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**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

Southwest Region Office
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November 2, 2023

Dennis Austin
Austin Family Properties LLC
6201 S Tacoma Way
Tacoma, WA 98409
daustinjr@buckys.com

Re: Further Action at the following contaminated Site:

- **Site Name:** Buckys
- **Site Address:** 3928 S Meridian, Puyallup, 98373, Pierce County
- **Facility/Site ID:** 7499861
- **Cleanup Site ID:** 1045
- **VCP Project ID:** SW1715

Dear Dennis Austin:

The Washington State Department of Ecology (Ecology) received your request for an opinion on your independent cleanup of the Buckys facility (Site). This letter provides our opinion. We are providing this opinion under the authority of the [Model Toxics Control Act \(MTCA\)](#),¹ [chapter 70A.305 Revised Code of Washington \(RCW\)](#).²

Issue Presented and Opinion

Ecology has determined that further remedial action is necessary to clean up contamination at the Site.

This opinion is based on an analysis of whether the remedial action meets the substantive requirements of MTCA, chapter 70A.305 RCW, and its implementing regulations, Washington

¹ <https://apps.ecology.wa.gov/publications/SummaryPages/9406.html>

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

Administrative Code ([WAC](#)) [chapter 173-340](#)³ (collectively “substantive requirements of MTCA”). The analysis is provided below.

Description of the Site

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:

- Gasoline range total petroleum hydrocarbons (TPH-G) and Diesel range and oil range total petroleum hydrocarbon (TPH-D and TPH-O, collectively; TPH-D/O) into the soil.
- Carcinogenic polycyclic aromatic hydrocarbons (cPAHs) into soil.
- Metals (total chromium, lead, nickel, and zinc) into soil.

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.

For a complete Site history and detailed description of the Site remedial activities, refer to the Remedial Investigation Report Version 2 (Report) from January 30, 2023.

Basis for the Opinion

This opinion is based on the information contained in the documents listed in **Enclosure B**.

You can request these documents by filing a [records request](#).⁴ For help making a request, contact the [Public Records Officer](#)⁵ or call (360) 407-6040. Before making a request, check whether the documents are available on [Ecology’s Cleanup Site Search webpage](#).⁶

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

Analysis of the Cleanup

Ecology has concluded that further remedial action is necessary to clean up contamination at the Site. That conclusion is based on the following analysis:

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

⁴ <https://ecology.wa.gov/About-us/Accountability-transparency/Public-records-requests>

⁵ publicrecordsofficer@ecy.wa.gov

⁶ <https://apps.ecology.wa.gov/gsp/Sitepage.aspx?csid=1045>

1. Characterization of the Site.

Ecology has determined your characterization of the Site is not sufficient to establish cleanup standards and select a cleanup action.

In November 2022, Aerotech collected 28 discrete soil samples from 21 sample locations. The samples comprise two separate groups. One group is in area around the former septic system and ranges in depth from 4.5 feet to 6.0 feet. The other group is in the area of the surface release identified by the Tacoma Pierce County Health Department (TPCHD) west of the Buckys building and ranges in depth from 0.2 feet to 4.0 feet.

The Site is composed primarily of an unknown oil mixture released to the ground surface along the west and southern sides of the Buckys building. Sometime after discovery, the area was paved over with asphalt.

- a. Ecology does not concur that the Site has been sufficiently defined. This issue has been discussed in detail in both the December 2020 and August 2022 Opinion Letters. However, given the specific results presented in this report, this is of particular concern north of samples B16, B17, and B18 as the landscape slopes down into the adjacent property where hazardous substances may have collected, especially given that the sample location B16 has the highest total petroleum hydrocarbon (TPH) with a value of 1,920 milligrams per kilogram (mg/kg). Ecology does not concur that the rocks present on the slope are a barrier to flow down the slope and into the rocky area at the bottom of the slope.

Ecology recommends generating isopleth maps and cross-section figures that define the extent of the Site to wherever detectable Site hazardous substances have come to be located⁷ and determine any data gaps that need to be addressed.

Ecology will require soil sampling north of B16 and recommends collecting samples at the base of the slope directly north of the B16 sample point.

- b. Ecology needs additional explanation on how you determined the total acreage of undeveloped land west of the Site. It appears that a lot of land was omitted from your calculation (that is left outside the green line in the TEE Figure), particularly in the area closest to the Buckys property (directly across the parking lot ingress/egress), and at the southern end of the US Bank of Washington property (Pierce County parcel No. 0419091061). Including these areas, Ecology estimates the undeveloped land area to be around 1.70 acres. A map showing Ecology's calculated area is included in **Enclosure A**.

