

COPY



STATE OF WASHINGTON  
**DEPARTMENT OF ECOLOGY**

**Southwest Region Office**  
PO Box 47775 • Olympia, WA 98504-7775 • (360) 407-6300

May 10, 2024

Dennis Austin  
Austin Family Properties LLC  
6201 S Tacoma Way  
Tacoma, WA 98409  
[daustinjr@buckys.com](mailto:daustinjr@buckys.com)

**Re: Technical assistance 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 No.: SW1715

Dear Dennis Austin:

The Washington State Department of Ecology (Ecology) received your request on February 8, 2024, for an opinion regarding the sufficiency of your independent cleanup of the Buckys facility (Site) under the [Voluntary Cleanup Program](#)<sup>1</sup> (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](#)<sup>2</sup> RCW. This technical assistance is provided pursuant to WAC 173-340-515(5).

---

<sup>1</sup> <https://ecology.wa.gov/Spills-Cleanup/Contamination-cleanup/Voluntary-Cleanup-Program>

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

## Issue Presented and Opinion

---

Ecology has determined that the proposed work plan, Remedial Investigation Work Plan, January 29, 2024, submitted by Aerotech (Report), will likely meet the stated objectives concerning Site data gaps.

## Site description

---

This opinion applies to the Site described here. The Site is defined by the nature and extent of contamination associated with the following release(s).

- 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.

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

## Basis for the opinion

---

Ecology bases this opinion on information in the documents listed in **Enclosure A**. This opinion is void if information in any of the listed documents is materially false or misleading.

You can request these documents by filing a records request.<sup>3</sup> For help making a request, contact the Public Records Officer at [recordsofficer@ecy.wa.gov](mailto:recordsofficer@ecy.wa.gov) or call (360) 407-6040. Before making a request, check whether the documents are available on the [Site webpage](#).<sup>4</sup>

## Analysis of the cleanup

---

Based on our review of the Remedial Investigation Work Plan (Report) Ecology has determined the following about the cleanup.

---

<sup>3</sup> <https://ecology.wa.gov/About-us/Accountability-transparency/Public-records-requests>

<sup>4</sup> <https://apps.ecology.wa.gov/cleanupsearch/site/1045>

**Comments and Responses to Ecology's November 2023 Opinion Letter**

1. **Characterization of the Site:** Ecology concurs with the additional sampling (item a), and the vapor intrusion (VI) assessment (item d) Aerotech has detailed in the Report. Ecology also concurs with the calculated toxic equivalent concentrations (TEQ) you provided for past cPAH samples and the additional sampling methodology you have proposed (item e).

Ecology has no additional comments on items b, c, and f.

2. **Establishment of Cleanup Standards:** Given that your NWTPH-Dx samples are described as an “unresolved complex mixture”, and confirmation through Ecology's Manchester Laboratory that only Oil range total petroleum hydrocarbons (TPH-O) are present, Ecology maintains its decision that total NWTPH-Dx (sum of Diesel range total petroleum hydrocarbons [TPH-D] and TPH-O) needs to be established as the Site MTCA Method A cleanup level (CUL). However, this will only affect any sample locations where some portion of the NWTPH-Dx analysis shows carbon chains in the TPH-D range as reported by the laboratory conducting the analysis. If at a later time, you would like Ecology to further assess whether TPH-D and TPH-O can be separated you may submit applicable sample chromatograms at that time.

If there is an attempted claim being made that a cooking oil release from the adjacent property to the south is affecting the Site, please note that does not resolve the need for a cleanup on the Bucky's property. Ecology recommends reviewing WAC 173-340-545 regarding private rights of action.

Ecology has no additional comment for item b.

3. **Selection of Cleanup Action:** Aerotech is proposing the removal of soils containing zinc at concentrations greater than the Puget Sound Region background concentration established in the [Natural Background Soil Metals Concentrations in Washington State](https://apps.ecology.wa.gov/publications/SummaryPages/94115.html).<sup>5</sup> Ecology concurs with the proposed methodology.

Ecology also recommends considering the following alternatives after you have completed Site definition:

---

<sup>5</sup> 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>

- i. Demonstrating compliance with the CUL based on natural background using the 95 UCL statistical method. This could potentially reduce the area required to be excavated to only the areas that are greater than two times the CUL, and a sufficient area to ensure that less than ten percent of the sample concentrations exceed the CUL.
- ii. Completing the terrestrial ecological evaluation (TEE) using the simplified evaluation under [WAC 173-340-7492\(2\)\(c\)](#),<sup>6</sup> and using MTCA Table 749-2<sup>7</sup> values as CULs. This will reduce the TPH-D/O CUL to 460 mg/kg as well.

