

ORIGINAL

RESOLUTION 2011 - 37

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SUNNYSIDE, WASHINGTON, AUTHORIZING THE CITY MANAGER TO CONTRACT WITH THE LAW OFFICES OF LATHROP, WINBAUER, HARREL, SLOTHOWER & DENISON, L.L.P., ATTORNEYS TO PROVIDE LEGAL SERVICES

WHEREAS, the City of Sunnyside owns and operates a municipal airport;

WHEREAS, the City of Sunnyside received an early notice letter regarding the release of hazardous substance at the Sunnyside Municipal Airport from the Department of Ecology dated October 26, 2010 (Attachment A), indicating that soil samples at the airport indicated the presences of pesticides above ecological screening levels;

WHEREAS, Jeff Slothower of the firm of Lathrop, Winbauer, Harrel, Slothower & Denison, L.L.P., attorneys at law, has experience in representing the interests of property owners who must address contamination found on the property owner's property;

WHEREAS, Lathrop, Winbauer, Harrel, Slothower & Denison, L.L.P., has agreed to provide legal services to the City under the terms of a fee agreement on file with the City Clerk;

WHEREAS, the City Council finds and determines that entering into an agreement with Lathrop, Winbauer, Harrel, Slothower & Denison, L.L.P. is in the best interest of the City and will promote the general health, safety and welfare of the City; and

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF SUNNYSIDE, WASHINGTON, as follows:

SECTION 1. That the City Council of the City of Sunnyside hereby authorizes and approves the City Manager executing a fee agreement with Lathrop, Winbauer, Harrel, Slothower & Denison, L.L.P. in the form on file with the City Clerk and to take all actions reasonably necessary to perform the obligations on the part of the City to be performed under such fee agreement, attached hereto as Exhibit A.

SECTION 2. This Resolution shall be effective upon passage, approval and signatures hereon in accordance with law.

PASSED this 13th day of June, 2011.



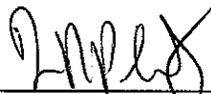
JAMES RESTUCCI, MAYOR

ATTEST:



DEBORAH A. ESTRADA, CITY CLERK

APPROVED AS TO FORM:



Menke Jackson Beyer Ehlis & Harper, LLP
Attorneys at Law



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

15 W Yakima Ave, Ste 200 • Yakima, WA 98902-3452 • (509) 575-2490

RECEIVED

OCT 27 2010

CITY OF SUNNYSIDE
PUBLIC WORKS DEPT

October 26, 2010

Jim L. Bridges, PE
818 E. Edison Avenue
Sunnyside, WA 98944

RE: Early Notice Letter Regarding the Release of Hazardous Substances at
Sunnyside Municipal Airport, Sunnyside
ERTS # 609136
Facility/Site ID # 20367

Dear Mr. Bridges:

Under Chapter 70.105D Revised Code of Washington (RCW), upon receiving a report of a release or threatened release of a hazardous substance that may pose a threat to human health or the environment, the Department of Ecology (Ecology) is required to conduct an Initial Investigation.

The initial investigation consisted of phone interviews, review of historical aerial photographs, and soil sampling. Analytical results from soil samples indicate 4,4'-DDT; 4,4'-DDE; toxaphene; and dieldrin are present in concentrations above either Method A, Method B, and/or terrestrial ecological screening levels (see attached Map 1).

Under the Model Toxics Control Act (MTCA), Ecology maintains a statewide database of confirmed or suspected contaminated sites. This database is made available to the public upon request and online at <http://www.ecy.wa.gov/programs/tcp/cscs/CSCSpag.HTM>. It is Ecology's decision that the above-referenced property will be added to this database because soil is contaminated at the site.

Please note that inclusion in the database does not mean that Ecology has made a determination regarding the identification of any potentially liable person(s) under the Model Toxics Control Act (administered under Chapter 173-340 WAC).

It is the policy of the Department of Ecology to work cooperatively with persons to accomplish prompt and effective site cleanups. Ecology prefers to achieve site cleanup cooperatively through independent cleanup actions (WAC 173-340-510). Cooperating with Ecology in planning or conducting remedial actions is not an admission of guilt or liability.



ATTACHMENT 'A'

James L. Bridges
October 26, 2010
Page 2

In proceeding with an independent cleanup, please be aware of the state law requirements. In particular, WAC 173-340-300(4) requires a report of independent actions. To the extent known, the report shall include:

1. identification and location of the hazardous substance(s)
2. circumstances of the release and discovery
3. remedial actions planned, completed, or underway

More requirements of independent cleanup actions are discussed in WAC 173-340-120(8)(b). Ecology will use the appropriate requirements contained throughout this chapter in its evaluation of the adequacy of any independent remedial actions performed.

