice of the lawsuit on July 25, 2007, when General Construction purportedly tendered defenses to Fletcher General. General Construction tendered the defenses under the 1996 stock purchase agreement, in which Fletcher General agreed to "defend, indemnify and hold General harmless" from claims regarding excluded liabilities. The court noted,

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<sup>47</sup> Pub. Util. Dist. No. 1 of Klickitat County v. Walbrook Ins. Co., 115 Wn.2d 339, 349, 797 P.2d 504 (1990) (citing Wilson v. Bd. of Governors, Wash. State Bar Ass'n, 90 Wn.2d 649, 656, 585 P.2d 136 (1978)).

<sup>48</sup> 890 S.W.2d 648 (Mo. 1994).

<sup>49</sup> 230 F.R.D. 548 (E.D. Wis. 2005).

however, that “the exhibit provided by Plaintiff in this regard was not properly authenticated.”

The Martins provide no evidence to support the second condition—that FCCNA knew or should have known that but for a mistake, it would have been named in the original complaint. They contend that FCCNA “had at least constructive knowledge that it was mistakenly omitted from the original complaint” “based on naming . . . its predecessor WSH as a defendant in the original complaint, the tender of defense by General Construction, and FCCNA’s forwarding the tender letter to its insurer.” But, as the trial court explained, FCCNA argues that Wright Schuchart Harbor Joint Venture, an entity whose assets and liabilities never merged with any Fletcher entity, performed the work at issue. The Martins provide no evidence to rebut this assertion. Additionally, FCCNA filed a certificate of dissolution in 2007. Therefore, FCCNA would have no reason to know that it should have been named in the original complaint or that it might be liable to the Martins for any damages.

Even if the Martins meet the first two conditions for relation back, they fail to demonstrate excusable neglect. They compare this case to Perrin v. Stensland,<sup>50</sup> where the plaintiff named the deceased driver rather than the driver’s estate because he was unaware of the driver’s death. Perrin concerned

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<sup>50</sup>158 Wn. App. 185, 189, 194, 240 P.3d 1189 (2010).

a claim of lack of due diligence in amending the complaint after learning the correct party.<sup>51</sup> The plaintiff served the driver's widow, who provided notice to the insurer under the same policy as the driver.<sup>52</sup> The court determined that the estate was not prejudiced because it should have known that the plaintiff would have named the estate but for the mistaken belief that the driver was still alive.<sup>53</sup> No evidence showed that Perrin "made a strategic choice to avoid naming the estate."<sup>54</sup>

The Martins provide no evidence of actions that they took to determine the correct parties before the statute of limitations expired or what information any investigation revealed. As discussed above, the articles of amendment changing the name of WSH to Fletcher General Inc., as well as the articles of merger of Fletcher General Inc. into FCCNA, were public records available at the time that the Martins filed their original pleading. FCCNA also points to a newspaper article and a page on General Construction's web site discussing the corporate history of WSH. And, again, FCCNA dissolved in 2007. Our Supreme Court has found inexcusable neglect when the party seeking to amend did not know the additional party's identity but could have discovered it from public records.<sup>55</sup>

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<sup>51</sup> Perrin, 158 Wn. App. at 188.

<sup>52</sup> Perrin, 158 Wn. App. at 188-89.

<sup>53</sup> Perrin, 158 Wn. App. at 202.

<sup>54</sup> Perrin, 158 Wn. App. at 202.

<sup>55</sup> See Haberman v. Wash. Pub. Power Supply Sys., 109 Wn.2d 107, 174-75, 744 P.2d 1032, 750 P.2d 254 (1987) (no excuse where omitted parties'

Even if, as the Martins allege, there were a “series of complex and non-public mergers and acquisitions over an extended period of time,” General Construction filed its answer and third party complaint in October 2007, asserting claims against third party defendants Fletcher General and Fletcher Pacific as the correct successors in interest. General Construction’s third party claims should have provided notice to the Martins of potential liability as to at least the Fletcher entities that General Construction named. Instead, the Martins did not file their first amended complaint until January 2010. Because the Martins do not offer a persuasive reason for this delay, they fail to demonstrate excusable neglect. Thus, the amendment does not relate back to the original pleading, and the statute of limitations bars the Martins’ claims against FCCNA.

#### General Construction’s Cross Appeals

General Construction raises three issues in its cross appeal. First, it claims that the trial court erred in denying its first motion for summary judgment contending that the Martins’ claims constituted an “excluded liability” under the 1996 stock purchase agreement. Second, it asserts that the trial court erred in denying its motion for summary judgment arguing that the statute of repose barred the Martins’ claims. Third, it challenges the trial court’s denial of its

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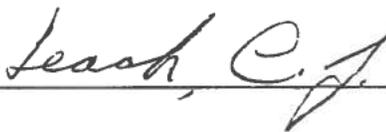
identity available from a variety of public sources); Tellinghuisen v. King County Council, 103 Wn.2d 221, 224, 691 P.2d 575 (1984) (no excuse where omitted parties’ identity was matter of public record); S. Hollywood Hills Citizens Ass’n v. King County, 101 Wn.2d 68, 77-78, 677 P.2d 114 (1984) (same).

motion for summary judgment contending that WSH was not liable under Washington's product liability act, chapter 7.72 RCW.

A party can appeal only a final judgment.<sup>56</sup> The denial of a summary judgment "has no preclusive effect on further proceedings. . . . It does not end proceedings, but rather permits them to proceed. The denial of a summary judgment motion is not a final order that can be appealed."<sup>57</sup> Therefore, we decline to address the issues that General Construction raises in its cross appeal.

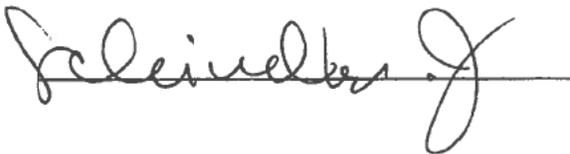
CONCLUSION

Because the Martins fail to show that General Construction assumed liability for their claims and fail to show that the trial court erred in its application of the statute of limitations, we affirm.



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WE CONCUR:



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<sup>56</sup> RAP 2.2(a).

<sup>57</sup> In re Estate of Jones, 170 Wn. App. 594, 605, 287 P.3d 610 (2012) (citing Zimny v. Lovric, 59 Wn. App. 737, 739, 801 P.2d 259 (1990); Roth v. Bell, 24 Wn. App. 92, 104, 600 P.2d 602 (1979)).

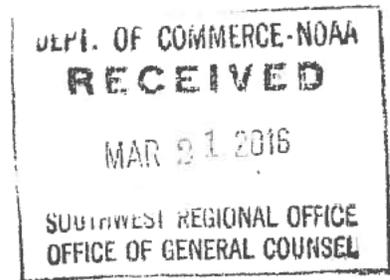


HOWARD F. JENSEN  
206.829.8429  
howard@verislawgroup.com

March 15, 2016

*Via U.S. Mail and Electronic Mail*

Laurie J. Lee  
NOAA Office of General Counsel  
Natural Resources Section  
501 West Ocean Boulevard, Suite 4470  
Long Beach, CA 90802  
laurie.lee@noaa.gov



Re: *Notice of Intent: Lower Duwamish Waterway  
Glacier Northwest, Inc.*

Dear Ms. Lee:

We are writing to you on behalf of Glacier Northwest, Inc., ("Glacier") in regards to the Notice of Intent the Elliot Bay Trustee Council ("Trustees") sent to Glacier, dated January 29, 2016. The letter references the following four tax parcels:

- Tax Parcel No. 1924049029 located at 5906 West Marginal Way. Glacier acquired this tax parcel in April 1991 and still owns it.
- Tax Parcel No. 1924049075 located at 5975 East Marginal Way South. Glacier acquired this tax parcel in April 1991 and still owns it.
- Tax Parcel No. 1924049092 located at 5931 East Marginal Way South. This tax parcel is owned by James Hardie Gypsum (Washington), Inc. Glacier has never owned this tax parcel.
- Tax Parcel No. 5367204505 located at 6335 First Avenue South. This tax parcel is owned by Lone Star Investors Limited Partnership. Glacier leased spaced inside a building on this tax parcel between May 1991 and January 1992, when it acquired the tax parcel. Glacier conveyed the tax parcel to American Life, Inc. and Vincent L. Deluca in May 2000, but entered into a lease effective as of that same date to lease space in the building. Glacier terminated the lease in March 2011. Glacier has not owned or operated the tax parcel since termination of the lease.

Glacier appreciates notice of the Trustees' intent to proceed with a Natural Resource Damage Assessment ("NRDA") of the Harbor Island, Lower Duwamish River, and Lockheed Superfund Sites. Glacier has insufficient information at this time to make a decision about



HARRIS CORPORATION

Jennifer M. Black  
Managing Counsel, Corporate

MallStop A-11A  
1025 West NASA Boulevard  
Melbourne, FL USA 32919  
Phone 1-321-724-3306  
[jblack18@harris.com](mailto:jblack18@harris.com)

March 15, 2016

*Via Email to Laurie.Lee@noaa.gov*

Ms. Laurie J. Lee, Attorney Advisor  
Natural Resources Section  
NOAA Office of General Counsel  
501 West Ocean Boulevard, Suite 4470  
Long Beach, CA 90802

**Re: Response to Notice of Intent, Lower Duwamish property: Harris Corporation  
King County Washington Tax Parcel(s): 5624201032**

Dear Ms. Lee:

Thank you for your correspondence dated January 29, 2016, addressed to William M. Brown, Chairman, CEO, received by Harris Corporation ("Harris") on February 16, 2016. I represent Harris in environmental matters, and I will be your primary contact for this matter.

Harris respectfully declines to participate in the development and implementation of an assessment plan as described in your correspondence since Harris does not believe it is responsible for any damages that are the subject thereof. Please find attached a copy of Harris' March 17, 2009 response to the United States Environmental Protection Agency's request for information pursuant to section 104(e) of CERCLA for the Lower Duwamish Waterway Superfund Site in Seattle, Washington. If you have any information indicating why the Trustees believe Harris would be considered a potentially responsible party, please provide for our review.

If you have any questions, please feel free to contact me.

Sincerely,

Jennifer M. Black  
Managing Counsel, Corporate

JB/kp

Attachment



HARRIS CORPORATION

ANTHONY DEGLOMINE, III  
Vice President-Litigation

Mail Stop A-11A  
1025 West NASA Boulevard  
Melbourne, FL USA 32919  
phone 1-321-727-9124  
fax 1-321-724-3943  
anthony.deglomine@harris.com

www.harris.com

March 17, 2009

VIA OVERNIGHT MAIL

Claire Hong, Remedial Project Manager  
United States Environmental Protection Agency, Region 10  
Environmental Cleanup Office, ECL-111  
1200 Sixth Ave., Suite 900  
Seattle, WA 98101

Re: Request for Information Pursuant to Section 104(e) of CERCLA for the Lower  
Duwamish Waterway Superfund Site, Seattle, Washington

Dear Ms. Hong:

You and I recently discussed the attached Section 104 request served on Harris Corporation for the site located at 9725 East Marginal Way South in Seattle, Washington ("Site"). Public records reveal that Boeing has owned a significant facility at the Site for years. The Boeing facility also appears to be bordered by an airport or airstrip of some type.

Harris Corporation does not own or lease real estate at the Site. Occasionally, Harris contracts with Boeing. For a brief period of time, a Harris employee occupied an office at the Site for customer relations purposes.

Harris has no other information responsive to the Section 104 request and considers this letter a complete and adequate response to the Section 104 request. Please contact me if you disagree.

The declaration associated with this response is also attached. Additional information about Harris can be found at [www.Harris.com](http://www.Harris.com).

Please call if you have any questions.

Sincerely,

Anthony Deglomine, III  
Vice President-Litigation

AD/km  
Enclosure

respond, may subject you to an enforcement action pursuant to Section 104(e) of CERCLA. The statute permits EPA to seek the imposition of penalties of up to thirty-two thousand five hundred dollars (\$37,500) for each day of non-compliance.

Please note that responses which are incomplete, ambiguous, or evasive may be treated as non-compliance with this Information Request. Provision of false, fictitious, or fraudulent statements or representations may subject you to criminal penalties under 18 U.S.C. § 1001.

Your response to this Information Request should be mailed to:

United States Environmental Protection Agency, Region 10  
Claire Hong, Remedial Project Manager  
Environmental Cleanup Office, ECL-111  
1200 Sixth Ave. Suite 900  
Seattle, Washington 98101

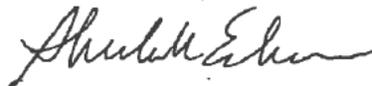
#### RESOURCES AND INFORMATION FOR SMALL BUSINESSES

EPA has created a number of helpful resources to assist small businesses. EPA has established the National Compliance Assistance Clearinghouse as well as Compliance Assistance Centers which offer various forms of resources to small businesses. You may inquire about these resources at [www.epa.gov](http://www.epa.gov). In addition, the EPA Small Business Ombudsman may be contacted at [www.epa.gov/sbo](http://www.epa.gov/sbo). Finally, EPA developed a fact sheet about the Small Business Regulatory Enforcement Fairness Act ("SBREFA"), which is enclosed with this letter.

If you have questions concerning this letter or the Site, please contact Claire Hong (206) 553-1813. Any communication by any attorney on your behalf should be directed to Alexander Fidis, EPA Office of Regional Counsel, at (206) 553-4710.

Thank you for your cooperation in this matter.

Sincerely,



Sheila Eckman, Unit Manager  
Site Cleanup Unit #3  
Office of Environmental Cleanup

Enclosures:

Information Request  
Definitions

U.S. EPA

CERCLA SECTION 104(e)

INFORMATION REQUEST

\*\*\*\*\*

Respondent: Representative of Harris Corporation  
c/o Corporation Service Company

Site: Lower Duwamish Waterway, Seattle WA

Harris Corporation  
9725 East Marginal Way S  
Seattle, WA 98108

King County Parcel: 5624201032

Date: First involvement at the Site to present

\*\*\*\*\*

Please note: this Information Request includes instructions for responding to this request and definitions of words such as "Respondent," "Site," and "identify" used in the questions.

INFORMATION REQUEST QUESTIONS

1. Respondent Information

- a. Provide the full legal name and mailing address of the Respondent.
- b. For each person answering these questions on behalf of Respondent, provide:
  - i. full name;
  - ii. title;
  - iii. business address; and
  - iv. business telephone number and FAX machine number.
- c. If Respondent wishes to designate an individual for all future correspondence concerning this Site, please indicate here by providing that individual's name, address, telephone

activities conducted at the Site.

- e. Provide all documents pertaining to sale, transfer, delivery, disposal, of any hazardous substances, scrap materials, and/or recyclable materials to this property.
- f. Provide all information on electrical equipment used at the Site, including transformers or other electrical equipment that may have contained polychlorinated biphenyls (PCBs).
- g. Provide information on the type(s) of oils or fluids used for lubrication of machinery or other industrial purposes, and any other chemicals or products which are or may contain hazardous substances which are or were used at the Site for facility operations.
- h. Provide any site drainage descriptions, plans or maps that include information about storm drainage which includes, but is not limited to, above or below surface piping, ditches, catch basins, manholes, and treatment/detention or related structures including outfalls. If available, also include information about connections to sanitary sewer.
- i. With respect to past site activities, please provide copies of any stormwater or drainage studies, including data from sampling, conducted at the Site. Also provide copies of any Stormwater Pollution Prevention or Maintenance Plans or Spill Plans that may have been developed for different operations during the Respondent's occupation of the property.

**3. Information About Others**

- a. Describe any business relationship you may have had regarding this property or operations thereon with any other entities.
- b. Provide the names and last known address of any tenants or lessees, the dates of their tenancy and a brief description of the activities they conducted while operating on the above mentioned Site.
- c. If not already provided, identify and provide a last known address or phone number for all persons, including Respondent's current and former employees or agents, other than attorneys, who have knowledge or information about the generation, use, purchase, storage, disposal, placement, or other handling of hazardous materials at, or transportation of hazardous materials to or from, the Site.

**4. Financial Information**

- a. Provide true and complete copies of all federal income tax documents, including all supporting schedules, for 2002, 2003, 2004, 2005, 2006 and 2007. Provide the federal Tax Identification Number and, if documentation is not available, explain why in detail.

- b. If there are any such policies from question "5a" above which existed, but for which copies are not available, identify each such policy by providing as much of the following information as possible:
- i. the name and address of each insurer and of the insured;
  - ii. the type of policy and policy numbers;
  - iii. the per occurrence policy limits of each policy; and
  - iv. the effective dates for each policy.
- c. Identify all insurance brokers or agents who placed insurance for the Respondent at any time during the period being investigated, as identified at the beginning of this request, and identify the time period during which such broker or agent acted in this regard.
- d. Identify all communication and provide all documents that evidence, refer, or relate to claims made by or on behalf of the Respondent under any insurance policy in connection with the site. Include any responses from the insurer with respect to any claims.
- e. Identify any previous settlements with any insurer in connection with the site, or for any claims for environmental liabilities during the time period under investigation. Include any policies surrendered or cancelled by the Respondent or insurer.
- f. Identify any and all insurance, accounts paid or accounting files that identify Respondent's insurance policies.
- g. Identify Respondent's policy with respect to document retention.

## INSTRUCTIONS

1. **Answer Each Question Completely.** Provide a separate answer to each question and subpart set forth in this Information Request. Incomplete, evasive, or ambiguous answers shall constitute failure to respond to this Information Request and may subject the Respondent to the penalties set out in the cover letter.
2. **Response Format and Copies.** Provide the responses to this Information Request and at least one copy of all requested documents either electronically or on paper (hard copy). Your submission, whether electronic or hard copy, must include an index that lists all the responsive documents provided, and that indicates where each document is referenced in the written response, and to which question or questions each document is responsive. Additionally, please clearly identify and segregate any information you determine to be Confidential Business Information (CBI).

If providing your response electronically, it must be submitted on a compact disc in Portable Document Format (PDF) and comply with the following requirements:

- a. CBI and personal privacy information should be provided on separate media (e.g., a separate CD) and marked as such to ensure information is appropriately handled and physically separated from the other response information in EPA's files.
  - b. The declaration must be provided in hard copy with an original signature.
  - c. All documents originally smaller than 11 by 17 inches can be submitted electronically; any documents originally larger than 11 by 17 inches must be submitted in hard copy.
  - d. Electronic PDF files cannot be submitted in Adobe Acrobat versions above 6 (or above PDF format version 1.5 if not using Adobe).
  - e. Electronic PDF files must be text-searchable.
  - f. The document index must clearly identify any single electronic document which has been separated into multiple electronic files (because of size limitation or otherwise) and each component file that comprises the full document.
3. **Number Each Answer.** Number each answer with the number of the question to which it corresponds.
  4. **Provide the Best Information Available.** Provide responses to the best of Respondent's ability, even if the information sought was never put down in writing or if the written documents are no longer available. Seek out responsive information from current and former employees/agents. Submission of cursory responses when other responsive information is available to the Respondent will be considered noncompliance with this Information Request.

## DEFINITIONS

All terms not defined herein shall have their ordinary meaning, unless such terms are defined in Section 101 of CERCLA, 42 U.S.C. § 9601, *et seq.*, or Volume 40 of the Code of Federal Regulations (CFR), in which case such statutory or regulatory definitions shall apply.

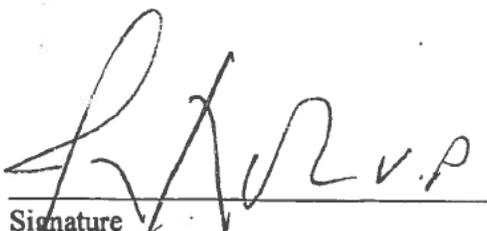
The following definitions shall apply to the following words as they appear in this Enclosure:

1. The term "Respondent" shall mean the addressee of this Request, together with the addressee's agents, employees, and contractors.
2. The terms "document" and "documents" shall mean any method of recording, storing, or transmitting information. "Document" shall include, but not be limited to:
  - a. writings of any kind, including, but not limited to, any of the following:
    - i. letters, memoranda, fax transmittals;
    - ii. meeting minutes, telephone records, notebooks;
    - iii. agreements and contracts;
    - iv. reports to shareholders, management, or government agencies;
    - v. transportation manifests;
    - vi. copies of any document.
  - b. any film, photograph, or sound recording on any type of device;
  - c. any blueprints or drawings;
  - d. attachments to, or enclosures with, any document.
3. The term "identify" means, with respect to a natural person, to set forth: (a) the person's full name, (b) present or last known business and home addresses and telephone numbers; and (c) present or last known employer (include full name and address) with job title, position, or business.
4. The term "identify" means, with respect to a corporation, partnership, business trust, or other entity, to set forth: (a) its full name; (b) complete street address; (c) legal form (e.g., corporation, partnership, etc.); (d) the state under whose laws the entity was organized; and (e) a brief description of its business.

**DECLARATION**

I declare under penalty of perjury that I am authorized to respond on behalf of Respondent and that the foregoing is complete, true, and correct.

Executed on March 17, 2009.

  
Signature

Anthony Deglomire  
Type or Print Name

Vice President  
Title

**Mailing Address:**

Corporation Service Company  
Registered Agent for Harris Corporation  
6500 Harbour Heights Pkwy, Suite 400  
Mukilteo, WA 98275

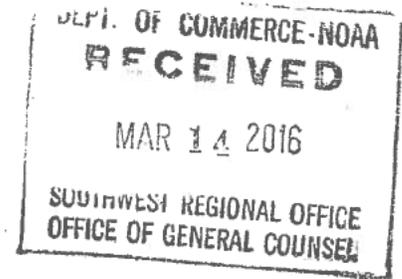
Harris Corporation  
9725 East Marginal Way S  
Seattle, WA 98108



# HARTCROWSER

March 9, 2016

Laurie J. Lee  
NOAA Office of General Counsel  
Natural Resources Section  
501 W Ocean Blvd., Suite 4470  
Long Beach, CA 90802



**Re: Notice of Intent, Lower Duwamish property: Hart Crowser  
King County Washington Tax Parcel(s): 2136200641; 2924049043**

Dear Ms. Lee:

Your January 29, 2016 letter was received by Hart Crowser in late February 2016. It was mailed to our old address. We are now responding to the letter within 30 days of its receipt.

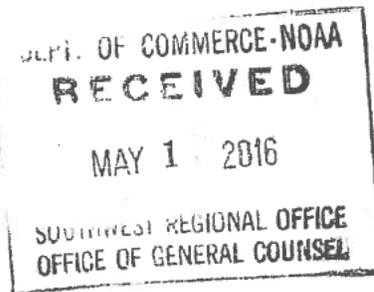
Hart Crowser is an environmental consulting firm. We provided services to Evergreen Marine Leasing (Evergreen). In July 2012, the United State Environmental Protection Agency (EPA) sent Hart Crowser a Section 104(e) request for certain documents relating to Hart Crowser's services for Evergreen. The reason EPA sent Hart Crowser the 104(e) request was because Evergreen was no longer in business. Hart Crowser responded to EPA's request.

Hart Crowser has not owned or operated the tax parcel properties identified above. Hart Crowser has never received a General Notice Letter or Special Notice Letter from EPA. Hart Crowser is not a potentially responsible party (PRP) for the Lower Duwamish Superfund Site. As such, Hart Crowser declines to participate in the natural resource damage injury assessment.

Respectfully,

**HART CROWSER, INC.**

**MICHAEL BAILEY**  
CEO



Joseph A. Farside, Jr.  
Partner  
Direct Telephone: 401-455-7648  
Direct Fax: 866-320-0797  
joseph.farside@lockelord.com

May 11, 2016

**BY REGULAR MAIL AND E-MAIL**

Laurie J. Lee  
NOAA Office of General Counsel  
Natural Resource Section  
501 W. Ocean Blvd., Suite 4470  
Long Beach, CA 90802

**Re: Notice of Intent, Lower Duwamish property: Hasbro, Inc.  
King County Washington Tax Parcel (s): 7666700390**

Dear Ms. Lee:

As you know, this Firm represents Hasbro, Inc. ("Hasbro") in connection with your letter to Hasbro dated January 29, 2016 (the "Letter"). Thank you for corresponding with me *via* e-mail about this matter after the Letter was sent. You may recall that, in our correspondence, you extended the time for Hasbro to respond to the Letter until June 1, 2016. This correspondence constitutes Hasbro's formal response to the Letter.

Hasbro at this time respectfully declines your invitation to participate in the process of performing the injury assessment for natural resource damages referenced and described in the Letter. As justification therefor, Hasbro refers you to, and incorporates herein by reference, its CERCLA § 104(e) response submitted to the U.S. Environmental Protection Agency, Region 10, by letter dated April 24, 2009 (the "104(e) Response"). Hasbro submits that, for the reasons set forth in its 104(e) Response, among others, it is not responsible for damage to natural resources associated with the Harbor Island, Lower Duwamish Waterway, and Lockheed West Superfund Sites.

If I can be of further assistance, please do not hesitate to contact me.

Sincerely,

Joseph A. Farside, Jr.

cc: Robert Turner, Esq.

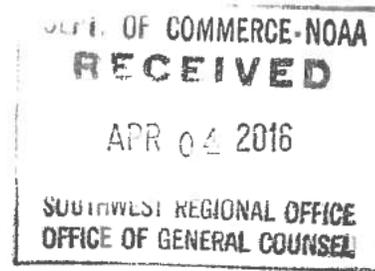
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# HEMPHILL BROTHERS, INC.

April 1, 2016

Laurie J. Lee  
NOAA Office of General Counsel  
Natural Resources Section  
501 W Ocean Blvd Suite 4470  
Long Beach, CA 90802



Dear Laurie,

We received your Notice of Intent letter dated 3/29/2016 regarding natural resources damages in the Lower Duwamish Waterway. We are writing to request you remove Hemphill Brothers, Inc. from your list of potentially responsible parties. Our company was located at 5427 Ohio Ave S. from 1976 to 2014 but during that entire period, our business activity was confined entirely to the office building. We never engaged in industrial activity; our business engaged solely in financial and administrative matters. We never owned, operated or leased equipment at that location (other than office equipment) nor did we ever own, operate or hold responsibility over any assets that discharged substances into the Duwamish River, hazardous or otherwise. Please take this information into consideration and remove us as a potentially responsible party.

Sincerely,

Luke Hemphill  
Vice President of Finance  
Hemphill Brothers, Inc.

*Physical Address: 375 Ericksen Ave NE, Bainbridge Island, WA 98110  
Telephone: (206) 842-0748  
Mailing Address: PO Box 10190, Bainbridge Island, WA 98110*

ANDERSON HUNTER LAW FIRM, P.S.

2707 COLBY AVENUE, SUITE 1001 / PO BOX 5397  
EVERETT, WASHINGTON 98206  
(425) 252-5161  
FAX: (425) 258-3345  
[www.andersonhunterlaw.com](http://www.andersonhunterlaw.com)

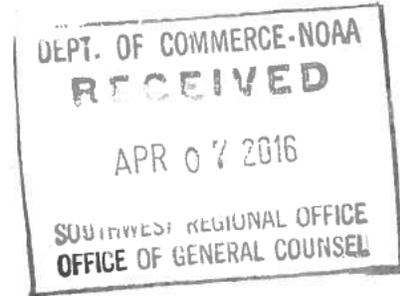
AMY C. ALLISON  
JEFFREY H. CAPELOTO  
GLENN PAUL CARPENTER  
BRADFORD N. CATTLE  
THOMAS R. COLLINS  
G. DOUGLAS FERGUSON  
JOHN A. FOLLIS  
NICOLE FRANKLIN  
G. GEOFFREY GIBBS

IAN JOHNSON  
C. MICHAEL KVISTAD  
SARAH O'FARRELL MCCARTHY  
VICKIE K. NORRIS  
LAURIE UMMEL  
JEFFREY C. WISHKO  
O.D. ANDERSON (1892-1961)  
JAMES P. HUNTER (1915-1988)

April 7, 2016

SEND VIA E-MAIL: [Laurie.Lee@noaa.gov](mailto:Laurie.Lee@noaa.gov)

Laurie J. Lee  
Attorney Advisor  
Natural Resources Section  
NOAA Office of General Counsel  
501 W. Ocean Blvd., Ste. 4470  
Long Beach, CA 90802



Re: Notice of Intent, Lower Duwamish Property: Hogland Transfer Company  
King County Washington Parcel: 6871200750

Dear Ms. Lee:

I represent Hogland Transfer Company. It received a March 29, 2016, letter from you regarding the above. Hogland wants to thank you for your formal invitation to participate in the development of the Assessment Plan, but respectfully declines to participate.

The primary contact for Hogland is:

Lee McElvaine  
General Manager  
Hogland Transfer Co.  
6605 Hardenson Road  
Everett, WA 98203

[leem@hoglands.com](mailto:leem@hoglands.com)

Very truly yours,

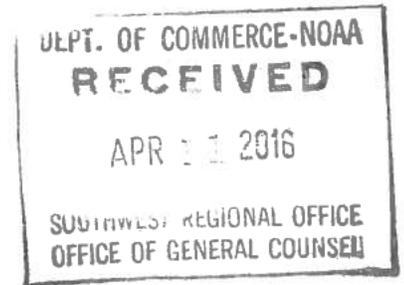
ANDERSON HUNTER LAW FIRM, P.S.