If the area of undeveloped land does prove to be 1.5 acres or more, Ecology recommends conducting a simplified terrestrial ecological evaluation (TEE) following [WAC 173-340-7492\(2\)\(c\)](#) and using Table 749-2⁸ values. In many cases, MTCA Method A

⁷ WAC 173-340-200 and WAC 173-340-350

⁸ WAC 173-340-900.

CULs are already below the Table 749-2 concentrations, and CULs do not need to be any lower than natural background concentrations, so there would not be an issue with your metals discussed in Section 2 of this letter.

- c. Please provide additional detail regarding the statement; "Soil containing residual [contaminants of potential concern] does not remain on the Bucky's Property"⁹ concerning developing CULs for Site soils.
- d. Ecology does not concur that the soil vapor pathway is not a concern based on a lack of volatile organic compounds (VOCs) present on the Site. Total petroleum hydrocarbon (TPH) is also included in the list of hazardous substances for vapor intrusion (VI). The indoor Method B non-cancer cleanup for TPH is 46 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$), and the Method B non-cancer soil gas screening level is $1,500 \mu\text{g}/\text{m}^3$.
- e. For samples B8 (0.2), B9 (0.2), and B13 (0.2) and any future Site samples showing cPAH results, please calculate and provide the total toxic equivalent concentration (total TEQ) as detailed in [Evaluating the Human Health Toxicity of Carcinogenic PAHs \(cPAHs\) Using Toxicity Equivalency Factors \(TEFs\)](#)¹⁰ (Implementation Memorandum #10).
- f. Given the soil makeup of the Buckys property, primarily silty sands, and silty gravels (Unified Soil Classification System group symbol SM and GM respectively), and that the release was a surface release, Ecology concurs that groundwater contamination on the Buckys property is unlikely.

However, considering that a Site (Chick-Fil-A Puyallup, FSID 38334, CSID 14653) located approximately 275 feet north of the Buckys Site reported depths to groundwater of only 11 feet, the potential for groundwater to be impacted should be reevaluated as the Site is further defined to the north and down the slope into the adjacent property.

2. Establishment of Cleanup Standards.

Ecology has determined the cleanup levels and points of compliance you established for the Site do not meet the substantive requirements of MTCA.

Cleanup Standards: Under MTCA, cleanup standards consist of three primary components; points of compliance,¹¹ cleanup levels,¹² and applicable state and federal laws.¹³

⁹ Report, page 20.

¹⁰ Washington State Department of Ecology, Evaluating the Human Health Toxicity of Carcinogenic PAHs (cPAHs) Using Toxicity Equivalency Factors (TEFs) (Implementation Memorandum #10), Publication No. 15-09-049, April 20, 2015.

<https://apps.ecology.wa.gov/publications/SummaryPages/1509049.html>

¹¹ WAC 173-340-200 "Point of Compliance."

¹² WAC 173-340-200 "Cleanup level."

¹³ WAC 173-340-200 "Applicable state and federal laws," WAC 173-340-700(3)(c).

Points of compliance and applicable state and federal laws were not discussed in the submitted report.

Points of Compliance. Points of compliance, that you need to propose, are the specific locations at the Site where cleanup levels must be attained. For clarity, Ecology provides the following table of standard points of compliance:

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. WAC 173-340-740 (6)(d)
Soil- Protection of Groundwater	Based on the protection of groundwater, the standard point of compliance is throughout the Site. WAC 173-340-740(6)(b)
Soil-Protection of Plants, Animals, and Soil Biota	Based on ecological protection, the standard point of compliance is throughout the Site from ground surface to fifteen feet below the ground surface. WAC 173-340-7490(4)(b)
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. WAC 173-340-720(8)(b)
Groundwater-Surface Water Protection	Based on the protection of surface water, the standard point of compliance is all locations where hazardous substances are released to surface water. WAC 173-340-730(6)
Air Quality	Based on the protection of air quality, the point of compliance is indoor and ambient air throughout the Site. WAC 173-340-750(6)
Sediment	Based on the protection of sediment quality, compliance with the requirements of 173-204 WAC. WAC 173-340-760

Cleanup Levels. Cleanup levels are the concentrations of a hazardous substance in soil, water, air, or sediment that are determined to be protective of human health and the environment. At this Site, MTCA Method A unrestricted cleanup screening levels were used to evaluate contamination detected at the Site. MTCA Method A cleanup levels may be appropriate for the releases, depending on the results of the needed terrestrial ecological evaluation and the completion of the remedial investigation.

