



STATE OF WASHINGTON  
**DEPARTMENT OF ECOLOGY**

Central Region Office

1250 West Alder St., Union Gap, WA 98903-0009 • 509-575-2490

February 16, 2023

Peggy Williamson  
Fulcrum Environmental Consulting, Inc.  
406 N. 2<sup>nd</sup> Street  
Yakima, WA 98901

**Re: No Further Action opinion for the following contaminated Site**

- **Site name:** Apple Valley Elementary School
- **Site address:** 7 North 88<sup>th</sup> Avenue, Yakima
- **Facility/Site ID:** 3464749
- **Cleanup Site ID:** 882
- **VCP Project No.:** CE0531

Dear Peggy Williamson:

The Washington State Department of Ecology (Ecology) received your request on November 23, 2022, for an opinion regarding the sufficiency of your independent cleanup of the Apple Valley Elementary School (Site) under the Voluntary Cleanup Program. This letter provides our opinion and analysis. We are providing this opinion under the authority of the Model Toxics Control Act (MTCA), Chapter 70A.305 RCW.<sup>1</sup>

## Opinion

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

This opinion depends on the continued performance and effectiveness of the post-cleanup controls and monitoring specified in this letter and the environmental covenant in Enclosure A.

Ecology bases this opinion on an analysis of whether the remedial action meets the substantive requirements of MTCA and its implementing regulations, which are specified in Chapter 70A.305 RCW<sup>2</sup> and Chapter 173 340 WAC<sup>3</sup> (collectively called "MTCA").

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<sup>1</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.305>

<sup>2</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.305>

<sup>3</sup> <https://app.leg.wa.gov/WAC/default.aspx?cite=173-340>

## Site Description

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

- Lead in Soil
- Arsenic in Soil

Enclosure B includes a Site description.

Please note that many former orchard lands in Central Washington State contain concentrations of lead and arsenic in soil exceeding MTCA cleanup levels due to legacy pesticide use. We encourage the use of Ecology's Dirt Alert Mapping tool to identify former orchards and sampling results.

## Basis for the Opinion

Ecology bases this opinion on the information contained in the following documents:

1. Apple Valley Elementary School Site Hazard Assessment Report, Ecology, February 2006<sup>4</sup>
2. Interim Action Plan, Apple Valley Elementary School, Ecology, February 2012<sup>5</sup>
3. Interim Action Report, Apple Valley Elementary School, Ecology, March 2014<sup>6</sup>
4. Capped Lead-Arsenic Soil, Redevelopment, Observations and Testing Summary Report, Fulcrum Environmental Consulting, Inc., November 2022<sup>7</sup>

You can request these documents by filing a records request. For help making a request, contact the Public Records Officer at [RecordsOfficer@ecy.wa.gov](mailto:RecordsOfficer@ecy.wa.gov) or call (360) 407 6040. You can also view the documents available on the Apple Valley Elementary School cleanup site website.<sup>8</sup> This opinion is void if information in any of the listed 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 B describes the Site.

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<sup>4</sup> <https://apps.ecology.wa.gov/cleanupsearch/document/52196>

<sup>5</sup> <https://apps.ecology.wa.gov/cleanupsearch/document/6417>

<sup>6</sup> <https://apps.ecology.wa.gov/cleanupsearch/document/26264>

<sup>7</sup> <https://apps.ecology.wa.gov/cleanupsearch/document/119146>

<sup>8</sup> <https://apps.ecology.wa.gov/cleanupsearch/site/882>

### **Setting cleanup standards**

Ecology has determined the cleanup levels and points of compliance you set for the Site meet the substantive requirements of MTCA. Use of remedies included in *Model Remedies for Cleanup of Former Orchard Properties*<sup>9</sup> are appropriate for cleanup at this site. Please see this document for information regarding cleanup levels, points of compliance, exposure pathways and all applicable local, state, and federal laws regarding use of model remedies for cleanup in Washington State.

The cleanup action you selected, excavation of contaminated soils and capping according to *Model Remedies for Cleanup of Former Orchard Properties*, meets the substantive requirements of MTCA for this property.

