From: David A. Rabbino
To: DAUGHERTY Katie * DEQ
Cc: John Walsh
Subject: RE: DEQ Feb. 10, 2023 letter re Warren Barges
Date: Monday, August 7, 2023 9:30:03 AM
Attachments: image001.png

Katie:

My apologies for not responding sooner. The City has reviewed the letter, and remains unclear why the letter has been sent to it or why DEQ is seeking to have the City perform the requested investigation activities. As the letter notes several times, the barges at issue were abandoned by unknown parties before the 1970s. There is no evidence that the City had any involvement in the decision to abandon the barges at that location, nor is there any evidence the City had or has any legally viable interest in the barges such that it is appropriate to request they take steps to investigate potential contamination from the barges.

As I am sure you are aware, ORS 465.255 provides strict liability against the following categories of parties:

(a) Any owner or operator at or during the time of the acts or omissions that resulted in the release.

(b) Any owner or operator who became the owner or operator after the time of the acts or omissions that resulted in the release, and who knew or reasonably should have known of the release when the person first became the owner or operator.

(c) Any owner or operator who obtained actual knowledge of the release at the facility during the time the person was the owner or operator of the facility and then subsequently transferred ownership or operation of the facility to another person without disclosing such knowledge.

(d) Any person who, by any acts or omissions, caused, contributed to or exacerbated the release, unless the acts or omissions were in material compliance with applicable laws, standards, regulations, licenses or permits.

(e) Any person who unlawfully hinders or delays entry to, investigation of or removal or remedial action at a facility."

Based on the information known to date, the City does not fall into any of these categories of parties. The City was not the owner of the barges at the time they were abandoned. There is no current information that there are releases from the barges, and certainly no information that the City is or was aware at any time of potential releases from the barges. The City has taken no actions that have contributed to, caused, or exacerbated any alleged release. Nor has the City done anything to hinder or delay any investigation of the barges. As such, the City believes there is no legal basis under ORS 465.255 for DEQ to assert liability against the City for any potential contamination associated with the barges (and the City will note that no evidence has been presented that there in fact are any releases from the barges).

Additionally, expressly exempt from liability under ORS 465.255 are the following entities:

(a) Any owner or operator who became the owner or operator after the time of the acts or omissions that resulted in a release, and who did not know and reasonably should not have known of the release when the person first became the owner or operator.

(b) Any owner or operator if the release at the facility was caused solely by one or a combination of the following:

(A) An act of God. "Act of God" means an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

(B) An act of war.

(C) Acts or omissions of a third party, other than an employee or agent of the person asserting this defense, or other than a person whose acts or omissions occur in connection with a contractual relationship, existing directly or indirectly, with the person asserting this defense. As used in this subparagraph, "contractual relationship" includes but is not limited to land contracts, deeds or other instruments transferring title or possession.

Given how long ago the barges were abandoned, the extent of sediment that has subsequently surrounded them, and the fact that the City had no involvement with the barges at that time, the City did not know and would have had no reason to know of any potential releases of contamination. To the extent the barges were abandoned, those acts were performed by third parties with whom the City had no contractual relationship. As a result, based on the information known to date, even if the City did fall into one of the categories of liable parties listed above (which the City believes it does not), it would likely be exempt from liability based on potentially two of the defenses listed immediately above.

The City appreciates DEQ's desire to investigate if there is potential contamination associated with the barges, but believes DEQ should seek to have the parties that were associated with the barges being left in that location to take on the investigation. The barges are listed as being USACE abandoned barges and being related to the U.S. efforts during World War II, and therefore potentially present claims against the United States, which DEQ is welcome to pursue. Based on the information known to dates, there is simply no factual or legal basis for DEQ to assert potential liability against the City for any potential contamination associated with the barges.

If DEQ has additional information to share that might otherwise provide a factual and legal basis to assert potential liability against the City for the barges, the City requests that DEQ provide the same for the City to review. In the absence of such a showing, the City believes there simply is no bases for DEQ's request to the City, and the City politely declines to undertake the requested investigation.

I am happy to discuss this in further detail. If you wish to discuss this matter further, please do not hesitate to contact me.

