



Port cleanup called unsafe

Precautions not taken at Harbor Island Superfund site, state alleges

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By **ROBERT McClure**

SEATTLE POST-INTELLIGENCER REPORTER

One of the world's largest building and engineering firms treated a Superfund site at the Port of Seattle as a run-of-the-mill construction job, potentially endangering workers' health and the environment, according to state records and accounts provided by construction workers.

The state, in citations issued to the company, alleges that Morrison Knudsen Corp. workers were ordered to move "leaky drums of unknown materials"; that a worker was splashed with the chemicals; and that no decontamination showers were provided.

When company supervisors were confronted by the state inspector, they were "uncooperative" and denied any problems, state records show.

Workers later told the Seattle Post-Intelligencer that they complained of headaches, fatigue and nosebleeds, but were ignored.

They also told government investigators that they were ordered to dump thousands of gallons of contaminated water into drains leading to the Duwamish River. U.S. Environmental Protection Agency investigators who sought evidence of criminal wrongdoing in the incident could not verify that allegation.

"Somebody had to be overseeing Morrison Knudsen -- the port, the government, somebody," said Gene Voss, a laborer who worked on the project and who is now suing his former employer. "Somewhere, somebody's failed."

"How did this happen?" wondered Neil Thompson of the EPA's Superfund staff.

Morrison Knudsen, which has since merged with another company to become Washington Group International, denies all of the 35 violations alleged by the state to have taken place in late 1999 and early 2000. The company says workers were not endangered, that showers were available, and that leaky drums they handled did not contain hazardous waste. The company also denies that there was any environmental damage.

A company spokesman portrayed the complaining workers as a small group led by a disgruntled former supervisor.

"Our company leads the industry in safety," said Brent Brandon, WGI's vice president for investor relations and corporate communications. "If there's one thing we're known for in the industry, it's safe conduct of operations. That's our calling card."

The ongoing job involves replacing a hodgepodge of old industrial buildings with expanded port facilities at Harbor Island, also known as Terminal Island. Arsenic and the toxic lead were handled in at least two of the old buildings, and the man-made island is pockmarked by spilled oil and other petroleum products.

It was listed in 1983 under the federal Superfund program, a designation meaning it numbered among the nation's most polluted sites.

Job specifications provided to Morrison Knudsen warned that "the entire site has been designated a Superfund site by the U.S. Environmental Protection Agency (EPA). All work under this section will be performed under the appropriate federal and Washington State rules for work at Hazardous Waste Sites."

But Mac Davis, the state Department of Labor and Industries industrial hygienist who issued the citations, later wrote that "in discussion with the safety officer, Bob Johnson, he denied initially that the site was a Superfund site and a designated hazardous waste site. He was not knowledgeable in the (state) hazardous waste standard and was not properly trained to supervise safety concerns on site."

"They perceived it ... as a dirt job, moving dirt around," Davis told the P-I. "Their contention is that all they were doing was construction."

Aaron Owada, a lawyer representing the construction firm, said the company "always acknowledged" that Harbor Island was a Superfund site.

"It was a cleanup site, but it was cleaned up, and after that, it became a construction site," said Owada, a former state assistant attorney general for 17 years who represented Labor and Industries before going into private practice last March.

The Port of Seattle disagrees with the construction company's characterization of the site as having been cleaned up.

"We told Morrison Knudsen 'Harbor Island is a Superfund site,'" said Tom Newlon, a port attorney. "You had to have your head very deep in the sand to not know it was a Superfund site."

As Superfund sites go, Harbor Island is not highly toxic, "not the Valley of the Drums or Love Canal," Newlon said. But, still, "this is an industrial site. You wouldn't want your kids playing in the dirt there, even after the cleanup."

Although the construction company has said the cleanup was finished when the construction work started, it was not, Newlon said.

It's true that some known contamination "hot spots" had been cleaned up -- those where the dirt was so polluted that it had to be treated as hazardous waste and hauled away for treatment, he said. But the plan for dealing with larger and less-polluted areas of contaminated soils, as approved by the EPA, was to simply pave over the dirt so that rainwater would not percolate through and leach out remaining pollutants.

The Port of Seattle is in an unusual situation because, although it owns the land and helped define work conditions, the contract for the job is between the construction company and a port tenant, Stevedoring Services of America.

SSA, which unloads ships, is developing facilities to allow shipping containers to be whisked away by rail. Port officials did arrange for the job specifications to spell out that the port would pay for disposal of any contaminated soils.

"We wanted to create a situation where no one had the incentive to do the wrong thing," Newlon said.

