

## A request for disclosure

Dear Mayor Brown:

Through my Substack, [The Daily Rhubarb](#), I've reported on the West Plains PFAS controversy—a problem that has the mark of a crisis for many Spokane and Spokane County residents—for the past three years.

Suffice to say the bare facts do not present a model of local government responsiveness and transparency. For starters, it was only after an affected West Plains resident and well-owner filed a public records request with the Spokane Airport that the public—and the state Department of Ecology--learned of well data gathered at Spokane International Airport (SIA) [revealing](#) PFAS in groundwater at the airport.

Whereas the U.S. Air Force, nine years ago, accepted responsibility for the contamination down-gradient of Fairchild and began working with affected well owners, it was left to EPA, the state health department and Ecology to fashion an emergency response to the contamination from SIA. In conjunction with its Restoration Advisory Board (RAB) the Air Force has hosted regular events where the public has had opportunities to voice its concerns and interact directly with personnel assigned to the PFAS response. In contrast, SIA's response (without discernible objection from either the City or County) has been bereft of public outreach. Instead, SIA has actively resisted Ecology's efforts to bring SIA into compliance with state law and defied the law by refusing (thus far) to fund Ecology's regulatory and public outreach activities as required under the Model Toxics Control Act. (MTCA)

SIA's resistance and failure to pay its bills to Ecology may have been a factor in Ecology's decision, last summer, to name both the City and the County as liable persons for the PFAS contamination emanating from the airport. That decision could have severe financial consequences for City taxpayers because—as Ecology officials have emphasized—the City is not just liable for its 1/3 share of the cleanup costs, it's also liable for the remaining 2/3 if either SIA or the County are unable (for whatever reason) to pay their shares.

This is pertinent because SIA officials continue to raise the prospect that the airport may be exempt from SIA's share of the cleanup costs. Because SIA receives grant funds from the Federal Aviation Administration, SIA suggests FAA may find the airport in violation of federal rules if it allocates airport revenues to non-aviation purposes, i.e. environmental remediation.

FAA has made no such determination. Moreover, I think it obvious that a letter SIA solicited from the FAA in 2024 (attached) plainly discourages such an interpretation—i.e. “Although we are not experts in Washington state law, we note that generally, at least in the Federal space, environmental liability for contamination, subject to limited defenses, is strict, joint and several.”

Yet, as recently as last month, SIA continues to waver on its commitments under MTCA, again raising the prospect that there is a legal impediment FAA may invoke that would prohibit SIA from funding its share of the cleanup. This was communicated in the context of a joint (SIA, City of Spokane, Spokane) response to Ecology in early April. It resulted in a sharp reply from Ecology and a joint response from the City, County and SIA that, on its face, lends support SIA's view that it may still escape liability for the cleanup costs by a future FAA ruling. (See attached portion of the SIA, City, County response on April 3rd)

And that's what brings me to you. Given the extent of the City's **added** liability if FAA somehow bars SIA from using airport revenues to fund its share of the cleanup, it acutely raises the question of whether the City conducted an independent legal analysis of the available March 29th, 2024 FAA letter before it signed onto the joint response to Ecology on April 3rd.

For obvious reasons, I did contact City Attorney Mike Piccolo yesterday. He declined to answer my question—about whether he was asked to independently opine on the FAA letter.

I realize his opinion (if he proffered one) could be withheld as attorney-client privilege and, for that reason, I've not bothered to file a public records request for it. But, more to the point, he replied that he could not respond to my question about whether he was consulted, “without disclosing attorney client communications in violation of the rules of professional conduct.”

I understand that as well and do not dispute it. But that's what brings me here because, as mayor, you're the client. Thus, you're the only one who can:

- waive the privilege and release the city's independent legal opinion if there is one.

or, at least

- answer the question about whether City Legal was asked to render an independent opinion on the FAA letter.

So I am asking that you do so.

I believe both questions are reasonable and hope you will agree. Moreover, I think disclosure would be a welcome development in a process that has only exacerbated public distrust and anxiety due to the lack of transparency.

Sincerely, Tim Connor, *The Daily Rhubarb*