



FILE COPY

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

15 West Yakima Avenue, Suite 200 • Yakima, Washington 98902-3452 • (509) 575-2490

January 29, 2007

Mr. Dan Sosnovske
Mountain West Senior Housing
3220 State Street, Suite 200
Salem, OR 97301

Re: Opinion under WAC 173-340-515(5) on Proposed Cleanup Action for the following Hazardous Waste Site:

- Name: Zur Hausen Orchard
- Address: Sunset Hwy N & 27th Street NW
- Facility/Site ID No: 5449470
- VCP No.: CE0258

Dear Mr. Sosnovske:

Thank you for submitting documents regarding your proposed cleanup action for the Zur Hausen Orchard facility (Site) for review by the Washington State Department of Ecology (Ecology) under the Voluntary Cleanup Program (VCP). Ecology appreciates your initiative in pursuing this administrative option for cleaning up hazardous waste sites under the Model Toxics Control Act (MTCA), Chapter 70.105D RCW.

This letter constitutes an advisory opinion regarding whether your proposed cleanup action is likely to be sufficient to meet the substantive requirements of MTCA and its implementing regulations, Chapter 70.105D RCW and Chapter 173-340 WAC. Ecology is providing this advisory opinion under the specific authority of RCW 70.105D.030(1)(i) and WAC 173-340-515(5).

This opinion does not resolve a person's liability to the state under MTCA or protect a person from contribution claims by third parties for matters addressed by the opinion. The state does not have the authority to settle with any person potentially liable under MTCA except in accordance with RCW 70.105D.040(4). The opinion is advisory only and not binding on Ecology.

Ecology's Toxics Cleanup Program has reviewed the following information regarding your proposed cleanup action and, as applicable, any remedial actions previously conducted at the Site:

1. *Cleanup Action Plan*, January 8, 2006
2. *Phase One Environmental Site Assessment*, August 24, 2005, V Environmental LLC
3. *Limited Subsurface Soil Investigation Report*, September 26, 2005, V Environmental LLC



The reports listed above will be kept in the Central Files of the Central Regional Office of Ecology (CRO) for review by appointment only. Appointments can be made by calling Roger Johnson, the CRO resource contact at (509) 454-7658.

The Site is defined by the extent of contamination caused by the following release(s):

- Arsenic in soil
- Lead in soil

The Site is more particularly described in the *Phase One Environmental Site Assessment and Limited Subsurface Soil Investigation Report*. The description of the Site is based solely on the information contained in the documents listed above.

Based on a review of your proposed cleanup action and supporting documentation listed above, **Ecology has determined that the proposed cleanup action has the potential to meet the substantive requirements contained in MTCA and its implementing regulations, Chapter 70.105D RCW and Chapter 173-340 WAC, for characterizing and addressing the contamination at the Site.** The methods that are proposed are acceptable however, there are several issues that need to be addressed in order to receive a positive determination, including:

- The Cleanup Action Plan should be a more complete document that will allow Ecology to understand how the cleanup action will take place. This document should give detail to the steps that will be taken throughout the construction process.
- Lead and arsenic contamination are typically concentrated at a depth between 3" and 15" in the soil column. Samples collected by V Environmental were collected from the 0-3.5' in the soil column. These samples do not accurately represent the peak lead and arsenic levels that are present at the site.
- A site plan should be included detailing the proposed locations of contamination, impermeable surfaces, and soil-capped surfaces.
- Sample data should be submitted to Ecology's EIM database. Data can be submitted at: <https://fortress.wa.gov/ecy/eimimport/submit.htm>

Please note that this opinion does not represent a determination by Ecology that no further remedial action will be required at the Site. To obtain such a determination, you must submit an independent remedial action report to Ecology upon completion of the cleanup action and request such an opinion under the VCP. In addition, because contaminated soils would remain in a contained state on the site under this type of cleanup plan, a restrictive covenant will be required to receive a No Further Action determination.

Please also note that this opinion is based solely on the information contained in the documents listed above. Therefore, if any of the information contained in those documents is materially false or misleading, then this opinion will automatically be rendered null and void.

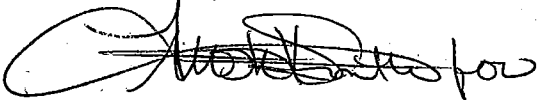
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The state, Ecology, and its officers and employees make no guarantees or assurances by providing this opinion, and no cause of action against the state, Ecology, its officers or employees may arise from any act or omission in providing this opinion.

Again, Ecology appreciates your initiative in conducting independent remedial action and requesting technical consultation under the VCP. As the cleanup of the Site progresses, you may request additional consultative services under the VCP, including assistance in identifying applicable regulatory requirements and opinions regarding whether remedial actions proposed for or conducted at the Site meet those requirements.

If you have any questions regarding this opinion, please contact me at (509) 454-7842.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Newschwander", with a large, stylized initial "J" and "N".

Jeff Newschwander
Site Manager
Toxics Cleanup Program - CRO