



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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March 2, 2022

Judith Wirth
Havens Estate Investments, LLC
5023 8th Ave NE
Seattle, WA 98105
judithwirth206@gmail.com

Re: No Further Action opinion for the following contaminated Site

Site name: John's Auto Wrecking aka Havens Estate Investments, LLC
Site address: 411 93rd Ave SE, Olympia, Thurston County, WA 98501
Facility/Site ID: 57665495
Cleanup Site ID: 2120
VCP Project No.: SW1613

Dear Judith Wirth:

The Washington State Department of Ecology (Ecology) received your request for an opinion on the sufficiency of your independent cleanup of the John's Auto Wrecking facility (Site) under the [Voluntary Cleanup Program \(VCP\)](#)¹ on October 14, 2021. Your request, including upload and acceptance of electronic data, was complete on October 22, 2021. This letter provides our opinion and analysis. We are providing this opinion under the authority of the [Model Toxics Control Act \(MTCA\)](#),² [chapter 70A.305 Revised Code of Washington \(RCW\)](#).³

Opinion

Ecology has determined that no further remedial action is necessary to clean up contamination at the Site.

Ecology bases this opinion on an analysis of whether the remedial action meets the substantive requirements of MTCA, chapter 70A.305 RCW, and its implementing regulations, Washington Administrative Code ([WAC chapter 173-340](#))⁴ (collectively "substantive requirements of MTCA"). The analysis is provided below.

¹ <https://www.ecy.wa.gov/vcp>

² <https://apps.ecology.wa.gov/publications/SummaryPages/9406.html>

³ <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.305>

⁴ <https://apps.leg.wa.gov/WAC/default.aspx?cite=173-340>

As the Site is ranked a 1 (highest risk), a 30-day public notice and comment period is required to meet WAC 173-340-600 and delist the Site from the hazardous sites list (HSL). Ecology's Toxics Cleanup Program (TCP) completes the public notice and comment period. Ecology's TCP also responds to any comments received. At Ecology TCP's discretion, should public comments be substantive, the no further action determination provided in this opinion letter may be rescinded and additional Site cleanup may be required.

Site Description

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

- Total petroleum hydrocarbons (TPH) in the diesel (TPH-D) and oil-ranges (TPH-O) into the Soil. Paraffin oil identified at the Site is included as mineral oil.
- Carcinogenic polycyclic aromatic hydrocarbons (cPAH) into soil.
- Polychlorinated Biphenyls (PCBs) into soil.
- Metals (arsenic, cadmium, chromium, lead, mercury, nickel, and zinc) into soil.
- Tetrachloroethylene (PCE) into soil.
- Lead and cPAHs into groundwater.

This opinion is limited to those releases identified at the Site. **Enclosure A** includes a Site description, history, and diagrams.

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.

The Site is comprised of 15 identified releases, referred to as areas of concern (AOC). The AOCs are identified as AOC-1 through AOC-14 and Hopkins Ditch. The Site includes portions of five contiguous Thurston County tax parcels: 12723210000, 12723210100, 12723210400, 12723210401, and 12723210700. The Property refers to these five parcels along with a sixth parcel, Thurston County tax parcel 12723220200, which does not appear to be a part of the Site, as no release has been identified with this parcel. The Property is a total of 16.04 acres in size.

Basis for the Opinion

Ecology bases this opinion on information in the documents listed in **Enclosure B**. You can request these documents by filing a [records request](#).⁵ For help making a request, contact the Public Records Officer at recordsofficer@ecy.wa.gov or call (360) 407-6040. Before making a request, check whether the documents are available on [Ecology's cleanup site search page](#).⁶

⁵ <https://ecology.wa.gov/About-us/Accountability-transparency/Public-records-requests>

⁶ <https://apps.ecology.wa.gov/gsp/CleanupSiteDocuments.aspx?csid=2120>

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

Analysis of the Cleanup

Ecology has concluded that no further remedial action is necessary to clean up contamination at the Site. Ecology bases its conclusion on the following analysis:

Characterizing the Site

Ecology has determined your completed Site characterization is sufficient for setting cleanup standards and selecting a cleanup action. **Enclosure A** describes the Site.

Each AOC within the Site has been sufficiently delineated and characterized in order to select cleanup standards and a cleanup action.

Data Collected Since Ecology's March 29, 2021, Opinion Letter

Ecology issued an opinion letter on March 29, 2021, and a technical assistance letter on September 9, 2021. Both letters identified the same five main tasks needed to collect data in order for Ecology to concur⁷ with a no further action determination.

