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STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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January 20, 2022

Steve Lazoff  
Endolyne Gardens LLC  
2143 N Northlake Way, # C1  
Seattle, WA 98103  
([slazoff99@gmail.com](mailto:slazoff99@gmail.com))

**Re: Opinion pursuant to WAC 173-340-515(5) on Remedial Action for the following Hazardous Waste Site:**

- **Site Name:** 45<sup>th</sup> Ave SW Apartments
- **Site Address:** 9212 45<sup>th</sup> Ave SW, Seattle WA 98136
- **Facility/Site No.:** 71883959
- **Cleanup Site ID No.:** 10264
- **VCP Project No.:** NW2809

Dear Steve Lazoff:

The Washington State Department of Ecology (Ecology) received your request for an opinion on the *Draft Remedial Action Report (DRAP)* dated August 19, 2021 regarding the 45<sup>th</sup> Ave SW Apartments facility (Site), also known as the Endolyne Garden Apartments. This letter provides our opinion. We are providing this opinion under the authority of the Model Toxics Control Act (MTCA), Chapter 70A.305 RCW.

### **Issue Presented and Opinion**

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Is the No Further Action (NFA) request proposed in the *DRAP* sufficiently documented per MTCA requirements by Site information presented to date?

**NO. Ecology has determined that additional information is needed to support consideration of a Property or Site NFA, including delineation of soil remaining in place with concentrations above MTCA Method A cleanup levels, and post-treatment confirmation of a stable or decreasing groundwater contaminant plume.**

## Description of the Site

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This opinion applies only to the Site described below. The Site is defined by the nature and extent of contamination associated with the following releases:

- Benzene and total petroleum hydrocarbons as gasoline (TPH-G) into the Soil and Groundwater.

**Enclosure A** includes a diagram of the Site, as currently known to Ecology.

Please note a parcel of real property can be affected by multiple sites. At this time, we have no information that the parcel(s) associated with this Site are affected by other sites.

## Basis for the Opinion

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This opinion is based on the information contained in the documents listed in **Enclosure B**. A number of these documents are accessible in electronic form from the [Site web page](#)<sup>[1]</sup>. The complete records are kept in the Central Files of the Northwest Regional Office of Ecology (NWRO) for review by appointment only. Visit our [Public Records Request page](#)<sup>[2]</sup> to submit a public records request or get more information about the process. If you require assistance with this process, you may contact the Public Records Officer at [publicrecordsofficer@ecy.wa.gov](mailto:publicrecordsofficer@ecy.wa.gov) or 360-407-6040.

This opinion is void if any of the information contained in those documents is materially false or misleading.

## Analysis and Opinion

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Based on a review of the *DRAP*, Ecology has determined:

- Ecology appreciates the characterization and cleanup progress accomplished at the Site, especially given the physical constraints of working around the buildings that occupy most of the property.
- Groundwater monitoring data have confirmed the beneficial effects of chemical treatment conducted at the Site from 2018 through 2020 (two chemical injection events followed by placement of in-well treatment “socks”).
- In order for Ecology to consider a Property or Site No Further Action (NFA) opinion, the following issues need to be resolved:
  - Complete an appropriate level of Terrestrial Ecological Evaluation (TEE) to

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<sup>[1]</sup> <https://apps.ecology.wa.gov/gsp/Sitepage.aspx?csid=10264>

<sup>[2]</sup> <https://ecology.wa.gov/publicrecords>

determine if Site soil cleanup levels need to be adjusted, and submit the completed TEE forms to Ecology.

- Once appropriate Site soil cleanup levels are confirmed, prepare a plan view map and a hydrogeologic cross section (through monitoring wells FMW-6, FMW-5, MFW-1, and FMW-3) that shows the present extent of soils with concentrations of contaminants above cleanup levels.
- Continue quarterly groundwater sampling of monitoring wells FMW-5 and FMW-6, to determine if the post-treatment contaminant plume is stable or decreasing, and to document the absence of contaminant rebound. Enter new data into EIM. Prepare and maintain a time-series plot of TPH-G concentrations in FMW-5, including labeling of chemical treatment events (injections and sock placement/removal) and comparison with the MTCA Method A cleanup level.
- Show the present extent of groundwater with concentrations of contaminants above Method A cleanup levels on a plan view map on the hydrogeologic cross section.
- Use groundwater monitoring data to demonstrate that the vapor intrusion (VI) exposure pathway is not present at the Site, per the [Ecology VI guidance](#)<sup>3</sup>.
- Determine if an [empirical demonstration](#)<sup>4</sup> (using data from monitoring wells FMW-5 and FMW-6) can be used to show that residual soil concentrations of TPH-G are protective of both groundwater quality and direct contact, and that the Site is eligible for a NFA opinion without an Environmental Covenant.
- If the Site is eligible for a Site NFA, determine if the Site qualifies for a [Groundwater Model Remedy](#)<sup>5</sup> and therefore does not require a Feasibility Study and Disproportionate Cost Analysis.

## Limitations of the Opinion

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### 1. Opinion does not settle liability with the state.

Liable persons are strictly liable, jointly and severally, for all remedial action costs and for all natural resource damages resulting from the release or releases of hazardous substances at the Site. This opinion **does not**:

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<sup>3</sup> <https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Vapor-intrusion-overview>

<sup>4</sup> <https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Empirical-demonstrations-MTCA>

<sup>5</sup> <https://apps.ecology.wa.gov/publications/SummaryPages/1609057.html>

- Resolve or alter a person's liability to the state.
- Protect liable persons from contribution claims by third parties.