  
C. Michael Kvistad

CMK:ams  
cc: Hogland Transfer Company

**RYAN WHALEY COLDIRON  
JANTZEN PETERS & WEBBER**

A Professional Limited Liability Company  
Attorneys and Counselors at Law  
900 Robinson Renaissance  
119 North Robinson Avenue  
Oklahoma City, Oklahoma 73102  
Telephone: (405) 239-6040  
Facsimile: (405) 239-6766  
[www.ryanwhaley.com](http://www.ryanwhaley.com)



April 11, 2016

*Via Email and Certified U.S. Mail*

Ms. Laurie J. Lee  
NOAA Office of General Counsel  
Natural Resources Section  
501 W. Ocean Blvd., Suite 4470  
Long Beach, California 90802  
[Laurie.Lee@noaa.gov](mailto:Laurie.Lee@noaa.gov)

Re: Lower Duwamish Waterway  
Notice and Invitation to Participate in NRD Assessment Plan

Dear Ms. Lee:

We are writing on behalf of Holcim (US) Inc. ("Holcim") to acknowledge receipt of NOAA's "Notice of Intent" dated January 29, 2016 regarding plans for the Elliott Bay Trustee Council ("Trustees") to conduct a Natural Resource Damage ("NRD") Assessment of the Harbor Island, Lower Duwamish Waterway, and Lockheed West Superfund Sites. Based upon the Notice of Intent, Holcim understands that the first intended task will be the development of an NRD Assessment Plan for the three Superfund sites, to be followed by the performance of the Assessment Plan. Holcim understands that the decision to proceed with an NRD Assessment is based upon the 2009 "Final Pre-Assessment Screen for Lower Duwamish River" and the 2013 "Final Lower Duwamish River NRDA Restoration Plan and Programmatic Environmental Impact Statement."

Holcim understands that NOAA issued the Notice of Intent to inform Holcim that it has been identified as a potentially responsible party ("PRP"), and to invite Holcim to participate in a cooperative process to develop the type and scope of the Assessment Plan and subsequently to perform the injury assessment.

Holcim is willing to explore the possibility of accepting this invitation. However, despite our review of the information included with the Notice of Intent and other publicly-available materials,

Ms. Laurie J. Lee  
NOAA Office of General Counsel  
April 11, 2016  
Page 2 of 2

Holcim is not yet in a position to make a final decision in this regard. For example, before Holcim can make an informed decision as to whether it should participate in this process, it will need to better understand:

1. Whether assessment-related costs paid by a participating party will result in a "credit" that reduces the party's remaining natural resource liability, if any;
2. The terms and conditions of any prior NRD settlements with other parties at the Harbor Island, Lower Duwamish Waterway, and Lockheed West Superfund Sites, and how those settlements will affect the contemplated NRD Assessment;
3. The terms and conditions of any funding and participation agreement to be executed by the Trustees and participating parties for the work described in the Notice of Intent;
4. The names of the other parties who received a Notice of Intent, and the names of parties who have elected to participate in the work described in the Notice of Intent;
5. The estimated cost to develop the Assessment Plan; and
6. The manner in which injury assessment activities and natural resource damage liability will be allocated between the Harbor Island, Lower Duwamish Waterway, and Lockheed West Superfund Sites.

Neither this letter nor Holcim's expression of a willingness to explore the possibility of participating in a cooperative injury assessment process is intended to be an acknowledgment that Holcim bears any liability for injury to natural resources within the Harbor Island, Lower Duwamish Waterway, or Lockheed West Superfund Sites. On the contrary, Holcim expressly disclaims any such liability.

We look forward to hearing from you with regard to the requested information identified above. In the interim, we ask that you please continue to include Holcim on any communications with the PRPs associated with these Sites.

Sincerely,  
  
FOR Mark D. Coldiron

From: **Ken Lederman** <ken.lederman@foster.com>

Date: Tue, Apr 5, 2016 at 7:21 PM

Subject: FW: Hurlen Logistics LLC - LDW NRD Assessment

To: "Laurie J. Lee (laurie.lee@noaa.gov)" <laurie.lee@noaa.gov>

Cc: Ken Lederman <ken.lederman@foster.com>, Alexandra Gilliland <alexandra.gilliland@foster.com>, Christi Bass <christi.bass@foster.com>

Laurie:

In response to NOAA's Notice of Intent issued to Hurlen Logistics LLC, we would like to participate in the discussions regarding the development of the type and scope of the Natural Resource Damage Assessment for the Lower Duwamish River and associated areas. We will not commit to paying for any phases of the injury assessment at this time – we will determine the best path forward after we learn more about the Trustees' plans and proposed course of action. In particular, Hurlen will pay close attention as to how the assessment process involves areas such as Harbor Island and Lockheed West which have no connection to or relationship with the Hurlen properties.

I will be the primary contact person on behalf of Hurlen. All future communications and notifications should be sent to my attention.

Hurlen's position is provided without admission as to liability or waiver as to any available defenses to its position.

Thanks.

**Ken Lederman**

FOSTER PEPPER PLLC

1111 Third Avenue, Suite 3000 | Seattle, WA 98101-3299

P 206.447.6267 | E [ken.lederman@foster.com](mailto:ken.lederman@foster.com)



# ICICLE

March 10, 2016

Lauri J. Lee  
NOAA Office of General Counsel  
Natural Resources Section  
501 West Ocean Blvd., Suite 4470  
Long Beach, CA 90802

Via email to [Laurie.Lee@noaa.gov](mailto:Laurie.Lee@noaa.gov)

RE: Notice of Intent, Lower Duwamish Property, Received 2/9/15  
King county Washington Tax Parcel: 5367202505

Dear Ms. Lee:

We are in receipt of the above referenced notice and invitation to participate with the Elliott Bay Trustee Council in a cooperative process to perform an injury assessment for natural resource damage in the Lower Duwamish Waterway and the East and West Waterways of Harbor Island.

Except for a brief period of subleasing space in the Seafreeze seafood processing facility located at 206 S.W. Michigan Street in Seattle, Washington beginning in late June 2008, Icicle Seafoods, Inc. ("Icicle") has held no interest at or within one-half mile of the superfund site. Further, Icicle possessed and complied with the terms of all environmental permits required during its short sublease of the subject property. Icicle does not believe it has any liability for the subject natural resource damage and is not on the list of GNL Entity Recipients for this superfund site.

Best regards,

ICICLE SEAFOODS, INC.

Patricia M. Hardina  
General Counsel & EVP Risk Management

**ICICLE SEAFOODS, INC.**

4019 - 21st Avenue West • Seattle, WA 98199  
P.O. Box 79003 • Seattle, WA 98119 • Tel: 206-282-0988 • Fax: 206-282-7222

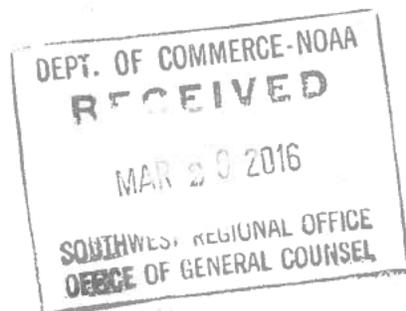


MICHELLE U. ROSENTHAL  
206.535.6006  
michelle@verislawgroup.com

March 28, 2016

*Via U.S. Mail and Electronic Mail (laurie.lee@noaa.gov)*

Laurie J. Lee  
NOAA Office of General Counsel  
Natural Resources Section  
501 West Ocean Boulevard, Suite 4470  
Long Beach, CA 90802



Re: *Notice of Intent: Lower Duwamish Waterway  
Ilahie Holdings, Inc.*

Dear Ms. Lee:

We are writing in regard to the January 29, 2016 Notice of Intent (Notice) the Elliot Bay Trustee Council (Trustees) sent to Ilahie Holdings, Inc. (Ilahie) regarding the Trustees' intent to proceed with a Natural Resource Damage Assessment (NRDA) of the waterways associated with Harbor Island and the Lower Duwamish River. The letter references two tax parcels:

- Tax Parcel No. 5367202506 is a brick commercial office building.
- Tax Parcel No. 53672025067 is a parking lot that serves the office building.

Ilahie appreciates the Trustees' Notice, but has insufficient information at this time to make a decision about participating in the NRDA process. Nonetheless, Ilahie wants to remain informed as the process moves forward and may choose to participate at a later date.

In the meantime, please do not hesitate to contact me if you have questions.

Sincerely,

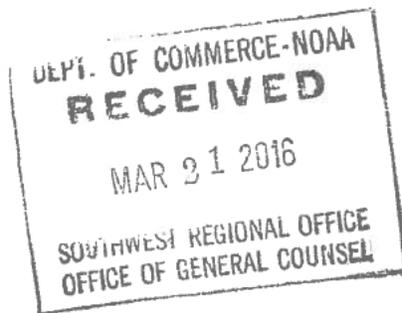
VERIS LAW GROUP PLLC

A handwritten signature in black ink, appearing to read "Michelle U. Rosenthal", written over the typed name.

MICHELLE U. ROSENTHAL

cc: Client

4810-9227-1919, v. 2



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Schiff Hardin LLP  
233 S. Wacker Drive  
Suite 6600  
Chicago, IL 60606

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T 312.258.5500  
F 312.258.5600

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[schiffhardin.com](http://schiffhardin.com)

Francis X. Lyons  
312.258.5661  
[flyons@schiffhardin.com](mailto:flyons@schiffhardin.com)

March 14, 2016

Laurie J. Lee  
Attorney Advisor  
Natural Resources Section  
National Oceanic and Atmospheric Administration  
Office of General Counsel  
501 W. Ocean Blvd., Suite 4470  
Long Beach, CA 90802

**Re: Notice of Intent, Lower Duwamish Property: Insurance Auto Auctions, Inc.  
King County Washington Tax Parcel(s): 5422600010, 5422600060**

Dear Ms. Lee:

We represent Insurance Auto Action Incorporated ("IAA"). This letter respond to your letter of January 29<sup>th</sup>, 2016 to Mary A. Mullin of my firm. Please direct all future correspondence in this matter to me. As explained in greater detail in response to a USEPA Notice of Potential Liability Pursuant to Section 107(a) and Request for Information Pursuant to Section 104(e) of CERCLA for the Lower Duwamish Waterway Superfund Site ("LDW"), IAA does not believe that there is credible evidence to support naming IAA as a PRP in this matter. IAA's response was set forth in a letter dated May 23, 2008 from Glenn Amster of the Lane Powell firm, to Claire Hong, USEPA, Region 10 ("the Amster letter"). A copy of this letter is attached hereto for your convenience

As detailed more fully in the Amster letter, IAA has leased the property located at 8801 East Marginal Way south, Tukwila, Washington, since December, 2004 ("the Site"). IAA activities at the Site consist of receiving, storage, and ultimate auction of total loss vehicles. IAA does not dismantle, paint, crush, wash or remove fluids or parts from the vehicles while stored at the Site. The only chemicals used at the facility are diesel and propane. No chlorinated solvents are used at the facility. The majority of the facility is paved, and any incidental leakage of fluid from a vehicle is quickly addressed through established procedures, including the use of absorbent materials. Further, IAA operates its own storm water system at the Site.

Laurie J. Lee  
March 14, 2016  
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There is no evidence to suggest that any of IAA's activities at the Site have contributed to contamination of the LDW. Significantly, the Washington Department of Ecology ("Ecology") has concluded that it will not pursue IAA as a potentially liable party ("PLP") under Washington's Model Toxic Control Act for contamination at the Site. This decision followed due consideration of IAA's response to a October 31, 2007 letter from Ecology notifying IAA that Ecology proposed to find IAA liable for contamination at the Site. IAA's response to Ecology contained similar information set forth in the Amster letter. Significantly, Ecology has concluded that PACCAR, Inc. is a PLP for contaminating at the Site, based on its prior operations at the Site prior to IAA's tenancy.

As detailed in the Amster letter, any contamination at the Site pre-dates IAA's tenancy at the Site, and was not caused or contributed to by IAA. For these reasons, and those detailed in the Amster letter, IAA should not be considered a PRP at the Site.

Very truly yours,



Francis X. Lyons

FXL:dm  
Enclosure

May 23, 2008

**VIA MESSENGER**

United States Environmental Protection Agency, Region 10  
Claire Hong, Remedial Project Manager  
Environmental Cleanup Office, ECL-111  
1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101

RE: IAA's Response to Notice of Potential Liability Pursuant to Section 107(a) and Request for Information Pursuant to Section 104(e) of CERCLA for the Lower Duwamish Waterway Superfund Site, Seattle, Washington.

Dear Ms. Hong:

This letter is Insurance Auto Auctions Incorporated's (IAA) response to EPA's March 25, 2008 letter notifying IAA that EPA is proposing to find IAA liable under CERCLA for remedial costs associated with the cleanup of the Lower Duwamish Waterway (LDW) Superfund Site situated immediately adjacent to the property located at 8801 East Marginal Way South, in Seattle, Washington (the upland property or the Site). IAA does not believe there is credible evidence to support EPA naming IAA as a potentially responsible person (PRP) because IAA is only a lessee of the Site and its tenancy began in December of 2004, which was well after the relevant releases of hazardous substances that occurred on the upland property. In addition, the Washington Department of Ecology (Ecology) has already determined it will not pursue IAA as a potentially liable party (PLP) under Washington's Model Toxics Control Act for contamination at the upland property, because there is no evidence that IAA's activities have caused or contributed to any further releases of hazardous substances at the upland property and IAA has already installed a state of the art storm water system at its own expense.

**Background on IAA**

IAA specializes in providing insurance companies, car rental companies and other vehicle providers with a number of services surrounding the liquidation of total-loss vehicles acquired through the settlement of claims. IAA picks up and stores vehicles, facilitates the transfer of sale documents, and auctions salvage vehicles.

Operations at IAA facilities consist of receipt of vehicles, storage of vehicles prior to sale, and subsequent auction of vehicles. Vehicles are typically towed to the IAA facility and temporarily placed into a drop zone for check-in, inventory, and to be photographed. Open

windows are closed and the vehicle is then loaded onto a front loader tractor and transported away from the drop zone to a sale area, storage area, or vehicle inspection center. Vehicles may be protected with shrink wrap or other material to preserve or enhance condition prior to auction. Vehicles are then auctioned and removed from the facility.

**Lease of 8801 E. Marginal Way South**

IAA operates an automobile auction facility at 8801 East Marginal Way South, Tukwila, Washington. The 24-acre parcel is located approximately 5 miles south of downtown Seattle. IAA's activities on the upland property are limited to receiving salvage vehicles, facilitating transfer of sale documents, and then auctioning the salvage vehicles. Vehicles are not dismantled, painted, crushed, or washed while stored at the upland property. No fluids or parts are removed from the vehicles after arriving at the upland property. There is signage at the Site specifically informing employees and car owners that no work can be done on vehicles while at the IAA facility.

IAA maintains a 250-gallon propane aboveground storage tank (AST) and diesel fuel is stored on Site in a 250-gallon AST with adequate secondary containment. The diesel and propane are used to fuel forklifts that are used to move vehicles around the Site. IAA does not conduct maintenance on its forklifts on Site, instead an off-site contractor performs the necessary maintenance on the forklifts. The only chemicals used by IAA at the Site are the diesel and propane. Most importantly, IAA has never used chlorinated solvents at the Site.

The majority of the Site is paved, which prevents any fluids accidentally leaked from a vehicle from reaching soil or groundwater. In the event of a small incidental release of fluid from a vehicle, IAA has specific procedures in place for responding including the use of absorbent materials.

**IAA Did Not Cause or Contribute to the Contamination at the Site**

As I am sure you are aware, the courts look to a variety of equitable factors when allocating liability among PRPs under CERCLA including taking into account the cause of the contamination, the defendant's relationship to the contamination, as well as other pertinent discretionary factors. Applying these factors to IAA's situation, it is clear that IAA should not even be included as a PRP for the 8801 East Marginal Way South Site.

Notably there are several federal cases interpreting CERCLA's definition of "owner or operator", that have held that a tenant does not necessarily constitute an "owner or operator" unless the tenant somehow exacerbates the contamination or actually controls the facilities that caused the contamination. See e.g., Commander Oil Corp. v. Barlo Equipment Corp., 215 F.3d 321 (2nd Cir. 2000) (holding "owner liability should not automatically apply to lessees/sublessors."); Nurad Inc. v. Wm. E. Hooper & Sons, Co., 966 F.2d 837 (4th Cir.

May 23, 2008

Page 3

1992). In this instance, IAA is merely a lessee of the property and it is known that the contamination that has historically impacted the Site predates IAA's tenancy by many years. In addition, there is no evidence to suggest IAA's on-site activities have caused or even contributed to the contamination of the LDW in an appreciable amount. For this reason alone, IAA should not be deemed a PRP.

The upland property has a long history of industrial use dating back to 1929 and continuing through 2004. IAA did not lease the Site until December 2004. It is widely known that the contaminants of concern were released prior to 2004. There have been numerous environmental reports released regarding the upland property that identify sources of contamination that pre-date IAA's tenancy and actually identify PACCAR, Inc. as responsible for the releases.

In fact, numerous investigations and removal actions have been conducted at the upland property since 1986. There was approximately 25 ground water monitoring wells already located at the Site prior to 2004. Results of investigations indicate that the contaminants of concern (COCs) include chlorinated solvents, polycyclic aromatic hydrocarbons (PAHs), polychlorinated biphenyls (PCBs), and metals in soil and/or groundwater. Several removal actions were completed including underground storage tank (UST) removals in 1986 and 2003 (18 USTs), petroleum-contaminated soil excavation in 2002 and 2003, use of oxygen-releasing compounds to remediate petroleum hydrocarbons in 2003 and 2004, storm-drain cleaning in 2004, installation and operation of an air-sparge and soil-vapor extraction system since 2004, and lining of a storm drain at the Site.

Prior to 2004, source areas were also identified for chemicals detected in soil and ground water. For example, several USTs were identified as one source of chlorinated solvents and were removed in 1986 and 2003. In 1988, storm drains were found to be draining shallow contaminated groundwater at the Site. Seeps along the river banks were found to be related to contaminated shallow ground water at the Site. In January 2001, the Site entered into Ecology's Toxic Cleanup Programs' Voluntary Cleanup Program and PACCAR, Inc. actually assumed responsibility for maintaining and operating a ground water remediation system at the Site. Again, all of these investigations and remedial efforts occurred before IAA leased the Site.

In short, IAA could not, therefore, have any connection to the release of hazardous substances that are suspected to have impacted the upland property or the LDW.

#### IAA Was Not Named as a PLP under MTCA

On or about October 31, 2007, IAA received a letter notifying it that the Ecology was proposing to find IAA liable under MTCA for the release of hazardous substances at the upland property. IAA responded with a letter setting forth substantially similar information

May 23, 2008

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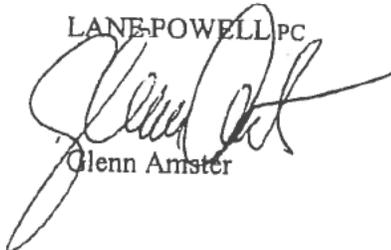
as set forth in this letter. After having time to consider IAA's response, Ecology issued a letter dated February 5, 2008, which indicated that IAA was not a PLP at the Site. However, two parties were named as PLPs at that time including PACCAR, Inc. and Washington Holdings, LLC. Ecology's conclusion should weigh heavily against EPA naming IAA as a PRP under CERCLA.

**Conclusion**

EPA should not name IAA as a PRP for the LDW CERCLA Superfund Site. All the evidence garnered to date suggests the contamination of upland property located at 8801 East Marginal Way South, in Seattle, Washington predates IAA's tenancy. IAA's operations are not chemically intensive and there are no known sources of appreciable soil and ground water contamination associated with IAA's activities. Lastly, Ecology has already determined that IAA is not liable as a PLP under MTCA for contamination of the upland property. For these reasons, IAA strenuously objects to being named as a PRP.

Very truly yours,

LANE POWELL PC

A handwritten signature in black ink, appearing to read "Glenn Amster", is written over the typed name. The signature is fluid and cursive.

Glenn Amster

Enclosures

cc (w/o enclosures):

Mr. Michael Madden, Insurance Auto Auctions, Inc.

Mr. Bernie Gawne, Insurance Auto Auctions, Inc.

Mr. Steve Tibble, Insurance Auto Auctions, Inc.

116664.0011/1527879.1

U.S. EPA  
CERCLA SECTION 104(e)  
INFORMATION REQUEST

\*\*\*\*\*

**RESPONDENT INSURANCE AUTO AUCTIONS' (IAA) RESPONSES TO  
INFORMATION REQUEST QUESTIONS**

**General Responses:**

*Documents responsive to EPA's Information Request are being produced with these Responses on the accompanying CD-ROM. The documents have been sequentially numbered to assist with identification. IAA's review of its documents is ongoing and to the extent additional responsive documents are identified they will be produced to EPA in a supplemental response to the Information Request.*

*IAA considers some of the documents being produced herewith to be confidential and/or proprietary because they contain information that if disclosed would likely cause substantial harm to its competitive position. Due to their confidential/proprietary nature, these documents are separated by a page marked "Company Confidential" and individually marked "Confidential". EPA should handle these document in accordance with 40 C.F.R. Part 2, Subpart B and other applicable rules and regulations associated with confidential and proprietary information.*

*By responding to this Information Request, IAA is not waiving the protection of documents, communications, or other information provided by the work product doctrine or the attorney-client privilege. See In Re Grand Jury Subpoena (Mark Torf/Torf Environmental Management), 357 F.3d 900 (9<sup>th</sup> Cir. 2004). Attorney-client communications have not been produced.*

**1. Respondent Information**

- a. Provide the full legal name and mailing address of the Respondent.

*Insurance Auto Auctions, Inc.  
Two Westbrook Corporate Center, Suite 500  
Westchester, IL 60154*

- b. For each person answering these questions on behalf of Respondent, provide:

*Sidney Kerley  
Vice President/General Counsel  
Insurance Auto Auctions, Inc.  
Two Westbrook Corporate Center, Suite 500*

Westchester, IL 60154  
Direct: 708.492.7369  
Fax: 708.492.7558  
[skerley@iaai.com](mailto:skerley@iaai.com)

- c. If Respondent wishes to designate an individual for all future correspondence concerning this Site, please indicate here by providing that individual's name, address, telephone number, and fax number.

*Glenn Amster  
Lane Powell PC  
1420 Fifth Avenue, Suite 4100  
Seattle, WA 98101-2338  
Direct: 206.223.6241  
Cell: 206.954.4585  
Fax: 206.223.7107  
[amsterg@lanepowell.com](mailto:amsterg@lanepowell.com)*

- d. State the dates during which Respondent held any property interests at or within one-half mile of the above mentioned address.

*December 2004 to the present.*

- e. State the dates during which Respondent conducted any business activity at or within one-half mile of the above mentioned address.

*December 2004 to the present.*

- f. Describe the nature of Respondent's business activities at the above mentioned address or within one-half mile of that address.

*IAA operates an automobile auction facility at 8801 East Marginal Way South, Tukwila, Washington (hereinafter referred to as "the Site".)*

- g. In relation to your answer to the previous question, identify all materials used or created by your activities at the above mentioned address, including raw materials, commercial products, building debris, and other wastes.

*Operations at the Site consist of receipt of salvage vehicles, storage of vehicles prior to sale, and subsequent auction of vehicles. Vehicles are typically towed to the IAA facility and temporarily placed into a drop zone for check-in, inventory, and to be photographed. Open windows are closed and the vehicle is then loaded onto a front loader tractor and transported away from the drop zone to a sale area, storage area, or vehicle inspection center. Vehicles may be protected with shrink wrap or other material to preserve or enhance condition prior to auction. Vehicles are then auctioned and removed from the Site.*

- h. If Respondent, its parent corporation, subsidiaries or other related or associated companies have filed for bankruptcy, provide:
- i. the U.S. Bankruptcy Court in which the petition was filed;
  - ii. the docket numbers of such petition;
  - iii. the date the bankruptcy petition was filed;
  - iv. whether the petition is under Chapter 7 (liquidation), Chapter 11 (reorganization), or other provision; and
  - v. a brief description of the current status of the petition.

*No parent, subsidiary, or other related or associated companies have filed for bankruptcy protection.*

**2. Site Activities and Interests**

- a. Provide all documents in your possession regarding the ownership or environmental conditions of the property mentioned above, including, but not limited to, copies of deeds, sales contracts, leases, blueprints, "as-builts" and photographs.

*See responsive documents to this Information Request being produced to EPA herewith*

- b. Provide information on the condition of the property when purchased; describe the source, volume, and content of any fill material used during the construction-of the buildings, including waterside structures such as seawalls, wharves, docks, or marine ways.

*IAA has not conducted any fill activities at the Site. IAA has not engaged in any construction. All buildings predate IAA's tenancy.*

*See responsive documents to this Information Request being produced to EPA herewith*

- c. Provide information on past dredging or future planned dredging at this site.

*IAA has not engaged in dredging and does not plan to engage in future dredging at the Site.*

- d. Provide a brief summary of the activities conducted at the site while under Respondent's ownership or operation. Include process diagrams or flow charts of the industrial activities conducted at the site.

*IAA's activities on the Site are limited to receiving salvage vehicles, facilitating transfer of sale documents, and then auctioning the salvage vehicles. Vehicles are not dismantled, painted, crushed, or washed while stored at the Site. No fluids or parts are removed from the vehicles after arriving at the Site. There is signage at the Site specifically informing employees and car owners that no work can be done on vehicles while at the IAA facility.*

- e. Provide all documents pertaining to sale, transfer, delivery, disposal, of any hazardous substances, scrap materials, and/or recyclable materials to this property.

*IAA does not engage in the sale, transfer, delivery, or disposal of any hazardous substances at the Site. As noted above, IAA's activities on the Site are limited to receiving salvage vehicles, facilitating transfer of sale documents, and then auctioning the salvage vehicles at which time the vehicles are removed from the Site. IAA has not produced the sales documents for the automobile auctions because salvage automobiles arguably do not fall within the definition of "scrap materials and or recyclable materials".*

- f. Provide all information on electrical equipment used at the facility, including transformers or other electrical equipment that may have contained polychlorinated biphenyls (PCBs).

*Electrical transformers are present on the property, but IAA has no information regarding their contents because they are maintained by Seattle City Light.*

- g. Provide information on the type(s) of oils or fluids used for lubrication of machinery or other industrial purposes, and any other chemicals or products which are or may contain hazardous substances which are or were used at the facility for facility operations.

*IAA maintains a 250-gallon propane aboveground storage tank (AST) and diesel fuel is stored on Site in a 250-gallon AST with adequate secondary containment. The diesel and propane are used to fuel forklifts that are used to move vehicles around the Site. IAA does not conduct maintenance on its forklifts on Site, instead an off-site contractor performs the necessary maintenance on the forklifts. The only chemicals used by IAA at the Site are the diesel and propane. Most importantly, IAA has never used chlorinated solvents at the Site.*

- h. Provide any site drainage descriptions, plans or maps that include information about storm drainage which includes, but is not limited to, above or below surface piping, ditches, catch basins, manholes, and treatment/detention or related structures including outfalls. If available, also include information about connections to sanitary sewer.

*See responsive documents to this Information Request produced to EPA herewith.*

- i. With respect to past site activities, please provide copies of any stormwater or drainage studies, including data from sampling, conducted at these properties. Also provide copies of any Stormwater Pollution Prevention or Maintenance Plans or Spill Plans that may

have been developed for different operations during the Respondent's occupation of the property.

*See responsive documents to this Information Request produced to EPA herewith.*

**3. Information About Others**

a. Describe any business relationship you may have had regarding this property or operations thereon with the following entities:

- i. Container Properties LLC,  
*IAA is a current tenant of Container Properties, LLC for the property located at 9229 E. Marginal Way South, Tukwila, Washington.*
- ii. Museum of Flight Foundation,  
*No business relationship.*
- iii. Rhodia, Inc., and  
*No business relationship.*
- iv. Rhone-Poulenc, Inc.  
*No business relationship.*
- v. General Motors Corporation,  
*No business relationship.*
- vi. Kenworth Motor Truck Corporation  
*No business relationship.*
- vii. Merrill Creek Holdings LLC,  
*IAA is a tenant of Merrill Creek Holdings LLC for the Site.*
- viii. Monsanto Chemical Co.,  
*No business relationship.*
- ix. Pacific Car and Foundry Company, and  
*No business relationship.*
- x. PACCAR, Inc.  
*IAA is a party to a Funding and Work Allocation Agreement with PACCAR, Inc. and Merrill Creek Holdings LLC. The Agreement is being produced to EPA in response to Information Request 2a. PACCAR also maintains an air purge system on the Site as part of its remedial responsibilities for contamination of the upland property.*

b. Provide the names and last known address of any tenants or lessees, the dates of their tenancy and a brief description of the activities they conducted while operating on the above mentioned site.