These tasks were to:

1. Collect at least one additional confirmatory soil sample at PS1.
2. Demonstrate how groundwater monitoring requirements under section 10.3 in Ecology Publication No. 10-09-057, [Guidance for Remediation of Petroleum Contaminated Sites](https://apps.ecology.wa.gov/publications/SummaryPages/1009057.html)⁸ or WAC 173-340-720(9) have been met for each monitoring well location.⁹
3. Collect at least three performance surface water samples from Hopkins Ditch.
4. Confirm list of applicable local, state, and federal laws. Add to list if necessary, justify if no additions required.
5. Determine if a Property-specific no further action (NFA) request (with or without institutional controls) is appropriate for the cleanup.

Performance surface water samples were collected at three locations from Hopkins Ditch. One surface water sample was collected as close to each excavation from August 2019, which was used to remove lead and cPAHs in soil. A third performance surface water sample was collected upgradient of the excavations to confirm background concentrations at the Site. Concentrations of lead and cPAHs in surface water were not detected at the laboratory reporting limit.

⁷ Under WAC 173-340-515(3)

⁸ Revised June 2016. <https://apps.ecology.wa.gov/publications/SummaryPages/1009057.html>

⁹ WAC 173-340-720(9)(c)

A soil performance sample collected at PS-1 and analyzed for cPAHs, showed that the concentrations in soil complied with cleanup levels. This sample was needed to confirm that cPAHs in soils from the former pond area had been successfully removed.

In September 2021, a groundwater performance sampling at MW-5 did not detect total or dissolved lead in groundwater. Total and dissolved lead concentrations in groundwater at MW-5 appear to be in compliance with the MTCA Method A cleanup level, and sampling appears to meet the requirements provided by Ecology in its petroleum cleanup guidance.¹⁰ Groundwater sampling results at MW-5 for other applicable Site hazardous substances and groundwater sampling results at all other Site monitoring wells were already in compliance with cleanup levels. Soil sampling results for other AOCs were already in compliance with Site cleanup levels at the time of the additional sampling request at MW-5.

The VCP customer team identified the goal of a Site NFA and did not choose to pursue a Property-specific NFA (with or without institutional controls).

Pathways Analysis Update

Concentrations of Site hazardous substances were not detected in surface water, and have been shown to be less than Site cleanup levels for soil and groundwater. As no concentrations of petroleum hydrocarbons and related volatile organic compounds remain in excess of the MTCA Method A cleanup levels or the most stringent MTCA Method B cleanup levels, the air pathway is confirmed to be incomplete. Ecology concurred no further terrestrial ecological evaluation was needed in our opinion dated March 29, 2021.¹¹ Site interim action excavations removed any contaminated soils and debris.

Ecology's Environmental Information Management System (EIM) Database

Site data have been uploaded in accordance with WAC 173-340-840(5) and Ecology's Toxics Cleanup Program Policy 840. Site data have been accepted into EIM on October 22, 2021. The VCP cleanup project manager has reviewed and approved these Site data.

Setting cleanup standards

Ecology has determined the cleanup levels and points of compliance you set for the Site meet the substantive requirements of MTCA. In our technical assistance letter dated September 9, 2021, Ecology concurred with the review of applicable state and federal laws. No adjustments to proposed cleanup levels were needed based on this review. Excavation and further evaluation of potential surface water and sediment pathways for the Site have been shown to be incomplete. Based on Ecology's determination in the opinion letter from March 29, 2021, there is no potential sediment Site of concern for this cleanup. Ecology determined that there is no sediment unit for the cleanup and the cleanup is an upland cleanup only.

¹⁰ Section 10.3 in Ecology Publication No. 10-09-057, *Guidance for Remediation of Petroleum Contaminated Sites*, revised June 2016.

¹¹ See p. 15.

The Site cleanup levels are listed in the table below. For soil and groundwater, MTCA Method A cleanup levels were established. If no MTCA Method A cleanup level existed for a Site hazardous substance, the most stringent MTCA Method B cleanup level was established. Cleanup levels are established based on unrestricted land use.

Site Hazardous Substance	MTCA Method Cleanup Level	Soil Cleanup Level (milligrams per kilogram [mg/kg])	Groundwater Cleanup Level (micrograms per liter [µg/L])
TPH as gasoline	A/A	100	1,000
TPH as diesel and heavy oil	A/A	500	500
TPH as mineral oil	A/A	4,000	500
Arsenic	A/A	20	5
Cadmium	A/A	2	5
Chromium	A/A	2,000	50
Copper	B/B	3,200	640
Lead	A/A	250	15
Mercury	A/A	2	2
Nickel	B/B	1,600	100
Zinc	B/B	6,000 ¹²	600
cPAHs (as benzo[a]pyrene)	A/A	0.1	0.1
PCBs	A/A	1.0	0.1
PCE	A/A	0.05	5

Standard points of compliance were established for complete Site pathways. Ecological receptors, air, surface water, and sediment have been shown to be incomplete Site pathways.