- a. Ecology does concur that Method A CULs are appropriate for the Site. Ecology does not concur with how you have established your TPH CULs and recognizes the following issue:
 - i. Unless there have been two separate releases or HCID analysis demonstrates diesel and heavy are present as two separate releases, then TPH-D and TPH-O analytical results should be combined and compared to the MTCA Method A cleanup level. Although they are reported as separate values in the laboratory analytical reports, at this Site, it appears that the sum of the TPH-D and TPH-O results should be

compared to the CUL. There should only be one CUL established for the total NWTPH-Dx analytical result. Refer to [Determining Compliance with Method A Cleanup Levels for Diesel and Heavy Oil](#)¹⁴ (Implementation Memorandum #4), and the [Guidance for Remediation of Petroleum Contaminated Sites](#)¹⁵ Section 7.3 for additional information on correctly establishing a TPH-D/O CUL.

- b. For a MTCA Method A cleanup, any substances that do not have an established CUL (MTCA Table 720-1 and Table 740-1)¹⁶ would need to use either the natural background concentration or the laboratory practical quantitation limit (PQL), whichever is greater. For additional information regarding this, refer to [WAC 173-340-740\(5\)\(c\)](#)¹⁷, and the [Concise Explanatory Statement](#) (CES)¹⁸ sections GQ 9.1.4, GQ 9.4.3, and GQ 20.2.5. Please be aware that Method B CULs are not appropriate for a Method A cleanup.

Based on this, for those metals that you indicate as not having a CUL established, (total chromium, nickel, and zinc), the correct CULs should be as follows:

- i. **Total Chromium:** use the lower 19 mg/kg chromium (VI) concentration for total chromium,¹⁹ or the background value established in the [Natural Background Soil Metals Concentrations in Washington State](#).²⁰ Alternatively, as described in the Important Notes in CLARC, you can analyze for both chromium (III) and chromium (VI) and use the appropriate Method A CUL.
- ii. **Nickel and Zinc:** use either the laboratory PQL or the natural background concentration established in the Natural Background Soil Metals Concentrations in Washington State.

In general Ecology recommends using an appropriate natural background concentration established in Natural Background Soil Metals Concentrations in Washington State for any metals that do not have an established MTCA Method A Table 740-1 value.

Applicable Laws and Regulations. In addition to establishing minimum requirements for cleanup standards, applicable local, state, and federal laws may also impose certain technical and procedural requirements for performing cleanup actions. These requirements

¹⁴ Washington State Department of Ecology, Implementation Memorandum #4; Determining Compliance with Method A Cleanup Levels for Diesel and Heavy Oil, Publication No. 04-09-086, June 17, 2004. <https://apps.ecology.wa.gov/publications/SummaryPages/0409086.html>

¹⁵ Washington State Department of Ecology Toxics Cleanup Program, Guidance for Remediation of Petroleum Contaminated Sites, Publication No. 10-09-057, June 2016. <https://apps.ecology.wa.gov/publications/SummaryPages/1009057.html>

¹⁶ WAC 173-340-900.

¹⁷ <https://app.leg.wa.gov/WAC/default.aspx?cite=173-340-740>

¹⁸ Washington State Department of Ecology Toxics Cleanup Program, Concise Explanatory Statement, Publication No. 01-09-043, February 12, 2001. <https://apps.ecology.wa.gov/publications/summarypages/0109043.html>

¹⁹ See the Links to Important Notes in the Cleanup Levels and Risk Calculation (CLARC) Tables for Chromium (Total), Chromium (III) or Chromium (VI).

²⁰ Washington State Department of Ecology Toxics Cleanup Program, Natural Background Soil Metals Concentrations in Washington State, Publication No. 94-115, October 1994. <https://apps.ecology.wa.gov/publications/SummaryPages/94115.html>

are described in [WAC 173-340-710](#).²¹ An [online tool](#)²² is currently available to help you evaluate the local requirements that may be necessary.

All cleanup actions conducted under MTCA shall comply with applicable state and federal laws.²³ The person conducting a cleanup action shall identify all applicable local, state, and federal laws. The department shall make the final interpretation on whether these requirements have been correctly identified and are legally applicable or relevant and appropriate.²⁴

There are three general groups of applicable local, state, and federal laws that need to be included:

- i. **Chemical-Specific:** Examples of chemical-specific laws include promulgated concentrations from another rule that result in adjusting proposed cleanup levels. Method A is inclusive of these laws. For Methods B or C, additional evaluation of chemical-specific applicable state and federal laws is required.
- ii. **Action-Specific:** Examples of action-specific laws include requirements for obtaining local permits to excavate and/or dispose of contaminated soil, stormwater construction permits, or the requirement to notify local law enforcement in case human remains are discovered during excavation. All MTCA cleanups require evaluation of action-specific applicable state and federal laws.
- iii. **Location-Specific:** Examples of location-specific laws include specific requirements for working near wetlands or archeologically important areas. All MTCA cleanups require evaluation of location-specific applicable state and federal laws.