*IAA is the only tenant that has occupied the Site since December 2004.*

c. If not already provided, identify and provide a last known address or phone number for all persons, including Respondent's current and former employees or agents, other than attorneys, who have knowledge or information about the generation, use, purchase,

storage, disposal, placement, or other handling of hazardous materials at, or transportation of hazardous materials to or from, the Site.

*As noted in response to Information Request 2g, IAA uses diesel and propane to fuel forklifts that are used to move vehicles around the Site. The employees that may have knowledge regarding the diesel and propane include:*

- *Kevin Roberts*
- *Eric Walden*
- *Neil Davidson*
- *Gary McGriff*

*These employees all currently work at the IAA site located at 8801 East Marginal Way South, in Seattle Washington. The office phone number at the Site is (206) 658-6900.*

**4. Financial Information**

- a. Provide true and complete copies of all federal income tax documents, including all supporting schedules, for 2002, 2003, 2004, 2005, 2006 and 2007. Provide the federal Tax Identification Number and, if documentation is not available, explain why in detail.

*See responsive documents to this Information Request produced to EPA herewith.*

- b. Provide the Respondent's financial interest in, control of, or that the Respondent is a beneficiary of any assets (in the U.S. or in another country) that have not been identified in your federal tax returns or other financial information to be presented to EPA. If there are such assets, please identify each asset by type of asset, estimated value, and location.

*See responsive documents to this Information Request produced to EPA herewith.*

- c. If Respondent is, or was at any time, a subsidiary of, otherwise owned or controlled by, or otherwise affiliated with another corporation or entity, then describe the full nature of each such corporate relationship, including but not limited to:

- i. a general statement of the nature of relationship, indicating whether or not the affiliated entity had, or exercised, any degree of control over the daily operations or decision-making of the Respondent's business operations at the Site;

*See responsive documents to this Information Request produced to EPA herewith.*

- ii. the dates such relationship existed;

*See responsive documents to this Information Request produced to EPA herewith.*

- iii. the percentage of ownership of Respondent that is held by such other entity(ies);

*See responsive documents to this Information Request produced to EPA herewith.*

- iv. for each such affiliated entity provide the names and complete addresses of its parent, subsidiary, and otherwise affiliated entities, as well as the names and addresses of each such affiliated entity's officers, directors, partners, trustees, beneficiaries, and/or shareholders owning more than five percent of that affiliated entity's stock;

*See responsive documents to this Information Request produced to EPA herewith.*

- v. provide any and all insurance policies for such affiliated entity(ies) which may possibly cover the liabilities of the Respondent at the Site; and

*See responsive documents to this Information Request produced to EPA herewith.*

- vi. provide any and all corporate financial information of such affiliated entities, including but not limited to total revenue or total sales, net income, depreciation, total assets and total current assets, total liabilities and total current liabilities, net working capital (or net current assets), and net worth.

*See responsive documents to this Information Request produced to EPA herewith.*

## **5. Insurance Coverage**

- a. Provide copies of all property, casualty and/or liability insurance policies, and any other insurance contracts referencing the site or facility and/or Respondent's business operations (including, but not limited to, Comprehensive General Liability, Environmental Impairment Liability, Pollution Legal Liability, Cleanup Cost Cap or Stop Loss Policies). Include, without limitation, all primary, excess, and umbrella policies which could be applicable to costs of environmental investigation and/or cleanup, and include the years such policies were in effect.

*See responsive documents to this Information Request produced to EPA herewith.*

- b. If there are any such policies from question "5a" above which existed, but for which copies are not available, identify each such policy by providing as much of the following information as possible:

- i. the name and address of each insurer and of the insured;
- ii. the type of policy and policy numbers;
- iii. the per occurrence policy limits of each policy; and

- iv. the effective dates for each policy.

*All such policies from Question 5a are being produced to EPA.*

- c. Identify all insurance brokers or agents who placed insurance for the Respondent at any time during the period being investigated, as identified at the beginning of this request, and identify the time period during which such broker or agent acted in this regard.

*IAA contracted with Marsh from 2001 through August 2006. IAA's contacts with Marsh were: (1) Helen Fox (312.627.6847) and (2) Rich Michaels (312.627.6083).*

*IAA contracted with HRH from September 1, 2006 through April 19, 2007. IAA's sole contact with HRH was Art Pedraza (312.527.7024).*

*Since April 2007 to the present, IAA has contracted with AON under KAR Holdings policy. IAA's contacts with AON are: (1) Brad Markle (248.936.5519) and (2) Brandon Bacon (248.936.5227).*

- d. Identify all communication and provide all documents that evidence, refer, or relate to claims made by or on behalf of the Respondent under any insurance policy in connection with the site. Include any responses from the insurer with respect to any claims.

*See responsive documents to this Information Request produced to EPA herewith.*

- e. Identify any previous settlements with any insurer in connection with the site, or for any claims for environmental liabilities during the time period under investigation. Include any policies surrendered or cancelled by the Respondent or insurer.

*There have been no previous settlements with any insurer in connection with the site.*

- f. Identify any and all insurance, accounts paid or accounting files that identify Respondent's insurance policies.

*IAA has no additional documents to produce responsive to this Information Request. Alexander Fidis, EPA Office of Regional Counsel, confirmed that production of the actual insurance policies to previous requests was sufficient.*

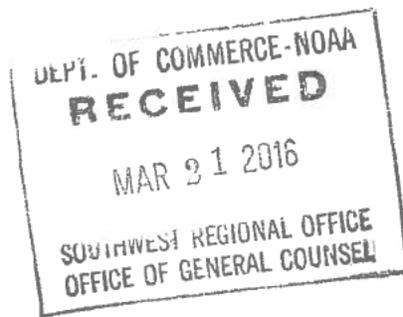
- g. Identify Respondent's policy with respect to document retention.

*See responsive documents to this Information Request produced to EPA herewith.*

**6. Compliance with This Request.**

a. Describe all sources reviewed or consulted in responding to this request, including, but not limited to:

- i. the name and current job title of all individuals consulted;  
*Bernie Gawne, Litigation Counsel*  
*Sidney Kerley, Vice President and General Counsel*  
*Eric Walden, Area Manager for NW Region*  
*Jason Reinwald, Controller*  
*Michael Madden, Vice President of Real Estate*  
*Jason Souza, Krazan and Associates, Senior Environmental Manager*  
*Glenn Amster, Lane Powell PC, Shareholder*  
*Andrew Rigel, Lane Powell PC, Associate Attorney*
- ii. the location where all documents reviewed are currently kept.  
*IAA Corporate Headquarters*  
*Insurance Auto Auctions, Inc.*  
*Two Westbrook Corporate Center, Suite 500*  
*Westchester, IL 60154*



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Schiff Hardin LLP  
233 S. Wacker Drive  
Suite 6600  
Chicago, IL 60606

---

T 312.258.5500  
F 312.258.5600

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schiffhardin.com

**Francis X. Lyons**  
312.258.5661  
flyons@schiffhardin.com

March 14, 2016

Laurie J. Lee  
Attorney Advisor  
Natural Resources Section  
National Oceanic and Atmospheric Administration  
Office of General Counsel  
501 W. Ocean Blvd., Suite 4470  
Long Beach, CA 90802

**Re: Notice of Intent, Lower Duwamish Property: Insurance Auto Auctions, Inc.  
King County Washington Tax Parcel(s): 5422600010, 5422600060**

Dear Ms. Lee:

We represent Insurance Auto Action Incorporated ("IAA"). This letter responds to your letter of January 29<sup>th</sup>, 2016 to Mary A. Mullin of my firm. Please direct all future correspondence in this matter to me. As explained in greater detail in response to a USEPA Notice of Potential Liability Pursuant to Section 107(a) and Request for Information Pursuant to Section 104(e) of CERCLA for the Lower Duwamish Waterway Superfund Site ("LDW"), IAA does not believe that there is credible evidence to support naming IAA as a PRP in this matter. IAA's response was set forth in a letter dated May 23, 2008 from Glenn Amster of the Lane Powell firm, to Claire Hong, USEPA, Region 10 ("the Amster letter"). A copy of this letter is attached hereto for your convenience.

As detailed more fully in the Amster letter, IAA has leased the property located at 8801 East Marginal Way south, Tukwila, Washington, since December, 2004 ("the Site"). IAA activities at the Site consist of receiving, storage, and ultimate auction of total loss vehicles. IAA does not dismantle, paint, crush, wash or remove fluids or parts from the vehicles while stored at the Site. The only chemicals used at the facility are diesel and propane. No chlorinated solvents are used at the facility. The majority of the facility is paved, and any incidental leakage of fluid from a vehicle is quickly addressed through established procedures, including the use of absorbent materials. Further, IAA operates its own storm water system at the Site.

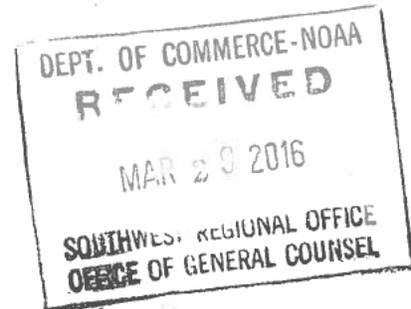


MICHELLE U. ROSENTHAL  
206.535.6006  
michelle@verislawgroup.com

March 28, 2016

*Via U.S. Mail and Electronic Mail (laurie.lee@noaa.gov)*

Laurie J. Lee  
NOAA Office of General Counsel  
Natural Resources Section  
501 West Ocean Boulevard, Suite 4470  
Long Beach, CA 90802



Re: *Notice of Intent: Lower Duwamish Waterway  
Ilahie Holdings, Inc.*

Dear Ms. Lee:

We are writing in regard to the January 29, 2016 Notice of Intent (Notice) the Elliot Bay Trustee Council (Trustees) sent to Ilahie Holdings, Inc. (Ilahie) regarding the Trustees' intent to proceed with a Natural Resource Damage Assessment (NRDA) of the waterways associated with Harbor Island and the Lower Duwamish River. The letter references two tax parcels:

- Tax Parcel No. 5367202506 is a brick commercial office building.
- Tax Parcel No. 53672025067 is a parking lot that serves the office building.

Ilahie appreciates the Trustees' Notice, but has insufficient information at this time to make a decision about participating in the NRDA process. Nonetheless, Ilahie wants to remain informed as the process moves forward and may choose to participate at a later date.

In the meantime, please do not hesitate to contact me if you have questions.

Sincerely,

VERIS LAW GROUP PLLC

MICHELLE U. ROSENTHAL

cc: Client

4810-9227-1919, v. 2



# ICICLE

March 10, 2016

Lauri J. Lee  
NOAA Office of General Counsel  
Natural Resources Section  
501 West Ocean Blvd., Suite 4470  
Long Beach, CA 90802

Via email to [Laurie.Lee@noaa.gov](mailto:Laurie.Lee@noaa.gov)

RE: Notice of Intent, Lower Duwamish Property, Received 2/9/15  
King county Washington Tax Parcel: 5367202505

Dear Ms. Lee:

We are in receipt of the above referenced notice and invitation to participate with the Elliott Bay Trustee Council in a cooperative process to perform an injury assessment for natural resource damage in the Lower Duwamish Waterway and the East and West Waterways of Harbor Island.

Except for a brief period of subleasing space in the Seafreeze seafood processing facility located at 206 S.W. Michigan Street in Seattle, Washington beginning in late June 2008, Icicle Seafoods, Inc. ("Icicle") has held no interest at or within one-half mile of the superfund site. Further, Icicle possessed and complied with the terms of all environmental permits required during its short sublease of the subject property. Icicle does not believe it has any liability for the subject natural resource damage and is not on the list of GNL Entity Recipients for this superfund site.

Best regards,

ICICLE SEAFOODS, INC.

Patricia M. Hardina  
General Counsel & EVP Risk Management

**ICICLE SEAFOODS, INC.**

4019 - 21st Avenue West • Seattle, WA 98199  
P.O. Box 79003 • Seattle, WA 98119 • Tel: 206-282-0988 • Fax: 206-282-7222



Vanessa Nalle - NOAA Affiliate <vanessa.nalle@noaa.gov>

---

**RE: NOI letter from NOAA**

2 messages

---

**Murphy Soares, Alice** <AliceMurphySoares@dwt.com>

Tue, Apr 12, 2016 at 12:31 PM

To: Vanessa Nalle - NOAA Affiliate <vanessa.nalle@noaa.gov>

Cc: "Todd, Brian" <briantodd@dwt.com>, "Sabin, Tina" <tinasabin@dwt.com>

Hi Vanessa,

Thank you for your email, here is what I have learned; DWT Washington LLC, which serves as Registered Agent for corporate entities represented by Davis Wright Tremaine LLP served as the registered agent for Indal Corporation. Indal Corporation has been an inactive entity with the Washington Secretary of State since March 31, 2009, and DWT Washington LLC has resigned as Registered Agent.

Davis Wright Tremaine LLP has not served as legal counsel to Indal Corporation since before that time, so there was no client for me to forward your letter to.

This was part of the reason none of the records were showing up in our system.

Unfortunately, I have no further information .

Best Regards,

~Alice

**Alice Murphy Soares | Davis Wright Tremaine LLP**

Administrative Assistant for Corporate Maintenance

1201 Third Avenue, Suite 2200 | Seattle, WA 98101

Tel: (206) 757-8716 | Fax: (206) 757-7700

Email: [alicemurphysoares@dwt.com](mailto:alicemurphysoares@dwt.com) | Website: [www.dwt.com](http://www.dwt.com)

Anchorage | Bellevue | Los Angeles | New York | Portland | San Francisco | Seattle | Shanghai | Washington, D.C.

---

**From:** Vanessa Nalle - NOAA Affiliate [mailto:vanessa.nalle@noaa.gov]

**Sent:** Tuesday, April 12, 2016 11:37 AM

**To:** Murphy Soares, Alice

**Cc:** Laurie Lee - NOAA Federal

**Subject:** NOI letter from NOAA

Hi Alice,

I'm writing to follow up on the voicemail I left you regarding your inquiry through Deanna Harwood.

The party named in connection with the Lower Duwamish NOI letter DWT received on March 30, 2016 is **Young Corporation (Indal Corporation)** - associated with Washington State tax parcel # 0001800113.

Were you able to determine if they are indeed clients of DWT Washington LLC?

Thank you,

—

*Vanessa Nalle*

ERT Inc.

**NOAA Office of General Counsel - Southwest**

**Montrose Settlements Restoration Program**

501 W. Ocean Blvd.

Suite 4470

Long Beach, CA 90802

562-980-4080

562-980-4084 fax

[www.montroserecovery.noaa.gov](http://www.montroserecovery.noaa.gov)

Find us on Facebook

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---

**Vanessa Nalle - NOAA Affiliate** <vanessa.nalle@noaa.gov>

Tue, Apr 12, 2016 at 12:42 PM

Draft To: "Murphy Soares, Alice" <AliceMurphySoares@dwt.com>

Cc: "Todd, Brian" <briantodd@dwt.com>, "Sabin, Tina" <tinasabin@dwt.com>, Laurie Lee - NOAA Federal <laurie.lee@noaa.gov>, Rebecca Hoff - NOAA Federal <rebecca.hoff@noaa.gov>

[Quoted text hidden]

February 29, 2016

**VIA US MAIL, AND VIA EMAIL TO LAURIE.LEE@NOAA.GOV**

Ms. Laurie J. Lee, Esq.  
NOAA Office of General Counsel  
Natural Resources Section  
501 W. Ocean Blvd.  
Suite 4470  
Long Beach CA 90802

**Re: Response to NOAA Notice of Intent**

Dear Ms. Lee:

We are writing in response to your letter dated January 29th to J.A. Jack & Sons, which was received on February [1? 2?], 2016. This firm represents J.A. Jack on matters related to the Duwamish waterway. Please, henceforward, direct your correspondence on this matter to our attention.

From your letter, it appears that the Elliott Bay Trustee Council (the "Trustees") has concluded that J.A. Jack is "a potentially liable party that has contributed to the release of hazardous substances" in the Lower Duwamish waterway. J.A. Jack affirmatively denies that conclusion.

We also request, by this letter, that you forward to this firm all information the Trustees have considered in formulating that conclusion. Please consider this to be a formal request to NOAA and to the Department of Ecology under both the Freedom of Information Act and the Washington Public Disclosure Act. Specific requests to NOAA and to the Department of Ecology are enclosed with this letter. Please let us know immediately if we need to transmit these requests independently to the agencies.

Your letter requests a response from J.A. Jack "indicating [its] intentions". We believe that you are asking two questions. First, whether J.A. Jack intends to participate in the proposed cooperative assessment that the Trustees apparently plan to undertake. Second, whether J.A. Jack intends to fund such an undertaking.

Your letter does not offer sufficient information for J.A. Jack to provide an answer to these questions at this time.

In particular, we do not know what information has already been gathered by the Trustees, what additional information gathering the Trustees propose to undertake, what expenses the Trustees expect will be incurred, the time horizon for performing the work, who will actually

Ms. Laurie J. Lee  
February 29, 2016  
Page 2

perform the work, which parties would participate in the work, how they would participate, and how the costs of performance would be shared.

To provide a meaningful answer to your questions, we will need to receive more information from the Trustees. How should we go about obtaining such information? Do the Trustees have specific proposals we should see and evaluate? Will you be holding informational meetings? If so, when, and where?

Please provide responses on these questions, as well as to the FOIA request above, so that we may meaningfully weigh J.A. Jack's options and your proposal. Thank you. Please let us know if you have any questions regarding this response.

Sincerely,



Loren R. Dunn  
of

RIDDELL WILLIAMS P.S.  
Counsel for J.A. Jack

Enclosures

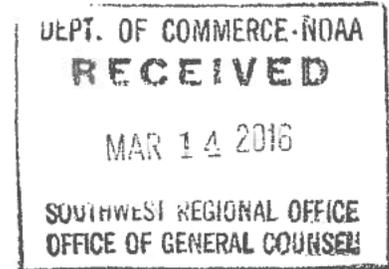
**William A. Anderson II, LLC**  
P.O. Box 62  
Sherwood, MD 21665

410-886-2144  
waatwolaw@gmail.com

March 8, 2016

**Via Certified Mail &  
E-mail to [Laurie.Lee@noaa.gov](mailto:Laurie.Lee@noaa.gov)**

Laurie J. Lee, Esquire  
NOAA Office of General Counsel  
Natural Resources Section  
501 W. Ocean Blvd., Suite 4470  
Long Beach, CA 90802



**Re:** Notice of Intent, Lower Duwamish Property: J.M. Huber Corporation  
King County, Washington Tax Parcel 1924049043

Dear Ms. Lee:

On February 11, 2016, J. M. Huber Corporation (“Huber” or “the Company” below) received your letter dated January 29, 2016, and addressed to Mr. Michael Marberry as CEO. The Company has asked me to respond on its behalf.

Your letter informed Huber of the intent of the Elliott Bay Trustee Council to proceed with a Natural Resource Damage Assessment of the Harbor Island, Lower Duwamish River, and Lockheed Superfund Sites, and it invited Huber to participate. It further indicated that “potentially responsible parties who are interested in participating in the assessment planning and implementation are requested to pay for all phases of the injury assessment.” And it explained that, if Huber believes that it is not responsible for damage to natural resources associated with those three Superfund Sites, it will have an opportunity to offer facts and information that support that conclusion. Your letter further requests a response within 30 days of Huber’s receipt of the letter, in this instance by March 14, 2016, as March 12 falls on a Saturday.

Please be advised that Huber has already provided facts and information to the United States Environmental Protection Agency, Region 10 (“EPA”), to show that it is not a responsible party for the Lower Duwamish River Superfund Site in a section 104(e) response from Jeri P. Wechsler, Corporate Counsel, to Claire Hong, Remedial Project Manager, EPA, dated April 30, 2009. That letter and its attachments are hereby incorporated by reference as though fully set forth herein. For your convenience, I enclose a copy of Ms. Wechsler’s letter. As stated there, Huber’s only involvement with the site was its ownership of personal property on a site owned

Laurie J. Lee, Esquire  
March 8, 2016  
Page 2

by J. A. Jack & Sons, Inc. ("Jack") and operated by Jack to produce ground calcium carbonate pursuant to a manufacturing agreement with Huber. While Huber provided engineering and technical advice to Jack, it did not control the site, operate equipment or maintain personnel there. Huber sold the equipment to Jack in 2004.

The voluminous attachments to Ms. Wechsler's letter should be available from Ms. Hong or the current Remedial Project Manager at EPA. Please note that those materials include Confidential Business Information, and nothing herein should be deemed as a waiver of that designation. No one has ever suggested that Huber has or should have any responsibility whatsoever for either of the other two Superfund Sites mentioned in your letter, and Huber is aware of no reason to believe that it ever had any involvement with those Sites.

Because Huber does not believe that it can properly be considered a responsible party for the Lower Duwamish River Superfund Site, it respectfully declines your invitation to participate in and pay for the injury assessment at this time. However, if you have information to indicate that, notwithstanding Ms. Wechsler's April 30, 2009 104(e) response, there is some reason to believe that Huber has any responsibility for the Lower Duwamish River Superfund Site, please provide that information to me. In that event, we hereby request an extension of the time within which to respond to your invitation to participate until 30 days after I have received that information. Alternatively, if you anticipate some additional administrative proceeding or forum in which Huber will have a further opportunity to offer facts and information to show it is not responsible for damage to natural resources associated with the Superfund Sites in your letter, the Company requests an extension of the time within which to respond to your invitation until 30 days after it is notified of the decision following its presentation of that information.

Please address any further correspondence regarding this matter to me at the above address. Thank you for your cooperation and assistance.

Sincerely yours,



William A. Anderson, II  
Counsel for J. M. Huber Corporation

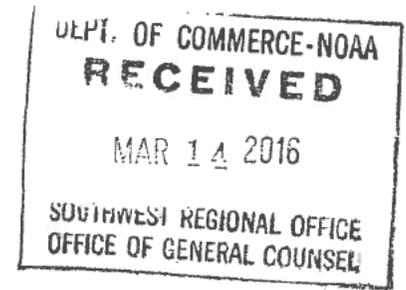
Enclosure

cc: David Cotey, Esquire (w/o)  
Assistant General Counsel

March 11, 2016

VIA US MAIL, AND VIA EMAIL TO [Laurie.Lee@NOAA.gov](mailto:Laurie.Lee@NOAA.gov)

Ms. Laurie J. Lee, Esq.  
NOAA Office of General Counsel  
Natural Resources Section  
501 W. Ocean Blvd.  
Suite 4470  
Long Beach, CA 90802



**Re: Response to NOAA Notice of Intent Letter**

Dear Ms. Lee:

We are writing in response to your letter dated January 29th to Roger Stone of "KapStone (fka) Longview Fibre Company," which was received on February 11, 2016. This firm represents Longview Fibre Paper and Packaging, Inc., doing business as KapStone Container Corporation ("KapStone"), on matters related to the Duwamish waterway. Please, henceforward, direct your correspondence on this matter to our attention.

From your letter, it appears that the Elliott Bay Trustee Council (the "Trustees") has concluded that KapStone is "a potentially liable party that has contributed to the release of hazardous substances" in the Lower Duwamish waterway. KapStone affirmatively denies that conclusion.

We also request, by this letter, that you forward to this firm all information the Trustees have considered in formulating that conclusion. Please consider this to be a formal request to NOAA and to the Department of Ecology under both the Freedom of Information Act and the Washington Public Disclosure Act. Copies of specific requests transmitted to NOAA and to the Department of Ecology are enclosed with this letter.

Your letter requests a response from KapStone "indicating [its] intentions." We believe that you are asking two questions. First, whether KapStone intends to participate in the proposed cooperative assessment that the Trustees apparently plan to undertake. Second, whether KapStone intends to fund such an undertaking.

Your letter does not offer sufficient information for KapStone to provide an answer to these questions at this time.

In particular, we do not know what information has already been gathered by the Trustees, what additional information gathering the Trustees propose to undertake, what expenses the Trustees expect will be incurred, the time horizon for performing the work, who will actually

perform the work, which parties would participate in the work, how they would participate, and how the costs of performance would be shared.

To provide a meaningful answer to your questions, we will need to receive more information from the Trustees. How should we go about obtaining such information? Do the Trustees have specific proposals we should see and evaluate? Will you be holding informational meetings? If so, when, and where?

Please provide responses on these questions, as well as to the attached FOIA request, so that we may meaningfully weigh KapStone's options and your proposal. Thank you. Please let us know if you have any questions regarding this response.

Sincerely



Loren R. Dunn

of

RIDDELL WILLIAMS P.S.

Counsel for KapStone

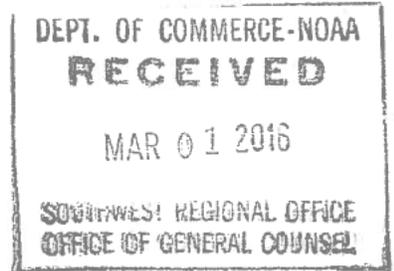
CC: David C. Weber, Riddell Williams P.S.

Enclosures: FOIA Request to NOAA  
Public Records Request to Ecology

ROBIE G. RUSSELL

ATTORNEY AT LAW

76 South Main Street  
Seattle, Washington 98104-2514  
Facsimile (206) 621-2104  
(206) 621-2102  
robielaw@gmail.com



Licensed in Washington  
and Idaho

Our Reference No.  
2802/0002

February 25, 2016

Laurie J. Lee  
NOAA Office of General Counsel  
Natural Resources Section  
501 W. Ocean Blvd., Ste. 4470  
Long Beach, CA 90802  
Laurie.Lee@noaa.gov

Re: Response of Karla Yantz to Lower Duwamish Notice of Intent

Dear Ms. Lee:

We are in receipt of your Lower Duwamish Notice of Intent letter dated January 29, 2016, and addressed to Karla Yantz, 4 South Idaho Street, Seattle, WA 98134, Tax Parcel No. 766700530.

The purpose of this letter is to advise you that our offices will be representing the foregoing party and will be looking forward to the opportunity to provide the necessary information to show that they are not responsible for any natural resource damages in connection with the Lower Duwamish Waterway and other associated sites.

Sincerely,

A handwritten signature in black ink, appearing to read "Robie G. Russell". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Robie G. Russell

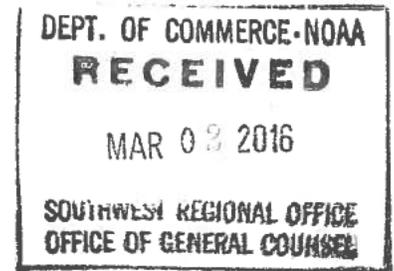
RGR/glf

cc: Karla Yantz

# KELLY-MOORE® PAINTS

February 26, 2016

Ms. Laurie J. Lee  
NOAA Office of General Counsel  
Natural Resources Section  
501 W. Ocean Blvd., Suite 4470  
Long Beach, California 90802  
Laurie.Lee@noaa.gov



**Re: Declination of Invitation to Participate in Natural Resource Injury  
Assessment by Kelly-Moore Paint Company, Inc.**

Dear Ms. Lee:

I am writing in response to your letter of January 29, 2016, wherein the Elliot Bay Trustee Council ("Trustee Council") alleges that Kelly-Moore may be a potentially liable party that contributed to a release of hazardous substances that have injured natural resources at the Lower Duwamish Waterway Superfund Site. As a result, the Trustee Council requests that Kelly-Moore participate in the performance of a natural resource injury assessment of the Lower Duwamish Waterway, Harbor Island, and Lockheed West Superfund Sites. Kelly-Moore takes its environmental stewardship obligations very seriously and has carefully evaluated your request. However, for the reasons discussed below, Kelly-Moore does not have liability in connection with the identified Superfund sites. As a result, Kelly-Moore declines to participate in the assessment.

The Kelly-Moore location referenced in your letter is a small property totaling approximately 2.7 acres, located nearly adjacent to Interstate 5, and generally identified by the street address of 5410 Airport Way South in Seattle, Washington. Kelly-Moore ceased all manufacturing activity at the property nearly a decade ago, sold a portion of the property in 2011 and has since sold the remainder of the property to a third-party. Although Kelly-Moore remains involved in some ongoing cleanup activity at the property – predominately in connection with total petroleum hydrocarbons – it is not the current owner of the property. Cleanup at the Site is being performed pursuant to the Washington State Voluntary Cleanup Program. Environmental investigations at the property have not identified any significant off-site impacts from former operations.

The former Kelly-Moore property is not close to any of the sites listed in your letter. At its nearest proximity, Kelly-Moore's former property is located approximately 5,000 feet from the Lower Duwamish Waterway, *i.e.*, nearly a mile. It is separated from the Lower Duwamish by multiple streets, major thoroughfares, and a long-standing, significant commercial and industrial community. The Kelly-Moore property is even further from the two other Superfund

sites – Lockheed West and Harbor Island – mentioned in your letter. Kelly-Moore never operated at the Lockheed West or Harbor Island locations and never conducted manufacturing operations at any property in closer proximity to the Lower Duwamish.

