



FILE COPY

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

15 W Yakima Ave, Ste 200 • Yakima, WA 98902-3452 • (509) 575-2490

September 23, 2008

Ms. Peggy Williamson
Fulcrum Environmental Consulting, Inc.
406 N 2nd Street
Yakima, WA 98901

Re: No Further Action at a Property associated with a Site:

- **Site Name:** Hilltop Apartments Development Site
- **Property Address:** 1509 South Mission Street
- **Facility/Site No.:** 5823960
- **VCP Project No.:** CE0244

Dear Ms. Williamson:

The Washington State Department of Ecology (Ecology) received your request for an opinion on your independent cleanup of a Property associated with the Hilltop Apartments 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. Is further remedial action necessary at the Property to clean up contamination associated with the Site?

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

This opinion is dependent on the continued performance and effectiveness of the post-cleanup controls and monitoring specified below.

2. Is further remedial action still necessary elsewhere at the Site?

YES. Ecology has determined that further remedial action is still 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



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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 parcel, which were affected by the Site and addressed by your cleanup:

- 222014230100

Enclosure A includes a legal description of the Property. The location of the Property within the Site is illustrated in **Enclosure B**.

2. Description of the Site.

The Site is defined by the nature and extent of contamination associated with the following releases:

- Lead into soil.
- Arsenic into soil.

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

Enclosure B includes a detailed description and diagram of the Site as currently known to Ecology.

3. Identification of Other Sites that may affect the Property.

Please note that a parcel of real property can be affected by multiple sites. At this time, we have no information that this Property is affected by other sites.

Basis for the Opinion

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

1. Hilltop Apartments Site Remedial Actions Summary, Fulcrum Environmental Consulting, Inc., September 17, 2007.

This document is kept in the Central Files of the Central Regional Office of Ecology (CRO) for review by appointment only. You can make an appointment by calling the CRO resource contact, Roger Johnson, at (509) 454-7658.

This opinion is void if any of the information contained in this document is materially false or misleading.

Analysis of the Cleanup

1. Cleanup of the Property located within the Site.

Ecology has concluded that **no further remedial action** is necessary at the Property to clean up contamination associated with the Site. That conclusion is based on the following analysis:

a. 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**.

b. 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.

i. Cleanup levels.

MTCA Method A cleanup levels are used for lead and arsenic at the Site.

ii. Points of compliance.

The point of compliance established for soil is throughout the Site, regardless of depth, to protect groundwater.

c. Selection of cleanup for the Property.

Ecology has determined the cleanup you selected for the Property meets the substantive requirements of MTCA. The cleanup meets the minimum cleanup requirements and does not exacerbate conditions or preclude reasonable cleanup alternatives elsewhere at the Site.

The cleanup method selected for the Site included a combination of onsite soil relocation and soil capping. Following remedial activities, an Environmental Covenant was recorded for the property.

d. Cleanup of the Property.

Ecology has determined the cleanup you performed meets the applicable Site cleanup standards within the Property. This determination is dependent on the continued

performance and effectiveness of the post-cleanup controls and monitoring specified below.

2. Cleanup of the Site as a whole.

Ecology has concluded that **further remedial action** under MTCA is still necessary elsewhere at the Site. In other words, while your cleanup constitutes the final action for the Property, it constitutes only an “**interim action**” for the Site as a whole.

Post-Cleanup Controls and Monitoring

Post-cleanup controls and monitoring are remedial actions performed after the cleanup to maintain compliance with cleanup standards. This opinion is dependent on the continued performance and effectiveness of the following:

1. Compliance with institutional controls.

Institutional controls prohibit or limit activities that may interfere with the integrity of engineered controls or result in exposure to hazardous substances. The following institutional controls are necessary at the Property:

- a. The Owner shall not alter, modify, or remove the existing structure[s] in any manner that may result in the release or exposure to the environment of that contaminated soil or create a new exposure pathway without prior written approval from Ecology. Any activity on the Property that may result in the release or exposure to the environment of the contaminated soil that was contained as part of the Remedial Action, or create a new exposure pathway, is prohibited. Some examples of activities that are prohibited in the capped areas include: drilling, digging; placement of any objects, or use of any equipment, which deforms or stresses the surface beyond its load bearing capability; piercing the surface with a rod, spike or similar item; bulldozing or earthwork.
- b. Any activity on the Property that may interfere with the integrity of the Remedial Action and continued protection of human health and the environment is prohibited.
- c. Any activity on the Property that may result in the release or exposure to the environment of a hazardous substance that remains on the Property as part of the Remedial Action, or create a new exposure pathway, is prohibited without prior written approval from Ecology.
- d. The Owner of the property must give thirty (30) days advance written notice to Ecology of the Owner's intent to convey any interest in the Property. No conveyance of title, easement, lease, or other interest in the Property shall be consummated by the Owner without adequate and complete provision for continued monitoring, operation, and maintenance of the Remedial Action.
- e. The Owner must restrict leases to uses and activities consistent with the Covenant and notify

all lessees of the restrictions on the use of the Property. Section 6. The Owner must notify and obtain approval from Ecology prior to any use of the Property that is inconsistent with the terms of this Covenant. Ecology may approve any inconsistent use only after public notice and comment.

- f. The Owner shall allow authorized representatives of Ecology the right to enter the Property at reasonable times for the purpose of evaluating the Remedial Action; to take samples, to inspect remedial actions conducted at the property, to determine compliance with this Covenant, and to inspect records that are related to the Remedial Action.
- g. The Owner of the Property reserves the right under WAC 173-340-440 to record an instrument that provides that this Covenant shall no longer limit use of the Property or be of any further force or effect. However, such an instrument may be recorded only if Ecology, after public notice and opportunity for comment, concurs.

To implement those controls, an Environmental Covenant has been recorded on the following parcel of real property at the Site:

- 222014230100

Ecology approved the recorded Covenant. A copy of the Covenant is included in **Enclosure C**.

Periodic Review of Post-Cleanup Conditions

Ecology will conduct periodic reviews of post-cleanup conditions at the Property to ensure that they remain protective of human health and the environment. If we conduct a periodic review and determine further remedial action is necessary at the Property, then we will withdraw this opinion.

Listing of the Site

Based on this opinion, Ecology will update the status of remedial action at the Site on our database of hazardous waste sites. However, because further remedial action is still necessary elsewhere at the Site, we will not remove the Site from our lists of hazardous waste sites. Furthermore, the Property will remain listed as part of the Site because the cleanup of the Property does not change the boundaries of the Site.

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**:

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- 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 performed is substantially equivalent. Courts make that determination. *See* RCW 70.105D.080 and WAC 173-340-545.

3. State is immune from liability.

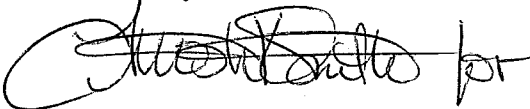
The state, Ecology, and its officers and employees are immune from all liability, and no cause of action of any nature may arise from any act or omission in providing this opinion. *See* RCW 70.105D.030(1)(i).

Contact Information

Thank you for cleaning up your Property under the Voluntary Cleanup Program (VCP). We look forward to working with you to clean up the remainder of the Site.

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 at (509) 454-7842.

Sincerely,



Jeff Newschwander
Site Manager
CRO Toxics Cleanup Program

Enclosures: A – Legal Description of the Property
B – Description and Diagram of the Site
C – Environmental Covenants for Institutional Controls

cc: Dolores Mitchell, VCP Financial Manager