



STATE OF NEVADA
Department of Conservation & Natural Resources
DIVISION OF ENVIRONMENTAL PROTECTION

Brian Sandoval, Governor
Leo M. Drozdoff, P.E., Director
Colleen Cripps, Ph.D., Administrator

September 9, 2011

Irwin Kushner
Herman Kushner Trust
294 Convention Center Drive
Las Vegas, NV 89109

Maryland Square Shopping Center, LLC
c/o Tim Swickard
Dongell Lawrence Finney LLP
770 L St., Suite 950
Sacramento, CA 95814

Subject: **Petition for Contained-In Determination** (dated September 6, 2011)

Facility: Al Phillips the Cleaner (former)
3661 S. Maryland Parkway
Las Vegas, NV
Facility ID: H-000086

Dear Mr. Kushner and Mr. Swickard:

The Nevada Division of Environmental Protection (NDEP) has received and reviewed the **Petition for Contained-in Determination** dated September 6, 2011 for water contaminated with tetrachloroethylene (PCE) and (potentially) trichloroethylene (TCE), "listed" hazardous wastes. The petition was submitted to the NDEP by Tetra Tech and their Certified Environmental Manager (CEM), Tamara Pelham, on behalf of the Herman Kushner Trust. This letter provides a "contained-in determination" based on the criteria described in this letter.

The NDEP is authorized by U.S. Environmental Protection Agency (EPA) to approve a "contained-in determination" on a case-by-case basis for media contaminated with listed wastes [FAXBACK 11393]. The determination that any given volume of contaminated media does not contain or no longer contains hazardous waste is called a "contained-in determination." Decisions that media do not or no longer contain listed hazardous waste are typically made on a case-by-case basis, considering the risks posed by the contaminated media. The EPA has advised that "contained-in determinations" be made using "conservative, health-based levels derived assuming direct exposure pathways."

This "contained-in determination" modifies the previous contained-in determination for managing source area soil (see NDEP letter dated August 10, 2011) and expands the determination to include all soil and waste water generated under all investigation and remediation activities conducted at the Maryland Square PCE Site. The August 10, 2011 letter determined that, according to the request for a contained-in determination and the Waste Management Plan (August 5, 2011), soil generated from the



referenced facility will be managed appropriately as either hazardous waste or non-hazardous waste in the following manner:

- Soil generated during excavation activities that contains concentrations of PCE or TCE greater than the Land Disposal Restriction (LDR) Universal Treatment Standard of 6,000 micrograms per kilogram ($\mu\text{g}/\text{kg}$) will be transported to a permitted Resource Conservation and Recovery Act (RCRA) Subtitle C hazardous waste landfill.
- Soil generated during excavation activities that contains concentrations of PCE or TCE less than the LDR Universal Treatment Standard of 6,000 $\mu\text{g}/\text{kg}$, will be transported to Las Vegas Paving Corporation for thermal treatment and recycling.

Based on the information provided by the Trust and their CEM, Tamara Pelham of Tetra Tech, NDEP expands the request for a "contained-in determination" at the referenced facility for all soils generated during all investigation and remediation activities, with the following concentration thresholds:

- Soil generated during all investigation and remediation activities that contains concentrations of PCE or TCE less than the LDR Universal Treatment Standard of 6,000 $\mu\text{g}/\text{kg}$.

According to the **September 6, 2011** petition for a contained-in determination, waste water generated from the referenced facility will be managed appropriately as either hazardous waste or non-hazardous waste in the following manner:

- Waste water generated during all investigation and remediation activities that contains concentrations of PCE and TCE greater than the LDR Universal Treatment standards of 56 micrograms per liter ($\mu\text{g}/\text{L}$) for PCE or 54 $\mu\text{g}/\text{L}$ for TCE will be transported to a RCRA Subtitle C hazardous waste landfill.
- Waste water generated during all investigation and remediation activities that contains concentrations of PCE and TCE less than their respective LDR Universal Treatment Standards of 56 $\mu\text{g}/\text{L}$ and 54 $\mu\text{g}/\text{L}$ will be transported to a permitted water recycling facility.
- Waste water generated during all investigation and remediation activities that contains concentrations of PCE and TCE less than 5 $\mu\text{g}/\text{L}$ will be treated as non-hazardous and non-regulated water that will be managed subject to discharge restrictions in accordance with state or local regulations.

Based on the information provided by the Herman Kishner Trust and their CEM, Tamara Pelham of Tetra Tech, NDEP approves the request for a "contained-in determination" at the referenced facility for the following concentration thresholds:

- Waste water containing concentrations of PCE and TCE less than the respective LDR Universal Treatment Standards of 56 $\mu\text{g}/\text{L}$ and 54 $\mu\text{g}/\text{L}$.

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Please be advised that any changes in the waste stream encountered at this location will void the terms of this "contained-in determination." If you have any further questions please call the case officer, Mary A. Siders, at (775) 687-9496 or msiders@ndep.nv.gov or Mike Richardson, Supervisor, Compliance & Enforcement Branch, Bureau of Waste Management, Las Vegas Office.

Sincerely,



Mary A. Siders, Ph.D.
Environmental Scientist III
Remediation Branch
Bureau of Corrective Actions
NDEP-Carson City Office



Mike Richardson
Supervisor
Bureau of Waste Management
NDEP-Las Vegas Office

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