Furthermore, there is no identified nexus between former on-site activity at the property and the contamination identified by regulatory agencies in the Lower Duwamish. Kelly-Moore has not identified any disposal of chemicals of concern at its former property that could have contributed to environmental impacts in the Lower Duwamish Waterway or caused natural resource damages in the vicinity. In fact, Kelly-Moore has been unable to identify any former manufacturing activity at the property that would have realistically impacted the waterway, located over a mile away, or any realistic pathway whereby any contamination at the property would have migrated to the waterway and measurably impacted natural resources.

Please direct any future correspondence on this issue to me, with a copy to Kelly-Moore's outside legal counsel, Mr. Boer, whose address is listed below.

Sincerely,



Steve DeVoe  
President/CEO

Kelly-Moore Paint Co.  
987 Commercial St.  
San Carlos, CA 94070

cc: Mary Logue, Kelly-Moore

J. Tom Boer  
Hunton & Williams LLP  
575 Market Street, Suite 3700  
San Francisco, California 94105  
jtboer@hunton.com



JOHANNESSEN & ASSOCIATES, P.S.  
ENVIRONMENTAL & CONSTRUCTION LAW

March 10, 2016

Via E-Mail Only

Laurie J. Lee, Attorney Advisor  
NOAA Office of General Counsel  
Natural Resources Section  
501 W. Ocean Blvd., Suite 4470  
Long Beach, CA 90802

Re: Notice of Intent, Lower Duwamish property: Kelly-Ryan, Inc.  
King County Washington Tax Parcels: 6871200651, 6871200670, 6871200675,  
and 6871200811

Dear Ms. Lee:

Our firm represents Kelly-Ryan, Inc. ("Kelly-Ryan"). I am writing in response to the Notice of Intent sent by the Elliott Bay Trustee Council ("Trustees") and referencing the four above-listed tax parcels. Although the Trustees' Notice of Intent is dated January 29, 2016, it was not received by Kelly-Ryan until February 26, 2016. I initially sent a copy of this letter to you via e-mail on February 29, 2016, and requested whether it would be possible to obtain additional information on the basis for the Trustees' assertion of liability against Kelly-Ryan. You indicated that you would get back to me.

Contrary to the Notice of Intent, Kelly-Ryan is not a potentially responsible party ("PRP") in connection with the Lower Duwamish Waterway ("LDW"). Kelly-Ryan initially received a combined General Notice Letter and a Request for Information Pursuant to CERCLA, Section 104(e) in March of 2008. After Kelly-Ryan submitted its 104(e) response, EPA made the conscious decision to omit Kelly-Ryan from EPA's updated list of General Notice Letter recipients that was published in November 2012. Because Kelly-Ryan was not on the list of recipients for EPA's second round of stand-alone General Notice Letters issued in 2012 and has never received a second General Notice Letter, we contacted EPA. We spoke with Aaron Lambert, Remedial Project Manager at EPA in December 2012. He confirmed that Kelly-Ryan was no longer considered by EPA to be a PRP. Furthermore, Kelly-Ryan has never been named a potentially liable party by the Washington Department of Ecology under the Model Toxics Control Act.

Until its receipt of this letter from the Trustees, Kelly-Ryan had never been approached by the Trustees or asked to participate in any NRD assessment or in any *de minimis* or non-*de minimis* settlement. In December 2009, the National Oceanic and Atmospheric Administration ("NOAA"), on behalf of the Trustees, issued letters to forty-four (44) property owners and

businesses along the LDW. That letter notified those property owners of a natural resource damages claim that the Trustees were seeking to resolve.

The letter encouraged potentially responsible parties ("PRPs") to enter into early settlement negotiations with the Trustees. It invited recipients to participate in a question and answer session sponsored by the Trustees on January 21, 2010. At that meeting, the Trustees discussed some of the factors that they had taken into consideration when determining whether a property owner was liable. The Trustees noted that the criteria used to determine liability is different from that of the EPA. However, the Trustees stated that they did not review the parties' Section 104(e) responses prior to making their liability determinations. They encouraged the PRPs to provide any additional information they believed was important to the Trustees. The Trustees affirmed that they would then review the information and decide whether to change their liability determination.

Kelly-Ryan was not a recipient of that 2009 letter. Based upon past discussions with the Trustees, our firm was under the impression that the Trustees did not intend to apportion or allocate liability to tenants or former owners of properties for which they have made liability determinations. It was also our understanding that the Trustees also did not envision including tenants in consent decrees negotiated between those property owners and the Trustees.

At no time has Kelly-Ryan received any notification from the Trustees that they were alleging that Kelly-Ryan is liable for natural resource damages. At no time has Kelly-Ryan received a "liability determination," been informed of the potential to resolve any alleged liability as a *de minimis* party, been provided with an alleged injury allocation, or any other information that would have allowed it to assess its potential liabilities (if any) and/or to participate in any *de minimis* NRD settlement. We are unaware of any basis for allocating liability based on Kelly-Ryan's activities conducted on the above-listed leased parcels. The four listed tax parcels are all upland parcels with no frontage on or activities along the LDW.

Given this additional information, kindly provide us with whatever new information considered or relied upon by the Trustees that would be significant enough to warrant a determination that Kelly-Ryan is or may be liable for natural resource damages. We would also appreciate it if you would inform us as to whether the Trustees have assessed Kelly-Ryan's share of alleged liability in the form of a discounted service acres per year ("dSAY") calculation or otherwise.

If there is documentation or information provided that would warrant potential settlement of any alleged liability by Kelly-Ryan, then we would appreciate receiving it so that we can initiate settlement discussions with the Trustees. Certainly, we have no information (nor does EPA, for that matter) that supports any finding that Kelly-Ryan is or should be considered a potentially responsible party for, or for any injuries to natural resources in, the LDW. Kelly-Ryan remains open to considering participation in a cooperative approach to conducting an injury assessment, if sufficient information can be provided to substantiate a claim of liability by the Trustees against Kelly-Ryan.

Laurie Lee, NOAA Office of General Counsel  
March 2, 2016  
Page 3 of 3

I look forward to hearing from you with the information requested. Thank you for your assistance in this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kim Maree Johannessen". The signature is written in a cursive, flowing style.

Kim Maree Johannessen

KMJ:kwl

cc: Kelly-Ryan, Inc.

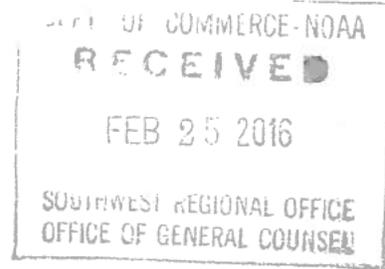


**MARTEN LAW**

February 22, 2016

Via Electronic and Certified Mail

Laurie J. Lee  
NOAA Office of General Counsel  
Natural Resources Section  
501 W. Ocean Blvd., Suite 4470  
Long Beach, CA 90802  
Laurie.Lee@noaa.gov



RE: Notice of Intent, Lower Duwamish property: Kiewit Construction Company; King County  
Tax Parcels: 1924049026, 21300695, 2136200706, 2924049089, 7666703440, 7666703442

Dear Ms. Lee:

This letter responds to your January 29, 2016 letter to Kiewit Construction Company concerning the injury assessment for natural resource damages in the Lower Duwamish Waterway in Seattle, Washington ("the Site"). Kiewit Construction Company was formed in 1981, but no longer exists by that name as it underwent a name change in 2010 to "Kiewit Infrastructure Co."

Kiewit Infrastructure Co. is not a potentially liable party under CERCLA or a potentially liable party under MTCA with respect to the Site. Kiewit Infrastructure Co. has never owned or leased King County Parcels No. 1924049026, 21300695, 2136200706, 2924049089, 7666703440, or 7666703442. It is not associated with any releases of hazardous substances from those parcels or at the Lower Duwamish Superfund Site. Consequently, Kiewit Infrastructure Co. (1) declines the invitation to join in the assessment process and (2) requests that it be removed from any further consideration by the Trustees with respect to the Site.

We note that the Trustees also sent an invitation to a corporation named General Construction Company ("GCC"), which currently leases Parcel 7666703440 from the Port of Seattle, the property owner. The current GCC, although associated with the Kiewit group of companies, is not and never has been a subsidiary of Kiewit Infrastructure Co. In any event, GCC also is not a potentially liable party under CERCLA or a potentially liable party under MTCA with respect to the Site. Information as to GCC's formation and corporate history was provided to EPA in response to three separate information requests under section 104(e) of CERCLA.

Laurie J. Lee  
February 22, 2016  
Page 2

In response to that information, EPA reevaluated its notice of general liability and determined that the current GCC "was not the correct recipient of the General Notice Letter intended for the pre-1996 General Construction Company." See Exhibit 1.

For all of these reasons, Kiewit Infrastructure Co. declines to participate in the injury assessment process, and should be removed from the Trustee's list of parties who may be responsible for any alleged natural resource damages at the Site. Kiewit Infrastructure Co. requests written confirmation that it received this invitation in error.

Thank you for your consideration of this information. Please let us know if you have any questions.

Very truly yours,

A handwritten signature in black ink that reads "Linda R. Larson". The signature is written in a cursive, flowing style.

Linda R. Larson

Enclosure:

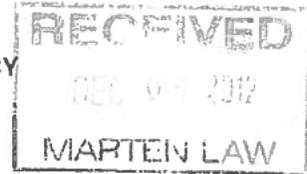
Exhibit 1: Letter from Aaron Lambert to Linda R. Larson dated December 4, 2012

cc: Mary Carnazzo

# Exhibit 1



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101-3140



DEC 04 2012

OFFICE OF  
ENVIRONMENTAL CLEANUP

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

Linda R. Larson  
Marten Law  
1191 2nd Avenue, Suite 2200  
Seattle, Washington 98101

Re: General Notice of Potential Liability Pursuant to Section 107(a) for the Lower Duwamish  
Waterway Superfund Site, Seattle, Washington

Dear Ms. Larson:

On May 22, 2012, the USEPA sent a General Notice Letter of Potential Liability to Kiewit Construction Company for a corporation named General Construction Company. EPA reviewed information received from Kiewit Corporation on October 1, 2012, which helped to clarify the relationship between Kiewit Corporation and a corporation in existence until approximately 1996 named General Construction Company. Based on this new information, EPA has determined that Kiewit Corporation was not the correct recipient of the General Notice Letter intended for the pre-1996 General Construction Company.

Please contact Alex Fidis at the EPA Region 10 Office of Regional Counsel, (206) 553-4710, if you have any questions concerning this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Lambert", with a long horizontal line extending to the right.

Aaron Lambert  
Environmental Protection Specialist  
Remedial Cleanup Program  
Site Cleanup Unit 3

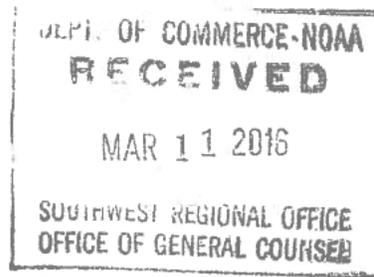
KING COUNTY PROSECUTING ATTORNEY'S OFFICE



DANIEL T. SATTERBERG  
PROSECUTING ATTORNEY

JUSTICE  
COMPASSION  
PROFESSIONALISM  
INTEGRITY  
LEADERSHIP

March 8, 2016



Laurie J. Lee, Attorney Advisor  
NOAA Office of General Counsel  
Natural Resources Section  
501 W. Ocean Blvd., Suite 4470  
Long Beach, CA 90802

RE: Notice of Intent, Lower Duwamish property: King County Washington  
King County Washington Tax Parcel(s): 1824049011, 1924049002, 1924049041,  
1924049043, 1924049067, 7327901195, 7666703050, 2924049091, 7327904049

Dear Ms. Lee:

King County hereby responds to NOAA's letter dated January 29, 2016, which was received by King County on February 11, 2016.

NOAA's letter invited King County to participate in a cooperative process to perform an injury assessment for natural resource damages in the Lower Duwamish Waterway and the East and West Waterways of Harbor Island. The intent of this response is to inform NOAA that King County desires to conduct settlement discussions with NOAA including meetings and exchanges of documents. The County believes that through these discussions it can resolve this matter, and thereby (1) reduce the number of DSAYs NOAA has attributed to County real properties and facilities, (2) reach agreement with NOAA on the identification of suitable habitat sites, and (3) make optimum use of the scarce public funding upon which the County must rely in meeting its responsibilities.

CIVIL DIVISION, DEPARTMENT OF NATURAL RESOURCES  
KING COUNTY ADMINISTRATION BUILDING 900  
500 FOURTH AVENUE • SEATTLE, WASHINGTON 98104  
Tel: (206) 296-0430 • Fax (206) 296-0415 • [www.kingcounty.gov/prosecutor](http://www.kingcounty.gov/prosecutor)

King County will contact NOAA shortly to arrange for the presentations and discussions we previously outlined during the meeting between representatives of NOAA and King County on October 20, 2015 at NOAA's Offices in Seattle.

We look forward to working with NOAA to achieve a mutually acceptable resolution.

Sincerely,

DANIEL T. SATTERBERG  
King County Prosecuting Attorney

A handwritten signature in black ink, appearing to read "Bill", written in a cursive style.

William E. Blakney,  
Sr. Deputy Prosecuting Attorney

WEB/mal

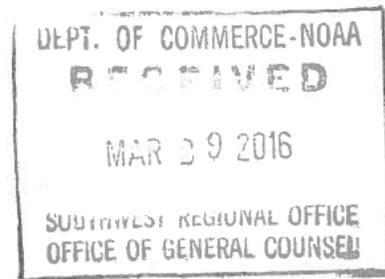


MICHELLE U. ROSENTHAL  
206.535.6006  
michelle@verislawgroup.com

March 28, 2016

*Via U.S. Mail and Electronic Mail (laurie.lee@noaa.gov)*

Laurie J. Lee  
NOAA Office of General Counsel  
Natural Resources Section  
501 West Ocean Boulevard, Suite 4470  
Long Beach, CA 90802



Re: *Notice of Intent: Lower Duwamish Waterway  
Knappton Maritime Corporation*

Dear Ms. Lee:

We are writing in regard to the January 29, 2016 Notice of Intent (Notice) the Elliot Bay Trustee Council (Trustees) sent to Knappton Maritime Corporation (Knappton) regarding the Trustees' intent to proceed with a Natural Resource Damage Assessment (NRDA) of the waterways associated with Harbor Island and the Lower Duwamish River. The letter references two tax parcels:

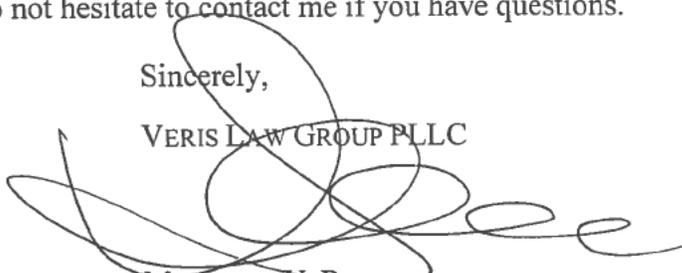
- Tax Parcel No. 7671800549 appears to be a portion of a pier at the north end of Harbor Island. Knappton has no information regarding its alleged connection to this parcel.
- Tax Parcel No. 7666701640 does not appear to exist.

Knappton appreciates the Trustees' Notice, but has insufficient information at this time to make a decision about participating in the NRDA process. Nonetheless, Knappton wants to remain informed as the process moves forward and may choose to participate at a later date.

In the meantime, please do not hesitate to contact me if you have questions.

Sincerely,

VERIS LAW GROUP PLLC



MICHELLE U. ROSENTHAL

cc: Client

4831-6661-7135, v. 2

April 20, 2016

*Via Email*

Ms. Laurie J. Lee  
NOAA Office of General Counsel  
Natural Resources Section  
501 W. Ocean Blvd., Suite 4470  
Long Beach, California 90802

Re: Lower Duwamish Waterway -Notice and Invitation to Participate in NRD  
Assessment Plan

Dear Ms. Lee:

This letter follows our prior communication with your office and acknowledges on behalf of Lafarge North America Inc. ("Lafarge") receipt of NOAA's "Notice of Intent" dated January 29, 2016 regarding the intent of the Elliott Bay Trustees Council ("Trustees") to conduct a Natural Resource Damage ("NRD") Assessment of the Harbor Island, Lower Duwamish River, and Lockheed Superfund Sites. Based upon the Notice of Intent, it is Lafarge's understanding that the first intended task will be the development of an NRD Assessment Plan for the three Superfund sites to be followed by the performance of the Assessment Plan. Lafarge understands that the decision to proceed with an NRD Assessment is based upon the previous "Final Pre-Assessment Screen for Lower Duwamish River, 2009" and the "Final-Lower Duwamish River NRDA Restoration Plan and Programmatic Environmental Impact Statement, 2013". With the Notice of Intent, Lafarge is being invited to participate in the development of the NRD Assessment Plan and conduct of the assessment as it has been identified by NOAA as a "potentially liable party" ("PRP") relative to injury to natural resources.

Please be advised that Lafarge is willing to explore, with other PRPs, participation in the development of an Assessment Plan and the subsequent assessment. However, Lafarge's expression of a willingness to explore participation is expressly not an acknowledgment by Lafarge that it bears any liability for injury to natural resources within the Lower Duwamish River, or within the Harbor Island or Lockheed Superfund Sites.

The Notice of Intent was not accompanied by a listing of other persons or entities also invited to participate in the development of an Assessment Plan and Lafarge has been unable to

identify through publicly available information what other parties are considered by NOAA to be PRPs for injury to natural resources within the Lower Duwamish River, or at the Harbor Island or Lockheed Superfund Sites. It would be of obvious assistance to Lafarge and any other PRP to be furnished with a list of PRPs which have received the Notice of Intent and which have responded to the Notice of Intent, including the appropriate contact information. Additionally, so that Lafarge can make better informed decisions regarding the implications of the Notice of Intent, we have the following questions which should be addressed:

1. Whether assessment-related costs paid by a participating party will result in a "credit" that reduces the party's remaining natural resource liability;
2. The terms and conditions of any prior NRD settlements with other parties at the Harbor Island, Lower Duwamish Waterway, and Lockheed West Superfund Sites, and how those settlements will affect the contemplated NRD Assessment;
3. The terms and conditions of any funding and participation agreement to be executed by the Trustees and participating parties for the work described in NOAA's Notice of Intent;
4. The names of the other parties who received a Notice of Intent, and the names of parties who have elected to participate in the work described in NOAA's Notice of Intent;
5. The estimated cost to develop the Assessment Plan; and
6. The manner in which injury assessment activities and natural resource damage liability will be allocated between the Harbor Island, Lower Duwamish Waterway, and Lockheed West Superfund Sites.

Thank you for your anticipated response to our questions and our request for additional information.

Sincerely,

*Steven C. Kohl*

Steven C. Kohl  
Partner

SCK/sck

March 28, 2016

*Via Email and Regular Mail*

Ms. Laurie J. Lee  
NOAA Office of General Counsel  
Natural Resources Section  
501 W. Ocean Blvd., Suite 4470  
Long Beach, California 90802

Re: Lower Duwamish Waterway -Notice and Invitation to Participate in NRD  
Assessment Plan -

Dear Ms. Lee:

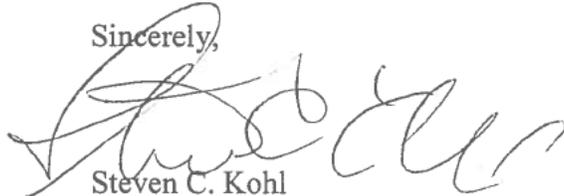
This letter acknowledges on behalf of Lafarge North America Inc. (“Lafarge”) receipt of NOAA’s “Notice of Intent” dated January 29, 2016 regarding the intent of the Elliott Bay Trustees Council (“Trustees”) to conduct a Natural Resource Damage (“NRD”) Assessment of the Harbor Island, Lower Duwamish River, and Lockheed Superfund Sites. Based upon the Notice of Intent, it is Lafarge’s understanding that the first intended task will be the development of an NRD Assessment Plan for the three Superfund sites to be followed by the performance of the Assessment Plan. Lafarge understands that the decision to proceed with an NRD Assessment is based upon the previous “Final Pre-Assessment Screen for Lower Duwamish River, 2009” and the “Final-Lower Duwamish River NRDA Restoration Plan and Programmatic Environmental Impact Statement, 2013”. With the Notice of Intent, Lafarge is being invited to participate in the development of the NRD Assessment Plan and conduct of the assessment as it has been identified by NOAA as a “potentially liable party” (“PRP”) relative to injury to natural resources.

Please be advised that Lafarge is willing to explore, with other PRPs, participation in the development of an Assessment Plan and the subsequent assessment. However, Lafarge’s expression of a willingness to explore participation is expressly not an acknowledgment by Lafarge that it bears any liability for injury to natural resources within the Lower Duwamish River, or within the Harbor Island or Lockheed Superfund Sites.

The Notice of Intent was not accompanied by a listing of other persons or entities also invited to participate in the development of an Assessment Plan and Lafarge has been unable to

identify through publicly available information what other parties are considered by NOAA to be PRPs for injury to natural resources within the Lower Duwamish River, or at the Harbor Island or Lockheed Superfund Sites. It would be of obvious assistance to Lafarge and any other PRP to be furnished with a list of PRPs which have received the Notice of Intent and which have responded to the Notice of Intent, including the appropriate contact information.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven C. Kohl", written in a cursive style.

Steven C. Kohl  
Partner

SCK/sck

CT

March 30, 2016

Laurie J. Lee  
United States Department of Commerce  
Suite 4470,  
501 West Ocean Boulevard,  
Long Beach, CA 90802

Re: Tax Parcel:1924049052, 1924049070 // To: Lehigh Northwest Cement Company

Case No.

Dear Sir/Madam:

After checking our records and the records of the State of WA, it has been determined that CT Corporation System is not the registered agent for an entity by the name of Lehigh Northwest Cement Company.

CT was unable to forward.

Very truly yours,

CT Corporation System

Log# 528907647

Sent By Regular Mail

cc: United States Department of Commerce  
National Oceanic and Atmospheric Adminis,  
Suite 4470,  
501 West Ocean Boulevard,  
Long Beach, CA 90802

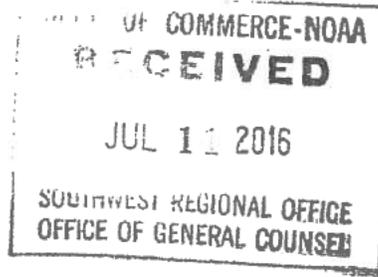
**(Returned To)**

Laurie J. Lee  
United States Department of Commerce  
Suite 4470,  
501 West Ocean Boulevard,  
Long Beach, CA 90802

**MPBA**  
Attorneys/Seattle

5500 COLUMBIA CENTER  
701 FIFTH AVENUE  
SEATTLE, WA 98104-7096  
(206) 682-7090 TEL  
(206) 625-9534 FAX

JOSHUA J. POPE  
DIRECT DIAL: 206-695-1113  
jpopc@mpba.com



July 6, 2016

**VIA CERTIFIED MAIL and  
EMAIL TO [Laurie.Lee@noaa.gov](mailto:Laurie.Lee@noaa.gov)**

National Oceanic and Atmospheric Administration  
Office of General Counsel  
Attn: Laurie J. Lee  
Attorney Advisor – Natural Resources Section  
501 West Ocean Boulevard, Suite 4470  
Long Beach, CA 90802

Re: Response to Notice of Intent, Lower Duwamish Property  
Lipsett Company, L.L.C.  
King County, Washington Tax Parcels: 7666703462 and 7666703530

Dear Ms. Lee:

Montgomery Purdue Blankinship & Austin represents Lipsett Company, L.L.C. (“Lipsett”) in matters pertaining to the above-referenced parcels (the “Property”). Lipsett’s former counsel (Walter J. Yund, Jr.) provided me with a copy of your Notice of Intent letter dated January 29, 2016 (the “Notice”). Please direct all future correspondence relating to the Property to my attention. This letter will serve as Lipsett’s formal response to the Notice.

Pursuant to that certain Real Estate Purchase and Sale Agreement dated October 9, 1996, as amended on June 19, 1997 and April 17, 2012 (collectively, the “Agreement”), Lipsett purchased the Property from the Port of Seattle (the “Port”). The Agreement contains an express obligation of the Port pertaining to the environmental condition of the Property, which provides the following in pertinent part

*“Indemnification by Seller. . . . Seller [the Port] shall be responsible for all claims, expenses (including, without limitation, reasonable attorney’s fees, litigation costs, expert witness fees, losses, penalties, fines, judgments, settlements, awards, remediation costs or liabilities*

Laurie J. Lee  
July 6, 2016  
Page 2

*(collectively "Claims")) relating to the Property, including without limitation Claims by third parties such as the Environmental Protection Agency, the Washington State Department of Ecology, or any other governmental or quasi-governmental agency, any prior owner or tenant, any adjacent property owner or tenant, (including without limitation PRP's, attorneys and other professionals, contractors or consultants), to the extent such Claims are based on the release of Hazardous Substances on or about the Property or in the generation, treatment, storage, disposal or use of Hazardous Substances on or about the Property, prior to Closing, provided that Buyer complies with certain restrictions ("Restrictions") defined below in section 6.e. This indemnity shall extend to Claims against Buyer or Buyer's successors relating to a release of Hazardous Substances from Survey Parcel 2<sup>1</sup> even though Buyer, with the consent of the Owner of Parcel 2, caused material from Survey Parcels 3, 4 and 5<sup>2</sup> to be deposited on Parcel 2 during the course of construction on the Property after the date of Close;"*

The Agreement broadly defines "Hazardous Substances" to mean any substance or material defined or designated as hazardous or toxic wastes, hazardous or toxic material, or hazardous, toxic or radioactive substances or other similar term by any federal, state or local statute, regulation or ordinance now or hereafter in effect.

The restrictions referenced above limit the use of the Property to industrial uses as permitted under zoning of the Property, as well as require Lipsett to minimize and restrict the excavation into and the exposure, relocation or handling of those dredge materials. Lipsett has faithfully complied with these restrictions and will continue to do so going forward.

In conclusion, as Lipsett is not responsible for damage to natural resources associated with the Harbor Island, Lower Duwamish Waterway, and Lockheed West Superfund sites referenced in the Notice, and because the Port of Seattle is contractually obligated to indemnify Lipsett for claims pertaining to the generation, treatment, storage, disposal or use of hazardous substances on or about the Property prior to Lipsett's acquisition of the Property, Lipsett chooses not to participate in the cooperative assessment process.

---

<sup>1</sup> This parcel is adjacent to and to the NW of the Lipsett parcels and is now owned by Biodiesel Properties, LLC.

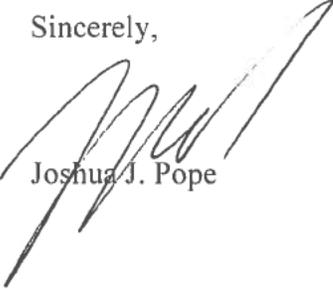
<sup>2</sup> Parcels 3, 4 and 5 make up what are now the two Lipsett parcels.

Laurie J. Lee  
July 6, 2016  
Page 3

I have copied the Port's in-house environmental counsel (Alex Smith) and their outside environmental counsel (Thomas Newlon) on this letter should you wish to speak with them regarding the indemnification obligation contained in the Agreement.

Please let me know if you have any questions. Thank you.

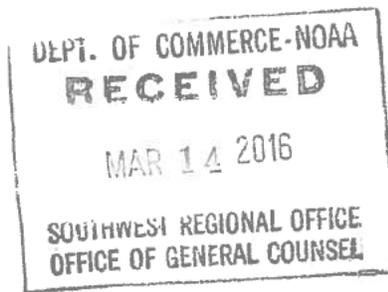
Sincerely,



Joshua J. Pope

JJP:slf

cc: Davene Schaefer – Manager, Lipsett Company, L.L.C. (via email)  
Camille Ralston (via email)  
Alex Smith, Port of Seattle (via email [Smith.a@portseattle.org](mailto:Smith.a@portseattle.org) and mail)  
Thomas Newlon, Stoel Rives LLP (via [Thomas.newlon@stoel.com](mailto:Thomas.newlon@stoel.com) and mail)



Evyann M. Overton  
201 North Charles Street  
Suite 2210  
Baltimore, MD 21201-4150  
Direct:(410) 230-1335  
Fax:(410) 230-1389  
eoverton@bdlaw.com

March 11, 2016

**VIA ELECTRONIC AND U.S. MAIL**

Laurie J. Lee  
NOAA Office of General Counsel  
Natural Resources Section  
501 W. Ocean Blvd., Suite 4470  
Long Beach, CA 90802  
Laurie.Lee@noaa.gov

Re: Notice of Intent, Lower Duwamish property: Liquid Carbonic Corporation King  
County Washington Tax Parcel(s): 1924049067, 3573200920, 3573200955,  
3573200975, 3573201061, 1924049041

Dear Ms. Lee:

I write on behalf of Praxair, Inc. in response to the Elliott Bay Trustee Council's ("Trustees") Notice of Intent letter to Praxair dated January 29, 2016. The letter identifies six purported Liquid Carbonic Corporation Tax Parcels (referenced above), and invites Praxair to participate in a cooperative process to perform the natural resources injury assessment of three sites: Harbor Island, Lower Duwamish Waterway, and Lockheed West Superfund Sites ("Sites"). The Trustees also provide Praxair the opportunity to offer facts and information that support a contention that Praxair is not responsible for damage to natural resources at the Sites.