After you have identified appropriate applicable local, state, and federal laws, report to Ecology the applicable local, state, and federal laws applicable to this cleanup, and how those laws and regulations specifically affect the proposed cleanup.

3. Selection of Cleanup Action.

Ecology has determined that additional remedial investigation is necessary at the Site before selecting a cleanup action.

Ecology has determined that additional Site definition in accordance with [WAC 173-340-200](#)²⁵ and [WAC 173-340-350](#)²⁶ is still required. However, interim actions may be taken at

²¹ <https://app.leg.wa.gov/WAC/default.aspx?cite=173-340-710>

²² <https://apps.oria.wa.gov/opas/index.asp>

²³ WAC 173-340-710(1)

²⁴ WAC 173-340-710(2)

Note – MTCA Method A includes ARARs and concentration-based tables (WAC 173-340-700(5)(a)) If MTCA Method A remains in use as proposed Site cleanup levels, identify non-concentration based technical and procedural requirements. If Method B or C cleanup levels are proposed, also include concentration-based requirements.

²⁵ <https://apps.leg.wa.gov/wac/default.aspx?cite=173-340-200>

²⁶ <https://apps.leg.wa.gov/wac/default.aspx?cite=173-340-350>

any time in order to reduce contaminant concentrations in the environment, consistent with [WAC 173-340-430](#).²⁷

Limitations of the Opinion

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**:

- 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(8) 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)

²⁷ <https://apps.leg.wa.gov/wac/default.aspx?cite=173-340-430>

Contact Information

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 [Voluntary Cleanup Program webpage](#).²⁸ If you have any questions about this opinion, please contact me at (360) 584-6212 or aaren.fiedler@ecy.wa.gov.

Sincerely,



Aaren Fiedler, LG
Toxics Cleanup Program
Southwest Region Office

AF/AT

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

cc by mail: Austin Family Properties LLC
cc by email: Justin Foslien, Aerotech Environmental Consulting, Inc., justin@dirtydirt.us
 Jerome Lambiotte, Ecology, jerome.lambiotte@ecy.wa.gov
 Ecology Site File

²⁸ <https://www.ecy.wa.gov/vcp>

Enclosure A

Diagrams of the Site

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Site Diagrams

Ecology Figure 1 Undeveloped Land West of the Buckys (FSID 74998661)

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Figure 1: Undeveloped Land West of Buckys (FSID 7499861)



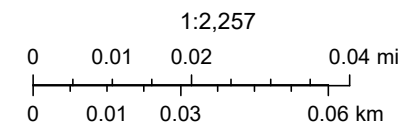
October 12, 2023

TCP Cleanupsites 1

Cleanup Status

 Cleanup Started

roads



WA Dept. of Ecology



Enclosure B

Basis for the Opinion

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List of Documents

1. Aerotech Environmental Consulting Inc. (Aerotech), Remedial Investigation Report Version 2, January 30, 2023.
2. Ecology, Technical Assistance at the following Site, letter, addressed to Dennis Austin, August 24, 2022.
3. Aerotech, Remedial Investigation Report & Work Plan, May 7, 2021.
4. Ecology, Further Action at the Following Site, letter, addressed to Dennis Austin, December 7, 2020.
5. Aerotech, [Completed] Voluntary Cleanup Program (VCP) Terrestrial Ecological Evaluation Form for the Buckys Site, 3928 South Meridian Puyallup, WA 98373, FSID7499861, Submitted with VCP application, June 15, 2020.
6. Aerotech, Removal from Confirmed and Suspected Contaminated Site List; Austin Family Properties (Buckys), letter, addressed to Kirsten Wecker (Toxics Cleanup Program), October 8, 2018.
7. Aerotech, Phase II Limited & Targeted Subsurface Investigation, August 1, 2018.
8. Garrett Bateman (Buckys), 3928 S Meridian, APN 0419095014, letter, addressed to Tacoma, Pierce County Health Department (Attn: Kirsten Wecker), April 20, 2009.
9. Tacoma Pierce County Health Department (TPCHD), 3928 S Meridian, APN 0419095014, letter, addressed to Bucky's South Hill, March 24, 2009.