



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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March 17, 2011

Freeman Anthony  
City of Bellingham, Public Works  
210 Lottie Street, City Hall  
Bellingham, WA 98225

**Re: Further Action at a Property associated with a Site:**

- Property Address: West Illinois Street and Marine Drive, Bellingham, WA as shown on the attached Site Diagram
- Facility/Site No.: 5075
- VCP Project No.: NW2198

Dear Mr. Anthony:

The Washington State Department of Ecology (Ecology) received your request for an opinion on your independent cleanup of a Property associated with a new road construction project "West Illinois/Timpson Street Extension".

Portions of the construction area require remedial actions under MTCA. These portions include an entire parcel, 380223 381262, and its adjacent parcel, 380223 330305 as shown on the Site Diagram in Enclosure B. Portions of two other parcels located at the east side of the construction area also need remediation. However, per direction of the TCP Management Team, Ecology only provides opinion letters on property-specific cleanups if the Property includes at least one whole tax parcel. Portions of a tax parcel under a right-of-way easement may be included if the easement is immediately adjacent to a whole tax parcel. Only Parcel 380223 381262 and Parcel 380223 330305 meet Ecology's definition of "Property". Therefore, this VCP only addresses cleanup associated with those two parcels.

This letter provides our opinion. We are providing this opinion under the authority of the Model Toxics Control Act (MTCA), Chapter 70.105D RCW.

### **Issues Presented and Opinion**

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1. Is further remedial action necessary at the Property to clean up contamination associated with the Site?

**YES. Ecology has determined that further remedial action is necessary at the Property to clean up contamination associated with the Site.**



Ecology issued an opinion letter on October 15, 2009 regarding the proposed cleanup action plan. In that letter, Ecology states that the proposed cleanup action plan is likely sufficient to cleanup contamination at the Property associated with the Site. That determination was based on complete implementation of the proposed cleanup action plan. Although the actual cleanup removed more arsenic contaminated soil than originally planned, confirmation samples were not collected as proposed in the small triangle area at the north side of the Property. Confirmation samples are needed in that area.

2. Is further remedial action also necessary elsewhere at the Site?

**YES. Ecology has determined that further remedial action is also necessary elsewhere at the Site.**

This opinion is based on an analysis of whether the remedial action meets the substantive requirements of MTCA, Chapter 70.105D RCW, and its implementing regulations, Chapter 173-340 WAC (collectively "substantive requirements of MTCA"). The analysis is provided below.

### **Description of the Property and the Site**

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This opinion applies only to the Property and the Site described below. This opinion does not apply to any other sites that may affect the Property. Any such sites, if known, are identified separately below.

1. **Description of the Property.**

The Property includes the following tax parcels in Whatcom County, which were affected by the Site and addressed by your cleanup:

- 380223 381262.
- 380223 330305.

**Enclosure B** includes a legal description of the Property and a diagram of the Site that illustrates the location of the Property within the Site.

2. **Description of the Site.**

The Site is defined by the nature and extent of contamination associated with the following release:

- Arsenic into the soil.

That release has affected more than one parcel of real property, including the parcels identified above.

The source of arsenic is unclear, but it is likely associated with the bedding historically placed on the railroad grade along the spur. The extent of the arsenic contamination beyond the Property is unknown. **Enclosure A** includes a detailed description of the Site, as currently known to Ecology.

**3. Identification of Other Sites that may affect the Property.**

Please note that the Oeser Superfund Site and the Little Squaticum Park Site may also affect this Property. This opinion does not apply to any contamination associated with those facilities.

**Basis for the Opinion**

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This opinion is based on the information contained in the following documents:

- Property Cleanup and Compliance Monitoring Report, West Illinois/Timpson Way Street Extension Project, prepared by Herrenkohl Consulting LLC on September 27, 2010.

That document is kept in the Central Files of the Northwest Regional Office of Ecology (NWRO) for review by appointment only. You can make an appointment by calling the NWRO resource contact at (425) 649-7190.