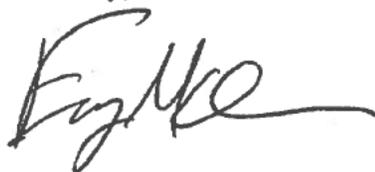
We looked up the six tax parcels referenced above, and found no evidence to support that Liquid Carbonic owned or operate five of the six parcels. Only one parcel has any connection to Praxair – a former Liquid Carbonic Corporation facility designated as tax parcel 3573200920, which is located at 5021 Colorado Avenue South, Seattle, Washington 98314. Praxair has investigated operation of this facility and has concluded that this facility is not responsible for damage to natural resources at the Sites. Praxair accepts the Trustees' invitation to provide facts and information that support this conclusion, but sees no reason to participate in the performance of the injury assessment.

March 11, 2016

Page 2

Please let me know when and in what format Praxair should provide facts and information demonstrating that the former Liquid Carbonic Corporation Colorado Avenue facility is not responsible for damage to natural resources. I will serve as Praxair's primary contact person.

Sincerely,

A handwritten signature in black ink, appearing to read "Evynn M. Overton". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Evynn M. Overton

cc: Michael Th. Bourque, Esq.  
- Praxair, Inc.



Alan N. Bick  
abick@bicklawgroup.com

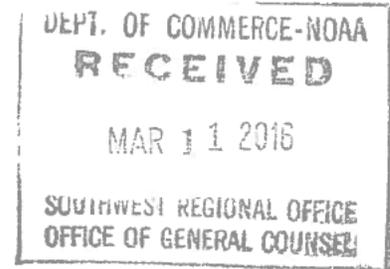
520 Newport Center Drive, Suite 370  
Newport Beach, CA 92660  
949-220-0760

Direct: 949-220-0783

March 8, 2016

Via E-Mail and U.S. Mail

Laurie J. Lee  
NOAA Office of General Counsel  
Natural Resources Section  
501 W. Ocean Blvd., Suite 4470  
Long Beach, CA 90802  
[Laurie.Lee@noaa.gov](mailto:Laurie.Lee@noaa.gov)



RE: Notice of Intent, Lower Duwamish property: Lockheed Ship Building Company  
King County Washington Tax Parcel(s): 7666702475, 7666702485, 7666702490,  
7666702525, 7666702585, 7666702950, 7666702951, 7666702960, 7666702970,  
7666703011, 7666703015, 7666703016, 7666703017

Dear Ms. Lee:

This letter is in response to your Notice of Intent to perform an injury assessment for natural resource damages in the Lower Duwamish Waterway and East and West Waterways of Harbor Island. We represent Lockheed Martin Corporation ("Lockheed Martin") in this matter. We received the Notice of Intent on February 12, 2016.

The Notice of Intent requests a response within 30 days of receipt "indicating your intentions" with regard to participating in the natural resource damages assessment planning and implementation and to paying "all phases of the injury assessment." Lockheed Martin's "intentions" are as follows. Lockheed Martin is interested in participating in the natural resource damages assessment process. Lockheed Martin is also willing to pay for a reasonable and equitable share of the assessment costs.

Please be advised, however, that nothing contained in Lockheed Martin's response herein is or may be construed as an admission of liability for the costs of assessment or any other alleged natural resource damages in connection with the Harbor Island, Lower Duwamish Waterway and Lockheed West Superfund Sites.

The Notice of Intent also requests the contact information for the primary contact person on behalf of Lockheed Martin. The primary contact person will be Alan N. Bick at Bick Law Group. All written correspondence and notices should be sent to Mr. Bick with a copy to Mary P. Morningstar, Associate General Counsel, Lockheed Martin. The following is the contact information for Mr. Bick and Ms. Morningstar:



Laurie J. Lee  
NOAA Office of General Counsel  
Natural Resources Section  
March 8, 2016  
Page 2

Alan N. Bick, Esq.  
Partner  
Bick Law Group  
520 Newport Center Drive, Suite 370  
Newport Beach, CA 92660  
Direct dial: 949-220-0783  
Email: [abick@bicklawgroup.com](mailto:abick@bicklawgroup.com)

Mary P. Morningstar, Esq.  
Associate General Counsel, Environmental Law  
Lockheed Martin Corporation  
6801 Rockledge Drive  
Bethesda, MD 20817  
Direct dial: 301-214-3397  
Email: [mary.p.morningstar@lmco.com](mailto:mary.p.morningstar@lmco.com)

If NOAA requires any additional information from Lockheed Martin at this time, please advise us in that regard. Thank you.

Sincerely,

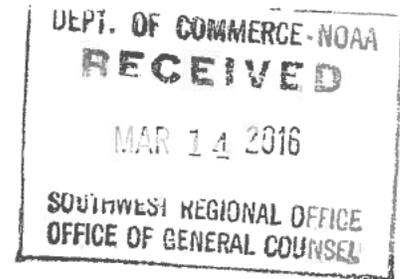
A handwritten signature in cursive script that reads "Alan N. Bick".

Alan N. Bick

cc: Mary P. Morningstar, Lockheed Martin  
Bill Bath, Lockheed Martin EESH

Elaine L. Spencer  
elaine.spencer@millernash.com  
206.777.7551 direct line

March 11, 2016



**BY FIRST-CLASS MAIL AND  
ELECTRONIC MAIL**

Laurie J. Lee  
Natural Resource Section  
NOAA Office of General Counsel  
501 W. Ocean Blvd., Suite 4470  
Long Beach, CA 90802

Subject: Notice of Intent, Lower Duwamish property, Manson Construction Co.,  
King County Tax Parcel(s): 1924049041, 0001600060, 1924049067

Dear Ms. Lee

This is to acknowledge your letters of January 29, 2016 to John Heckel inviting Manson Construction Co. to participate in the process to perform a natural resource injury assessment for the Lower Duwamish Waterway.

On February 16, 2016 I emailed you two questions concerning the invitation. Specifically I asked:

The letters state, "Please note that if you believe you are not responsible for damage to natural resources associated with the Harbor Island, Lower Duwamish Waterway, and Lockheed West Superfund Sites, you will have an opportunity to offer facts and information that support your contention." Are you stating that participation in the natural resource damage assessment, as provided in the Invitation is the only opportunity that a party will have to demonstrate that they are not responsible for damage to natural resources? Or, will parties have that opportunity at some point, regardless of whether they participate in the development of the type and scope of Assessment plan and performance of the damage assessment?

Laurie J. Lee  
March 11, 2016  
Page 2

The letter also states that parties who participate are “requested to pay for all phases of the injury assessment.” How much money do the trustee expect a party to pay for that?

I have not received a response to those questions, which were pertinent to Manson’s consideration of the invitation. Nonetheless, at this time Manson respectfully declines the invitation. It does not believe it owes any natural resource damages, and cannot justify the expenditure implicit in the invitation.

Very truly yours,

MILLER NASH GRAHAM & DUNN  
LLP

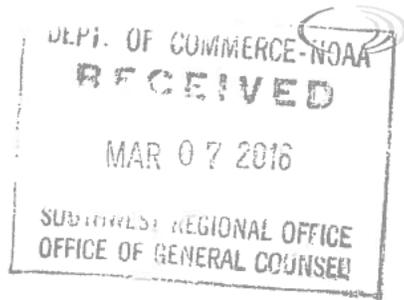
*Elaine L. Spencer* FOR

Elaine L. Spencer

Enclosure

cc: John Heckel  
Dan Whitaker

70085229.1



**DORSEY™**  
DORSEY & WHITNEY LLP

PETER EHRLICHMAN  
Partner  
(206) 903-8825  
FAX (206) 260-9106  
ehrllichman.peter@dorsey.com

March 3, 2016

**VIA U.S. MAIL**

Laurie J. Lee  
NOAA Office of General Counsel  
Natural Resources Section  
501 W. Ocean Blvd., Suite 4470  
Long Beach, CA 90802

Re: Response to NOAA's Notice of Intent regarding Marine Power & Equipment Co., Inc., King County Tax Parcels 0001800104, 0001800128, 2924049083 along the Lower Duwamish

Dear Ms. Lee:

We are responding to your letter of January 29, 2016, addressed to me regarding Marine Power & Equipment Co., Inc. and the above-specified parcels of land located at or around 6701 Fox Ave. S., Seattle, WA 98108. Neither I nor my law firm represent Marine Power & Equipment Co., Inc. (MPECo, Inc.), nor am I affiliated in any way with this company.

To the best of our knowledge, MPECo, Inc. is no longer in existence. According to public records, it entered bankruptcy proceedings in 1986 and emerged two years later as United Marine Shipbuilding Inc., and apparently was subsequently liquidated.

I object to any designation that I am a representative of MPECo, Inc. or that I am personally responsible for responding to matters relating specifically to the parcels at 6701 Fox Ave. S., Seattle, WA 98108 because I have never been directly involved in that site. For these and other reasons, we respectfully decline your invitation to participate in the Natural Resources Damage Assessment.

Very truly yours,

DORSEY & WHITNEY LLP

Peter Ehrlichman  
Partner

cc: Client



**Fwd: Lower Duwamish Property, Seattle, WA**

1 message

**Laurie Lee - NOAA Federal** <laurie.lee@noaa.gov>  
To: Vanessa Nalle - NOAA Affiliate <vanessa.nalle@noaa.gov>

Thu, Mar 3, 2016 at 10:32 AM

Laurie Lee, Deputy Section Chief  
Natural Resources Section  
NOAA General Counsel Office  
501 W. Ocean Blvd., Suite 4470  
Long Beach, CA 90802  
Laurie.Lee@noaa.gov  
Office: 562-980-4078  
Cell: [REDACTED]  
Fax: 562-980-4084

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----- Forwarded message -----

From: **MC Halvorsen** [REDACTED]  
Date: Mon, Feb 22, 2016 at 10:28 AM  
Subject: Lower Duwamish Property, Seattle, WA  
To: "Laurie.Lee@noaa.gov" <Laurie.Lee@noaa.gov>  
Cc: "Boyer@boyertowing.com" <Boyer@boyertowing.com>, "reberah@johanassoc.com" <reberah@johanassoc.com>

Dear Attorney Advisor Laurie Lee:

I received your letter Re: Notice of Intent: dated January 29, 2010 on February 16, 2016. The last paragraph of the letter stated that my reply could be emailed and I am choosing that medium.

I have no knowledge of any hazardous substance being released. I leased the property for 30 years to a man named Richard D. Schultz, now deceased, who operated a marina there. There were no live-aboards. There was a property manager who lived in a house standing on the property, which was hooked up to city sewer.

I have read CERCLA. It took me fifty hours. It is not light reading. CERCLA is remedial; not punitive. However, in order to assess the damage, it must be measurable. If it is measurable, there must be a remedy; otherwise no damage assessment can be made.

Around 2007, the EPA had three different maps on the internet showing the places exactly where the pollution was occurring. There was pollution from the barrel company, at the time Northwest Cooperage, oozing in front of part of the property. However, EPA assessed the barrel company and required it to clean up the pollution.

Since there is no pollution in front of my property I am not liable.

Mary Catherine Halvorsen

DONALD J. VERFURTH  
DVERFURTH@GORDONREES.COM  
DIRECT DIAL: (206) 695-5111  
DIRECT FAX: (877) 634-3032

Admitted In: Washington  
Oregon

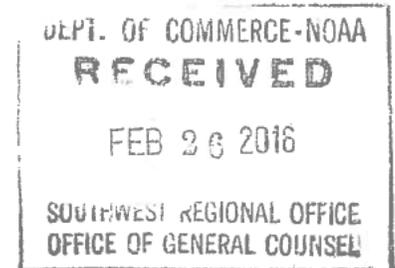
## GORDON & REES LLP

ATTORNEYS AT LAW  
701 5TH AVENUE, SUITE 2100  
SEATTLE, WA 98104  
PHONE: (206) 695-5100  
FAX: (206) 689-2822  
WWW.GORDONREES.COM

February 23, 2016

### VIA EMAIL AND US MAIL

Laurie J. Lee  
Attorney/Advisor  
Natural Resources Section  
NOAA Office of General Counsel  
501 W. Ocean Boulevard, Suite 4470  
Long Beach, CA 90802  
[Laurie.Lee@noaa.gov](mailto:Laurie.Lee@noaa.gov)



**Re: Notice of Intent, Lower Duwamish property: McLeod, Dennis & Patricia  
King County Washington Tax Parcel: 2136200075**

Dear Ms. Lee:

We are acknowledging your letter to me dated January 29, 2016 which we received on February 9, 2016. As you are aware I am counsel for Dennis and Patricia McLeod. After careful consideration our clients decline to participate in Natural Resource Damage Assessment, at this time.

If you have any questions, please do not hesitate to give us a call.

Very truly yours,

GORDON & REES LLP

Donald J. Verfurth

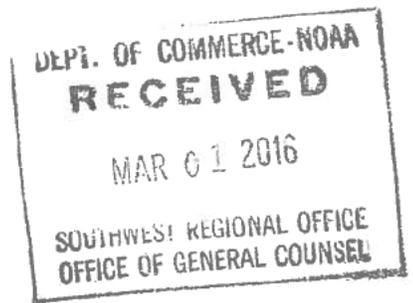
DJV:cjk

cc: Dennis & Patricia McLeod

ROBIE G. RUSSELL

ATTORNEY AT LAW

76 South Main Street  
Seattle, Washington 98104-2514  
Facsimile (206) 621-2104  
(206) 621-2102  
robielaw@gmail.com



Licensed in Washington  
and Idaho

Our Reference No.  
2803/0002

February 25, 2016

Laurie J. Lee  
NOAA Office of General Counsel  
Natural Resources Section  
501 W. Ocean Blvd., Ste. 4470  
Long Beach, CA 90802  
Laurie.Lee@noaa.gov

Re: Response of the Estate of Merle Steinman to Lower Duwamish Notice of Intent

Dear Ms. Lee:

We are in receipt of your Lower Duwamish Notice of Intent letter dated January 29, 2016, and addressed to Merle Steinman, 2805 South 125th Seattle, WA 98168, Tax Parcel Nos. 7327906685 and 7327906750.

The purpose of this letter is to advise you that our offices will be representing the foregoing party and will be looking forward to the opportunity to provide the necessary information to show that they are not responsible for any natural resource damages in connection with the Lower Duwamish Waterway and other associated sites.

Sincerely,

A handwritten signature in black ink, appearing to read "Robie G. Russell".

Robie G. Russell

RGR/glf

cc: Ron Steinman



Vanessa Nalle - NOAA Affiliate <vanessa.nalle@noaa.gov>

---

## Fwd: Lower Duwamish Parcel # 7666702165

1 message

---

Laurie Lee - NOAA Federal <laurie.lee@noaa.gov>  
To: Vanessa Nalle - NOAA Affiliate <vanessa.nalle@noaa.gov>

Tue, Mar 15, 2016 at 10:51 AM

Laurie Lee, Deputy Section Chief  
Natural Resources Section  
NOAA General Counsel Office  
501 W. Ocean Blvd., Suite 4470  
Long Beach, CA 90802  
Laurie.Lee@noaa.gov  
Office: 562-980-4078

[REDACTED]  
Fax: 562-980-4084

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----- Forwarded message -----

From: **Karen Zaknich** <karen@pacificsheetmetal.com>  
Date: Thu, Mar 10, 2016 at 9:29 AM  
Subject: Lower Duwamish Parcel # 7666702165  
To: Laurie.Lee@noaa.gov

Hello Laurie,

My name is Karen Zaknich, the wife of Nicholas, named in the attached letter. I wanted to email you my contact information as requested.

Many thanks,

Karen Zaknich  
[REDACTED]  
[REDACTED]  
[REDACTED]

---

 **Lower Duwamish Notice.pdf**  
1320K



Lawyers since 1897

Ryan, Swanson & Cleveland, PLLC  
1201 Third Avenue, Suite 3400  
Seattle, WA 98101-3034  
206.464.4224 | Fax 206.583.0359  
Toll-free 800.458.5973  
www.ryanswansonlaw.com

Jo M. Flannery  
Attorney Of Counsel

direct dial 206.654.2241  
flannery@ryanlaw.com  
Ref. No. 1264253.01/005556.00001

February 24, 2016

United States Department of Commerce  
National Oceanic and Atmospheric Administration  
Office of General Counsel  
Attn.: Laurie J. Lee  
Suite 4470  
501 West Ocean Boulevard  
Long Beach, CA 90802

**Re: Notice of Intent, Lower Duwamish Property  
King County Washington Tax Parcel: 2136200695**

Dear Ms. Lee:

We represent Nitze-Stagen & Co. in connection with its receipt of your correspondence dated January 29, 2016 regarding the above-referenced matter and the work of the Elliott Bay Trustee Council on natural resource damages. Nitze-Stagen is the commercial property manager and not the owner of the property referenced in your correspondence. While the property is located near the Duwamish Waterway there is no known connection between the property and any of the superfund sites referenced in your correspondence, at this time.

Other than proximity to the Waterway it is unclear how or why this property was included in your mailing. Our client, therefore, appreciates the notice of the Council's work, but will not seek to participate in the performance of its assessment.

Very truly yours,

RYAN, SWANSON & CLEVELAND, PLLC

Jo M. Flannery  
Attorney Of Counsel

cc: Client



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
Office of General Counsel  
Suite 4470  
501 West Ocean Boulevard  
Long Beach, CA 90802

January 29, 2016

Via Certified Mail

6350 Benham St  
NIW Inc., (dba Nelson Ironworks)  
Detroit, MI 48211

RE: Notice of Intent, Lower Duwamish property: NIW Inc., (dba Nelson Ironworks)  
King County Washington Tax Parcel(s): 7666702365, 7666701930

The Elliott Bay Trustee Council is beginning to develop an injury assessment for natural resource damages in the Lower Duwamish Waterway and the East and West Waterways of Harbor Island. You are receiving this Notice because you may be a potentially liable party that has contributed to the release of hazardous substances that have injured natural resources. The Elliott Bay Trustee Council is inviting you to participate in a cooperative process to perform the injury assessment.

The Elliott Bay Trustee Council (Trustees), described below, have concluded their preliminary investigation of potential injuries to natural resources under their trusteeship which have occurred as the result of releases of hazardous substances into the environment at and from the Harbor Island, Lower Duwamish Waterway, and Lockheed West Superfund Sites each of which was placed on the National Priorities List in 1983, 2001, and 2007, respectively (collectively "the Sites").

Elliott Bay Trustee Council (collectively referred to as "Trustees"):

- United States of America, on behalf of the United States Department of Commerce, acting through the National Oceanic and Atmospheric Administration ("NOAA"), and the United States Department of the Interior;
- The State of Washington ("the State") through the Washington State Department of Ecology;
- The Suquamish Tribe; and
- The Muckleshoot Indian Tribe.

We have no affiliation with the Nelson Ironworks in Seattle WA.

We have never performed work in WA.

Diane E. Grabowski  
President



**NL INDUSTRIES, INC.**

**THREE LINCOLN CENTRE**

**5430 LBJ FREEWAY**

**SUITE 1700**

**DALLAS, TEXAS 75240-2697**

TELEPHONE: 972.233.1700

TELEPHONE FACSIMILE: 972.934.5358

**Courtney J. Riley**

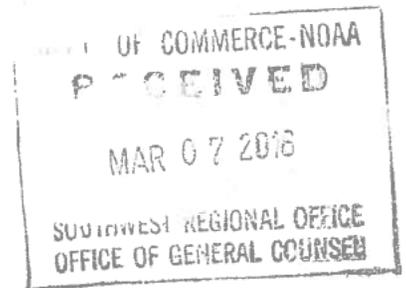
*Vice President, Environmental Affairs*

972 448-1466

*criley@valhi.net*

Via Email and US Mail

February 29, 2016



Ms. Laurie J. Lee

NOAA Office of General Counsel

Natural Resources Section

501 W. Ocean Blvd., Suite 4470

Long Beach, CA 90802

Re: January 29, 2016 Notice of Intent, Lower Duwamish Property ("Notice of Intent")

Dear Ms. Lee:

I represent NL Industries, Inc. ("NL"). Separate copies of the above referenced Notice of Intent were referred to me by Kronos Worldwide, Inc. ("Kronos") and CompX Inc. ("CompX") (received on February 11, 2016 and February 17, 2016, respectively). The Notices of Intent reference King County Washington Tax Parcel 7666702165, which, according to information from the King County website, relates to property at street address: 1128 SW Spokane Street (the "Property"). NL is a signatory to the 1994 Harbor Island S&G OU Consent Decree based on an alleged nexus to the Property. Thus, I assume that the notices to Kronos and CompX were intended for NL.

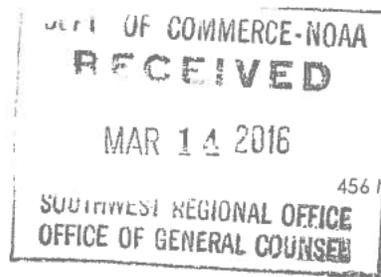
This letter confirms NL's receipt of the Notice of Intent. NL denies any and all potential liability related to the Property and/or the Harbor Island Site and respectfully declines to participate in the Natural Resource Damage Assessment described in the Notice of Intent.

Please remove Kronos and CompX from your list of recipients and forward all future communications related to the Property to NL for my attention.

Sincerely,

Courtney J. Riley

CJR:jl



Nicholas W. van Aelstyn  
456 Montgomery Street, Suite 1800  
San Francisco, CA 94104-1251  
Direct: (415) 262-4008  
Fax: (415) 262-4040  
nvanaelstyn@bdlaw.com

March 9, 2016

***Via Email & Certified Mail No. 7012-3460-0000-3353-5305***

Laurie J. Lee, Esq.  
NOAA Office of General Counsel  
Natural Resources Section  
501 W. Ocean Blvd., Suite 4470  
Long Beach, CA 90802  
[Laurie.Lee@noaa.gov](mailto:Laurie.Lee@noaa.gov)

**Re: Elliott Bay Trustee Council Notice of Intent**

Dear Ms. Lee:

This firm represents Northwest Container Service, Inc. ("NWCS") with respect to the Lower Duwamish Waterway Superfund site (the "LDW Site"). NWCS received the Elliott Bay Trustee Council's (the "Trustees") Notice of Intent dated January 29, 2016 via certified mail on February 11, 2016. The Notice invites NWCS to participate in the Trustees' development of an Assessment Plan and the performance of a Natural Resources Damages Assessment ("NRDA") in accordance with the Assessment Plan for the LDW Site as well as the Harbor Island and Lockheed Superfund sites.

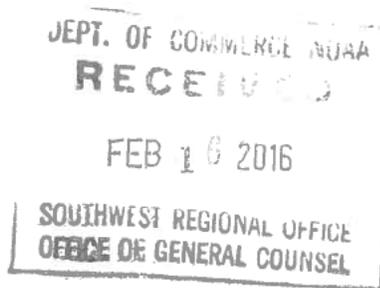
The Notice provides no information as to how, when, on what basis, by whom, nor at what cost the Assessment Plan and the NRDA would be performed. It is silent as to the scope of the project and the data that will be relied upon. As I'm sure you are aware, the latter is an important issue at the LDW Site. Would it be the RI data, the additional baseline data that EPA Region 10 has indicated will be gathered during the next two years, data gathered independently by the Trustees' unnamed consultants, or something else? The Notice does not even indicate when such basic information would be made available. Most importantly, it provides no information with respect to the statement that if NWCS believes that it is not responsible for any natural resource damages at the three Superfund sites, which it certainly does, it "will have an opportunity to offer facts and information that support your contention." Offer such information to whom? In what context and to what end?

///



Via E-Mail

Laurie J. Lee  
NOAA Office of General Counsel  
Natural Resources Section  
501 W. Ocean Blvd., Suite 4470  
Long Beach, CA 90802  
[Laurie.Lee@noaa.gov](mailto:Laurie.Lee@noaa.gov)



RE: Response to "Notice of Intent, Lower Duwamish property: Treasures from the Sea by Odyssey Enterprises Inc; King County Tax Parcel(s): 5367202505"

I received your letter dated January 29, 2016 and referenced above. For your convenience, I have attached a copy of your letter to this correspondence. Two items in response:

- 1) Please update your records to reflect the following company name and contact information

Odyssey Enterprises, Inc  
Attn: Theodore Hadley  
2729 6th Ave S, STE 200  
Seattle, WA 98134  
Office: 206-285-7445  
[tedh@ody.bz](mailto:tedh@ody.bz)

- 2) Odyssey Enterprises, Inc. ("Odyssey") does not believe that we have held or discharged any hazardous substances to the environment and therefore respectfully declines the offer to participate in any damages assessment.

Please contact me if you believe any further cooperation on our part is required or would be beneficial.

Sincerely,

Theodore Had  
General Manager and CFO  
Odyssey Enterprises, Inc.

**Odyssey Enterprises, Inc.**

UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
Office of General Counsel  
Suite 4470  
501 West Ocean Boulevard  
Long Beach, CA 90802

January 29, 2016

Via Certified Mail

Phil Crean  
Treasures from the Sea by Odyssey Enterprises Inc  
2729 6th Ave S #200  
Seattle, WA 98134

RE: Notice of Intent, Lower Duwamish property: Treasures from the Sea by Odyssey Enterprises Inc  
King County Washington Tax Parcel(s): 5367202505

The Elliott Bay Trustee Council is beginning to develop an injury assessment for natural resource damages in the Lower Duwamish Waterway and the East and West Waterways of Harbor Island. You are receiving this Notice because you may be a potentially liable party that has contributed to the release of hazardous substances that have injured natural resources. The Elliott Bay Trustee Council is inviting you to participate in a cooperative process to perform the injury assessment.

The Elliott Bay Trustee Council (Trustees), described below, have concluded their preliminary investigation of potential injuries to natural resources under their trusteeship which have occurred as the result of releases of hazardous substances into the environment at and from the Harbor Island, Lower Duwamish Waterway, and Lockheed West Superfund Sites each of which was placed on the National Priorities List in 1983, 2001, and 2007, respectively (collectively "the Sites").

Elliott Bay Trustee Council (collectively referred to as "Trustees"):

- United States of America, on behalf of the United States Department of Commerce, acting through the National Oceanic and Atmospheric Administration ("NOAA"), and the United States Department of the Interior;
- The State of Washington ("the State") through the Washington State Department of Ecology;
- The Suquamish Tribe; and
- The Muckleshoot Indian Tribe.

This investigation has focused on releases from the Sites as a result of past industrial operations. Pursuant to the Natural Resource Damage Assessment Regulations, 43 C.F.R. Part 11, the Trustees for these three Sites completed a Pre-Assessment Screen which can be found in the Administrative Record for the Sites at [www.darrp.noaa.gov](http://www.darrp.noaa.gov).<sup>1</sup> The findings, conclusions, and determination therein are hereby adopted and fully incorporated in this Notice.

Information gathered by the Trustees and presented in the Pre-Assessment Screen form the basis of the Trustees' conclusions that the following criteria, as set forth in 43. C.F.R. § 11.23 (e), have been met:

1. A release of hazardous substances has occurred.
2. Natural resources for which the Trustees may assert trusteeship under CERCLA [Comprehensive Environmental Response, Compensation, and Liability Act of 1980] have been, or are likely to have been adversely affected by the release.
3. The quantity and concentration of the released hazardous substances is sufficient to potentially cause injury to natural resources for which the Trustees may assert trusteeship under CERCLA.
4. Data sufficient to pursue Natural Resource Damage Assessment are available or likely to be obtained at a reasonable cost.
5. Currently implemented and planned response actions are not expected to remedy the injury to natural resources without further action.

The Trustees have also completed a Programmatic Restoration Plan and Programmatic Environmental Impact Statement which is available at: [www.darrp.noaa.gov](http://www.darrp.noaa.gov).<sup>2</sup>

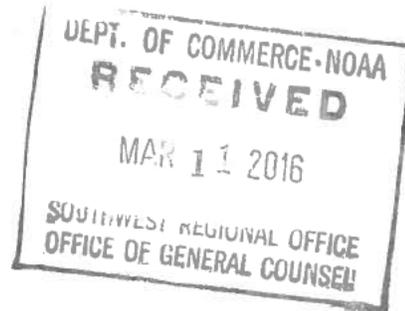
Based on all of the above, the Trustees will proceed with a Natural Resource Damage Assessment of the Harbor Island, Lower Duwamish River, and Lockheed Superfund Sites. This is your formal invitation and notification of your opportunity to participate in the development of the type and scope of the Assessment Plan and subsequently in the performance of the assessment. Also, potentially responsible parties who are interested in participating in the assessment planning and implementation are requested to pay for all phases of the injury assessment. Please note that if you believe you are not responsible for damage to natural resources associated with the Harbor Island, Lower Duwamish Waterway, and Lockheed West Superfund Sites, you will have an opportunity to offer facts and information that support your contention.

