

**From:** Tom McCormick <tommccormick@mac.com>  
**Sent:** Tuesday, February 27, 2018 3:08 PM  
**To:** Mock, Barb  
**Cc:** MacCready, Paul; Countryman, Ryan; Rowe, Tom; McCrary, Mike; Dobesh, Michael; Otten, Matthew; Tom Mailhot; Debbie Tarry; Eric Faison  
**Subject:** Point Wells contamination and cleanup; BSRE's failure to provide information

Director Mock:

Point Wells is a contaminated site that must be cleaned up.

Public records obtained from the Department of Ecology indicate that it may take five years or longer to get a cleanup plan approved, and that it could take decades for the actual cleanup to be completed. See the excerpts below:

"It will likely take two to five years to develop a Cleanup Action Plan. This is just the plan. It can take longer if the site is complex, there is a great deal of data that needs to be collected, and there are divergent views on what needs to be done. ... After the Cleanup Action Plan is developed, it can take many years to clean up large petroleum-contaminated sites. There is great uncertainty as to time frames at Ecology's current level of knowledge about the site." Source: March 24, 2011 internal Dept. of Ecology email about Point Wells from David South to Karen Terwilleger.

"We have emphasized that cleanup of complex petroleum sites such as Point Wells can take years, even decades, and that BSRE Point Wells should consider this when considering their schedule." Source: April 19, 2011, email from David South (Senior Engineer, Toxics Cleanup Program, Department of Ecology) to Mark Wells (Environmental Mgr for the Alon USA oil company operating Point Wells), summarizing what Mr. South might say in a then upcoming press interview, and asking Mr. Wells to "send me any corrections." In an April 21 reply email, Mr. Wells said: "PLEASE DELETE [THE] REFERENCE TO DECADES." Mr. South then replied: "With regard to your suggested change: ... I may or may not say something like this. We started at Unocal Edmonds in 1993 and still have several years of work to do. So, it is an accurate statement. Whether cleanup of Point Wells will take decades is to be determined." The email string ended with a reply from Mr. Wells: "I understand what you are saying. It is just that the word 'decades' can mean 10, 20, 30, 40, ... years. Maybe you can say 'several' or 'many' years."

The County has asked BSRE to provide detailed information about the site's contamination.

"[N]o report provided by the applicant to date has the necessary information regarding contamination for the EIS.

Second request. The applicant must address this important SEPA issue. A response is still required.

...

Any future approval from Snohomish County for the site plan will be conditional on receipt of a letter from the Washington State Department of Ecology (DOE) certifying approval of adequate cleanup and mitigation plans.” (Review Completion Letter, Oct. 6, 2017, page 25.)

In his February 1, 2018, letter to you, Mr. Huff says that, “site remediation is the contractual obligation of an independent and wholly unaffiliated third party. BSRE has limited control over the timing or handling of the remediation process.”

It doesn't matter whose obligation it is to clean up the site. BSRE has applied to develop Point Wells as an urban center. It is BSRE's obligation to provide all of the information that the County requires about the site's contamination and cleanup — information required to assess whether the site plan, drainage plan, and other components of BSRE's applications can be approved, and whether BSRE's assumed 2035 buildout date is realistic. A lengthy cleanup could push the buildout date to 2060 or beyond, especially if, due to the high risk of contamination infiltrating onto a cleaned up area from an adjacent contaminated area, it is determined that all or nearly all of the Point Wells site needs to be cleaned up before any construction can begin. A 2060 or later buildout date would require numerous revisions to the site plan and other application materials (for example, ordinary high water mark and related buffer lines, traffic volume assumptions, flood hazard areas, environmental impacts and mitigations, etc.).

Until details about the site's contamination and cleanup are provided, and a reliable buildout date is provided, BSRE's application to develop Point Wells as an urban center should be denied.

### **What control or influence might BSRE have to secure the required contamination and cleanup information?**

Mr. Huff's statements that "site remediation is the contractual obligation of an independent and wholly unaffiliated third party," and that BSRE “has limited control over the timing or handling of the remediation process,” got me wondering who that unaffiliated third party might be, and what sort of limited control BSRE might have (limited control is more than no control).