Media	Points of Compliance
Soil-Direct Contact	Based on human exposure via direct contact, the standard point of compliance is throughout the Site from ground surface to fifteen feet below the ground surface. ¹³
Soil- Protection of Groundwater	Based on the protection of groundwater, the standard point of compliance is throughout the Site. ¹⁴
Groundwater	Based on the protection of groundwater quality, the standard point of compliance is throughout the site from the uppermost level of the saturated zone extending vertically to the lowest most depth which could potentially be affected by the site. ¹⁵

¹² MTCA Method B for zinc in soil protective of the leaching pathway at 6,000 mg/kg should be used to screen analytical results. This is the value from Ecology's CLARC tables, February 2021. Zinc was detected in groundwater at MW-1, and so cleanup level set for zinc in soil at the Site must be protective of the leaching pathway.

¹³ WAC 173-340-740 (6)(d)

¹⁴ WAC 173-340-747

¹⁵ WAC 173-340-720(8)(b)

Per Ecology's determination in our technical assistance letter dated September 9, 2021, applicable local, state, and federal laws have been appropriately considered and applied to Site cleanup standards. No additional adjustment to the established cleanup levels is necessary.

Selecting the cleanup action

Ecology has determined the cleanup action you selected for the Site meets the substantive requirements of MTCA. Excavation and debris removal were completed as interim actions which were equivalent to a selected cleanup action for the Site. Contaminated soils were disposed at off-Site permitted facilities.

Implementing the cleanup action

Ecology has determined your cleanup meets the standards set for the Site. Performance soil, groundwater, and surface water samples meet cleanup standards for each AOC. Excavation¹⁶ and debris removal interim actions were successful at removing contamination from the Site. Contaminated soils were properly disposed at off-Site permitted facilities. A detailed review of these interim actions is provided in Ecology's opinion letter dated March 29, 2021.

The cleanup performed at the Site meets the threshold requirements under WAC 173-340-360(2), and:

- Is protective of human health and the environment.
- Complies with cleanup standards.
- Complies with applicable state and federal laws.
- Uses permanent solutions to the maximum extent practicable.
- Provides for a reasonable restoration timeframe.
- Sufficiently considers public concerns.
- Does not require institutional controls or compliance monitoring.
- Meets the cleanup action requirements under WAC 173-340-360(2)(d).

You must decommission [resource protection wells](#)¹⁷ installed as part of the remedial action that are not needed for any other purpose at the Site. Resource protection wells (aka monitoring wells) must be decommissioned in accordance with WAC [173-160-460](#).¹⁸ Well decommissioning must be overseen by a driller licensed in Washington State. **Ecology recommends delaying any needed well decommissioning until after the public notice and comment period and any needed comment resolution are complete.**

¹⁶ See figure 3 in Robinson-Noble's *Supplemental Remedial Investigation* report, October 14, 2021.

¹⁷ <https://app.leg.wa.gov/WAC/default.aspx?cite=173-160-410>

¹⁸ <https://app.leg.wa.gov/WAC/default.aspx?cite=173-160-460>

To meet the requirements under WAC 173-340-600, a 30-day public notice and comment period is necessary to delist a Site from Ecology's Hazardous Site List (HSL).

If any investigation derived waste remains at the Site, please dispose of it at a permitted facility, in accordance with all applicable local, state, and federal laws.

Listing of the Site

Based on this opinion, Ecology will initiate the process of removing the Site from its lists of contaminated sites, including the:

- Hazardous Sites List.
- Confirmed and Suspected Contaminated Sites List.

That process includes providing public notice and the opportunity to comment. Based on the comments received, Ecology will either remove the Site from the applicable lists or rescind this opinion.

Limitations of the Opinion

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**:

- 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).¹⁹

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](#)²⁰ and WAC [173-340-545](#).²¹

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).²²

¹⁹ <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.305.040>

²⁰ <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.305.080>

²¹ <https://apps.leg.wa.gov/WAC/default.aspx?cite=173-340-545>

²² <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.305.170>

Termination of Agreement

Thank you for cleaning up the Site under the VCP. This opinion terminates the VCP Agreement governing VCP Project No. SW1613.

Questions

If you have any questions about this opinion or the termination of the Agreement, please contact me at 360-999-9589 or tim.mullin@ecy.wa.gov.