<sup>1</sup> Document title "Final Pre-Assessment Screen for the Lower Duwamish River. Elliot Bay Trustee Council, December 2, 2009" can be found under the About DARRP tab, in Case Documents, Northwest Section, using the Lower Duwamish River, WA link, Restoration Section, Preliminary Assessment.

<sup>2</sup> Document title "Final - Lower Duwamish River NRDA Restoration Plan and Programmatic Environmental Impact Statement (2013)" can be found under the About DARRP tab, in Case Documents, Northwest Section, using the Lower Duwamish River, WA link, Restoration Section, Programmatic Restoration Plan.

**Asteghik Khajetoorians**  
asteghik.khajetoorians@millernash.com  
562.247.7621 direct line

March 11, 2016



**VIA E-MAIL AND U.S. MAIL**  
**LAURIE.LEE@NOAA.GOV**

Ms. Laurie J. Lee  
Natural Resources Section  
NOAA Office of General Counsel  
501 West Ocean Boulevard, Suite 4470  
Long Beach, California 90802

Subject: Notice of Intent, Lower Duwamish Property: Olympic Pipeline Co.,  
BP Pipelines, King County Tax Parcel: 7666701710

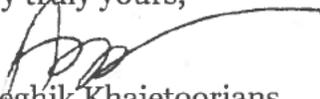
Dear Ms. Lee:

This is to acknowledge your letters of January 29, 2016 to Olympic Pipeline Co. ("Olympic") and Steve Goodman inviting Olympic to participate in a process to perform a natural resource injury assessment for the Lower Duwamish Waterway and the East and West Waterways. As an initial matter, Steve Goodman is an attorney at this law firm that represents Olympic and is not a potentially liable party.

Olympic respectfully declines the invitation. Olympic's facility is nearly 1,000 feet from the nearest waterway. Olympic does not owe any natural resource damages and cannot justify the expense of participating in the injury assessment.

Olympic will monitor the injury assessment process and reserves its right to later join the process. Olympic also reserves its right to assert any and all defenses. Olympic's reference to the distance from a waterway should not be construed as a waiver of other defenses. Please contact me if you have any questions.

Very truly yours,

  
Asteghik Khajetoorians

cc: Doug Reinhart, Esq. (via email)  
Steve H. Goodman, Esq. (via email)

Portland, OR  
Seattle, WA  
Vancouver, WA  
Bend, OR  
Long Beach, CA

MILLERNASH.COM



February 17, 2016

Laurie J Lee

NOAA Office of General Council

Natural Resources Section

501 W. Ocean Blvd., Suite 4470

Long Beach, Ca. 90802

Laurie,

I have forwarded your previous correspondence concerning the Notice of Intent, Lower Duwamish property to Bimbo Baking Corp. Bimbo Baking Corp owns the Oroweat Brand, not me.

We are and have always been an authorized Oroweat Distributor out of Boise Idaho. We have never owned any property or manufacturing facilities in Oregon/Washington.

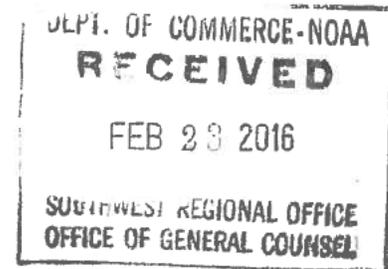
We have operated as Oroweat Foods of Boise as our DBA, not Oroweat Food Company's

Thank you

Darrin Gardner

President

P&P Distributing Inc.





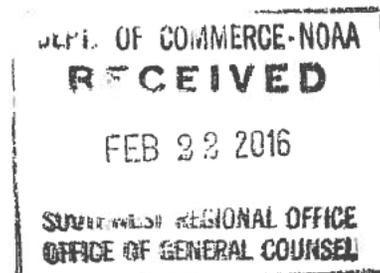
255 Business Center Drive  
Horsham, PA 19044

SHELLY W. SELIGMAN  
VICE PRESIDENT AND GENERAL COUNSEL  
Phone: (215) 323-9212  
Fax: (215) 293-9629

February 18, 2016

VIA UPS OVERNIGHT EXPRESS

Ms. Laurie J. Lee  
NOAA Office of General Counsel  
Natural Resources Section  
501 W. Ocean Blvd., Suite 4470  
Long Beach, CA 90802



Re: NOAA Notice of Intent Regarding Lower Duwamish Waterway (WA)

Dear Ms. Lee:

I am General Counsel of Bimbo Bakeries USA, Inc. ("BBUSA"). BBUSA is in receipt of the National Oceanic and Atmospheric Administration's ("NOAA") Notice of Intent ("Notice") dated January 29, 2016 addressed to "Oroweat Foods Company" regarding the development of injury assessments for natural resource damages related to the release of hazardous waste from past industrial operations at sites along the Lower Duwamish Waterway in Washington state. There is no Oroweat Foods Company entity. The letter was sent to the address of someone else who referred it to us. BBUSA acquired the Oroweat trademark and brand in 2002 and therefore is responding to the January 29 letter. Given our lack of information generally (see below), we cannot agree at this time that BBUSA is a "PRP" or to participate in your Natural Resource Damage assessment.

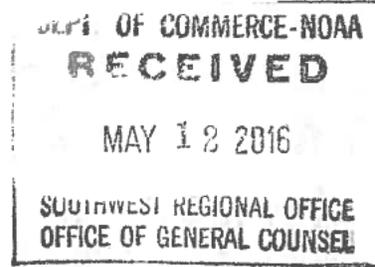
The Notice specifically references Oroweat in relationship to a facility identified by King County Washington tax parcel 0001800113 ("Site" or "Parcel") located at 6901 Fox Avenue S. in Seattle, Washington. We are not presently aware that Oroweat or any company that owned the brand has ever been an owner or operator of the Site in any capacity including, but not limited to, leasing, easements or holding of financial instruments which may have burdened the Parcel. To the best of our knowledge, any company that owned the Oroweat brand neither generated, transported nor arranged for disposal of hazardous substances in relationship to the Site. We are not aware that any company that owned the Oroweat brand is or was involved with any recent activities undertaken at the Site nor had involvement with any historic industrial operations or other historic activities which may have occurred on the Parcel.

If you have evidence of Oroweat's involvement, including any response to your 104(e) letter to Oroweat (which we never received and do not know if anyone responded), we would appreciate seeing it. At this time, BBUSA respectfully declines to participate in the Elliot Bay Trustee Council's process to perform injury assessments as outlined in the Notice. We would welcome the receipt of any documents, materials, or specific information NOAA or the Elliot Bay Trustee Council have in their possession which alleges or demonstrates Oroweat's involvement at the Site. Depending on the outcome of those findings, we may wish to re-engage the discussion of injury assessments as identified in the Notice.



Pacific Pile & Marine, LP  
700 South Riverside Drive  
Seattle, WA 98108

T 206 331-3873  
F 206 774-5958  
License # PACIFPM922J3



May 9, 2016

Laurie J. Lee  
NOAA Office of General Counsel  
501 W. Ocean Blvd., Suite 4470  
Long Beach, CA 90802

Regarding: Notice of Intent, Lower Duwamish property: Pacific Pile & Marine, LP King County Washington Tax Parcel(s): 7327906645

Ms. Lee,

This letter serves as Pacific Pile & Marine's (PPM) official notice of intention to dispute PPM's responsibility for damage to natural resources associated with the Lower Duwamish Waterway.

Pacific Pile & Marine uses the tax parcel in question, 7327906645, as a storage yard for equipment and inert construction materials. All equipment is maintained and monitored to ensure no leakage occurs to the Duwamish River. The property is also permitted and maintained through the Department of Ecology's Industrial Stormwater General Permit since 2015. The yard has only been used by PPM as a storage yard since 2008 and could not reasonably contribute to the injury of natural resources.

Pacific Pile & Marine would like to participate in the development of the Assessment Plan as the Duwamish River serves as our headquarters and home to many of our employees, however we are unsure if participation is still allowed if we contend our responsibility. Further, it is unclear what the costs would be to participate in the assessment. If it is just the cost of our own personnel attending meetings we would willingly take on such costs however if it is to pay for items beyond that we would choose to decline to participate in the development of the Assessment Plan.

Please respond at your earliest convenience to Wilbur "JC" Clark who will serve as our primary contact.

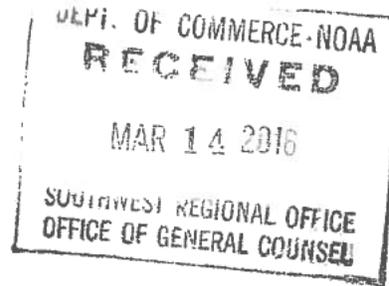
Respectfully,

Wilbur "JC" Clark  
Pacific Pile & Marine, L.P.  
206-300-1312  
[jc@pacificpile.com](mailto:jc@pacificpile.com)



Westway Feed Products LLC  
14015 Park Drive Suite 217  
Tomball, Texas 77377  
Main: 281.351.4420 / Fax: 281.351.4975  
www.westwayfeed.com

Via Certified Mail



March 9, 2016

NOAA Office of General Counsel  
Natural Resources Section  
501 W. Ocean Blvd., Suite 4470  
Long Beach, CA 90802

Ms. Laurie J. Lee,

RE Notice of Intent, Lower Duwamish property: Pacific Molasses Company  
King County Washington Tax Parcel (s): 766701330

On behalf of Westway Feed Products (Westway) LLC, I am acknowledging the receipt of the Notice of Intent (NOI) sent to Pacific Molasses Company that was received on 2/19/16. Please note our records indicate that Pacific Molasses Company relocated and became "operational" at the current location of 1002 SW Spokane St., Seattle, WA 98134 in November 1998. Westway Feed Products (Westway) purchased Pacific Molasses Company (aka Pm Ag/United Molasses) in 2002.

Westway Feed Products LLC – Seattle intends to participate as a member of the cooperative assessment plan.

Please contact Mr. Chuck Darby (cell: 206.399.1263 or email: [CharleD@westwayfeed.com](mailto:CharleD@westwayfeed.com)) and/or myself (cell: 346.234.1701 or email: [gary.hendershot@westwayfeed.com](mailto:gary.hendershot@westwayfeed.com)) should you have any question or comments.

Respectfully,

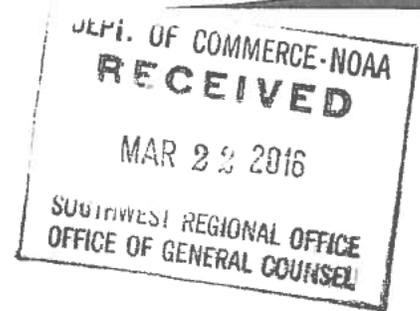
Gary L. Hendershot

HSE Manager  
Westway Feed Products LLC  
14015 Park Drive, Suite 117  
Tomball, TX 77377  
Mobile: (346) 234-1701 | Direct: (281) 290-3004 | Fax: (281) 351-4975  
www.westwayfeed.com

Cc: Steve Boehmer; President, Westway Feed Products LLC  
Mike Strobel; Director of Operations, Westway Feed Products LLC  
Chuck Darby; District Operations Manager, Westway Feed Products LLC  
Brian Holly; Terminal Manager, Westway Feed Products LLC  
HSE e-file - Seattle

**Pangborn LLC**  
4630 Coates Drive  
Fairburn, GA 30213  
Phone: 404-665-5700  
Fax: 404-665-5701

**PANGBORN®**



March 12, 2016

Ms. Laurie J. Lee  
Attorney Advisor  
Natural Resources Section  
Office of the General Counsel  
National Oceanic and Atmospheric Administration  
501 West Ocean Boulevard, Suite 4470  
Long Beach, California 90802

Re: Harbor Island, Lower Duwamish Waterway, and Lockheed West Superfund Sites

Dear Ms. Lee:

Pangborn Corporation ("Pangborn") (now known as Pangborn LLC) has received your letter dated January 29, 2016 concerning the Harbor Island, Lower Duwamish Waterway, and Lockheed West Superfund Sites ("Sites"). The letter provided notice that the Elliott Bay Trustee Council is beginning to develop an injury assessment for natural resource damages in the Lower Duwamish Waterway and the East and West Waterways of Harbor Island. The letter further advised that the Trustees intend to perform a natural resource damage assessment ("NRDA") for the Sites and invited Pangborn to participate in the development, performance, and funding of the NRDA.

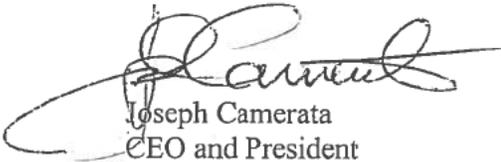
Pangborn has no knowledge or information concerning the tax parcel number referenced in your letter. As had been discussed between Pangborn and the United States Environmental Protection Agency ("EPA") in relation to a March 2012 EPA request for information pursuant to CERCLA concerning the Lower Duwamish Waterway Site, Pangborn is aware of no connection whatsoever to the Lower Duwamish Site and it appeared that Pangborn's name was added to a list of PRPs in error. A copy of Pangborn's April 25, 2012 letter to EPA concerning this matter is attached for your reference. Pangborn similarly is aware of no connection whatsoever to the Harbor Island or Lockheed West Sites.

As noted in that letter, Pangborn, which is an equipment manufacturer based in Georgia, does not have and has never had a facility on the West Coast. It appears that Pangborn's name was identified in connection with the Lower Duwamish Site because Pangborn at some time in the past sold new and unused equipment to United Western Supply, which is a distributor that sold Pangborn's equipment to its customers. At no time did Pangborn own or operate the United Western Supply property, or arrange for the disposal or treatment of any hazardous substance there or in any other location at or near the Sites.

Based on more recent discussions between our attorney and EPA this month, we understand that EPA sent out General Notice Letters for the Lower Duwamish Site in 2013 and that if Pangborn did not receive such a letter, EPA no longer considers it a PRP. Pangborn did not receive a General Notice Letter for the Lower Duwamish<sup>1</sup> or any correspondence from EPA concerning the Harbor Island or Lockheed West Sites.

Accordingly, unless the Trustees have any information linking Pangborn to one or more of the Sites (in which case Pangborn requests that such information be provided to it at the earliest opportunity), Pangborn declines the Trustee's invitation and asks that its name be deleted from any list of PRPs for the Sites. We would appreciate if the Trustees would send us an acknowledgement to that effect. If you have any further questions, please contact our attorney Laurence S. Kirsch at (202) 346-4440, [lkirsch@goodwinprocter.com](mailto:lkirsch@goodwinprocter.com). Thank you for your cooperation.

Sincerely,



Joseph Camerata  
CEO and President

cc: Laurence S. Kirsch, Goodwin Procter LLP

---

<sup>1</sup> The list of recipients of the EPA General Notice Letters appears at <https://yosemite.epa.gov/r10/CLEANUP.NSF/sites/lduwamish/>. Pangborn's name does not appear on that list.

Pangborn Corporation  
4630 Coates Drive  
Fairburn, GA 30213 USA  
Phone: 404.665.5700  
Fax: 404.665.5701  
www.pangborn.com

**PANGBORN®**

April 25, 2012

Mr. Aaron Lambert  
Environmental Protection Specialist  
United States Environmental Protection Agency, Region 10  
Office of Environmental Cleanup, Mail Code ECL-111  
1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101

Re: Lower Duwamish Waterway Superfund Site, Seattle Washington

Dear Mr. Lambert:

I am writing on behalf of Pangborn Corporation ("Pangborn") to follow up on communications that you and Mr. Fidis have had with our counsel Larry Kirsch of Goodwin Procter LLP in relation to the January 29, 2009 request for information of the United States Environmental Protection Agency ("EPA") concerning the Lower Duwamish Waterway Superfund Site ("Site"), and the EPA follow-up letters dated September 17, 2010 and March 26, 2012. By letter dated March 30, 2012, EPA granted Pangborn an extension to respond to the EPA information request until May 10, 2012. As has been discussed in the communications between your office and our counsel, Pangborn has no connection whatsoever to the Site and it appears that the EPA request for information was sent to us in error.

By this letter, and in response to EPA's request to Mr. Kirsch, we confirm that Pangborn, which is an equipment manufacturer based in Georgia, does not have and has never had a facility on the West Coast. It appears that Pangborn's name was identified in connection with the Site because Pangborn at some time in the past sold equipment to United Western Supply, which is a distributor that sold Pangborn's equipment to its customers. At no time did Pangborn own or operate the United Western Supply property, or arrange for the disposal or treatment of any hazardous substance there.

We trust this response is sufficient to close out any issues concerning Pangborn in relation to the Site, and we would appreciate if EPA would send us an acknowledgement to that effect. If you have any further questions, please contact Mr. Kirsch at (202) 346-4440, [lkirsch@goodwinprocter.com](mailto:lkirsch@goodwinprocter.com). Thank you for your cooperation.

Sincerely,



Joseph Camerata  
President

cc: Alex Fidis, Esq., EPA  
Laurence S. Kirsch, Goodwin Procter LLP

Date: Sun, Feb 28, 2016 at 8:21 PM  
Subject: Reply to Notice of Intent, Lower Duwamish Property: Paul F. Euchner  
To: Laurie.Lee@noaa.gov  
Cc: Paul Euchner [REDACTED]

February 28, 2016

Lauri J. Lee  
Attorney Advisor  
Natural Resources Section  
NOAA Office of General Counsel

Dear Ms. Lee,

This letter is in reply to your letter dated January 29, 2016, sent via certified mail and received February 11, 2016. King County Washington Tax Parcels 0022000165 & 0022000195 apply.

Please reply acknowledging receipt of this email.

I was the owner of the property from approximately 1998 to 2005. The subject property consisted of a single family residential home and adjacent unimproved land. This property was bought in the early 1900's by my grandparents who bought two lots. One lot contained the home and the other garden. After my grandparent's death, my aunt continued to occupy the home. She was one of the few "Boeing holdouts" who elected not to sell to Boeing.

In her later years she had gravel placed on a portion of unimproved land and rented the space as parking to Boeing employees. Later she rented the parking spaces directly to Boeing who allowed their employees to continue to park on the property.

Upon my aunt's death the property passed to my father, who passed away a few years later and the property passed to myself.

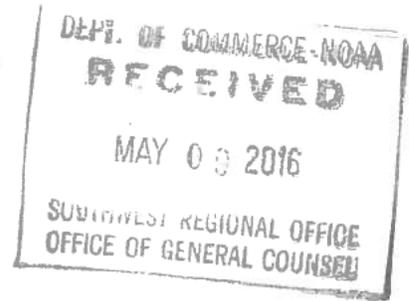
I rented the house to a single couple and continued to honor the existing parking lease with Boeing.

In approximately 2005, upon lease expiration, Boeing exercised their right of first refusal option and purchased both properties.

The property was solely a single family home and garden that eventually was used to park privately owned vehicles of Boeing employees.

The property was never used to store, process, or otherwise accommodate industrial hazardous materials.

Mark N. Hansen



April 25, 2016

Laurie J. Lee  
NOAA Office of General Counsel  
Natural Resources Section  
501 W. Ocean Blvd., Suite 4470  
Long Beach, CA 90802

RE: Response to Notice of Intent, Lower Duwamish property: Hansen, Mark  
King County Washington Tax Parcel(s): 7327905700, 7327905710

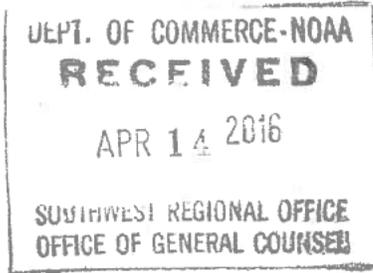
I do not intend to participate in the development of the Harbor Island, Lower Duwamish River, and Lockheed Superfund sites Natural Resource Damage Assessment plan. I am not and never have been responsible for damages to natural resources associated with the Harbor Island, Lower Duwamish River, and Lockheed Superfund sites.

Parcel 7327905710 was a 6000 square foot residential property purchased by me in 1996 that I lived at, Parcel 7327905700 was a 4750 square foot industrial property purchased by me and my now ex-wife in 1993 that I operated my small business from. Both properties were purchased by the City of Seattle through Eminent domain and condemnation in 2009. I am very perplexed how I became and still remain a potential liable party in this matter.

Sincerely

A handwritten signature in black ink that reads "Mark N. Hansen".

Mark N. Hansen  
Registered Agent for Pro Fab, Inc.



WILLIAMS KASTNER™  
WIK

April 11, 2016

83175.117

Laurie J. Lee  
NOAA Office of General Counsel  
Natural Resources Section  
501 W Ocean Blvd., Suite 4470  
Long Beach, CA 90802

RE: Notice of Intent, Lower Duwamish property: Proler International  
King County Washington Tax Parcel(s): 5367202505

Dear Ms. Lee:

Your January 29, 2016 letter was received by Schnitzer Steel Industries, Inc. on February 10, 2016. The letter identified Proler International. Proler International was formally dissolved as a legal corporate entity on May 20, 2008. There is no one legally authorized to respond regarding the dissolved Proler International entity.

Very truly yours,

Mark M. Myers  
(206) 628-6635  
mmyers@williamskastner.com

cc: Monica Rodal  
Mathew Cusma  
Scott Sloan  
Brenda Anderson

---

**PRUZAN BUILDING COMPANY LLC**  
**P.O. Box 9386**  
**Seattle, WA 98109-0386**

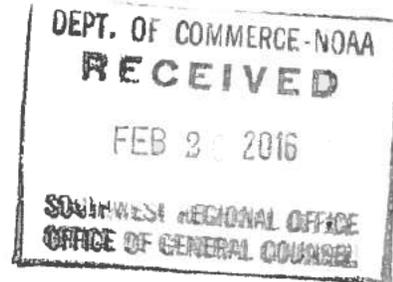
**Telephone: 206-285-0100**

**Email: herb@pruzans.com**

---

February 23, 2016

Laurie J. Lee  
NOAA Office of General Counsel  
Natural Resources Section  
501 W. Ocean Blvd., Suite 4470  
Long Beach, CA 90802



RE: Notice of Intent, Lower Duwamish property: Pruzan Building Co.  
King County Washington Tax Parcel: 7666702058

This is in response to your letter of January 29 and will outline the history of Pruzan Building Company's (PBC) relationship to the subject property. The parcel of approximately 12,300 sq. ft. of undeveloped land was owned by the City of Seattle Department of Lighting and had been intended as a substation site which was never constructed. As surplus property it was sold by sealed bid to the predecessor company of PBC on March 1, 1978, and then transferred to PBC. PBC had a warehouse building of approximately 9,500 sq. ft. constructed on the property. The building was leased to Owens Corning Fiberglas Corp. for use in storage of materials needed for contracts they held with shipyards on Harbor Island. The occupancy permit was issued on March 12, 1979.

In 1984 Owens Corning sublet the building to Schultz Distributing Company which continued the lease with PBC through the sale of the building in 1994 when the lease was assigned to the purchaser, the Port of Seattle (POS).

In 1986 PBC was informed by EPA that the property was within the Harbor Island Superfund Site and requested information about activities conducted on the property which was furnished to them. Subsequently, in 1989, PBC was advised that it was being removed as a potentially responsible party (PRP), subject to possible reevaluation. In 1993 a group of smaller PRPs was formed to work cooperatively toward resolving any remaining issues or claims. PBC participated in that process.

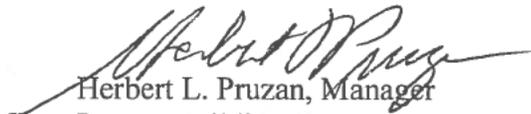
Earlier, however, in October, 1991, POS published its Container Terminal Development Plan which included the subject property as part of its intended acquisition for the terminal. In 1993 PBC entered negotiations with POS for sale of the property and it was determined that environmental reports on it would be required in order to successfully complete a transaction. Those reports were done and made Exhibit B of the sales agreement with POS. Attached is a copy of the 9-page Real Estate Purchase and Sale Agreement dated February 10, 1994. Copies of the Exhibits are available if desired.

The point of this letter is to refer you to paragraph 6.f. of the Sale Agreement which provides "Indemnification by Purchaser" (POS) for all claims regarding hazardous substances, and the further statement that this refers to indemnification for claims relating to the property's location on a Superfund site.

Subsequent to the property sale, which closed on April 27, 1994, the POS requested that PBC sign the Consent Decree and Harbor Island Remediation PRP Participation Agreement that had been negotiated and of which PBC was considered part of the Small Participant Group I. In requesting PBC's signing on to that agreement, even after the sale had been closed, the POS further emphasized that PBC was fully indemnified for all claims having to do with the property which POS purchased. PBC signed that agreement, as well as the Organizational Agreement for the Harbor Island Small Participant Group, on November 17, 1994.

With the presentation of these facts, Pruzan Building Company respectfully requests that it be removed from the list of potentially liable parties inasmuch as any and all potential liability was assumed by the Port of Seattle with their purchase of the subject property and the indemnifications they gave upon that purchase. PBC has all of the original documentation, reports and notifications regarding this matter and will be able to furnish any additional information that you may require in order to close your file on Pruzan Building Company for this matter.

Very truly yours,

  
Herbert L. Pruzan, Manager  
Pruzan Building Company

✓ Enclosure: Real Estate Purchase and Sale Agreement  
Copy to: Port of Seattle, Legal Department

March 10, 2016

**VIA EMAIL**

Laurie J. Lee  
NOAA Office of General Counsel  
Natural Resources Section  
501 W. Ocean Blvd., Suite 4470  
Long Beach, CA 90802  
Laurie.Lee@noaa.gov

**Re: Notice of Intent, Lower Duwamish Property: Puget Sound Energy, Inc.  
King County Washington Tax Parcel(s): 7006700570**

Dear Ms. Lee:

I am writing in response to the above-referenced letter dated January 29, 2016. This firm represents Puget Sound Energy, Inc. ("PSE") in connection with the Lower Duwamish Waterway Superfund Site. Based upon information presently known, PSE denies responsibility for damage to natural resources associated with the Harbor Island, Lower Duwamish Waterway, and Lockheed West Superfund Sites and declines to participate in the upcoming Natural Resource Damage Assessment.

Sincerely,



Courtney L. Seim  
of  
RIDDELL WILLIAMS P.S.

CLS  
Our File: 44901.00097



Lawyers since 1897

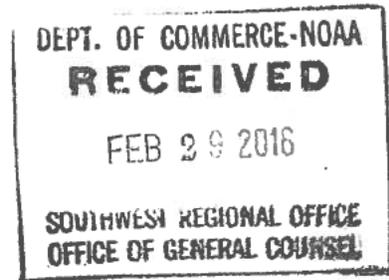
Ryan, Swanson & Cleveland, PLLC  
1201 Third Avenue, Suite 3400  
Seattle, WA 98101-3034  
206.464.4224 | Fax 206.583.0359  
Toll-free 800.458.5973  
www.ryanswansonlaw.com

Jo M. Flannery  
Attorney Of Counsel

direct dial 206.654.2241  
flannery@ryanlaw.com  
Ref. No. 1264252 01 015435 00010

February 24, 2016

United States Department of Commerce  
National Oceanic and Atmospheric Administration  
Office of General Counsel  
Attn.: Laurie J. Lee  
Suite 4470  
501 West Ocean Boulevard  
Long Beach, CA 90802



**Re: Notice of Intent, Lower Duwamish Property  
King County Washington Tax Parcel: 7135400000**

Dear Ms. Lee:

We represent Rainier Commons, LLC in connection with its receipt of your correspondence dated January 29, 2016 regarding the above-referenced matter and the work of the Elliott Bay Trustee Council on natural resource damages. The Rainier Commons property is located upland from the Lower Duwamish Waterway. Its combined storm/sewer system is operated by the public utilities serving the property. We understand that the Seattle Public Utility has an overflow outfall at the Diagonal Cap of the Lower Duwamish Waterway. It is our further understanding that the utility only utilizes this outfall, on few occasions, in severe storm systems.

Rainier Commons has no direct connection with the Lower Duwamish Waterway. Any indirect connection, if at all, is through the public utility, as referenced above, along with the multitude of other upland utility customers. Our client, therefore, appreciates the notice of the Council's work, but will not seek to participate in the performance of its assessment.

Very truly yours,

RYAN, SWANSON & CLEVELAND, PLLC

Jo M. Flannery  
Attorney Of Counsel

cc: Client



JAMES A. EDWARDS  
Senior Vice President and  
Chief Legal Officer  
Direct Office: 817.877.8305  
Email: Andy.Edwards@pilotthomas.com

April 28, 2016

Via Email: Laurie.Lee@noaa.gov  
NOAA Office of General Counsel  
Natural Resources Section  
501 West Ocean Boulevard, Suite 4470  
Long Beach, CA 90802

Re: Notice of Intent, Lower Duwamish property; Rainier Petroleum Corporation,  
King County Washington Tax Parcel(s): 5367204160

Dear Ms. Lee,

This letter serves as written notice that Rainier Petroleum Corporation plans to participate in the process regarding the above referenced matter.