The citations issued by the state, however, charge that Morrison Knudsen:

- Failed to advise employees about procedures for decontaminating themselves.
- Failed to minimize workers' exposure to hazardous substances.
- Failed to evaluate the potential for the job site to harm its employees so they could be issued protective equipment.
- Failed to tell laborers about harmful substances "known or expected to be present."
- Failed to monitor the air on the sometimes-dusty island for the presence of airborne toxins.
- Failed to protect employees from overexposure to lead.
- Failed to arrange for employees with symptoms of possible overexposure to hazardous substances to see a doctor as soon as possible.
- Failed to provide special training to project managers, including the head safety official, about how to work at a Superfund site.

In October, the state ordered that Boise, Idaho-based WGI pay a \$48,500 fine.

WGI denies all charges and is contesting the fine.

"WGI has a very safe and healthy work environment," said Owada, the attorney. "There were no violations. The employees were not exposed to any inappropriate chemicals or hazardous waste. ... They dotted their i's and crossed their t's."

The company says leaky drums the workers were ordered to move had already been tested by the port and no hazardous waste was found. Workers were monitored for contamination, Owada said.

Owada and company spokesman Brandon said the symptoms the workers reported were not consistent with poisoning by lead, which is believed to be the most widespread contaminant on the island. And none of the workers has been successful in pursuing claims for workers' compensation after leaving the job, Brandon and Owada said.

Brandon noted that government agencies began investigating last year based on complaints by a junior foreman at the site, Ron Slater.

"I put these in the category of a disgruntled employee who has other issues," Brandon said.

Slater said he told his supervisors on numerous occasions about lapses in safety and environmental precautions between the time he started the job in November 1999 and when he quit after being demoted last March.

"I was not only demoted when I brought up safety concerns, but I also proved those concerns to the port, (state Department of) Ecology, EPA, and L and I," Slater said.

According to state and federal records, Slater and several other workers who left the job and contacted government agencies allege that the company:

- Ordered contaminated water improperly dumped into storm drains feeding into the Duwamish. The water had been pumped from underground, had a light-brown color, an oily sheen and "an industrial stench," Slater said.

He and another worker, Voss, said Slater's supervisor, Roger Accornero, ordered Voss to pump the water into storm drains.

In sworn testimony last month, Accornero was asked whether he helped Voss dump the water. "No, not me personally," he said. "I don't pump water or tell laborers to. ... I don't like to get dirty."

Thompson of the EPA said there was little his agency could do.

"By the time we found out about it, the action had occurred and it (the water) was gone," Thompson said. "If it went down the drain and got out into the bay, it didn't create a problem that was identifiable and measurable at the time," such as a large slick, he said. Thompson said, however, that it's clear the company was required to test the water, but did not.

"Yeah, it was wrong," Thompson said.

- Hauled truckloads of contaminated soil to a Maple Valley company that sells topsoil. Months later, technicians took a number of samples from that company's 20- to 25-foot-high stockpile, which contained about 15,000 to 20,000 cubic yards of dirt. They did not identify any hazardous waste in the pile at that time.

"We couldn't prove that anything contaminated left the site," said Michael Burnett, an EPA investigator. It appears that the soils were not properly tested, said Thompson, of the EPA's Superfund staff. The manager of WGI's construction project, George Harvey, told an EPA investigator "no material should have left the Harbor Island site," records state.

- Failed to remove underground tanks containing petroleum products. Slater said that on several occasions he saw places where fill pipes sticking up from the ground were bulldozed, with the tanks left in place. John Wietfeld, supervisor of the petroleum cleanup unit at the state Department of Ecology's Bellevue office, said the tanks all appeared to be the kind that the businesses on Harbor Island would have used to store heating oil. Such tanks, even if they are quite large, are exempt from the state's Model Toxics Control Act.

"I saw nothing that would have been regulated under the underground storage tank regulation," Wietfeld said. He acknowledged that he could not know about buried tanks, but said it was unlikely WGI would leave those in the ground because later the tanks could later rust and collapse, creating big holes in the ground that would be dangerous for port workers.

A WGI spokesman rejected all the charges.

"We deny the allegations that we did anything to the environment at that site, and we're confident that any kind of inquiry, investigation or lawsuit will prove we didn't do it," said Rod Hunt, a company spokesman.

Some former workers are angry with WGI, saying their health was endangered. Four are suing the company.

"They did not make us aware of what we were dealing with and what we were tracking home to our families," said Henry Eger, an ironworker who labored at the site. Eger said he suffered nosebleeds, migraine headaches and fatigue. More than a half-dozen co-workers had similar complaints, he said. "They told us this was in our heads," Eger said. "It was obvious they were trying to downplay everything."

Slater filed suit, and went to Labor and Industries to challenge his demotion. Slater contended he was discriminated against for bringing up safety concerns. In a Nov. 14 letter, an L and I program manager told Slater "the discrimination complaint is valid."

