



**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

Central Region Office

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

January 8, 2024

Sean Hartnett
Hartnett Real Estate LLC
3419 Crestview Road
Wenatchee, WA 98801

Re: No Further Action Opinion for the Following Contaminated Site:

- **Site Name:** Hartnett Real Estate Development
- **Site Address:** 270 East Penny Road, Wenatchee
- **Facility/Site ID:** 100000357
- **Cleanup Site ID:** 16897
- **VCP Project No.:** CE0548

Dear Sean Hartnett:

The Washington State Department of Ecology (Ecology) received your request on October 16, 2023 for an opinion regarding the sufficiency of your independent cleanup of the Hartnett Real Estate LLC Development facility (Site) under the Voluntary Cleanup Program (VCP). 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.¹

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 in the environmental covenant(s) 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 and Chapter 173 340 WAC² (collectively called "MTCA").

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

² <https://apps.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 and arsenic in soil

Note that many former orchard lands in Central Washington State contain concentrations of lead and arsenic in soils exceeding Model Toxics Control Act cleanup levels due to legacy pesticide use. We encourage the use of Ecology's Dirt Alert mapping tool³ to identify former orchards and sampling results.

Please note that releases from multiple sites can affect a parcel of real property. At this time, Ecology has no information that other sites affect the parcel(s) associated with this Site.

Basis for the Opinion

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

- "Remedial Action Report for Lead and Arsenic Contaminated Former Orchard Soils," Grette Associates, dated September 1, 2023⁴
- Environmental Covenant, recorded in Chelan County on November 3, 2023⁵

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 or call (360) 407 6040.

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:

Lead and arsenic soils containing concentrations exceeding MTCA cleanup levels have been successfully capped at the property, and an institutional control in the form of an environmental covenant has been recorded at the Chelan County auditor's office.

Characterizing the Site

Ecology has determined your completed Site characterization is sufficient for setting cleanup standards and selecting a cleanup action. Soils were sampled for concentrations of lead and arsenic using a handheld X-ray Fluorescence handheld sampling device.

³ <https://apps.ecology.wa.gov/dirtalert/orchard?lat=47.125327&lon=-120.317961&zoom=7>

⁴ <https://apps.ecology.wa.gov/cleanupsearch/document/131240>

⁵ <https://apps.ecology.wa.gov/cleanupsearch/document/132653>

Sampling confirmed concentrations of lead and arsenic exceeding MTCA cleanup levels and determined that use of the Model Remedy for Cleanup of Former Orchard Properties in Central and Eastern Washington was appropriate for this property.

Setting cleanup standards

Ecology has determined the cleanup levels and points of compliance you set for the Site meet the substantive requirements of MTCA. Ecology used MTCA Method A Soil Cleanup Standards for Unrestricted Property Use of 20 mg/kg for arsenic and 250 mg/kg for lead.

Selecting the cleanup action

Ecology has determined the cleanup action you selected for the Site meets the substantive requirements of MTCA.

The cleanup action was consistent with guidelines contained within the Model Remedy for Former Orchard Properties in Central and Eastern Washington and consisted of capping in place. Approximately 82% of the parcel was covered by hard capping consisting of buildings, paved parking areas, and concrete sidewalks, with the remaining 18% covered by soft caps consisting of marker barriers and at least 6 inches of clean soils and landscaping materials. Because the capping-in-place remedy was used, additional institutional controls in the form of an environmental covenant has been recorded in Chelan County.

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:

- The remedial action for the property is based on a cleanup designed for commercial property. As such, the property shall be used in perpetuity only for commercial land uses as that term is defined in the rules promulgated under Chapter 70A.305 RCW. Prohibited uses on the Property include but are not limited to residential uses, childcare facilities, K-12 public or private schools, parks, grazing of animals and growing of food crops.

- The remedial action for the Property is based on containing contaminated soil under a cap consisting of a hard cap comprised of buildings, paved parking areas and concrete sidewalks, and a soft cap consisting of at least 6 inches of clean soils, delineated by a marker barrier, and covered with landscaping wood chips.
- The following restrictions shall apply within the capped areas: Any activity on the property that will compromise the integrity of the cap including drilling, digging, piercing the cap with sampling device, post, stake or similar device, grading, excavation, installation of underground utilities, removal of the cap or application of loads in excess of the cap load bearing capacity is prohibited without prior written approval by Ecology. Any discovery of damage to the cap shall be reported to Ecology within forty-eight (48) hours of discovery of the damage. Unless an alternative plan has been approved by Ecology in writing, Ecology expects prompt repair of the damage followed by submission of a report documenting this work to Ecology within thirty (30) days of completing the repairs.
- Removal or alteration of existing structures on the property in any manner that would expose contaminated soil and result in a release to the environment of contaminant or create a new exposure pathway shall be prohibited without prior written approval of Ecology. Should the covenant holder propose to remove all or a portion of the existing structures covered by the environmental covenant so that access to the underlying contamination is feasible, Ecology may require treatment or removal of the underlying contaminated soil.

To implement the controls, you recorded an environmental covenant on the following parcel of real property in Chelan County:

- 232021430210

Ecology approved the recorded environmental covenant (see Enclosure A). To amend or terminate the covenant, you must request additional review under the VCP.

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.

Listing of the Site

Based on this opinion, Ecology will update the Site status on the Confirmed and Suspected Contaminated Sites List.

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:

Sean Hartnett
Hartnett Real Estate LLC
January 8, 2024
Page 5

- 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).⁶

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.305.080⁷ and WAC 173-340-545.⁸

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).⁹

Termination of Agreement

Thank you for cleaning up the Site under the VCP. This opinion terminates the VCP Agreement governing VCP Project No. CE0548.

Questions

If you have any questions about this opinion or the termination of the Agreement, please contact me at 509-571-6661 or Mary.Monahan@ecy.wa.gov.

Sincerely,



Mary Monahan
Central Regional Office
Toxics Cleanup Program

Enclosure A: Environmental Covenant

cc: Eron Drew, Grette Associates LLC

⁶ <https://app.leg.wa.gov/rcw/default.aspx?cite=70A.305.040>

⁷ <https://app.leg.wa.gov/rcw/default.aspx?cite=70A.305.080>

⁸ <https://app.leg.wa.gov/wac/default.aspx?cite=173-340-545>

⁹ <https://app.leg.wa.gov/rcw/default.aspx?cite=70A.305.170>