You are encouraged to contact Ecology for limited informal advice and assistance. For technical assistance you are advised to hire an environmental consultant with the appropriate expertise. A copy of Chapter 70.105D RCW, the Model Toxics Control Act, and the implementing regulation Chapter 173-340 WAC, which details the requirements of the Act, is enclosed.

If you would like Ecology to review the independent cleanup actions conducted and determine if the site warrants **no further action**, you are encouraged to participate in the Voluntary Cleanup Program (VCP). Information about the Voluntary Cleanup Program is available online at <http://www.ecy.wa.gov/programs/tcp/vcp/Vcpmain.htm>, or you may contact Frosti Smith, CRO VCP Coordinator, at (509) 454-7841.

If you have any questions regarding this letter, please feel free to contact me at (509) 454-7834.

Sincerely,

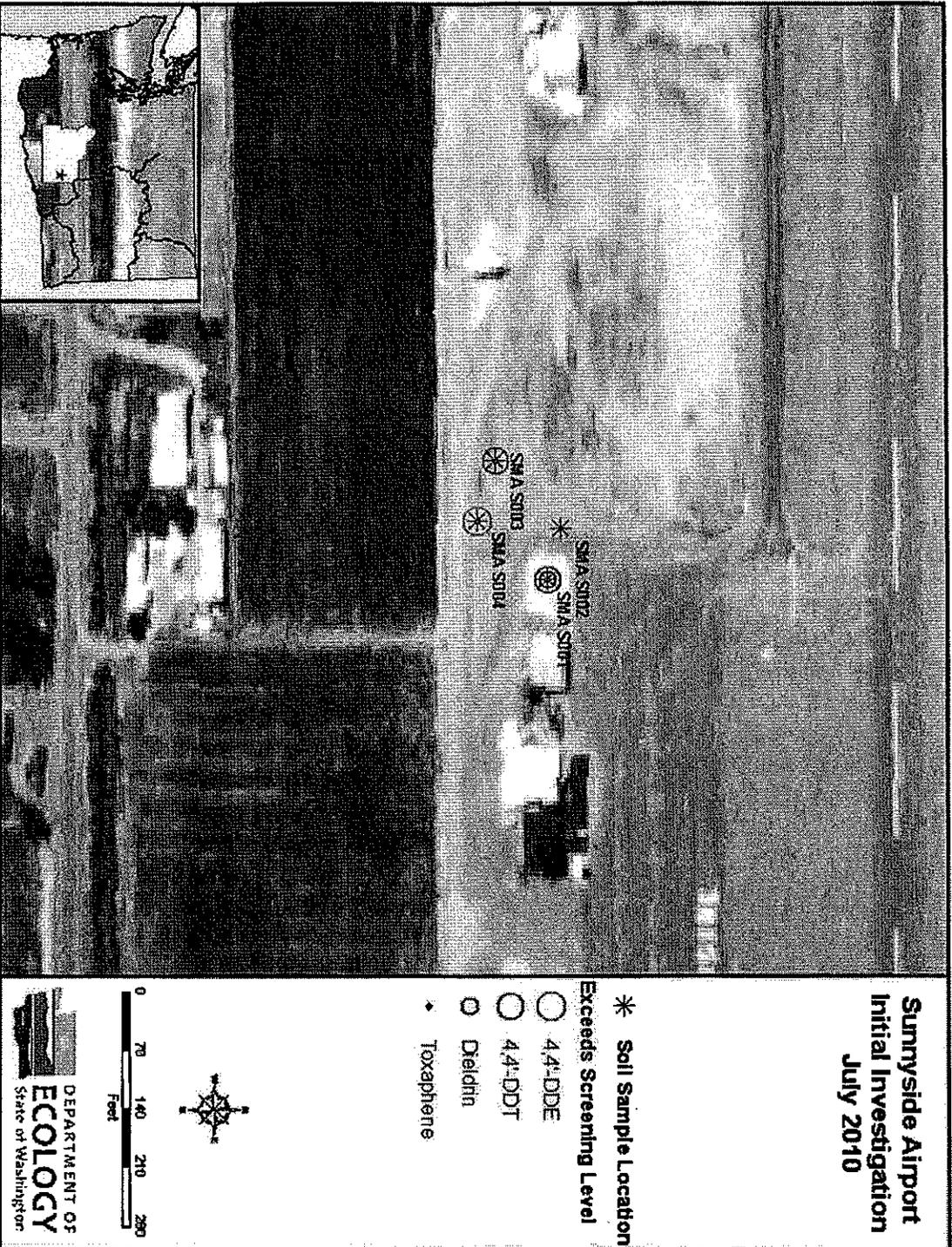


Jason Shira
Site Manager
Toxics Cleanup Program

Enc: Chapter 173-340 WAC
Chapter 70.105D RCW
Map 1

By certified mail: 7009 2250 0004 4951 5940

cc: Roland Bonny
Ted Durfey



ATTACHMENT 'A'
 Map 1. Aerial photograph with approximate location of soil samples taken at Sunnyside Municipal Airport, and respective pesticide with concentrations above screening levels. Screening Levels:
 4,4'-DDE > 1,000 µg/Kg; 4,4'-DDT > 1,000 µg/Kg; dieldrin > 170 µg/Kg; toxaphene > 910 µg/Kg.

EXHIBIT 'A'

FEE AGREEMENT

Client: City of Sunnyside

Client hereby retains the law offices of Lathrop, Winbauer, Harrel, Slothower & Denison, L.L.P., Attorneys at Law (Attorney or Firm), as Client's attorney and authorizes Attorney to represent Client in the following matter:

Re: Property Contamination – Sunnyside Municipal Airport

Your primary attorney, Jeff Slothower, will charge you \$235.00 per hour. If another attorney, legal intern, or legal assistant performs services on your case, you will be billed at the appropriate hourly rate for that person. The hourly rates are \$210.00 for James T. Denison, Jr., \$215.00 for John P. Winbauer, \$205.00 for Susan K. Harrel, \$190.00 for Christopher Taylor, \$330.00 for F. Steven Lathrop, and \$70.00 for Legal Assistants. An attorney's hourly rate may be increased from time to time with thirty (30) days advance notice. You will also be billed for costs. Costs include, but are not limited to, long distance telephone charges, facsimile charges, copying fees and postage. Costs also include expenses paid to third parties for filing fees, deposition expenses, service fees, expert fees and so forth.