Regards, David

David A. Rabbino | Attorney
Direct: (503) 598-5536

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From: DAUGHERTY Katie * DEQ <Katie.DAUGHERTY@deq.oregon.gov>
Sent: Thursday, August 3, 2023 3:59 PM
To: David A. Rabbino <David.Rabbino@jordanramis.com>
Subject: RE: DEQ Feb. 10, 2023 letter re Warren Barges

CAUTION: EXTERNAL EMAIL – verify sender before opening links or attachments

Hi David, I never received a response on this letter. What is the status? Thanks, Katie

---

From: David A. Rabbino <David.Rabbino@jordanramis.com>
Sent: Monday, March 13, 2023 8:23 AM
To: DAUGHERTY Katie * DEQ <Katie.DAUGHERTY@deq.oregon.gov>
Subject: Re: DEQ Feb. 10, 2023 letter re Warren Barges

Will do.

Sent from my iPhone

David A. Rabbino | Attorney
Direct: (503) 598-5536

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On Mar 13, 2023, at 8:22 AM, DAUGHERTY Katie * DEQ <Katie.DAUGHERTY@deq.oregon.gov> wrote:

Sure 9:30 is great. Please call me at 503-860-3943

From: David A. Rabbino <David.Rabbino@jordanramis.com>
Sent: Monday, March 13, 2023 8:19 AM
To: DAUGHERTY Katie * DEQ <Katie.DAUGHERTY@deq.oregon.gov>
Subject: Re: DEQ Feb. 10, 2023 letter re Warren Barges

Katie

That can work. I'm dealing with a cold so am not in the office. Does 9:30 work?

David

Sent from my iPhone

David A. Rabbino | Attorney
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<image002.jpg>

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On Mar 13, 2023, at 8:01 AM, DAUGHERTY Katie * DEQ <Katie.DAUGHERTY@deq.oregon.gov> wrote:

Hi David,

Any chance you have time to talk before 10 today?

Thanks
Katie

<image003.png>

Katie Daugherty, R.G | she/her
Project Manager
Oregon DEQ | NWR Cleanup and Leaking UST Section
700 NE Multnomah Street, Suite 600
Portland, OR 97232
503-860-3943
Katie.Daugherty@deq.oregon.gov

From: David A. Rabbino <David.Rabbino@jordanramis.com>
Sent: Monday, March 6, 2023 3:04 PM
To: SEIDEL Paul * DEQ <Paul.SEIDEL@deq.oregon.gov>; DAUGHERTY Katie * DEQ <Katie.DAUGHERTY@deq.oregon.gov>
Subject: RE: DEQ Feb. 10, 2023 letter re Warren Barges

Paul:

That's fine. I assume that DEQ will agree that the City reached out prior to the expiration of the 30-day period in the letter. I will be happy to speak to Katie when she returns.

David

David A. Rabbino | Attorney
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<image005.jpg>

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From: SEIDEL Paul * DEQ <Paul.SEIDEL@deq.oregon.gov>
Sent: Monday, March 6, 2023 2:56 PM
To: David A. Rabbino <David.Rabbino@jordanramis.com>; DAUGHERTY Katie * DEQ <Katie.DAUGHERTY@deq.oregon.gov>

Subject: RE: DEQ Feb. 10, 2023 letter re Warren Barges

Good Afternoon David,

Katie is out on leave until the 13th, and can call you then. If more urgent we can always chat, but it is best if we wait until Katie returns.

Best Regards,
Paul

Paul Seidel
Manager – NWR Cleanup, Site Assessment and Emergency Response
Phone: 503-229-5614 | E-mail: paul.seidel@deq.oregon.gov |
Oregon DEQ | 700 NE Multnomah Street, Suite 600 | Portland OR 97232

From: David A. Rabbino <David.Rabbino@jordanramis.com>
Sent: Monday, March 6, 2023 2:53 PM
To: DAUGHERTY Katie * DEQ <Katie.DAUGHERTY@deq.oregon.gov>
Cc: SEIDEL Paul * DEQ <Paul.SEIDEL@deq.oregon.gov>
Subject: DEQ Feb. 10, 2023 letter re Warren Barges

Katie:

I represent the City of St. Helens, and they have asked that I reach out and discuss with you the letter they received from your office dated February 10, 2023. Please call me at your earliest convenience. I can be reached at 503-504-2835.

Regards, David

David A. Rabbino | Attorney
Direct: (503) 598-5536

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