



Oregon

Tina Kotek, Governor

Department of Environmental Quality

Northwest Region

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TTY 711

March 5, 2025

Michael P. Rickman
13151 SE Bobby Bruce Lane
Boring, OR 97009

RE: **DEQ Response to Public Comment on Proposed Conditional No Further Action
Determination for Astro Western #503**
LUST No. 03-93-0024

Dear Michael Rickman:

On January 27, 2025, you submitted comments via a telephone call to the Oregon Department of Environmental Quality (DEQ), regarding the proposed Conditional No Further Action (cNFA) determination for the former Astro Western #503 property, also known as the former Holts Shopping Center, located at 13230 Southeast Orient Drive in Boring, Clackamas County, Oregon (the site) (Exhibit A). A historic release of petroleum at the site was discovered in 1993 and DEQ's UST Cleanup Regulations (OAR 340-122-0205 through 0360) require the Responsible Party (i.e., Astro West) to determine the magnitude and extent of contamination and perform cleanup as necessary.

Based on review of current site conditions and cleanup actions performed to date, DEQ has determined that conditional upon adherence to a contaminated media management plan (CMMP) and property use restrictions in an Easement and Equitable Servitudes (E&ES) at the site, site conditions are protective of public health, safety and welfare, and the environment under Oregon Administrative Rules (OAR) 340-122-0205 through 0360 and Oregon Revised Statutes (ORS) 465.200 et seq. under likely future use scenarios. This determination is supported by reports in the Administrative File and the DEQ Staff Memo dated January 6, 2025.

In your comments, you expressed concern about contamination on your property, located at 13151 Southeast Bobby Bruce Lane, and your responsibility as a property owner as it pertains to contamination from the site. In terms of your responsibility as a property owner as it pertains to contamination from the site, DEQ's *Off-Site Contaminant Migration Policy*, implemented on December 26, 2012, (see Exhibit B in Attachments) states that, in cases where hazardous substances have come to be located at a property solely as the result of migration from a source or sources outside the property, DEQ will **not** require the owner or operator of the impacted property to perform remedial actions or pay remedial action costs associated with the migrated contaminants. While this policy is subject to certain conditions (see Exhibit B), the net effect is that you are an impacted property owner and cannot be held responsible for such contamination.

While understanding the basis for your concerns, DEQ lacks statutory authority to compel Responsible Parties to clean up to non-detect (i.e., zero contamination) levels once contamination has been delineated and shown to be stable. DEQ can only require that contamination be cleaned up to acceptable risk levels protective of human health. Based on the following lines of evidence, DEQ considers contamination at 13151 Southeast Bobby Bruce Lane to pose minimal risk to human health.

Site investigations revealed unimpacted (i.e., clean) soil samples between your property and contamination from the former underground storage tanks at the Astro site (borings SP3, SP6, SP7, MW-3, and P5). In addition, field observations during the investigation (i.e., soil color, odor and photoionization detector measurements) revealed a low likelihood of soil contamination on your property. In such situations, groundwater is considered a more reliable proxy indicator of the potential for impact to your property than soil.

Benzene and total xylenes were detected at low concentrations in groundwater at your property (0.33 micrograms per liter [$\mu\text{g/L}$] and 2 $\mu\text{g/L}$, respectively), but do not exceed the most conservative of DEQ's risk-based concentrations (RBCs) for ingestion of groundwater and therefore do not pose unacceptable risks to human health. Additionally, based on distance and cross-gradient location relative to contamination at the site as determined by groundwater flow patterns, the low concentration of benzene and total xylenes detected in the shallow groundwater at your property does not threaten the water well providing drinking water to your property. In August 2018, the water well providing drinking water to your property was sampled (Well 8-TL2400) and there were no detections of petroleum hydrocarbons and volatile organic compounds (VOCs) in the water sample. Groundwater plume stability has been demonstrated through multi-year sampling of the monitoring wells and water wells on the Astro station property, and groundwater containing concentrations greater than the residential and/or occupational RBCs for groundwater ingestion and inhalation from tap water does not extend offsite (Exhibit A).

DEQ's focus is on evaluating risks to human health and the environment. By that standard, low levels of petroleum-related VOCs in groundwater at your property do not pose unacceptable human health risks and does not warrant further cleanup. DEQ cannot speak to concerns regarding the impact of low levels of contamination to property value. Concerns regarding property devaluation should be directed to the site property owner.

If you have questions or would like to discuss the implications further, please call me at 503-926-2257 or email me at rebecca.digiustino@deq.oregon.gov.