Said Thompson of the EPA: "It turns out he was probably correct in bringing some things to the attention of his employers. It was clear they needed to upgrade their health and safety."

THE COMPANY

Washington Group International:

- **History:** Created in July 2000 when Morrison Knudsen Corp. bought Raytheon Engineers & Constructors, moving from 12th-largest to fourth-largest globally among construction and engineering firms.
- **Employees:** 38,000
- **Services:** Include construction, hazardous-waste cleanup, engineering and program-management services for environmental, government, mining, power and water-resources markets.
- **Headquarters:** Boise, Idaho.
- **Past projects:** Include San Francisco Bay Bridge, Hoover Dam, Grand Coulee Dam, Lake Washington floating bridges, Interstate 90 construction, Sea-Tac Airport construction, Trans-Alaska Pipeline, Kennedy Space Center.
- **Current and future projects:** Include Harbor Island construction and cleanup of the Hanford Nuclear Reservation.

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Seattle Post Intelligence

Soil use being investigated

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By LEWIS KAMB ✉
SEATTLE POST-INTELLIGENCER REPORTER

Between January and March, up to 59 truckloads of potentially contaminated soil were hauled away from a federal Superfund site in Seattle with intentions to mix it into garden topsoil, federal regulators said.

Now, regulators are investigating the contractors of a Port of Seattle expansion project. Those contractors apparently allowed the dirt to be taken without first conducting required tests.

An inspector for the state Department of Labor and Industries said yesterday he is investigating allegations of "unsafe work conditions concerning hazardous waste" against Morrison Knudson, a Boise company coordinating the port authority's Terminal 18 expansion project on Harbor Island.

Citing reasons of confidentiality, L&I compliance inspector Mac Davis said he could not discuss details of the investigation until his inspection is completed within the next five months.

But a spokesman for the Port of Seattle acknowledged yesterday that port officials are cooperating with state and federal inspectors. They are also conducting their own review of the dirt and are looking into whether Morrison Knudson was involved.

And a project manager of the Environmental Protection Agency's Superfund site at Harbor Island said yesterday that federal inspectors are examining how the soil managed to be removed without first being analyzed for contaminants.

"We're reviewing whether the process somehow broke down or whether someone intentionally tried to skirt it," EPA Project Manager Neil Thompson said.

John Fischer, a Seattle project manager for Morrison Knudson, referred questions to a company administrator in Boise yesterday. That administrator could not be reached for comment.

The soil in question has since been traced to a stockpile at Pacific Topsoil's facilities in Maple Valley, Thompson said.

Employees for the company, which mixes and sells gardening and landscaping soils, referred questions to property development manager Jim Lindsay, who was out sick yesterday.

"I'm sure Pacific Topsoil's probably wouldn't have wanted it if they thought it might be contaminated," Thompson said. EPA inspectors will test the soil to determine whether it is safe for the company to mix into a marketable grade of gardening soil, or whether it contains unsafe levels of contaminants that require disposal, Thompson said.

For decades, a lead smelter operated on Harbor Island, contaminating its soil on with lead, arsenic and other heavy metals, Thompson said. After the smelter closed in 1980, the EPA designated the area as a Superfund site.

Under an agreement with the Port of Seattle to redevelop the site, the EPA requires that soil and other materials be screened for contamination before leaving the island, Thompson said.

But for whatever reason, that didn't happen between January and March when Pacific Topsoil's apparently hauled away between 35 and 59 truckloads -- from 660 to 1,000 cubic yards -- of Harbor Island soil, Thompson said.

A project worker on the island alerted the agency earlier this month that the soil had been removed without proper testing.

Along with the soil, several truckloads of branches, plant material and other organic material was taken by the topsoil company, Thompson said.

Inspectors are less concerned about that material, because it likely is not contaminated, he said.

But EPA officials are worried about the soil. Topsoil on Harbor Island is known to be contaminated; some of it to degrees that pose serious health risks for people who handle it, Thompson said.

The island's subsurface soils, on the other hand, usually pose little risk and show minimal, if any, contamination, he said.

It is unclear from what part of the island the soil in question came from, Thompson said.

The way the soil is now stockpiled -- beneath dozens of loads of other dirt that has since been dumped on top of it -- people have little chance to come in contact with it, Thompson said. Rain water runoff from the pile also isn't likely to spread any potential contaminants, he said.

EPA inspectors are now preparing tests for the soil, which likely will be analyzed within the next few weeks, Thompson said.

In the meantime, a Port of Seattle spokesman said that port officials are cooperating.

Morrison Knudsen, one of the nation's largest civil engineering firms, is coordinating the port's two-year, \$350-million expansion project of Terminal 18 on Harbor Island.