Dan Kovacich and Mike Auer will be the primary contacts during this process. Dan Kovacich can be reached at [Dan.Kovacich@pilotthomas.com](mailto:Dan.Kovacich@pilotthomas.com) and Mike Auer can be reached at [Mike.Auer@pilotthomas.com](mailto:Mike.Auer@pilotthomas.com).

Please let us know if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "James A. Edwards", with a large, stylized flourish extending to the right.

James A. Edwards

777 Main Street, Suite 2000 | Fort Worth, TX 76102  
817.877.8300 | PilotThomas.com

# Rick's Master Marine

8500 Dallas Ave S, Seattle WA 98108 / ph 206.762.0741 / fax 206.763.8015

April 27<sup>th</sup>, 2016

Ms. Lee,

Ricks Master Marine respectfully declines participation in the development and any assessment planning. We do not feel that we have any involvement in the damaging of natural resources associated with the Harbor Island, Lower Duwamish Waterway, and the Lockheed West Superfund Sites.

We are a small marine engine service repair shop located at 8500 Dallas Ave S., Seattle WA, 98108 (formally listed as 1411 S. Thistle St prior to the completion of the 14<sup>th</sup> Ave Bridge) and have had ownership since July 1<sup>st</sup>, 2010. We do not manufacture any products, we strictly service marine engines. Any spent oils, antifreeze and filters are responsibly disposed of via Emerald Recycling (Emerald Automotive Division) on an "as needed" basis. I am submitting a report that details each pick up dating back to November 30<sup>th</sup>, 2010.

Primary contact – Ramon Montoya

Regards,

Ramon and Maureen Montoya

From: **Gordon Newton** <gordonn@unitedmotorfreight.com>  
Date: Thu, Mar 31, 2016 at 10:35 AM  
Subject: Lower Duwamish River Restoration Plan  
To: "Laurie.Lee@noaa.gov" <Laurie.Lee@noaa.gov>

Laurie,

Responding to your letter of March 29, 2016 I wish to participate in the Elliot Bay Trustee Council to perform the injury assessment.

Gordon C. Newton

Registered Agent for Riverside Mill, LLC

3800 West Marginal Way SW

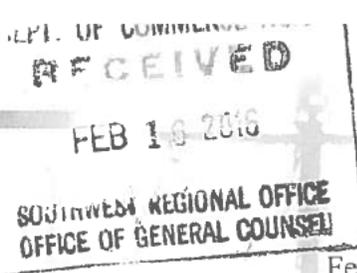
Seattle, WA 98106

King County Tax Parcel (s): 7666703321, 7666703290

<https://mail.google.com/mail/u/0/?ui=2&ik=da2236e7ea&view=pt&search=inbox&th=154111ef1e22f3f3&siml=154111ef1e22f3f3>

# SAMSON

TUG AND BARGE



February 11, 2016

Laurie J Lee  
NOAA Office of General Counsel  
Natural Resources Section  
501 W Ocean Blvd., Suite 4470  
Long Beach, CA 90802

Subject: RE: Notice of Intent, Lower Duwamish property: Samson Tug & Barge Company, Inc.  
King County Washington Tax Parcel(s): 0001800104, 0001800104, 0001800128, 0001800128,  
Letter dated January 29, 2016

To the Office of Laurie J. Lee,

We acknowledge receipt of your letter dated January 29, 2016. However, Samson does not believe its operations have resulted in injury to any natural resources. To that, we respectfully decline to participate in the natural resource damage assessment.

Questions or concerns can be addressed to my office:

Richard E. Seslar  
Samson Tug and Barge  
6361 1<sup>st</sup> Ave South  
Seattle, WA 98108  
[richardseslar@samsontug.com](mailto:richardseslar@samsontug.com)

Respectfully,

A handwritten signature in black ink, appearing to read "R. Seslar".

Richard E. Seslar  
Seattle Facilities and Safety Operations Manager

5693955.1

*Alaskans Serving Alaskans*

SEATTLE TERMINAL  
6361 1st Avenue South  
Seattle, WA 98108

[www.samsontug.com](http://www.samsontug.com)

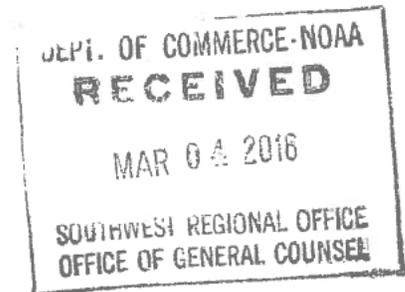
TELEPHONE CONTACT

voice 206.767.7820  
toll free 800.331.3522  
facsimile 206.767.5358

# **FPI** Fabricated Products, Inc.

February 29, 2016

Ms. Laurie J. Lee  
NOAA Office of General Counsel  
Natural Resources Section  
501 W. Ocean Blvd., Suite 4470  
Long Beach, CA 90802



Re: Notice of Intent, Lower Duwamish property: Seafab Metal Corporation

Dear Ms. Lee:

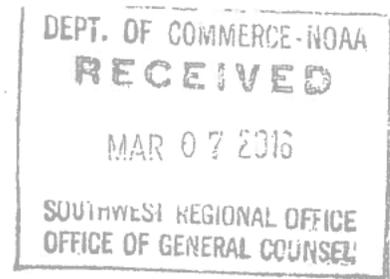
Fabricated Products, Inc. (FPI) is in receipt of your letter to the "Seafab Metal Corporation" regarding the proposed injury assessment for the Lower Duwamish Waterway and the East and West Waterways of Harbor Island. FPI was formed to acquire certain assets of Seafab Metal Corporation in 1996 and moved all operations from Harbor Island shortly thereafter. Although FPI markets some of its products under the Seafab Metals Company trade name, it is not, nor is it a successor to the liabilities of, the Seafab Metal Corporation. For this reason, FPI declines to participate in the development and performance of an injury assessment and looks forward to the opportunity to offer additional information demonstrating that it is not responsible for the natural resource damages being alleged.

If you have any questions, please contact me at the address listed below.

Sincerely,

Dave Oikkonen  
General Manager  
Fabricated Products, Inc.

**Seattle Barrel Company**  
4716 Airport Way South  
Seattle, WA. 98108  
206-622-7218



TO : **United States Department of Commerce**  
National Oceanic & Atmospheric Administration  
Office of General Counsel  
Suite #4470  
501 West Ocean Boulevard  
Long Beach, CA. 90802

DATE : **February 29, 2016**

ATTN : **Laurie J. Lee** – Attorney Advisor  
Laurie.Lee@noaa.gov

RE : Letter dated January 29, 2016.

NOTE : Dear Ms. Lee,

We received your letter dated January 29, 2016 in regards to the Lower Duwamish Waterway Superfund site located in King County, Washington. We are responding to your letter as requested, but we do not believe that our company has in any way or form contributed to the Lower Duwamish Waterway Superfund site. Our company has a very reputable history of compliance with all local, state and federal laws and guidelines as they relate to such activity. We have never had any major spills or exposures that would have contributed to any superfund cleanup. We also do not store or ship any large quantities of dangerous or hazardous materials which have commonly contributed to such a superfund site. Our company is a small business that simply does not generate enough dangerous or hazardous material that could have contributed to this superfund site. The small amount of dangerous waste generated has been properly contained in certified containers and disposed of through reputable environmental companies. Most importantly, geographically it is highly unlikely, if not impossible from our location of business, nearly a mile from the Duwamish waterway, that our company could have contributed to any such activities on the lower Duwamish river.

Furthermore, you have listed two locations in your letter, our warehouse facility at 4520 7<sup>th</sup> Avenue South, and our plant facility at 4716 Airport Way South, in Seattle. Our warehouse at 4520 7<sup>th</sup> Avenue South is a small location with the warehouse covering nearly 50% of the property. At this location we only store new and reconditioned empty drums and park semi-trailers we use for deliveries. There is no processing or other business activity occurring at this location. We do not generate, store, nor ship dangerous or hazardous waste at this location.. For this reason, it is highly unlikely that any activity or lack of activity contributed in any way or form to the Lower Duwamish Waterway Superfund site. As for our plant facility at 4716 Airport Way South, it is also a small location with the building nearly covering 50% of the property. The building is constructed of

one foot thick concrete floors and solid block walls. The entire property has been contained with concrete since our company started at this location. The small fenced yard on the south side of the property comprises of a concrete floor and concrete footing of approximately one foot high. Again, this has been present since our company started at this location and it should be more than sufficient to avoid exposure to the ground. Most importantly, all of the drums we collect for recycling are empty when they come to our facility. It would be our policy to reject drums that are not empty and require our customers to empty the drums, and in some cases the drums are triple rinsed before they arrive at our facility. In addition, we have a policy to keep the closures on the drums until such time they go into the plant for recycling. Even though the drums are empty, this negates any chance for exposures to the environment. Also, although the drums are empty, we maintain two spill kits on site, one on each end of the building, in case of any exposure. We also have a spill response plan that the employees have been trained with and is displayed in our office. In other words, even though we have very little exposure to spills, we are prepared for any given situation. More importantly, we also have a very limited amount of dangerous or hazardous materials used in our recycling process. One, we use a caustic and water bath that is totally contained. The drums go into the bath and then drip off within the contained area. Two, we also paint the drums after they are rinsed, steam treated and dried. The painting occurs in a contained spray booth. The paint is always stored in drums that have a secured closure and the paint is non-hazardous when it is dry. And third, the only other product used is paint thinner to thin the paint if necessary, and to clean the paint guns. The paint thinner is always contained in a secured container. We have never had any major spills of any of these items, and our facility is totally contained in concrete which negates any chance for exposure outside of the building. Other than the caustic, paint, and paint thinner, we do not use any other dangerous or hazardous materials in our recycling process. King County monitors our waste water, as well as we self monitor our wastewater through an outside lab. We are proud of our record and we have received Gold and Silver Awards from the King County Department of Natural Resources & Parks several times over the past years recognizing our exemplary compliance in regards to our water quality. Given these circumstances, it is highly unlikely that our activities at this facility contributed in any way or form to the Lower Duwamish Waterway Superfund site. We have never had any significant spills at either of these properties. Any minor spills would have been cleaned up at such time and properly disposed. We have continuously maintained our properties in good order since we have been present at these locations. We do understand your desire to search for additional parties to help with the clean up costs for the Lower Duwamish Waterway project, but we do not feel that we are responsible in any way or form. Given your lack of any circumstantial or substantive evidence that we participated in the creation of the Lower Duwamish Waterway Superfund site, we are requesting that you remove our company name from all lists, rosters, directories, files, or records of any kind relating our company to this superfund site you are managing, unless you have detailed, substantive, proven beyond a doubt, information identifying our company directly with this superfund site. So far there

is none. Any such relation of our company to the Duwamish clean up without detailed, substantive, proven beyond a doubt information would be damaging to our business and create an undue hardship that we would hold you responsible for all damages incurred as a result.

In closing, the responsibility for the clean up costs for the Lower Duwamish Waterway Superfund Site needs to be imposed on the large and small businesses and property owners in the immediate area that had a direct involvement in creating the need for such clean up. Our company is not one of those companies for the reasons clearly outlined above. Unless you have information directly relating our business to the Lower Duwamish clean up, which you don't, then we have no plans on participating in the clean up costs for something we had nothing to do with.

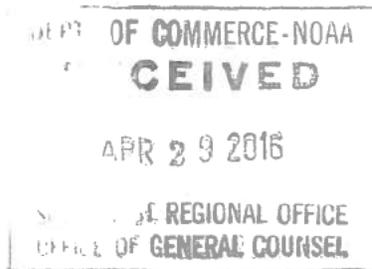
Sincerely,

A handwritten signature in black ink that reads "Louie Sanft". The signature is written in a cursive, slightly slanted style.

Louie Sanft  
Seattle Barrel Company.

# BakerHostetler

April 29, 2016



Baker & Hostetler LLP

11601 Wilshire Boulevard  
Suite 1400  
Los Angeles, CA 90025-0509

T 310.820.8800  
F 310.820.8859  
www.bakerlaw.com

Sonja A. Inglin  
direct dial: 310.442.8889  
singlin@bakerlaw.com

## VIA EMAIL

Laurie J. Lee  
Attorney Advisor  
NOAA Office of General Counsel  
Natural Resources Section  
National Oceanic and Atmospheric Administration  
501 W. Ocean Blvd. Suite 4470  
Long Beach, CA 90802

Re: Notice of Intent, Lower Duwamish Property: Sea King Industrial Park, LLC, King County Washington Tax Parcel 0001600060

Dear Ms. Lee:

This letter is submitted on behalf of Sea King Industrial Park, LLC (“Sea King”) in response to your letter dated March 29, 2016 (the “Notice Letter”).

The Notice Letter states that it was being sent to Sea King, “because you may be a potentially liable party that has contributed to the release of hazardous substances that have injured natural resources.” Sea King has not been identified as a responsible party at any of the Superfund sites referenced in the Notice Letter (the Harbor Island, Lower Duwamish Waterway or Lockheed West Superfund Sites), and disputes that there is any basis on which it could be identified as a potentially liable party that has contributed to the release of hazardous substances that have injured natural resources. Therefore, at this time, Sea King does not intend to participate in the assessment activities referenced in the Notice Letter.

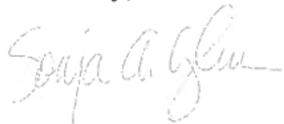
The Notice Letter notes that a later opportunity would be provided to offer “facts and information” that support Sea King’s contention that it is not responsible for damages to natural resources associated with the Superfund sites. Thus, for purposes of this letter, Sea King has not undertaken to provide such facts and information.

Atlanta Chicago Cincinnati Cleveland Columbus Costa Mesa Denver  
Houston Los Angeles New York Orlando Philadelphia Seattle Washington, DC

Sea King reserves the right to supplement this response. Given its lack of involvement in the Superfund sites, Sea King had available to it only limited information regarding those Superfund sites or the assessment process for purposes of evaluating and responding to the Notice Letter. Requests were made for additional time for Sea King to provide this response. In light of the fact that Sea King did not receive any reply to those requests, this letter is being submitted specifically conditioned upon Sea King's right to later supplement this response.

As requested in the Notice Letter, the primary contact person for Sea King Industrial Park, LLC is Ray Young, whom you can contact by regular mail at c/o International Airport Centers L.L.C., 1849 Green Bay Road, 4<sup>th</sup> Floor, Highland Park, IL 60035 and by electronic mail at [ryoung@jetcargo.com](mailto:ryoung@jetcargo.com).

Sincerely,

A handwritten signature in cursive script that reads "Sonja A. Inglin". The signature is written in dark ink and is positioned above the printed name.

Sonja A. Inglin



100 N. 35<sup>th</sup> Street • Seattle, WA 98103

JOHN T. (J.T.) COOKE  
ATTORNEY  
JTC@HOULIHANLAW.COM

February 29, 2016

**Via First-Class Mail & Email (Laurie.Lee@noaa.gov)**

Laurie J. Lee  
NOAA Office of General Counsel  
Natural Resources Section  
501 W. Ocean Blvd., Suite 4470  
Long Beach, CA 90802

**RE: NOAA'S Notice of Intent to Seattle Boiler Works Inc.**

Dear Ms. Lee:

We represent Seattle Boiler Works Inc. ("SBW"). We are in receipt of your letter dated January 29, 2016 requesting that SBWI participate in a cooperative process to perform an injury assessment for the Lower Duwamish Waterway and the East and West Waterways of Harbor Island ("Sites"). SBW may be interested in a cooperative NRD assessment for the Sites; however, we need additional information to come to an informed decision on whether to participate.

Please keep us informed of the process as additional details become available. Future correspondence regarding this matter may be directed to my attention.

Sincerely,

John (JT) Cooke  
Attorney for Seattle Boiler Works, Inc.

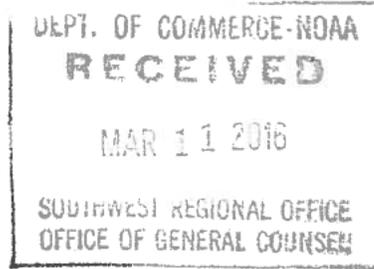
Cc: Client (via email)



JOYCE ZIKER  
PARKINSON

William F. Joyce  
Direct Dial: 206.957.5951  
Email: wjoyce@jzplaw.com

Also Admitted in Oregon



March 9, 2016

Laurie J. Lee  
NOAA Office of General Counsel  
Natural Resources Section  
501 W. Ocean Blvd., Suite 4470  
Long Beach, CA 90802

**Re: Lower Duwamish Waterway  
Seattle Iron & Metal Corporation's Response to Elliott Bay Trustee Council's  
Notice of Intent**

Dear Laurie:

This letter is written on behalf of Seattle Iron & Metals Corporation ("SIMC) and Simco Properties LLC in response to your letters to Alan Sidell dated January 29, 2016. Mr. Sidell appreciated notification of the Elliott Bay Trustee Council's ("Trustee Council") Notice of Intent to perform a Natural Resource Damage Assessment ("NRD Assessment").

SIMC has been working cooperatively and proactively with the Department of Ecology and the City of Seattle for many years on the Lower Duwamish. SIMC is interested in cooperating with the Trustee Council and would appreciate any information you may have at this time regarding the schedule, scope, estimated cost of and next steps for the NRD Assessment.

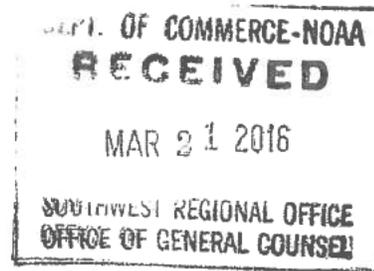
Very truly yours,

JOYCE ZIKER PARKINSON, PLLC

William F. Joyce

Enclosure

cc: Client



March 11, 2016

UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
Attn: Office of General Counsel  
Suite 4470  
501 West Ocean Boulevard  
Long Beach, CA 90802

Re: Notice of Intent. Lower Duwamish property:  
King County Washington Tax Parcel(s): 7666700315

To Whom It May Concern:

We are in receipt of your January 29 letter regarding the aforementioned property and your Notice of Intent to perform a Natural Resource Damage Assessment. Please accept this correspondence as indication of our intent to **dispute** any responsibility or liability for "damages to natural resources associated with the Harbor Island, Lower Duwamish Waterway, and Lockheed West Superfund Sites." We would appreciate your forwarding any and all information you have that in any way implicates or otherwise suggests culpability by SEW-Eurodrive, Inc. to us immediately for our review.

Please direct all future correspondence in this matter to me, C. Alexander Cable. Thank you in advance for your time and assistance.

Sincerely,

C. Alexander Cable  
Counsel  
SEW-Eurodrive, Inc.

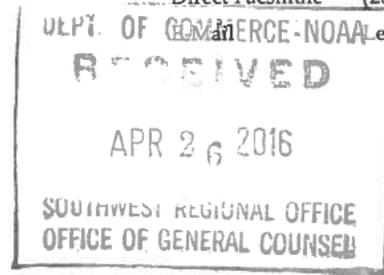


**FOSTER PEPPER** PLLC

Direct Phone (206) 447-6267

Direct Facsimile (206) 749-2090

April 26, 2016



LeeK@fooster.com

**VIA ELECTRONIC MAIL ONLY**

Laurie J. Lee  
NOAA Office of General Counsel  
Natural Resources Section  
501 W. Ocean Blvd., Suite 4470  
Long Beach, CA 90802  
Laurie.Lee@noaa.gov

Re: Sound Delivery Logistics, LLC - LDW NRD Assessment

Dear Laurie:

We are responding to your March 29, 2016 letter addressed to the registered agent for Sound Delivery Logistics, LLC (“Sound Delivery”) regarding the property located at 7225 2<sup>nd</sup> Avenue South in Seattle, Washington (the “Property”). Sound Delivery has a limited connection to the Property, which is owned and operated by Boyer Towing, Inc (“Boyer”). From approximately August 2006 through October 2006, Sound Logistics held a short-term lease interest in the Property pursuant to a verbal agreement with Boyer. Sound Logistics used the Property only to store fabricated steel for use in an offsite construction project. No equipment or other materials were stored at the Property. Trailers and fork lifts used for loading and unloading were kept at another Sound Delivery facility. In light of the brevity of tenure at the Property and the minimal nature of the activities there, Sound Delivery’s connection to the Lower Duwamish Waterway is extremely limited.

In reply to NOAA’s Notice of Intent, Sound Logistics responds that it intends to participate in preliminary discussions regarding the development of the type and scope of the Natural Resource Damage Assessment for the LDW and associated areas. Sound Logistics will not commit to paying for any phases of the injury assessment at this time – we will determine the best path forward after we learn more about the Trustees’ plans and proposed course of action. In particular, Sound Logistics will pay close attention as to how the assessment process involves areas such as Harbor Island and Lockheed West, which have no connection to or relationship with the Property.

Foster Pepper PLLC will serve as the primary contact on behalf of Sound Logistics for NRDA matters. All future communications and notifications from NOAA or the NRDA Trustees should be sent to my attention in care of Sound Logistics.

Laurie Lee  
April 25, 2016  
Page 2

The position of Sound Logistics is provided without admission as to liability or waiver as to any available defenses to its position.

Sincerely,

A handwritten signature in black ink, appearing to read "Ken Lederman", with a long horizontal flourish extending to the right.

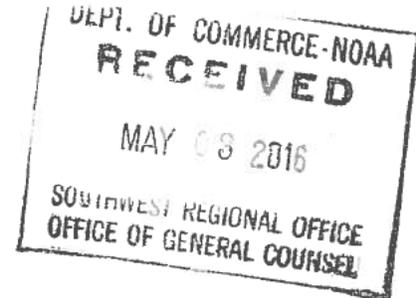
Ken Lederman

Cc: Client

May 3, 2016

**VIA ELECTRONIC MAIL ONLY**

Laurie J. Lee  
NOAA Office of General Counsel  
Natural Resources Section  
501 W. Ocean Blvd., Suite 4470  
Long Beach, CA 90802  
Laurie.Lee@noaa.gov



Re: Sternoff Metals LLC - LDW NRD Assessment

Dear Laurie:

We are responding to your March 29, 2016 letter addressed to the registered agent for "Sternoff Metals LLC." As you have misidentified the Sternoff entity formerly connected with property in the vicinity of the Lower Duwamish Waterway ("LDW"), we want to clarify that we are writing only on behalf of Jay Sternoff and Richard Sternoff, (collectively, the "Sternoffs"), who are former members of Sternco Industrial Properties Partnership ("Sternco").

Sternco was a Washington general partnership that was dissolved in 2008 pursuant to a receivership action. When Sternco was a going concern, it owned the real property located at 7201 E. Marginal Way in Seattle, Washington (the "Property"), near the LDW. Before Sternco sold the Property to Donald and Patricia McLeod in 1998, it leased the Property to Sternoff Metals Corporation, which operated on the Property until the late 1986. Sternoff Metals Corporation, another Sternoff-family entity, was formally dissolved in 1988. Sternoff Metals LLC, the party to whom you addressed your letter, was not formed until 2008 and has no connection to the Property, to Sternoff Metals Corporation, or to the LDW. As such, we request confirmation that the NOAA Trustees will remove Sternoff Metals LLC from all records regarding the LDW.

In response to NOAA's Notice of Intent issued to Sternoff Metals LLC, the Sternoffs identified above, acting only as former members of Sternco, respond that they intend to participate in preliminary discussions regarding the development of the type and scope of the Natural Resource Damage Assessment for the LDW and associated areas. The Sternoffs will not commit to paying for any phases of the injury assessment at this time – we will determine the best path forward after we learn more about the Trustees' plans and proposed course of action. In particular, the Sternoffs will pay close attention as to how the assessment process involves areas such as Harbor Island and Lockheed West, which have no connection to or relationship with the Property.

Laurie Lee  
May 3, 2016  
Page 2

Foster Pepper PLLC will serve as the primary contact on behalf of the Sternoffs for NRDA matters. All future communications and notifications from NOAA or the NRDA Trustees should be sent to my attention in care of Sternco.

Sternco's position is provided without admission as to liability or waiver as to any available defenses to its position.

Sincerely,

A handwritten signature in black ink, appearing to read "Ken Lederman", written in a cursive style.

Ken Lederman

Cc: Clients  
Ryan Sternoff



Via Email

March 30, 2016

Laurie J. Lee  
NOAA Office of General Counsel  
Attorney Advisor  
Natural Resources Section  
501 W. Ocean Blvd., Suite 4470  
Long Beach, CA 90802

RE: Notice of Intent, Lower Duwamish Property, et al

Dear Ms. Lee:

I am in receipt of your letter dated January 29, 2016 received via Certified Mail in reference to Notice of Intent, Lower Duwamish property and the subsequent King County Tax Parcels, per the attached document.

The property mentioned is unfamiliar to TAG Holdings, LLC or any of its companies. We do not own the property mentioned nor have any affiliation with it. We therefore are not responsible for damage to any natural resources associated with the Harbor Island, Lower Duwamish Waterway, and Lockheed West Superfund Sites.

If you require further information, please feel free to contact me.

Regards,

A handwritten signature in cursive script that reads 'Joseph B. Anderson, Jr.'.

Joseph B. Anderson, Jr.  
Chairman and CEO

JBA:sn  
Attachments

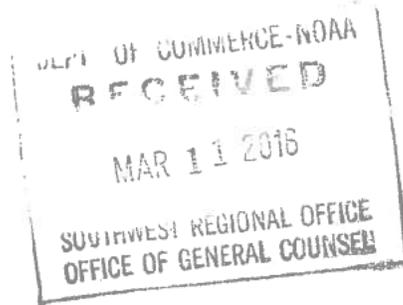


**SUMMIT**  
LAW GROUP

*a professional limited liability company*

MAUREEN L. MITCHELL  
DID: (206) 676-7004  
EMAIL: [maureenm@summitlaw.com](mailto:maureenm@summitlaw.com)

315 Fifth Ave S Suite 1000  
Seattle, Washington 98104  
phone: 206.676.7000  
fax: 206.676.7001



March 8, 2016

Laurie J. Lee  
Attorney Advisor  
Natural Resources Division  
NOAA Office of General Counsel  
Suite 4470  
501 West Ocean Boulevard  
Long Beach, CA 90802

**Re: Lower Duwamish property; Trotsky, Herman & Jacqualine,  
King County Washington Tax Parcel(s): 2924049004, 2924049030,  
2924049108**

Dear Ms. Lee:

We have received your correspondence dated January 29, 2016 regarding the Elliott Bay Trustee Council's proposal to participate in a cooperative process to develop an injury assessment for natural resource damages in the Lower Duwamish Waterway and the East and West Waterways of Harbor Island. We are working closely with the Washington Department of Ecology ("Ecology") to complete the remedial investigation and feasibility study for NW Cooperage's upland property and the inlet tidelands owned by N.W. Cooperage. As soon as Ecology selects the cleanup action plan for N.W. Cooperage's owned property, we will be in a better position to discuss natural resource damages. For that reason, we decline to participate in your process at this time. But we will appreciate receiving any progress reports and other information you are willing to share in the future. Please direct any future correspondence regarding the above-referenced properties to myself and to Kenneth A. Bloch, Keller Rohrback, 1201 3<sup>rd</sup> Avenue, Suite 3200, Seattle, WA 98101.

Laurie J. Lee  
March 8, 2016  
Page 2

Very truly yours,

SUMMIT LAW GROUP PLLC

A handwritten signature in black ink, appearing to read "Maureen L. Mitchell", with a long horizontal flourish extending to the right.

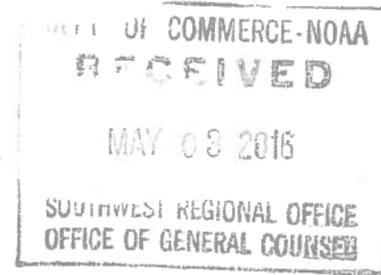
Maureen L. Mitchell

cc: Kenneth A. Bloch



April 29, 2016

Laurie J. Lee, Esq.  
NOAA Office of General Counsel  
Natural Resources Section  
501 S. Ocean Boulevard, Suite 4470  
Long Beach, CA 90802



Re: United Western Supply Company  
Lower Duwamish Waterway  
Our file no. 7441.001

Dear Ms. Lee:

I am writing this letter on behalf of our client United Western Supply Company, a Washington corporation that in 2003 became a subtenant of one parcel of industrial property on the Lower Duwamish Waterway. In your letter you had identified King County assessor's parcel no. 1924049052 (in green on the enclosed map) as the one that United Western occupies. United Western actually occupies the north half of parcel 1924049051 (the north half of the orange parcel), not parcel 9052. An unrelated company called Iconco occupies the south half of parcel 9051.