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

**Analysis of the Cleanup**

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

**1. Characterization of the Site.**

Ecology has determined your characterization of the Site is sufficient to establish cleanup standards for the Site and select a cleanup for the Property.

**2. Establishment of cleanup standards for the Site.**

Ecology has determined the cleanup levels and points of compliance you established for the Site meet the substantive requirements of MTCA.

**i. Cleanup levels.**

In accordance with WAC 173-340-7491 (1) (b), the Property is excluded from a terrestrial ecological evaluation since all contaminated soil, is or will be covered

by physical barriers (paved roads) that prevent exposure to plants and wildlife and an institutional control will be implemented as required by WAC 173-340-440.

Because the cleanup at the Property is relatively straight forward and involve only arsenic, the MTCA Method A soil cleanup level is deemed applicable and appropriate. The cleanup level is based on direct contact using Equation 740-2 and protection of groundwater for drinking water use using the procedures in WAC 173-340-747(4), adjusted for natural background for soil.

**ii. Points of compliance.**

For soil cleanup level based on protection of surface water and groundwater, the point of compliance is the soil throughout the Site.

**3. Selection of cleanup for the Property.**

As stated in Ecology's October 22, 2009 opinion letter, Ecology determined the cleanup you proposed for the Property met the substantive requirements of MTCA. Your proposed cleanup meets minimum cleanup requirements and will not exacerbate conditions or preclude reasonable cleanup alternatives elsewhere at the Site.

**4. Cleanup of the Property.**

Ecology has determined the cleanup you performed does not meet the applicable Site cleanup standards within the Property.

Cleanup actions were conducted from approximately May 4, 2010 to July 31, 2010. More arsenic contaminated soil was removed than originally planned. The attached map in Enclosure C shows the extent of the final excavated areas, confirmation sampling locations and results.

Approximately 1,200 tons of soil were cleared and grubbed to a depth of 2 feet in Areas A, B and C as shown on the attached map in Enclosure C. Since the existing soil was found to be unsuitable as road sугrade, approximately 2,750 tons of soil were excavated to a depth of 1 to 2 feet across the entire planned road construction area. In addition, approximately 3 feet of arsenic contaminated soil was excavated from an area of approximately 2,400 square feet centered above the culvert as planned in the CAP, followed by another 2 feet of excavation in an area about 800 square feet in the southern portion of the 2,400 square feet cleanup area. However, since two of six confirmation samples collected in that area were still above the cleanup level, an additional 2 feet of soil was excavated from about a 200 square feet area. Miscellaneous fill materials were encountered during construction of the eastern retaining wall. Approximately 650 tons of these fill materials were also excavated and transported off-site for disposal.

In summary, approximately 5,300 tons of arsenic contaminated soils and fill material were excavated from the Property and vicinity and transported to Roosevelt Regional Landfill for disposal. Analytical results indicated that only one soil sample (WIL-HA-27) exceeded the cleanup level of arsenic with concentrations of 27 mg/kg. It should be noted that soils were not sampled from the small "triangle-shaped" portion of the Property along the northern boundary. Further action is needed in that area.

### **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**:

- Change the boundaries of the Site.
- 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 70.105D.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 70.105D.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 70.105D.030(1)(i).

### **Contact Information**

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Thank you for choosing to clean up your Property 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.

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For more information about the VCP and the cleanup process, please visit our web site: [www.ecy.wa.gov/programs/tcp/vcp/vcpmain.htm](http://www.ecy.wa.gov/programs/tcp/vcp/vcpmain.htm). If you have any questions about this opinion, please contact me at (425) 649-4310.

Sincerely,



Jing Liu  
NWRO Toxics Cleanup Program

jl: kp

Enclosures (3): A – Description of the Site  
B – Legal Description of the Property and Diagram of the Site  
C – Approximate Extent of the Final Excavated Areas, Confirmation  
Sampling, Locations and Results

cc: Mark J. Herrenkohl, Herrenkohl Consulting LLC  
Russ Olsen, Ecology  
Donna Musa, Ecology  
Mary K. O'Herron, Ecology