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Judge rejects fine imposed at Superfund site

The state may appeal Morrison Knudsen worker-safety decision

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By [ROBERT McCLURE](#)
SEATTLE POST-INTELLIGENCER REPORTER

Rejecting a \$48,500 fine imposed by state worker-safety inspectors, a state administrative judge has found that construction giant Morrison Knudsen Corp. did not violate the law while working at a Harbor Island Superfund cleanup site.

The decision vindicates Morrison Knudsen, which had maintained that workers were not endangered and the environment was not threatened by its actions.

The state Department of Labor and Industries alleged in October 2000 that workers at the Port of Seattle-owned site were ordered to move "leaky drums of unknown materials"; that a worker was splashed with chemicals; and, among other charges, that no decontamination showers were provided.

Workers also told government investigators they were ordered to dump thousands of gallons of contaminated water into the Duwamish River. U.S. Environmental Protection Agency investigators who sought evidence of criminal wrongdoing in that incident could not verify that allegation.

The state may appeal the proposed ruling by Assistant Chief Industrial Appeals Judge Mark Jaffe, said Michael Hall, an assistant state attorney general.

"It's a case that will undoubtedly go up through the court system," Hall said shortly before Jaffe ruled recently.

"It's going to be, in all likelihood, a precedent-setting case about the scope of these regulations and whether they apply to work like this. It's undoubtedly going to affect other employers."

Harbor Island, one of the largest manmade islands in the hemisphere, housed an ever-changing series of industries through much of the past century. By the time it was declared a Superfund site in 1983, the island was riddled with contaminants such as lead, arsenic and polychlorinated biphenyls, or PCBs.

Morrison Knudsen and its parent, Boise-based Washington Group International, argued that because contamination "hot spots" had been removed before its construction of a shipping terminal, the site should not fall under state worker-safety rules covering hazardous-waste sites.

Judge Jaffe agreed.

The case turned, Jaffe wrote, on whether Harbor Island could be considered an "uncontrolled hazardous waste site" at the time of the work. Because an environmental engineering firm had previously documented the hot spot locations, assessed the risks and shown how the cleanup should be done, the site was not "uncontrolled," he wrote.

Work crews did find contaminated soils and stockpile them for removal, and capped other contaminated soils with asphalt, Jaffe wrote.

"The question is if these activities, alone, are enough to subject Morrison Knudsen" to rules covering hazardous-waste cleanup operations, Jaffe wrote. "I do not believe they are enough based on the language in the definition of a cleanup operation in the regulation.

"The operative phrase in the definition is 'with the ultimate goal of making the site safer for people or the environment.' The record does not support findings that this was the case with this project."

Jaffe also rejected the state's arguments that the job specifications identified the work as taking place on a hazardous-waste site, and that Morrison Knudsen sought tax breaks granted to companies that clean up such sites.

During proceedings before Jaffe earlier this year, a doctor specializing in occupational health testified on behalf of Morrison Knudsen, saying the worksite was safe.

"Safety is our No. 1 priority," said Katrina Puett, representing Washington Group International. "We're pleased with the apparent outcome of this."

Hall, the assistant attorney general, said he still believes the company should have treated the site as a hazardous-waste cleanup.

"When they bid for the job, they told the port they were doing hazardous-waste cleanup, and they applied to the city of Seattle for tax breaks on the basis that they were doing hazardous-waste cleanup," Hall said.

Ron Slater, a foreman fired after he and his workers brought what they considered dangerous conditions to the state's attention, is seeking reinstatement and three years' back pay. The state found he was improperly dismissed for reporting suspected violations of the law.

Slater's case may be complicated by the fact that Washington Group International filed for bankruptcy after Slater was fired, said Carrie Hoon, an assistant attorney general. The firm emerged from bankruptcy in January.

Slater said he believes Jaffe's decision will be overturned by the three-person Board of Industrial Insurance Appeals.

"The citations reflect not only Morrison Knudsen's attitude toward the men, but also their attitude toward the environment," Slater said. "I have never seen such arrogance and disdain for the proper protection of all of us."

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Wednesday, August 17, 2005

**Workers get win in hazardous site case
Company knew of risk on Harbor Island, judges rule**

By **ROBERT McCLURE**
SEATTLE POST-INTELLIGENCER REPORTER

Whistle-blowers, who reported unsafe work practices on a Harbor Island construction job, including exposure to hazardous wastes, have won a second round in court.

Morrison Knudsen Corp. knew that the work it took on at Harbor Island involved a Superfund site that needed special handling, the state Court of Appeals ruled.

The company, now a subsidiary of the mammoth Washington Group International, has steadfastly maintained that it was merely doing construction on a site that already had been cleaned up by the Port of Seattle.