



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Central Region Office

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

March 15, 2024

Karl Schultz
JR Simplot
One Capitol Center
999 W. Main Street
Boise, ID 83702-9000

Re: Further Action at the following Site:

- **Site Name:** Simplot Soilbuilders Moxee City
- **Site Address:** 7528 Postma Road, Moxee
- **Facility/Site No.:** 84612438
- **Cleanup Site No.:** 12402
- **VCP Project No.:** CE0419

Dear Karl Schultz:

The Washington State Department of Ecology (Ecology) received your request for an opinion on your independent cleanup of the Simplot Soilbuilders Moxee City facility (Site). This letter provides our opinion. We are providing this opinion under the authority of the Model Toxics Control Act (MTCA), Chapter 70A.305¹ RCW.

Issue Presented and Opinion

Is further remedial action necessary to clean up contamination at the Site?

YES. 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, Chapter 173-340 WAC² (collectively “substantive requirements of MTCA”). The analysis is provided below.

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

² <https://apps.leg.wa.gov/WAC/default.aspx?cite=173-340>

Description of the Site

This opinion applies only to the Site described below. The Site is defined by the nature and extent of known contamination associated with the following releases:

- Nitrate in Soil and Groundwater.
- Sulfate in Soil and Groundwater.

Please note 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.

Basis for the Opinion

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

1. Haley Aldrich, *"Semiannual Report On Simplot Growers Solutions Groundwater Monitoring Moxee, Washington,"* dated December 2023.³
2. Haley Aldrich, *"Semiannual Report On Simplot Growers Solutions Groundwater Monitoring Moxee, Washington,"* dated March 2023.⁴
3. Haley Aldrich, *"Work Plan Downgradient Groundwater Assessment Simplot Growers Solution Moxee, Washington,"* dated December 30, 2022.⁵
4. Haley Aldrich, *"Simplot Growers Solutions Groundwater Assessment Moxee, Washington,"* dated June 2022.⁶
5. Hart Crowser, *"Data Gap and Groundwater Assessment and Groundwater Monitoring Work Plan,"* dated July 23, 2021.⁷
6. HDR, *"Offsite Groundwater Investigation Report,"* dated January 2021.⁸
7. Washington State Department of Ecology, *"Voluntary Cleanup Program – Work Plan Review Comments,"* dated July 27, 2018.⁹
8. HDR, *"Groundwater Monitoring Well Construction and Sampling Report,"* dated January 2017.¹⁰

³ <https://apps.ecology.wa.gov/cleanupsearch/document/135129>

⁴ <https://apps.ecology.wa.gov/cleanupsearch/document/137712>

⁵ <https://apps.ecology.wa.gov/cleanupsearch/document/137693>

⁶ <https://apps.ecology.wa.gov/cleanupsearch/document/137692>

⁷ <https://apps.ecology.wa.gov/cleanupsearch/document/113156>

⁸ <https://apps.ecology.wa.gov/cleanupsearch/document/98183>

⁹ <https://apps.ecology.wa.gov/cleanupsearch/document/76193>

¹⁰ <https://apps.ecology.wa.gov/cleanupsearch/document/62092>

9. HDR, "*Preliminary Site Investigation Report*," dated October 2015.¹¹
10. HDR, "*Preliminary Site Investigation Report*," dated February 2015.¹²
11. GeoEngineers, "*Data Gap Investigation Report*," dated April 3, 2014.¹³

You can request these documents by filing a records request.¹⁴ For help making a request, contact the Public Records Officer at recordsofficer@ecy.wa.gov or call (360) 407-6040. Before making a request, check if the documents are available on the Site's web page.¹⁵

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:

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.

The nature and extent of contamination must be adequately characterized prior to establishment of cleanup standards. Cleanup standards consist of two primary components: cleanup levels and points of compliance. Cleanup levels determine at what level a particular hazardous substance does not threaten human health or the environment, and points of compliance designate the location on the site where the cleanup levels must be met.

When characterizing a site, it is necessary to identify the contaminants of concern, the media impacted by contaminants released during historical site use, and the extent of those impacts (vertical and horizontal). Remedial investigations have not addressed all potential contaminants from historic site usage. The vertical and horizontal extent of contamination has not been adequately characterized.

