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STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Avenue SE • Bellevue, Washington 98008-5452 • (425) 649-7000

April 26, 2011

Kevin Daniels
Daniels Development Co, LLC
2401 Utah Ave South, Suite 305
Seattle, WA 98134

Re: Opinion on Proposed Cleanup of a Property associated with a Site:

- Property Address: 201 South King Street, Seattle, WA 98104
- Facility/Site No.: 5378137
- VCP Project No.: NW1986

Dear Mr. Daniels:

The Washington State Department of Ecology (Ecology) received your request for an opinion on your proposed independent cleanup of a Property associated with the North Lot Development facility (Site). 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

1. Upon completion of the proposed cleanup, will further remedial action likely be necessary at the Property to clean up contamination associated with the Site?

NO. Ecology has determined that no further remedial action will likely be necessary at the Property to clean up contamination associated with the Site.

Ecology issued an opinion letter on March 25, 2011 on the Draft Final Feasibility Study for this Site. In that letter, Ecology required that the final Feasibility Study (FS) specifically clarify which areas outside the building footprint would be over-excavated to a depth of five feet and which capped with pavement. This clarification should also be incorporated in the final Cleanup Action Plan.

It should be noted that the compliance monitoring plan may need to be adjusted after new information is collected during cleanup action.

2. Upon completion of the proposed cleanup, will further remedial action likely still be necessary elsewhere at the Site?

YES. Ecology has determined that further remedial action will likely still be 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

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 King County, which were affected by the Site and will be addressed by your cleanup:

- 7666204878
- 7666206780
- 7666206790

Enclosure A includes a legal description of the Property. **Enclosure B** includes 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 releases:

- Gasoline-range petroleum hydrocarbons (TPH-G), diesel-range petroleum hydrocarbons (TPH-D), motor oil-range petroleum hydrocarbons (TPH-O), benzene, toluene, ethylbenzene, xylenes (BTEX) in soil;
- TPH-G, TPH-D, TPH-O and benzene in ground water;
- Polycyclic aromatic hydrocarbons (PAHs) in soil and ground water;
- Arsenic and mercury in soil;
- Arsenic in ground water;
- Dioxins and furans in soil.

Those releases have affected more than one parcel of real property, including the parcels identified above.

Although the nature and extent of contamination has been characterized at the Property, the full nature and extent of the Site remains undefined. A site, as defined under MTCA,

is an area contaminated by a specific release or releases. For the North Lot Development property, there have been a number of different types of releases, some of which appear to have been derived from off-Property sources, some of which may represent area-wide contamination, and some of which originated on-Property but extend off-Property. Specifically, the Site includes a combination of contaminated fill extending unknown distances in all directions from the Property, a deep subsurface concentration of creosote-like material which extends some unknown distance off-Property to the north and east, and possible off-Property contamination of undetermined extent associated with a former gas station. Because of this situation, it is not practicable to characterize the Site or attempt a full cleanup. The Site therefore remains undefined, and the cleanup action is focused on the Property.

Enclosure B includes a detailed description and diagram of the portion of the Site on and immediately adjacent to the Property, as currently known to Ecology.

Basis for the Opinion

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

1. Ecology Review Draft Cleanup Action Plan, North Lot Development, Seattle, Washington, prepared by Landau Associates, dated March 25, 2011.
2. Ecology's opinion letter dated March 25, 2011. Re: Opinion pursuant to WAC 173-340-515(5) on the Draft Final Feasibility Study for the following Hazardous Waste Site:
 - Name: North Lot Development
 - Property Address: 201 South King Street, Seattle, WA 98104
 - Facility/Site No.: 5378137
 - VCP Project No.: NW1986

Those documents are 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

1. **Cleanup of the Property located within the Site.**

Ecology has concluded that, upon completion of your proposed cleanup, **no further remedial action** will likely be 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. The Site is described above and in **Enclosure B**.

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. The final conditional point of compliance for ground water will be determined through the Prospective Purchaser Agreement/Consent Decree process.

a. Substance-specific standards

Soil Cleanup Levels

Soil cleanup levels were set based on protection of direct contact, ground water and marine surface water. The standard Method B cleanup levels were calculated for direct contact pathway, and a fixed 3-phase partitioning model was used to calculate the cleanup level for protection of ground water and marine surface water.

Final soil cleanup levels were selected as the most stringent of the three exposure pathways described above and listed in Table 1 of the referenced DCAP.

It should be noted that a remediation level of 780 µg/kg was established for benzene in soil to address any potential vapor intrusion threat in the former gasoline area located on the northwestern portion of the Property.

The soil cleanup level for arsenic is established based on background concentrations.

Soil Point of Compliance

The point of compliance for soil is throughout the Site in order to protect against direct contact, leaching, and vapor intrusion.