As the Lower Duwamish Waterway was placed on the National Priorities List in 2001, and United Western Supply was formed on February 25, 2003, it is not a potentially responsible party for releases that occurred before 2003. Also, a building covers almost all of the United Western Supply site except the railroad spur, so it is unlikely that my client's operations have contributed to any release of hazardous substances in the Lower Duwamish Waterway. If the Trustees have any conflicting information about the operations of my client since its formation in 2003, I would be pleased to consider it.

You may direct further correspondence about the United Western Supply Company tenancy to me.

Very truly yours,

FOLAWN ALTERMAN & RICHARDSON LLP

A handwritten signature in black ink that reads 'Dean N. Alterman'.

Dean N. Alterman  
dean@farlawfirm.com

Enclosure: Map of the United Western Supply site  
Corporations Registration for United Western Supply Company

Copy w/encl: Mr. Douglas G. McGillivray  
Mr. Murray Welch  
Mr. Chuck McKeever

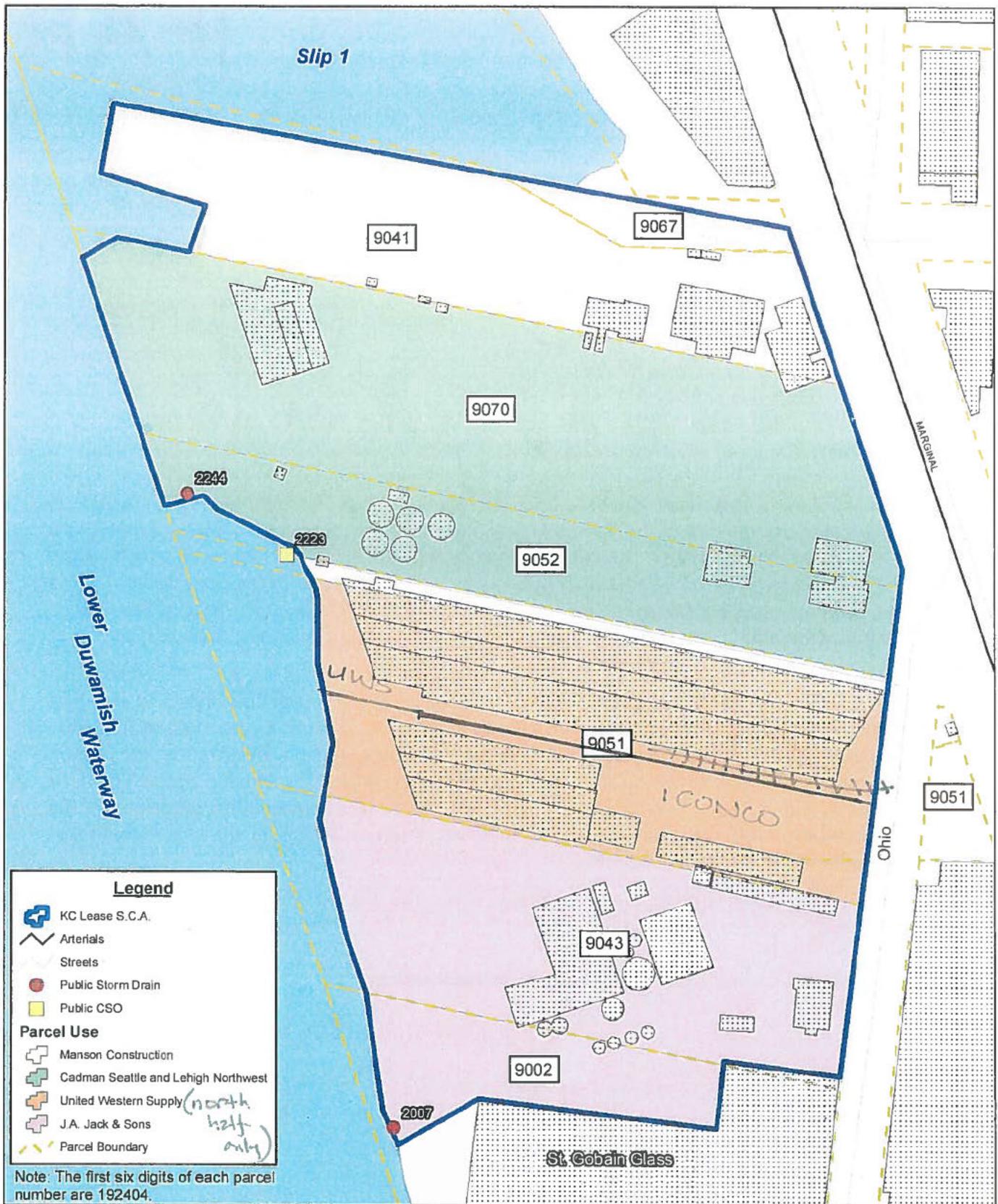


Figure 6. Tax Parcels in the King County Lease Source Control Area

ⓘ Online annual report filing for profit corporations and LLCs will be **unavailable from May 25 to June 5**. Be sure to file your annual report before that time! [Read more... \(/corps/BLS-Online-Reporting-Unavailable-May-25-to-June-5.aspx\)](http://www.sos.wa.gov/corps/BLS-Online-Reporting-Unavailable-May-25-to-June-5.aspx)

**UNITED WESTERN SUPPLY COMPANY**

|                                     |                         |
|-------------------------------------|-------------------------|
| UBI Number                          | 602274100               |
| Category                            | REG                     |
| Profit/Nonprofit                    | Profit                  |
| Active/Inactive                     | Active                  |
| State Of Incorporation              | WA                      |
| WA Filing Date                      | 02/25/2003              |
| Expiration Date                     | 02/28/2017              |
| Inactive Date                       |                         |
| Duration                            | Perpetual               |
| <b>Registered Agent Information</b> |                         |
| Agent Name                          | RSC CORPORATION         |
| Address                             | 1201 THIRD AVE STE 3400 |
| City                                | SEATTLE                 |
| State                               | WA                      |
| ZIP                                 | 98101                   |
| <b>Special Address Information</b>  |                         |
| Address                             |                         |
| City                                |                         |
| State                               |                         |
| Zip                                 |                         |

**Governing Persons**

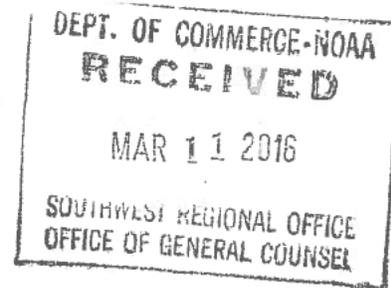
| Title                       | Name                 | Address  |
|-----------------------------|----------------------|--|
| Director                    | WELCH, MURRAY        | 21584 848<br>LANGLEY BC V1M 2K8<br>CANADA, FO 00001  |
| President,Chairman,Director | MCGILLIVRAY, DDUGLAS | 3102 NE ROYAL OAKS DR<br>VANCOUVER, WA 98660         |
| Secretary,Treasurer         | BELL, KAREN          | PO BOX 103, 323 S MAIN STREE<br>ZELIENOPLE, PA 16063 |

Corporate Headquarters • PO Box 9777 • Federal Way, WA 98063-9777

Telephone: 253.924.2803  
Fax: 253.928.2184

March 4, 2016

Laurie J. Lee  
Attorney Advisor  
NOAA Office of General Counsel  
United States Department of Commerce  
Suite 4470  
501 West Ocean Boulevard  
Long Beach CA 90802



RE: Lower Duwamish Waterway  
Your letter of January 29, 2016

Dear Ms. Lee,

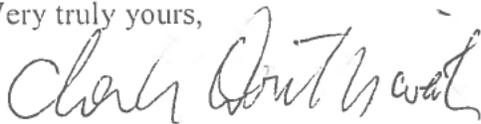
Your letter of January 29, 2016, addressed to Mr. Doyle Simons, President and CEO of Weyerhaeuser Company, was forwarded to me for response. We received your letter February 22, 2016.

Your letter reports that the agencies that comprise the Elliott Bay Trustee Council will proceed with a natural resource damage assessment and provides notice that Weyerhaeuser may participate in that process.

Thank you for your update and notice. At this time we respectfully decline the offer to participate.

For future reference please direct communications for Weyerhaeuser to me or my colleague Kimberly Hughes.

Very truly yours,

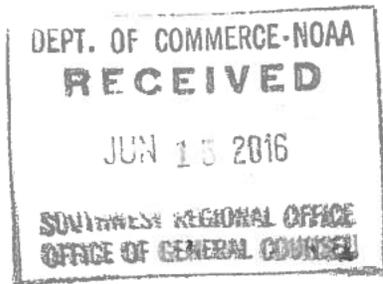


Charles K. Douthwaite  
Vice President and Assistant General Counsel

cc Kimberly A. Hughes  
Senior Legal Counsel  
Weyerhaeuser Company

June 9, 2016

Via E-Mail



 **NORTON ROSE FULBRIGHT**

Norton Rose Fulbright US LLP  
1301 McKinney, Suite 5100  
Houston, Texas 77010-3095  
United States

Ms. Laurie J. Lee  
NOAA Office of General Counsel  
Natural Resources Section  
501 W. Ocean Blvd., Suite 4470  
Long Beach, CA 90802  
Laurie.Lee@noaa.gov

**Edward Lewis**  
Head of Environmental, United States  
Direct line +1 713 651 3760  
eddie.lewis@nortonrosefulbright.com

Tel +1 713 651 5151  
Fax +1 713 651 5246  
nortonrosefulbright.com

Re: USF Reddaway, Inc.'s Response to NOAA's Notice of Intent, Lower Duwamish Waterway Superfund Site: King County Washington Tax Parcel(s): 6871200210

Dear Ms. Lee:

This letter is on behalf of our client, USF Reddaway, Inc. ("USF"), in response to a March 29, 2016, letter from the National Oceanic and Atmospheric Administration ("NOAA"). In the letter, NOAA invited USF to participate in the development, implementation, and funding of the Assessment Plan for the Lower Duwamish Waterway Superfund Site.

USF Reddaway, Inc. does not know why it received the notice from NOAA. USF Reddaway has not engaged in the sale, transfer, delivery or disposal, of any hazardous substances, scrap materials, and/or recyclable materials to this Site. USF has leased a very small portion (six parking spaces) of a parcel located at 7318 4<sup>th</sup> Avenue South in Seattle for the parking of its trailers and converter dollies since February 2005. No equipment is left at the parcel overnight. A trailer and a converter dolly are only left at the parcel while the tractor driver delivers a second trailer to a location within the city. The trailer and converter dolly typically remain at the parcel for a maximum of six to eight hours. At the end of each day, the trailers and converter dolly are picked up and returned to USF's terminal in Kent, Washington.

There is no evidence of any release associated with the minimal activities USF has conducted at a small portion of the parcel, and USF is not aware of any release associated with its activities at the site or near the parcel. As such, USF respectfully declines participation in the development, implementation, and funding of the Assessment Plan for the Lower Duwamish Waterway Superfund Site at this time.

Laurie J. Lee  
June 9, 2016  
Page 2

NORTON ROSE FULBRIGHT

If you have any questions, please feel free to contact me at the address or phone number shown above.

Very truly yours,

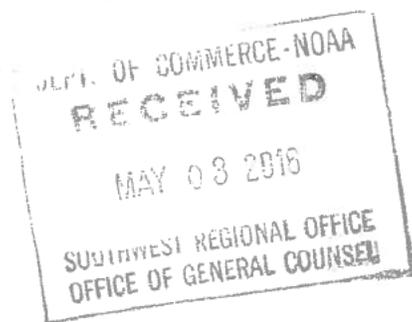
*Eddie Lewis*

Edward Lewis

ROBIE G. RUSSELL

ATTORNEY AT LAW

76 South Main Street  
Seattle, Washington 98104-2514  
Facsimile (206) 621-2104  
(206) 621-2102  
robielaw@gmail.com



Licensed in Washington  
and Idaho

Our Reference No.  
2803-0002

April 27, 2016

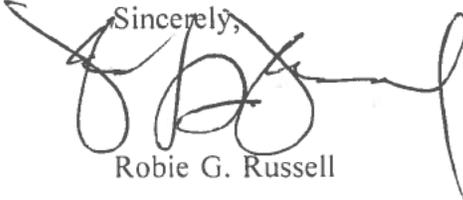
Laurie J. Lee  
NOAA Office of General Counsel  
Natural Resources Section  
501 W. Ocean Blvd., Ste. 4470  
Long Beach, CA 90802  
Laurie.Lee@noaa.gov

Re: Response of University Mortgage & Investment LLC to Lower Duwamish Notice of Intent

Dear Ms. Lee:

We are in receipt of your Lower Duwamish Notice of Intent letter dated March 29, 2016, and addressed to Ronald W. Steinman, registered agent for University Mortgage & Investment LLC, 4731 12th Avenue NE, Seattle, WA 98105, Tax Parcel Nos. 7327906685 and 7327906750.

The purpose of this letter is to advise you that our offices will be representing the foregoing party and will be looking forward to the opportunity to provide the necessary information to show that they are not responsible for any natural resource damages in connection with the Lower Duwamish Waterway and other associated sites.

Sincerely,  
  
Robie G. Russell

RGR/glf

cc: Ron Steinman

# V. Van Dyke Inc.

"Specialists In Oversize Hauling"

1810 Stewart St.

Tacoma, Washington 98421

253-272-2222

2/17/16

Laurie J. Lee  
NOAA Office of General Counsel  
Natural Resources Section  
501 W. Ocean Blvd. Suite 4470  
Long Beach, CA 90802  
Laurie.Lee@noaa.gov

RE: Notice of Intent, Lower Duwamish Property: V. Van Dyke, Inc.  
King County Washington Tax Parcel(s) 536702270, 536702400

Dear Ms. Lee:

The purpose of this letter is to respond to your letter dated January 29, 2016.

Cliff Bates is no longer affiliated with V. Van Dyke Inc. Rather, the contact person at V. Van Dyke, Inc. should be me, Steve Bates.

In addition, you should know that V. Van Dyke Inc. has never owned the property. Rather, it is merely a tenant, and the property is owned by:

Lloyd Babler  
VVD Properties, LLC  
3740 SE Shattuck Road  
Portland, OR 97221

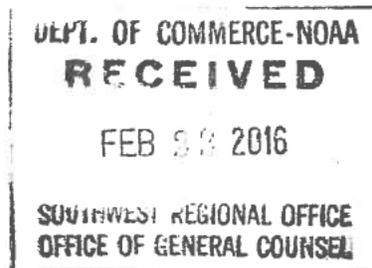
Additionally, it should be emphasized that earlier tests showed that V. Van Dyke Inc. never released any hazardous materials that made it into the river. Indeed, V. Van Dyke Inc. is not responsible for any damage to the natural resources associated with the Harbor Island, Lower Duwamish Waterway, and Lockheed West Superfund Sites.

Sincerely,



Steve Bates  
President, V. Van Dyke Inc.  
Tacoma, WA

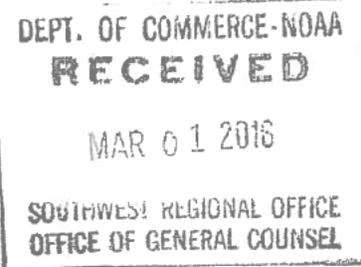
cc: Mr. Lloyd Babler, VVD Properties, LLC



ROBIE G. RUSSELL

ATTORNEY AT LAW

76 South Main Street  
Seattle, Washington 98104-2514  
Facsimile (206) 621-2104  
(206) 621-2102  
robielaw@gmail.com



Licensed in Washington  
and Idaho

Our Reference No.  
2504/0001

February 25, 2016

Laurie J. Lee  
NOAA Office of General Counsel  
Natural Resources Section  
501 W. Ocean Blvd., Ste. 4470  
Long Beach, CA 90802  
Laurie.Lee@noaa.gov

Re: Response of Wells Trucking & Leasing, Inc. to Lower Duwamish Notice of Intent

Dear Ms. Lee:

We are in receipt of your Lower Duwamish Notice of Intent letter dated January 29, 2016, and addressed to our offices regarding Wells Trucking & Leasing, Inc., Tax Parcel No. 6871200750.

The purpose of this letter is to advise you that our offices will be representing the foregoing party and will be looking forward to the opportunity to provide the necessary information to show that they are not responsible for any natural resource damages in connection with the Lower Duwamish Waterway and other associated sites.

Sincerely,

A handwritten signature in black ink, appearing to read "Robie G. Russell".

Robie G. Russell

RGR/glf

cc: Wells Trucking & Leasing, Inc.

**SENDER: COMPLETE THIS SECTION**

Complete items 1, 2, and 3.

- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Western Marine Construction, Inc.  
 2775 Harbor Ave SW # A  
 Seattle, WA 98126



9590 9403 0321 5155 9777 30

Article Number (Transfer from service label)

7015 0640 0003 4933 4319

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

Agent  
 Addressee

B. Received by (Printed Name)

C. Date of Delivery

2-10-16

D. Is delivery address different from item 1? If YES, enter delivery address below:

Yes  
 No

3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Return Receipt for Merchandise
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

PS Form 3811, April 2015 PSN 7530-02-000-9053

Domestic Return Receipt

From: **Maddie O'Rourke** <maddie@wmc2775.com>

Date: Mon, Feb 29, 2016 at 4:40 PM

Subject: January 29, 2016 correspondence regarding Notice of Intent, Lower Duwamish Property: Western Marine Construction, Inc. King County Washington Tax Parcel(s): 6871200695

To: "Laurie J. Lee" <Laurie.Lee@noaa.gov>

Dear Ms. Lee,

We received your certified letter dated January 29, 2016 on February 10, 2016. We are confused by the content of your letter as Western Marine Construction, Inc. has never been approached by the United States Department of Commerce National Oceanic and Atmospheric Administration Office of General Counsel or any other Trustees regarding this issue.

Have the Trustees made a dSAY calculation for King County Washington tax parcel number 6871200695 for any alleged claim of natural resource damages by our company? Please provide this and any additional information that the Trustees may have to quantify and substantiate our connection to this claim so we may understand what this notice of intent is referring to and whether any opportunities for settlement may exist.

If you wish to call and discuss this matter further I can be reached at my office number below.

Very truly yours,

Madeleine (Maddie) O'Rourke

Chief Financial Officer

Western Marine Construction, Inc.

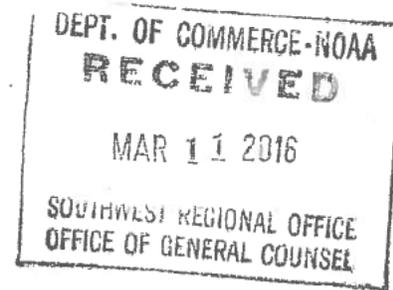
206.622.9161

Corporate Headquarters • PO Box 9777 • Federal Way, WA 98063-9777

Telephone: 253.924.2803  
Fax: 253.928.2184

March 4, 2016

Laurie J. Lee  
Attorney Advisor  
NOAA Office of General Counsel  
United States Department of Commerce  
Suite 4470  
501 West Ocean Boulevard  
Long Beach CA 90802



RE: Lower Duwamish Waterway  
Your letter of January 29, 2016

Dear Ms. Lee,

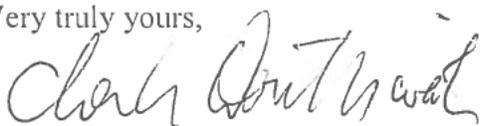
Your letter of January 29, 2016, addressed to Mr. Doyle Simons, President and CEO of Weyerhaeuser Company, was forwarded to me for response. We received your letter February 22, 2016.

Your letter reports that the agencies that comprise the Elliott Bay Trustee Council will proceed with a natural resource damage assessment and provides notice that Weyerhaeuser may participate in that process.

Thank you for your update and notice. At this time we respectfully decline the offer to participate.

For future reference please direct communications for Weyerhaeuser to me or my colleague Kimberly Hughes.

Very truly yours,



Charles K. Douthwaite  
Vice President and Assistant General Counsel

cc Kimberly A. Hughes  
Senior Legal Counsel  
Weyerhaeuser Company



## WHECO Corporation

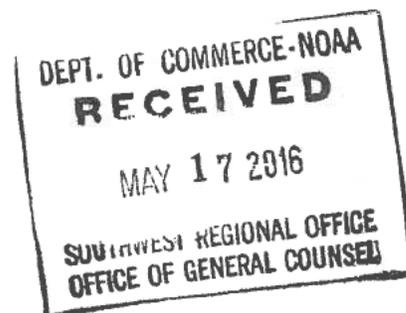
Corporate Headquarters

2989 Kingsgate Way • Richland, Washington 99354-5311

Phone: (509) 371-1703 • Fax: (509) 375-4920 • Website: [www.wheco.com](http://www.wheco.com)

May 10, 2016

Laurie J. Lee  
NOAA Office of General Counsel  
Natural Resources Section  
501 W. Ocean Blvd. Suite 4470  
Long Beach, CA 90802  
[Laurie.Lee@noaa.gov](mailto:Laurie.Lee@noaa.gov)



RE: March 29, 2016, Notice of Intent, Lower Duwamish property: WHECO Corporation  
King County Tax Parcel: 73279064465

This letter is in response to your March 29, 2016 letter of notification that you believe WHECO may have released hazardous substances into the Lower Duwamish Waterway.

WHECO has already been forced to expended considerable resources defending itself on this subject to the U. S. Environmental Protection Agency (EPA). Resultantly, when the EPA issued its final list of General Notice Letter recipients for the Lower Duwamish Waterway (LDW) in November 2012, WHECO was excluded from that list. Therefore it appears EPA did not intend to include WHECO as a Potentially Responsible Party (PRP) in connection with LDW.

The WHECO business model has not changed and WHECO continues to NOT be a contributor to the release of hazardous substances into the LDW.

Your accusatory statement is a general shotgun approach in that it does not provide any specifics about what you believe WHECO has contaminated the waterway with....Please identify what hazardous substance WHECO has potentially released into the Lower Duwamish Waterway.

Sincerely,

WHECO Corporation

*Ron Williams*

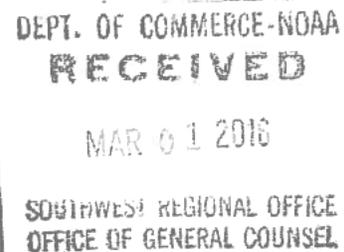
Ronald L. Williams  
CEO/Chairman of the Board

RLW

ROBIE G. RUSSELL

ATTORNEY AT LAW

76 South Main Street  
Seattle, Washington 98104-2514  
Facsimile (206) 621-2104  
(206) 621-2102  
robielaw@gmail.com



Licensed in Washington  
and Idaho

Our Reference No  
2504 0001

February 25, 2016

Laurie J. Lee  
NOAA Office of General Counsel  
Natural Resources Section  
501 W. Ocean Blvd., Ste. 4470  
Long Beach, CA 90802  
Laurie.Lee@noaa.gov

Re: Response of Wells Trucking & Leasing, Inc. to Lower Duwamish Notice of Intent

Dear Ms. Lee:

We are in receipt of your Lower Duwamish Notice of Intent letter dated January 29, 2016, and addressed to our offices regarding Wells Trucking & Leasing, Inc., Tax Parcel No. 6871200750.

The purpose of this letter is to advise you that our offices will be representing the foregoing party and will be looking forward to the opportunity to provide the necessary information to show that they are not responsible for any natural resource damages in connection with the Lower Duwamish Waterway and other associated sites.

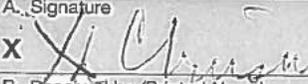
Sincerely,

A handwritten signature in black ink, appearing to be "Robie G. Russell".

Robie G. Russell

RGR/glf

cc: Wells Trucking & Leasing, Inc.

|  |   |
|--|---|
| <b>RENDER: COMPLETE THIS SECTION</b><br>Complete items 1, 2, and 3.<br>Print your name and address on the reverse so that we can return the card to you.<br>Attach this card to the back of the mailpiece, or on the front if space permits.<br>Article Addressed to:<br><p style="text-align: center;">Western Marine Construction, Inc.<br/>         2775 Harbor Ave SW # A<br/>         Seattle, WA 98126</p> | <b>COMPLETE THIS SECTION ON DELIVERY</b><br>A. Signature<br><br><input type="checkbox"/> Agent<br><input type="checkbox"/> Addressee<br>B. Received by (Printed Name)<br>C. Date of Delivery<br>2-10-16<br>D. Is delivery address different from item 1? <input type="checkbox"/> Yes<br>If YES, enter delivery address below: <input type="checkbox"/> No  |
| <br><b>9590 9403 0321 5155 9777 30</b><br>Article Number (Transfer from service label)<br><b>7015 0640 0003 4933 4319</b>  | 3. Service Type<br><input type="checkbox"/> Adult Signature<br><input type="checkbox"/> Adult Signature Restricted Delivery<br><input checked="" type="checkbox"/> Certified Mail®<br><input type="checkbox"/> Certified Mail Restricted Delivery<br><input type="checkbox"/> Collect on Delivery<br><input type="checkbox"/> Collect on Delivery Restricted Delivery<br><input type="checkbox"/> Restricted Delivery<br><input type="checkbox"/> Priority Mail Express®<br><input type="checkbox"/> Registered Mail™<br><input type="checkbox"/> Registered Mail Restricted Delivery<br><input type="checkbox"/> Return Receipt for Merchandise<br><input type="checkbox"/> Signature Confirmation™<br><input type="checkbox"/> Signature Confirmation Restricted Delivery |

PS Form 3811, April 2015 PSN 7530-02-000-9053 Domestic Return Receipt

From: **Maddie O'Rourke** <maddie@wmc2775.com>  
 Date: Mon, Feb 29, 2016 at 4:40 PM  
 Subject: January 29, 2016 correspondence regarding Notice of Intent, Lower Duwamish Property: Western Marine Construction, Inc. King County Washington Tax Parcel(s): 6871200695  
 To: "Laurie J. Lee" <Laurie.Lee@noaa.gov>

Dear Ms. Lee,

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Have the Trustees made a dSAY calculation for King County Washington tax parcel number 6871200695 for any alleged claim of natural resource damages by our company? Please provide this and any additional information that the Trustees may have to quantify and substantiate our connection to this claim so we may understand what this notice of intent is referring to and whether any opportunities for settlement may exist.

If you wish to call and discuss this matter further I can be reached at my office number below.

Very truly yours,

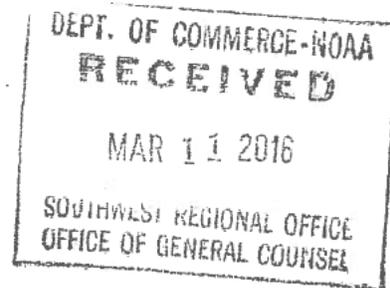
Madeleine (Maddie) O'Rourke  
 Chief Financial Officer  
 Western Marine Construction, Inc.  
 206.622.9161

Corporate Headquarters • PO Box 9777 • Federal Way, WA 98063-9777

Telephone: 253.924.2803  
Fax: 253.928.2184

March 4, 2016

Laurie J. Lee  
Attorney Advisor  
NOAA Office of General Counsel  
United States Department of Commerce  
Suite 4470  
501 West Ocean Boulevard  
Long Beach CA 90802



RE: Lower Duwamish Waterway  
Your letter of January 29, 2016

Dear Ms. Lee,

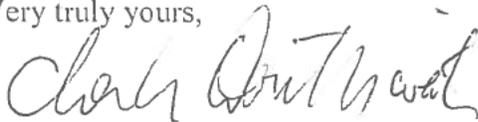
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For future reference please direct communications for Weyerhaeuser to me or my colleague Kimberly Hughes.

Very truly yours,



Charles K. Douthwaite  
Vice President and Assistant General Counsel

cc Kimberly A. Hughes  
Senior Legal Counsel  
Weyerhaeuser Company



**WHECO Corporation**

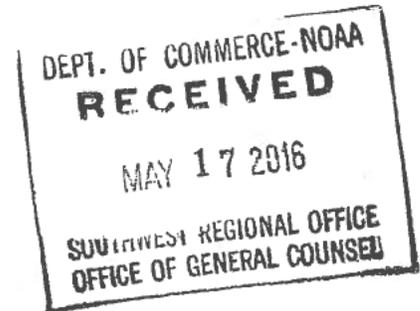
Corporate Headquarters

2989 Kingsgate Way • Richland, Washington 99354-5311

Phone: (509) 371-1703 • Fax: (509) 375-4920 • Website: [www.wheco.com](http://www.wheco.com)

May 10, 2016

Laurie J. Lee  
NOAA Office of General Counsel  
Natural Resources Section  
501 W. Ocean Blvd. Suite 4470  
Long Beach, CA 90802  
[Laurie.Lee@noaa.gov](mailto:Laurie.Lee@noaa.gov)



RE: March 29, 2016, Notice of Intent, Lower Duwamish property: WHECO Corporation  
King County Tax Parcel: 73279064465

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Sincerely,

WHECO Corporation

*Ron Williams*

Ronald L. Williams  
CEO/Chairman of the Board

RLW