I reviewed annual reports filed with the Securities and Exchange Commission (SEC) by Alon Blue Square Israel Ltd. (then controlling shareholder of Blue Square Real Estate Ltd., the foreign owner of BSRE Point Wells, LP), and by Alon USA Energy, Inc., which owns and operates the oil facilities at Point Wells (the storage and distribution of marine fuels and asphalt oil). Note: In 2017, Delek US Holdings, Inc. acquired Alon USA. Alon USA continues to operate the oil facilities.

In 2010, BSRE Point Wells, LP (BSRE) acquired Point Wells from Alon USA Energy, Inc. (technically, from its subsidiary, Paramount of Washington, LLC). BSRE acquired just the land. Alon USA retained ownership of the the oil tanks, pipelines, structures, docks, the pier, etc. In

2010, BSRE and Alon USA were "related parties" controlled by a common upper-tier parent, Alon Israel Oil Co. Ltd. BSRE and Alon USA ceased being related parties in 2015.

When BSRE acquired Point Wells from Alon USA, it also entered into both a lease agreement and a development agreement with Alon USA (technically, with two of Alon USA's subsidiaries).

"According to the development agreement signed between the parties, [BSRE] will take action to initiate a detailed plan for approving the construction of at least 2,000 residential units on the property. ... If the detailed plan is not approved and/or if it does not contain at least 2,000 residential units, [BSRE] will bear no responsibility to [Alon USA]. In consideration for [Alon USA's] right to participate in the development of the property and in the proceeds that will be received from the sale of the property to a third party after the enhancement thereof, [Alon USA] will pay [BSRE] quarterly participation fees in a sum of \$440,000, which will be paid commencing from July 1, 2010 and throughout the entire License Period [ending June 2, 2020]." (2015 Annual Report (Form 20-F) filed by Alon Blue Square Israel Ltd., page 59.)

The development agreement provides that Alon USA is responsible for site cleanup at Point Wells:

"According to the development agreement, all demolition and contamination cleanups required for the land will be the responsibility of the former related party [(Alon USA)] and on its account." (2015 Annual Report (Form 20-F) filed by Alon Blue Square Israel Ltd., page F-72.)

According to Alon USA's 2014, 2015 and 2016 annual reports, Alon USA is currently "remediating historical soil and groundwater contamination" at Point Wells." It spent \$0.5 million in 2014 for remediation costs, another \$0.5 million in 2015, \$0.2 million in 2016, and estimated it would spend \$0.6 million in 2017.

The development agreement intends for Alon USA and BSRE to cooperate in the development of Point Wells. According to Alon USA's 2016 annual report:

"In order to enhance the value of the land with a view towards maximizing the proceeds from its sale, the [development] agreement provides that **Alon and BSRE intend to cooperate in the development** and construction of a mixed-use residential and planned community real estate project on the land. As part of this agreement, we agreed to pay a quarterly development fee ... in exchange for the right to participate in the potential profits realized by BSRE from the development of the land. During each of the years ... 2016, 2015 and 2014, \$1,755,000 was paid to BSRE." (2016 Annual Report (Form 10-K) filed by Alon USA Energy, Inc., page F-39, bold added for emphasis.)

Given that the development agreement provides that Alon USA and BSRE intend to cooperate in the development of Point Wells, and that Alon USA is paying BSRE \$1,755,000 per year as a development fee, not to mention another \$1,700,000 or so in annual lease payments, one would think that BSRE would be in a position to seek Alon USA's cooperation to provide the required information about site contamination and cleanup, even if Alon USA and BSRE are no longer entities related by common ownership and control. Alon USA has continued to pay the annual \$1,755,000 development fee to BSRE. To date, Alon USA has paid BSRE over \$13,000,000 in development fees. One would think that Alon USA, to protect its \$13,000,000 investment, would cooperate with BSRE to gather the contamination and cleanup information that the County requires BSRE to provide.

If "BSRE remains fully committed to see its Urban Center Development Application approved," as Mr. Huff states in his letter dated February 1, 2018, then BSRE needs to find a way to provide the required site contamination and cleanup information to the County.

In the end, what matters is this: BSRE has applied to develop Point Wells as an urban center. It is BSRE's obligation to provide the information that the County requires about the site's contamination and cleanup. If BSRE does not provide this information, for whatever reason (e.g., its "limited control"), then, based on this failure (not to mention the many other reasons articulated in the County's Review Completion Letter), BSRE's application to develop Point Wells as an urban center should be denied.

Thank you.

Tom McCormick