It would need to be determined by the customer team, which is more cost-effective to remediate, either the area where zinc exceeds the CUL or where TPH-D/O exceeds the CUL.

4. **Work Plan:** Ecology concurs with the proposed Work Plan. Aerotech has proposed additional soil samples across the Site. The approach detailed in the Report will likely complete Site delineation which will fill in the data gaps and determine if contamination has migrated down the slope into the north adjacent property, confirm or disprove cPAH exceedances present in samples that had laboratory matrix interference issues, and allow Aerotech to determine if the terrestrial ecological pathway can be excluded under [WAC 173-340-7491\(1\)\(c\)](#).<sup>8</sup>

## 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**:

- Resolve or alter a person's liability to the state.
- Protect liable persons from contribution claims by third parties.

---

<sup>6</sup> <https://app.leg.wa.gov/WAC/default.aspx?cite=173-340-7492>

<sup>7</sup> WAC 173-340-900.

<sup>8</sup> <https://app.leg.wa.gov/WAC/default.aspx?cite=173-340-7491>

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).<sup>9</sup>

### **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 would make that determination. See RCW [70A.305.080](#)<sup>10</sup> and WAC [173-340-545](#).<sup>11</sup>

### **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).<sup>12</sup>

### **Contact information**

---

Thank you for choosing to clean up your Site under the VCP. After you have addressed our comments, you may request another review of your cleanup. We look forward to working with you.

### **Questions**

---

If you have any questions about this opinion, please contact me at (360) 584-6212 or [aaren.fiedler@ecy.wa.gov](mailto:aaren.fiedler@ecy.wa.gov). Ecology looks forward to receiving your next submittal or report.

Sincerely,



Aaren Fiedler, LG  
Southwest Regional Office,  
Toxics Cleanup Program  
AF:at

---

<sup>9</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.305.040>

<sup>10</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.305.080>

<sup>11</sup> <https://apps.leg.wa.gov/WAC/default.aspx?cite=173-340-545>

<sup>12</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.305.170>

Dennis Austin  
May 10, 2024  
Page 6

Buckys  
SW1715

Enclosures (1):           A – Basis for the Opinion: List of Documents

cc by mail:     Austin Family Properties LLC, Property owner

cc by email:    Justin Foslien, Aerotech Environmental Consulting Inc., [justin@dirtydirt.us](mailto:justin@dirtydirt.us)

Tim Mullin, LGH, Ecology, [tim.mullin@ecy.wa.gov](mailto:tim.mullin@ecy.wa.gov)

Ecology Site File

## Enclosure A

---

Basis for the Opinion: List of Reviewed Documents





#### Basis for the Opinion: List of Reviewed Documents

1. Aerotech Environmental Consulting Inc., Remedial Investigation Work Plan, January 29, 2024.
2. Ecology, Further Action at the following contaminated Site, letter, addressed to Dennis Austin, November 2, 2023.
3. Aerotech Environmental Consulting Inc. (Aerotech), Remedial Investigation Report Version 2, January 30, 2023.
4. Ecology, Technical Assistance at the following Site, letter, addressed to Dennis Austin, August 24, 2022.
5. Aerotech, Remedial Investigation Report & Work Plan, May 7, 2021.
6. Ecology, Further Action at the Following Site, letter, addressed to Dennis Austin, December 7, 2020.
7. 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.
8. Aerotech, Removal from Confirmed and Suspected Contaminated Site List; Austin Family Properties (Buckys), letter, addressed to Kirsten Wecker (Toxics Cleanup Program), October 8, 2018.
9. Aerotech, Phase II Limited & Targeted Subsurface Investigation, August 1, 2018.
10. Garrett Bateman (Buckys), 3928 S Meridian, APN 0419095014, letter, addressed to Tacoma, Pierce County Health Department (Attn: Kirsten Wecker), April 20, 2009.
11. Tacoma Pierce County Health Department (TPCHD), 3928 S Meridian, APN 0419095014, letter, addressed to Bucky's South Hill, March 24, 2009.