Sincerely,

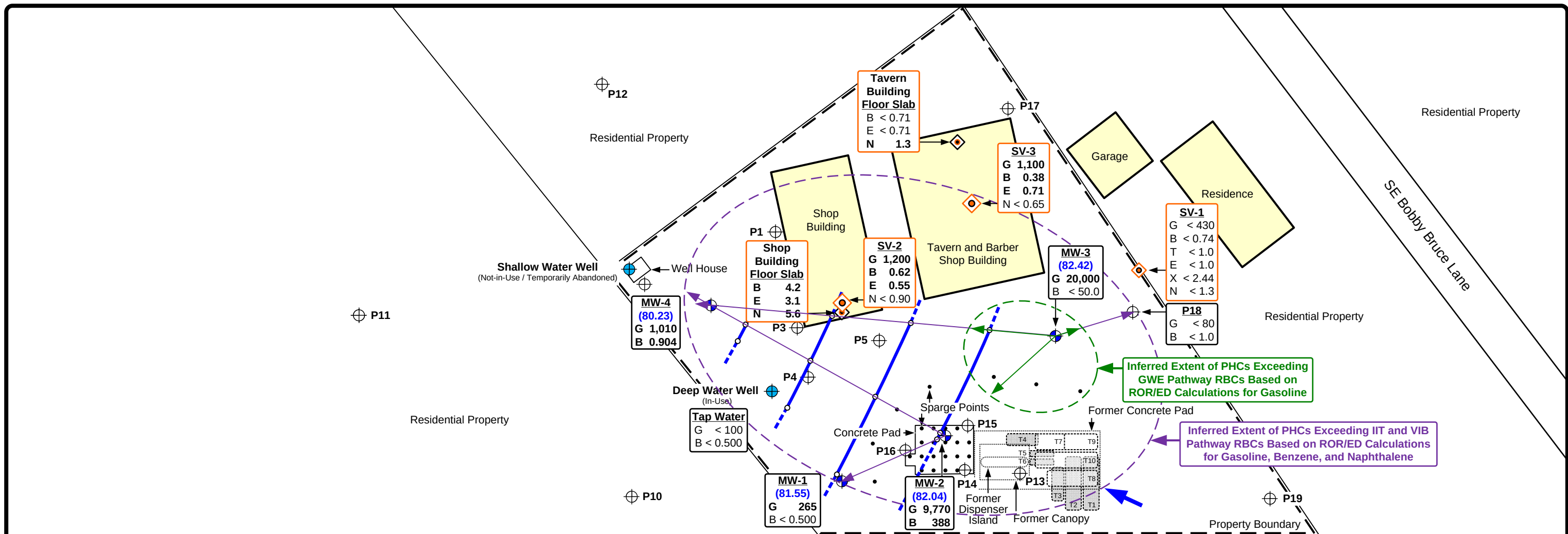


Rebecca Digiustino
Project Manager
Northwest Region Cleanup Program

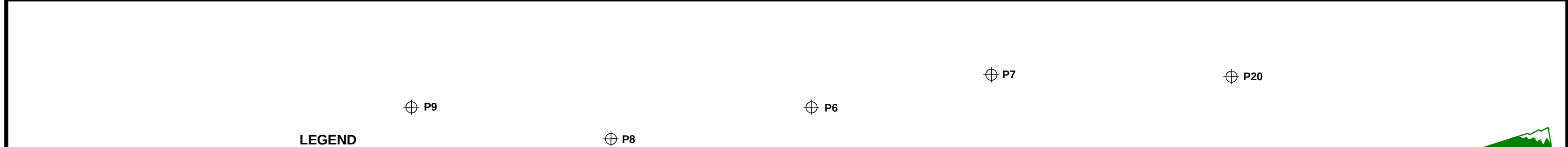
Attachments:

Exhibit A – Soil Vapor and Groundwater Data (2023) figure

Exhibit B – Off-Site Contaminant Migration Policy, DEQ, December 26, 2012.



SE Orient Drive



LEGEND

SV-1
G < 430
B < 0.74
T < 1.0
E < 1.0
X < 2.44
N < 1.3

Soil Vapor Sample Location and ID
Gasoline
Benzene
Toluene
Ethylbenzene
Xylenes
Naphthalene

(TO-15) (µg/m³)

MW-1
(81.55)
G 265
B 0.377

Monitoring Well Location and ID
Groundwater Elevation (feet)
Gasoline (NWTPH-Dx) (ppm)
Benzene (8260D) (ppm)

Inferred Groundwater Flow Direction Based on Contours and PHC Distribution

Bold Value

< Not Detected Above the Laboratory Reporting Limit, as Listed

81.50 Groundwater Elevation Contour (Feet); Dashed Where Inferred

o Calculated Gradient Control Point

P4 Push Probe Groundwater Sample Location and ID (RDM – 2007 & 2011)

P4 Water Well Location and ID

Shop Building Floor Slab Subslab Vapor Sample Location and ID (RDM - 2021)

T1 Former UST Location and ID (Decommissioned in 1993)

T8 Former UST Location and ID (Decommissioned in 2007)

Revised: 10/29/2024 11:00 AM

MSBA
Martin S. Burck Associates, Inc.
Geologic and Environmental Consulting Services