To settle liability with the state and obtain protection from contribution claims, a person must enter into a consent decree with Ecology under RCW 70A.305.040(4).

**2. Opinion does not constitute a determination of substantial equivalence.**

To recover remedial action costs from other liable persons under MTCA, one must demonstrate that the action is the substantial equivalent of an Ecology-conducted or Ecology-supervised action. This opinion does not determine whether the action you performed is substantially equivalent. Courts make that determination. See RCW 70A.305.080 and WAC 173-340-545.

**3. State is immune from liability.**

The state, Ecology, and its officers and employees are immune from all liability, and no cause of action of any nature may arise from any act or omission in providing this opinion. See RCW 70A.305.170(6).

**Contact Information**

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Thank you for choosing to clean up the Site under the Voluntary Cleanup Program (VCP). After you have addressed our concerns, you may request another review of your cleanup. Please do not hesitate to request additional services as your cleanup progresses. We look forward to working with you.

For more information about the VCP and the cleanup process, please visit our web site: [www.ecy.wa.gov/vcp](http://www.ecy.wa.gov/vcp). If you have any questions about this opinion, please contact me by phone at 206-594-0121 or e-mail at [michael.warfel@ecy.wa.gov](mailto:michael.warfel@ecy.wa.gov).

Sincerely,



Michael R. Warfel, VCP Site Manager  
NWRO Toxics Cleanup Program

Enclosures (2): A –Diagram of the Site  
B – Basis for the Opinion: List of Documents

cc: Lyndsey Needham, Farallon Consulting ([lneedham@farallonconsulting.com](mailto:lneedham@farallonconsulting.com))  
Sonia Fernandez, Ecology, ([sonia.fernandez@ecy.wa.gov](mailto:sonia.fernandez@ecy.wa.gov))

## **Enclosure A**

### **Diagram of the Site**



**LEGEND**

- - - APPROXIMATE PROPERTY BOUNDARY
- W — WATER LINE
- SS — SS — SANITARY SEWER
- SD — STORM DRAIN
- GAS — GAS — GAS LINE
- ? — GAS — UTILITY LOCATION UNKNOWN
- W WATER METER
- G GAS METER
- H HYDRANT
- W WATER MANHOLE
- S SANITARY SEWER MANHOLE
- ? UNKNOWN UTILITY VAULT OR MANHOLE
- FMW-01 + MONITORING WELL LOCATION
- B3 + BORING LOCATION WITH RECONNAISSANCE GROUNDWATER SAMPLE
- B1 ● SOIL BORING LOCATION
- (85.27) GROUNDWATER ELEVATION IN FEET
- 84.00 - - - GROUNDWATER ELEVATION CONTOUR (DASHED WHERE INFERRED)
- ← APPROXIMATE DIRECTION OF GROUNDWATER FLOW
- FORMER UNDERGROUND STORAGE TANK
- / SLOPE ASPECT INDICATOR WITH "V" OPENING IN UPHILL DIRECTION

ALL LOCATIONS ARE APPROXIMATE  
 FIGURES WERE PRODUCED IN COLOR. GRAYSCALE  
 COPIES MAY NOT REPRODUCE ALL ORIGINAL INFORMATION





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**FIGURE 6**

GROUNDWATER ELEVATION CONTOUR MAP  
 DECEMBER 15, 2020  
 ENDOLYNE GARDEN APARTMENTS  
 9212 45TH AVENUE SOUTHWEST  
 SEATTLE, WASHINGTON  
 FARALLON PN: 1295-001

## **Enclosure B**

**Basis for the Opinion:  
List of Documents**

1. GeoTech Consultants (GeoTech), *Removal of Underground Storage Tanks, 14-Unit Apartment Building, 9212 45th Avenue SW, Permit No. 645073, Seattle, WA, September 5, 1989.*
2. GeoTech, *Closure Report: Underground Storage Tanks, 14-Unit Apartment Building, 9212-45th Avenue SW, Seattle, WA, December 5, 1989.*
3. Terracon, *Phase I Environmental Site Assessment Report, Endolyne Garden, 9212 and 9214 45th Avenue SW, King County Parcel No. 234670-0000, Seattle, King County, WA , December 9, 2013.*
4. Department of Ecology (Ecology), *Opinion on Proposed Remedial Action, 45th Avenue SW Apartments, VCP NW2809, March 11, 2014.*
5. Farallon Consulting, L.L.C. (Farallon), *Scope of Work Limited Soil Investigation, Endolyne Garden Apartments, 9212 45th Avenue SW, Seattle, WA, July 21, 2014.*
6. Ecology, *Opinion on Proposed Remedial Action, 45th Avenue SW Apartments, VCP NW2809, October 10, 2014.*
7. Farallon, *Limited Subsurface Investigation – Summary of Results, Endolyne Garden Apartments, 9212 45th Avenue SW, Seattle, WA, May 1, 2015.*
8. Farallon, *Summary Work Plan, May 19, 2015.*
9. Ecology, *Opinion on Proposed Remedial Action, 45th Avenue SW Apartments, VCP NW2809, August 18, 2015.*
10. Farallon, *Limited Subsurface Investigation – Summary of Results, , Endolyne Garden Apartments, 9212 45th Avenue SW, Seattle, WA, June 6, 2016.*
11. Farallon, *Monitoring Well Installation and Sampling Report, Endolyne Garden Apartments, 9212 45th Avenue SW, Seattle, WA, June 11, 2021.*
12. Farallon, *Remedial Action Report, Endolyne Garden Apartments, 9212 45th Avenue SW, Seattle, WA, August 19, 2021.*