Records of time devoted to your case are kept by our office. We include in the records all time of attorneys, legal assistants, and legal interns spent on your case, and include such items as office calls, telephone discussions, letters written and received, court documents written and received, legal research, discussions with witnesses, notes to the file, and any other activity that takes place in your case. You will receive a detail of these items in your billing.

Client further understands that an advance deposit of legal fees may be required at any time the amount unpaid on the bill exceeds \$250.00 for more than sixty (60) days after billing. If Client does not pay Client's bill within 60 days from the statement date, Attorney may withdraw from the representation of Client and terminate further activity on Client's behalf and retain all sums paid with right of suit to recover unpaid fees. Each month we will mail to you a statement showing the fees and expenses incurred in your account.

Unpaid sums become delinquent sixty (60) days after the initial billing. Delinquent accounts are charged interest at a rate of twelve percent (12%) per annum, and client agrees to pay the same.

The attorney's representation of client may be terminated by attorney or by client with 30 days notice.

In some types of cases it is possible to seek attorney fees from an opposing party. However, please note that we look to you for payment of the total fee. If fees are recovered, you will receive a credit for them when the fees are paid.

Client acknowledges that the attorney has made no guarantee regarding the successful conclusion of the representation, and all expressions relative thereto are matters of opinion only.

EXHIBIT 'A'

Your final fee will be based upon the time required to perform the legal service properly multiplied by the hourly rate of the individuals in our firm performing the work and the costs incurred.

Should Client fail to pay our billings, or to keep the agreed funds on deposit as described above attorney shall withdraw from the representation of Client and terminate further activity on Client's behalf and retain all sums paid with right of suit to recover unpaid fees. If it is necessary to take legal action to collect delinquent legal fees or advanced costs, client promises to pay reasonable attorney's fees and any and all costs as they relate to the collection of delinquent legal fees. Venue of any action brought under this Agreement shall be in Yakima County, Washington.

Dated this _____ day of _____, 2011.

I have read the above. I understand and agree to the terms and conditions set forth herein.

CITY OF SUNNYSIDE:

Signed: _____

Print Name: _____

Title _____

JEFF SLOTHOWER
Primary Attorney