FIGURE 4

SOIL VAPOR AND GROUNDWATER DATA (2023)

Astro #503
Former Holts Shopping Center
13230 SE Orient Drive, Boring, OR
DEQ File No. 03-93-0024

Approximate Scale (feet)

0 25 50

NORTH



State of Oregon
Department of
Environmental
Quality

OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY

Land Quality Division

OFF-SITE CONTAMINANT MIGRATION POLICY

I. Background

Throughout Oregon, numerous sites are subject to investigation and cleanup under Oregon law (Oregon Revised Statutes 465.200 through .900) due to contaminated soil, sediments, and groundwater. Natural processes, such as groundwater infiltration and flow, stormwater runoff, and vapor movement through voids in unsaturated soil can carry contaminants from the source of the release and onto adjoining properties.

Any person owning property, or owning or operating a facility on a property onto which contamination has migrated from an off-site property (referred to in this policy as “impacted properties”) faces uncertainty about potential cleanup liability. This occurs even where such owner or operator has not participated in the handling of hazardous substances, and has taken no action to contribute to or exacerbate the release from an off-site property.

This policy replaces the Oregon Department of Environmental Quality’s 2004 Contaminated Aquifer Policy. It addresses the potential liability of all parties associated with impacted properties, including owners, operators, lenders, and prospective purchasers. This policy is designed to lower the barriers to transfers of impacted properties and improve opportunities for beneficial reuse of these properties by reducing uncertainty over potential cleanup liability to DEQ.

II. Statement of Policy

It is DEQ’s policy, subject to the specific conditions listed below, that where hazardous substances have come to be located at a property solely as the result of migration from a source or sources outside the property, DEQ will not require the owner or operator of the impacted property to perform remedial actions or pay remedial action costs associated with the migrated contaminants.

This policy is subject to the following conditions:

A) The owner or operator of the impacted property did not cause, contribute to, or exacerbate, through an act or omission, the release of hazardous substances that has migrated to the impacted property. Failure to take affirmative steps to mitigate or remediate migrated contamination, such as conducting groundwater or soil-vapor investigations or installing remediation systems, will not, in the absence of exceptional circumstances, constitute an “omission” within the meaning of this condition. This policy might not apply where the impacted property contains a groundwater extraction well or stormwater conveyance system, the existence or operation of which may exacerbate the migration or transport of contamination onto the impacted property. Such cases will require site-specific analysis.

B) The person whose acts or omissions caused the release was not and is not an employee or agent of the owner or operator of the impacted property.

C) The acts or omissions of the person causing the release did not occur in connection with a contractual relationship existing directly or indirectly with the owner or operator of the impacted property.

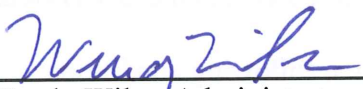
D) There is no other basis for the impacted property owner or operator to be liable for the contamination, such as:

1. Unlawfully causing, contributing to, or exacerbating the release.
2. Unlawfully hindering or delaying response actions.
3. Failing to notify DEQ of a known release, to the extent such failure exacerbates the contamination.
4. Failing to exercise due care regarding known contamination, to the extent such failure exacerbates the contamination.
5. Failing to take reasonable precautions regarding the foreseeable acts of a third party, to the extent such failure exacerbates the contamination.

(Note: for purposes of this policy, DEQ does not consider “due care” or “reasonable precautions” to mean that affirmative steps must be taken to remediate contamination. However, there might be instances, such as operating or installing a well in a contaminated aquifer, or failing to operate a previously installed treatment system, that would not constitute due care or reasonable precautions and might increase exposure risks.)

This policy statement should meet the needs of most interested parties. DEQ will not provide release from liability letters to owners or operators of impacted property. Subject to staff availability, DEQ will upon request and as appropriate make a determination of whether a property is an “impacted property” for purposes of this policy. The person requesting the determination may be responsible for paying DEQ costs to research the site, review documents, and prepare the determination. DEQ may use its information-gathering authority, as appropriate, to verify the presence of conditions under which this policy would be applied. DEQ may decline to apply this policy if an impacted property owner fails to provide access to the property or fails to respond to DEQ information requests. DEQ may also decline to apply this policy if there is insufficient information to determine the source(s) of contamination. Nothing in this policy is intended to limit the ability of DEQ to access an impacted property or undertake necessary investigation or remediation activities at an impacted property.

APPROVED BY:


Wendy Wiles, Administrator
Land Quality Division

DATE:

December 26, 2012

Disclaimer:

This policy statement is intended solely as guidance for employees of the Oregon Department of Environmental Quality. It does not constitute rulemaking by the Oregon Environmental Quality Commission and may not be relied upon to create a right or a benefit, substantive or procedural, enforceable at law or in equity, by any person. DEQ may take action at variance with this policy statement.