¹¹ <https://apps.ecology.wa.gov/cleanupsearch/document/51134>

¹² <https://apps.ecology.wa.gov/cleanupsearch/document/44615>

¹³ <https://apps.ecology.wa.gov/cleanupsearch/document/26965>

¹⁴ <https://ecology.wa.gov/About-us/Accountability-transparency/Public-records-requests>

¹⁵ <https://apps.ecology.wa.gov/cleanupsearch/site/12402>

In 2018 Ecology advised a review of current and past processes to determine if screening of additional constituents of concern was necessary. HDR's Offsite Groundwater Investigation Report from January 2021 indicates that the facility served as a retail outlet for agrichemicals such as fertilizers, pesticides, and soil amendments. Additional investigation is necessary to determine if these substances were released and pose a threat to human health and the environment.

Ecology's 2018 letter discussed the tendency for dissolved phase groundwater contamination to move deeper with downstream migration. MW-6 provides evidence of this trend, as it is screened from 15 to 25 feet below ground surface and tends to mirror the concentrations in upgradient wells MW-4 and MW-5. Further investigation is required to adequately define the vertical extent of contamination. Additionally, the horizontal extent of the downgradient plume has yet to be determined.

The December 2023 Semiannual Report by Haley Aldrich proposed ceasing groundwater monitoring activities due to the definition of potable groundwater according to the Washington Administrative Code (WAC) 173-340-720.¹⁶ Subsection 2 of WAC 173-340-720 is meant to establish if the site cleanup levels are established for highest beneficial use, protection of drinking water, or if a lesser beneficial use is appropriate. Cleanup levels must still be established, and the Sites contaminated media must be remediated to those cleanup levels at the established points of compliance.

If you wish to demonstrate that local groundwater does not meet the definition of potable, additional data is required. The criteria for this is outlined in subsection 2. Additional investigation is required to demonstrate that domestic wells are not within the same aquifer as Site contaminants. It is insufficient to assume wells are not interconnected just because of a difference in their screen depth. Stating that the strata is not likely to "produce sufficient quantities to provide sustainable yield for a domestic well" is not sufficient to meet the low yield requirement. There are several methods to determine if the actual groundwater yield from the strata would or would not produce 0.5 gallon per minute minimum. Groundwater characteristics change over time as such it is not appropriate to determine groundwater potability with groundwater analytics from 2006.

MTCA separates background in two categories depending on if they occur naturally or due to human impacts.

¹⁶ <https://apps.leg.wa.gov/WAC/default.aspx?cite=173-340-720>

Natural background “means the concentration of hazardous substances consistently present in the environment that has not been influenced by localized human activities,” and area background is “the concentration of hazardous substances that are consistently present in the environment in the vicinity of a site which are the result of human activities unrelated to releases from that site.”

The Site contaminants do not meet the definition of natural background. The use of natural background as a site cleanup level is permitted under certain circumstances. This site and its contaminants do not meet those criteria. Area background cannot be used as a cleanup level for a site, but a site may meet area background levels as an interim action until cleanup levels are attained. Analytical data from 2006 is inappropriate to use as area background criteria.

Additional remedial investigation is required for site characterization to meet the substantive requirements of MTCA.

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).¹⁷

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.305.080¹⁸ and WAC 173-340-545.¹⁹

¹⁷ <https://app.leg.wa.gov/rcw/default.aspx?cite=70A.305.040>

¹⁸ <https://app.leg.wa.gov/rcw/default.aspx?cite=70A.305.080>

¹⁹ <https://app.leg.wa.gov/wac/default.aspx?cite=173-340-545>

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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.305.170.²⁰

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 website.²¹ If you have any questions about this opinion, please contact me by phone at 509-490-5298 or e-mail at will.strand@ecy.wa.gov.

Sincerely,



Will Strand for Kyle Parker
Toxics Cleanup Program
Central Regional Office

By certified mail: 9589 0710 5270 0589 5638 32

cc: Michael Murray, HDR Engineering

²⁰ <https://app.leg.wa.gov/rcw/default.aspx?cite=70A.305.170>

²¹ <https://ecology.wa.gov/spills-cleanup/contamination-cleanup/voluntary-cleanup-program>