### **Implementing the cleanup action**

Ecology has determined your cleanup meets the standards set for the Site. Cleanup activities consisted of regrading portions of the site during construction activities for the newly built school; capping of contaminated areas with geotextile fabric, clean soils, gravel and landscaping material, concrete and asphalt, use of an Operations and Maintenance (O&M) Plan, and an environmental covenant to restrict land use at the property.

### **Post-Cleanup Controls and Monitoring**

Post-cleanup controls and monitoring are remedial actions performed to ensure compliance with cleanup standards. Ecology is issuing this No Further Action opinion based on the continued performance and effectiveness of the following post-cleanup remedial actions at the Site. Ecology may rescind this opinion if these remedial actions are not performed or do not effectively maintain the cleanup standards.

### **Compliance with institutional controls**

Institutional controls prohibit or limit activities that may interfere with the integrity of engineering controls or result in exposure to contamination.

The following site-specific institutional controls are needed at the Site:

- Environmental covenant for institutional controls

To implement the controls, you recorded an environmental covenant on the following parcels of real property in Yakima County on September 23, 2022:

- 181319-42022
- 181319-42006

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<sup>9</sup> <https://apps.ecology.wa.gov/publications/documents/2109006.pdf>

Ecology approved the recorded environmental covenant. To amend or terminate the covenant, you must request additional review under the VCP.

### **Operation and maintenance of engineering controls**

Engineering controls prevent or limit movement of, or exposure to, contamination. The Site needs the following engineering controls:

- Capping of contaminated soils with geotextile fabric, clean soils, gravel, landscaping materials, concrete, and/or asphalt.

Ecology has determined the operation and maintenance plan you submitted for these engineering controls meets the substantive requirements of MTCA. Enclosure B includes this plan as an exhibit to the environmental covenant.

### **Periodic review of post-cleanup conditions**

Ecology will conduct periodic reviews of post-cleanup conditions at the Site to evaluate if they remain protective of human health and the environment. Based on a periodic review, if Ecology determines the Site needs further remedial action, Ecology will rescind this opinion.

Based on this opinion, Ecology will update the Site status on the Confirmed and Suspected Contaminated Sites List.<sup>10</sup>

### **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).<sup>11</sup>

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<sup>10</sup> <https://apps.ecology.wa.gov/cleanupsearch/reports/cleanup/contaminated>

<sup>11</sup> <https://app.leg.wa.gov/rcw/default.aspx?cite=70A.305.040>

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### **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 if the action you performed is substantially equivalent. Courts make that determination. See RCW 70A.305.080<sup>12</sup> and WAC 173-340-545.<sup>13</sup>

### **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).<sup>14</sup>

### **Termination of Agreement**

Thank you for cleaning up the Site under the VCP. This opinion terminates the VCP Agreement governing VCP Project No. CE0531.

### **Questions**

If you have any questions about this opinion or the termination of the Agreement, please contact me by phone at 509-571-6661 or email at [Mary.Monahan@ecy.wa.gov](mailto:Mary.Monahan@ecy.wa.gov).

Sincerely,



Mary Monahan  
Toxics Cleanup Program  
Central Region Office

Enclosures 2: A – Environmental Covenant for Institutional Controls  
B – Site Description

cc: Peter Finch, West Valley School District

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<sup>12</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.305>

<sup>13</sup> <https://app.leg.wa.gov/WAC/default.aspx?cite=173-340-545>

<sup>14</sup> <https://app.leg.wa.gov/rcw/default.aspx?cite=70A.305.170>



## **Enclosure A**

Environmental Covenant for Institutional Controls





# Enclosure B

## Site Description

### Site Description

Apple Valley Elementary School is located within an area of former orchard properties that have been contaminated with historic use of pesticides. The contaminants of concern are lead and arsenic in site soils; site groundwater has not been impacted by these former pesticides. The entire site was assumed to be impacted by lead and arsenic exceeding the MTCA cleanup levels in soils:

Lead cleanup level-250 mg/kg

Arsenic cleanup level-20 mg/kg

The diagram included in Exhibit A details the current features of the Site.

