



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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February 12, 2013

Mr. Nels B. Cone  
Mr. Eric Berg  
Mr. David Nightingale  
Mr. Rampur Viswanath  
Pacific Northwest Chapter –  
Academy of Hazardous Materials Managers  
P.O. Box 85418  
Seattle, WA 98145

RE: Ecology's Response to January 18, 2013, Meeting Request

Dear Gentlemen:

This letter is in response to your January 18, 2013, letter regarding the discussions surrounding the role of Certified Hazardous Materials Managers (CHMM) in Washington. I appreciate the information that you have provided to Ecology. I have reviewed those materials and my October 5, 2011, letter in response to your request for CHMM certification and accommodation. I believe that my earlier letter clearly states the statutory constraints on Ecology's ability to fully accommodate your requests. As discussed below, I do not believe that further meetings are needed to discuss this issue.

As background, Ecology and CHMM representatives began discussing this issue after you submitted comments during the scoping process for the Model Toxics Control Act (MTCA) Cleanup Regulations in late 2009. In December 2010, you also submitted the "Proposal for Authorization of Certified Hazardous Materials Managers (CHMMs) Under Washington State's Toxic Cleanup Program". This is a well-researched and well-organized document. The document provided examples of how other state agencies have defined roles for CHMMs. Since receiving your initial rule scoping comments, Ecology staff and managers have met several times with you and other CHMM representatives to discuss the document and related materials. I provided Ecology's response to your request in a letter sent on October 5, 2011. I will briefly summarize the four main points in that letter.

- **CHMM Authorization for MTCA Cleanup Projects:** The Model Toxics Control Act (MTCA) establishes Ecology's duties and authorities for overseeing and/or performing cleanup actions in Washington. With respect to your request, I clearly stated MTCA does not provide the authority for Ecology to pursue certification programs similar to those you identified in other states.

Specifically: *The Model Toxics Control Act statute does not directly authorize Ecology to establish a program for certifying people who perform remedial work or otherwise limit or regulate who may perform such work. (See page 1 of October 5, 2011, letter)*

- **Underground Storage Tank (UST) Program:** In my earlier letter, I did distinguish between our authorities under the MTCA statute and the Underground Storage Tank (UST) law. Unlike MTCA, the UST law explicitly provides Ecology with the authority to establish a program to certify those who perform services on UST systems, including installation, testing, decommissioning and site assessments. I said we would consider and evaluate allowing those with the CHMM credential to perform UST site assessments. We were not able to address this issue during Phase I of the UST rule revision process because of the rule moratorium limited agency rulemaking activities. However, we will continue to pursue this idea when we initiate Phase II of the UST rulemaking process. Our Phase II rulemaking effort will address a wide range of issues associated with planned changes to the Federal UST rule. Consequently, we will not begin this work until EPA has published final revisions to the Federal UST rule. There have been several delays in the Federal rulemaking process. We do not expect to begin work on the Phase II UST rulemaking process until mid-to-late 2014.
- **Petroleum Contaminated Soils (PCS) Guidance.** In my earlier letter, I stated that we would clarify that not all remediation work requires an engineering or geology license. We included a general statement in the PCS guidance issued in 2011. Based on subsequent discussions and your November 21, 2012 letter, it appears that you continue to hope the Ecology can provide a more definitive statement on tasks that can be performed by CHMMs (“...appropriate language to accommodate CHMM inclusion within the UST, PCS and VCP guidelines...”). I can understand your interest in having a greater level of specificity in the guidance document. However, I believe we have accommodated CHMMs and other qualified professionals by clarifying that all remedial work does not require an engineering or geology license. I do not believe that a greater level of detail to accommodate CHMMs would serve a useful purpose at this time.
- **Voluntary Cleanup Program (VCP) Guidance.** We still plan to provide similar clarifications in the VCP guidance materials. We have not revised these materials because of work on higher priority projects such as the Sediment Management Standards (SMS) rulemaking process. We appreciate your willingness to provide several examples of problems that you have encountered on sites in Washington (October 5, 2012, e-mail from Nels Cone to Dave Bradley). These examples will be very helpful as Dave and I discuss this issue with the TCP Management Team. The materials are self-explanatory and we don't believe it is necessary to meet to go over this information.

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In closing, I appreciate your interest in accelerating cleanup work in Washington. I think we can agree that this is an important goal. Ecology is pursuing several initiatives to reduce project delays and improve program performance. However, the Department has gone as far as it can to address your requests without additional legislative direction. Further conversations will not change this situation.

Sincerely,

A handwritten signature in dark ink, appearing to read 'JP', with a long horizontal stroke extending to the right.

James J. Pendowski, Program Manager  
Toxics Cleanup Program

Enclosures

cc: Dave Bradley, Ecology  
Martha Hankins, Ecology