Ground Water Cleanup Levels

Ground water cleanup levels were set based on its use as a potential drinking water source and protection of marine surface water. The more stringent of the two applicable criteria were selected and listed in Table 3 of the referenced DCAP.

For arsenic, the MTCA Method A ground water cleanup level based on the state background concentration was selected, except in the southeast corner of the Property. In this area, ground water containing elevated arsenic concentrations appears to be coming onto the Property from an upgradient source, as mentioned previously. Therefore, a site-specific background-based ground water screening level was calculated for this area using data collected at the upgradient Union Station.

Ground Water Point of Compliance

The standard point of compliance for ground water is throughout the Site from the water table to the lowest depth potentially affected by the Site. Because cleanup of the entire Site is impracticable, as described previously, a conditional point of compliance is being proposed at the property line, except in the northeast corner of the Property where the presence of creosote-like material prevents an accurate measure of dissolved constituent movement in ground water. In this area, an off-Property conditional point of compliance is being proposed.

MTCA allows for a conditional point of compliance placed no further from the source than the property line, if it is not practicable to meet cleanup levels throughout the site within a reasonable restoration time frame (WAC 173-340-720 (8)(c)). This criterion is met for the North Lot Site. MTCA also provides for three exceptions where off-property points of compliance are allowed (WAC 173-340-720 (8)(d)). One of these exceptions potentially applies to the Site, specifically "Properties near, but not abutting surface water". Under this exception, the conditional point of compliance must be set as close to the "source" as practicable, and all property owners between the source and the surface water point of discharge must agree to the conditional point of compliance in writing. The proposed conditional point of compliance is the Property boundary or as close to the Property boundary as practicable. As stated above, the final conditional point of compliance will be determined through the Prospective Purchaser Agreement/Consent Decree process.

b. Action and location-specific requirements.

Please note that other requirements may apply to the cleanup action based on the type of the action or location of the Site.

3. Selection of cleanup for the Property.

Ecology has determined the cleanup you proposed for the Property meets 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.

The selected cleanup alternative will be conducted as part of the planned development, and it includes:

- Excavation of contaminated soil in the northwestern corner of the Property in the vicinity of a former gas station ("hotspot excavation"). The excavation would extend to the water table.
- Application of material in the base of the hotspot excavation to promote biological degradation of residual gasoline and benzene contamination ("enhanced bioremediation").
- Construction of an impervious protective cap over the entire Property.
- Excavation of soil to a depth of five feet outside the footprint of buildings that will be constructed on the Property.
- Implementation of institutional controls, including an environmental covenant, to maintain the cap and prevent future exposure to contaminated soil or ground water.
- Implementation of a ground water monitoring program.
- Development of a contingency plan for controlling the migration of contaminated ground water, should such measures ever be necessary.

The development will be implemented in phases. Construction on the west block will be implemented first. The construction timeline for the east block will be determined later based on market conditions. The cleanup actions described above will be implemented during development on the west block. Meanwhile, asphalt repair, maintenance and replacement will be implemented on the east block until it is developed. In addition, a ground water compliance monitoring plan will be implemented Property-wide following cleanup and development of the west

block.

While Ecology concurs with the chosen cleanup action, we have several comments on the March 25th Ecology Review DCAP. These are presented in Enclosure C.

2. Cleanup of the Site as a whole.

Ecology has concluded that **further remedial action** will still be necessary elsewhere at the Site upon completion of your proposed cleanup. In other words, while your proposed cleanup may constitute the final action for the Property, it will constitute only an **“interim action”** for the Site as a whole.

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**:

- 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 proposed will be substantially equivalent. Courts make that determination. *See* RCW 70.105D.080 and WAC 173-340-545.

3. Opinion is limited to proposed cleanup.

This letter does not provide an opinion on whether further remedial action will actually be necessary at the Property upon completion of your proposed cleanup. To obtain such an opinion, you must submit a report to Ecology upon completion of your cleanup and request an opinion under the VCP.

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4. 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

Thank you for choosing to clean up your Property under the Voluntary Cleanup Program (VCP). As you conduct your cleanup, please do not hesitate to request additional services. 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/programs/tcp/vcp/vcpmain.htm. If you have any questions about this opinion, please contact me by phone at (425) 649-4310 or by e-mail at jliu461@ecy.wa.gov.

Sincerely,



Jing Liu
NWRO Toxics Cleanup Program

jl: kp

Enclosures (3): A – Legal Description of the Property
B – Description and Diagrams of the Site (including the Property)
C – Comments on the March 25, 2011 Ecology Review Draft Cleanup Action Plan

Cc: Kathy Brown, King County
Bob Warren, Ecology
Russ Olsen, Ecology
Mark Adams, Ecology
Tim Syverson, Landau Associates, Inc.
Kristy Hendrickson, Landau Associates, Inc.
Charles R. Wolfe, Counsel for North Lot Development, LLC