



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Central Region Office

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

November 8, 2024

Brice Baxter
B & M Rentals
2521 River Road
Yakima, WA 98902

Re: Further Action at the following Site:

- **Site Name:** Orchard Rite
- **Site Address:** 1702 Englewood Avenue, Yakima
- **Facility/Site ID:** 57471125
- **Cleanup Site ID:** 9773
- **VCP Project No.:** CE0563

Dear Brice Baxter:

The Washington State Department of Ecology (Ecology) received your request for an opinion on your independent cleanup of the Orchard Rite facility (Site). This letter provides our opinion. We are providing this opinion under the authority of the Model Toxics Control Act (MTCA), Chapter 70A.305 RCW.¹

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 contamination associated with the following releases:

- Gasoline into the soil.
- Gasoline into the Groundwater.

Site Description:

On September 26 and 27, 1994, HMB Construction Inc., (HMB) decommissioned and removed three underground storage tanks (USTs) at the facility, including one 10,000-gallon gasoline tank, one 1,100-gallon unleaded gasoline tank, and one 1,100-gallon diesel tank. Sage Earth Sciences, Inc. conducted site assessments during the removal, and no petroleum contamination was detected in the excavation or stockpile of the two 1,100-gallon tanks, which were in good condition. However, organic vapors were found beneath the fuel dispenser island near the 10,000-gallon UST, leading to the removal of approximately 35 cubic yards of petroleum-impacted soil. Analysis confirmed petroleum contamination, and Orchard Rite proposed off-site landfarming to treat the impacted soil.

On May 2, 2024, Blue Mountain Environmental and Consulting Co., Inc. (BMEC) conducted a limited Phase II environmental site assessment with groundwater sampling. A groundwater sample from an existing well on the property was analyzed for gasoline, diesel, volatile organic compounds, and total lead with results showing no detectable levels of any contaminants.

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. Orchard Rite - Phase II Site Investigation, Blue Mountain Environmental and Consulting Co., Inc., May 13, 2024.³
2. Orchard Rite – Closure Site Assessment & Independent Remedial Action Report, Sage Earth Sciences, Inc., December 1994.⁴

³ <https://apps.ecology.wa.gov/cleanupsearch/document/147508>

⁴ <https://apps.ecology.wa.gov/cleanupsearch/document/10449>

Those documents are kept in the Central Files of the Central Regional Office of Ecology (CRO) for review by appointment only.

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 receive an No Further Action. To receive an No Further Action (NFA) letter from Ecology, the following are needed:

- Post-remediation soil samples must be submitted to Ecology for review. Refer to Table 830-1 in the “Model Toxics Control Act Regulation and Statute” for the minimum testing requirements for petroleum releases in soil and groundwater. See Table 1 below.
- Please provide Ecology with four (4) quarterly consecutive sample results below MTCA cleanup levels. Please see Section 10.3.1 (Stage 3) in the “Guidance for Remediation of Petroleum Contaminated Sites⁵” states: “The site is in compliance if at least the last eight (8) consecutive quarterly samples (or four (4), if eligible for a reduction) from all monitoring points, are below cleanup levels.”
- Section 11.8 in the “Guidance for Remediation of Petroleum Contaminated Sites” outlines requirements for cleanup documentation or records of end use of waste soil (off-site disposal or land farming). Required are all legal documents such as environmental covenants, records of waste disposal and documentation of compliance with permits.

2. Establishment of cleanup standards.

Ecology has determined the cleanup levels and points of compliance you established for the Site do not meet the substantive requirements of MTCA.

⁵ <https://apps.ecology.wa.gov/publications/SummaryPages/1009057.html>

To receive a NFA letter, soil and groundwater samples must be below Method A Cleanup Levels which can be found below.

Table 1: MTCA Cleanup Levels

Media	Contaminant of Concern	MTCA CULs
Groundwater		µg/L
	Benzene	5.0
	Toluene	1000
	Ethylbenzene	700
	Xylenes	1000
	EDB	0.01
	EDC	5.0
	Total Lead	15
	Gasoline	800
Soil		mg/kg
	Benzene	0.03
	Toluene	7.0
	Ethylbenzene	6.0
	Xylenes	9.0
	EDB	0.005
	EDC	0.023
	Total Lead	250
	Gasoline	30

3. Selection of cleanup action.

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

4. Cleanup.

Ecology has determined the cleanup you performed does not meet any cleanup standards at the Site.

Excavation was the selected as the remedy for soil contamination. In 1994, the 10,000-gallon gasoline UST and associated piping and dispensers, was decommissioned and removed from the site. During the UST removal, 35 cubic yards of impacted soil were also excavated and transported to another Orchard Rite location for landfarming.

Ecology requested documentation of the landfarming, but Orchard Rite responded that the information had been misplaced.

For groundwater, natural attenuation was chosen as the remediation method. In 2008, at Ecology's request, Orchard Rite sampled the on-site well, reporting diesel concentrations at 50,000 µg/L. Blue Mountain Environmental and Consulting Co., Inc has since provided a groundwater sample showing results below MTCA Cleanup levels. For additional compliance guidance, refer to Section 10.3.1 of the "Guidance for Remediation of Petroleum Contaminated Sites," titled "Determining Groundwater Compliance using Direct Comparison for guidance on compliance".

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).⁶

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.305.080⁷ and WAC 173-340-545.⁸

3. State is immune from liability.

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>

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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.305.170.⁹

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.¹⁰ If you have any questions about this opinion, please contact me by phone at 509-406-6959 or e-mail at tavi.wise@ecy.wa.gov.

Sincerely,



Tavi Wise
Toxics Cleanup Program
Central Regional Office

cc: Yancy Meyer, Blue Mountain Environmental Consulting

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

¹⁰ www.ecy.wa.gov/programs/tcp/vcp/vcpmain.htm