Sincerely,



Tim Mullin, LHG
Toxics Cleanup Program
Southwest Regional Office

TCM/tam

Enclosures: A – Site Description
B – Basis for the Opinion: List of Documents

cc by email: Philip Grafious, Property Owner; pgrafious@gmail.com
Max Wills, Robinson-Noble; MWills@robinson-noble.com
Fiscal, VCP Fiscal Analyst
TCP, Operating Budget Analyst
Ecology Site File

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Enclosure A

Site Description

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Site Description

The John's Auto Wrecking (Site) is located at 411 93rd Avenue Southeast, Olympia, Thurston County, Washington. The Thurston County tax parcels comprising the Property are zoned for both light industrial (use code 69 – warehouse) and undeveloped land (use code 91 – undeveloped land).²³

Thurston County Tax Parcel	Use Code	Current Zoning
12723210000	91	Undeveloped land
12723210100	69	Warehouse
12723210400	91	Undeveloped land
12723210401	91	Undeveloped land
12723210700	91	Undeveloped land

The Property was used as a junkyard for approximately 22 years. The northernmost area of the Property contained five buildings used in the various salvage operations. In the middle of the Property, a large tire pile from the salvage vehicles was present. Various other salvage operation areas were scattered about the Property. The Hopkins Ditch, an ephemeral stream, is present along the southern portion of the Property.

The Site located about 0.3 miles south-southeast of the Olympia Regional Airport. The Site is located in the Upper Chehalis Watershed, and within the Salmon Creek sub-watershed. Ecology notes that Hopkins Ditch does not appear to be connected to the main channel of Salmon Creek, which is about two miles southwest of the Site.²⁴ Fish identified in the wetlands survey have not been observed in Hopkins Ditch at the Site; however, there is no specific barrier to fish moving between Salmon Creek and Hopkins Ditch if sufficient surface water were present to make Hopkins Ditch a viable waterway.

Ecology's 2004 Site Hazard Assessment rated the distance to nearest fishery resource to the Site as a "0," noting that Hopkins Ditch was an "ephemeral stream not a fishery resource."²⁵

Site soils are described in the wetland delineation report as Nisqually loamy fine sand, Norma fine sandy loam, Everett very gravelly sandy loam, Tisch silt loam, and Mukilteo muck. The Site is underlain by silty sands with varying amounts of gravel, interpreted as glacial outwash. Site groundwater ranges from near surface to approximately nine feet below top of casing, depending on the time of year and where at the Site.

Site groundwater flow has been primarily to the northwest, with some localized groundwater flow to the south at the south end of the Site adjacent to Hopkins Ditch.

²³ Zoning current as of September 10, 2020.

²⁴ <https://www.ci.tumwater.wa.us/home/showpublisheddocument?id=3918>

²⁵ p. 6 of Ecology's Site Hazard Assessment, Worksheet #4, Surface Water Route

Contaminated soil associated with the various Site AOCs has generally required testing of groundwater to determine if contaminated groundwater is present. Grab groundwater sampling and groundwater sampling from five properly constructed monitoring wells, MW-1 through MW-5, have been used to evaluate Site groundwater quality. Cleanup has consisted of removal of soils by excavation and removal of debris from the Site.

Enclosure B

Basis for the Opinion: List of Documents

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List of Documents

1. Robinson-Noble, *Supplemental Remedial Investigation*, October 14, 2021.
2. Ecology, *Technical Assistance at the following Site*, letter, addressed to Judith Wirth, September 9, 2021.
3. Robinson-Noble, *Draft Work Plan*, June 8, 2021.
4. Ecology, *Opinion on a cleanup for the following Site*, letter, addressed to Judith Wirth, March 29, 2021.
5. Email correspondence. Max Wills of Robinson-Noble to Tim Mullin of Ecology, January 14, 2021.
6. Email correspondence. Max Wills of Robinson-Noble to Tim Mullin of Ecology, October 15, 2020.
7. Robinson-Noble, *Supplemental Remedial Investigation/Cleanup Action*, May 15, 2020.
8. Ecology, Comments on SEPA 2019101360, April 19, 2019.
9. Email Correspondence, Zach Meyer of Ecology to Max Wills of Robinson-Noble, June 18, 2018.
10. Robinson-Noble, *Remedial Investigation*, July 2013.
11. Robinson-Noble, *Draft Work Plan for Supplemental Site Investigation*, February 2012.
12. Ecology, *Further Action at the following Site*, letter, addressed to Mr. Alan J. Wertjes, August 23, 2011.
13. Robinson-Noble, *Site Remediation of the Havens Property (aka Johns Auto Wrecking)*, letter, addressed to Alan J. Wertjes, Attorney at Law, December 10, 2009.
14. Robinson-Noble, Site Investigation/Characterization, Havens Property (aka) Johns Auto Wrecking, letter, addressed to Alan J. Wertjes, Attorney at Law, April 21, 2009.
15. Ecology, *Site Characterization Work Plan, John's Auto Wrecking, 411 93rd Avenue SE, Olympia, Washington*, prepared by Associated Environmental Group, LLC, dated June 15, letter, addressed to Michael S. Chun, 2006, June 26, 2006.
16. Ecology, *Opinion pursuant to WAC 173-340-515(5) on Proposed Remedial Action for the following Hazardous Waste Site*, letter, addressed to Mr. John Havens, February 23, 2006.