



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

4601 N Monroe Street • Spokane, Washington 99205-1295 • (509)329-3400

FILE COPY

May 3, 2011

Ralph Tinsley
US Bank Corporate Real Estate
5221 E. Third Ave
Spokane, WA 99212

Re: No Further Action at the following Site:

- **Site Name:** U S Bank
- **Site Address:** 1 N. 3rd Street, Harrington, WA
- **Facility/Site No.:** 5647227
- **VCP Project No.:** EA0182

Dear Mr. Tinsley:

The WA Department of Ecology (Ecology) received your request for an opinion on your independent cleanup of the U S Bank 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.

Issue Presented and Opinion

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

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

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

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 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 release:

- Petroleum Hydrocarbons into the Soil and Groundwater.



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

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

Basis for the Opinion

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

- Notification of Concrete Pad completion: Nova Consulting, April 27, 2011.
- Remedial Investigation Report, US Bank, 1 North 3rd Street, Harrington, Washington: Nova Consulting, May 28, 2010.
- US Bank – Harrington Site, Subsurface Assessment: Nova Consulting, March 30, 2009.
- Subsurface Investigation, US Bank – Harrington Site, 1 North 3rd Street, Harrington, WA: Nova Consulting, October 15, 2008.
- Underground Storage Tank Site Assessment Report, 1 North 3rd Ave., Harrington, WA: AEC, October 16, 2008.
- Underground Storage Tank Removal Assessment, US Bank – Harrington Branch, Third and Main Street, Harrington, Washington: Nova Consulting, November 6, 2008.

Those documents are kept in the Central Files of the Eastern Regional Office of Ecology (ERO) for review by appointment only. You can make an appointment by calling Kari Johnson at 509/329-3415.

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 **no 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 sufficient to establish cleanup standards and select a cleanup action. The Site is described above and in **Enclosure A**. The lateral and vertical extent of the petroleum hydrocarbons in soil and groundwater was defined in the reports listed above.

2. Establishment of cleanup standards.

Ecology has determined the cleanup levels and points of compliance you established for the Site meet the substantive requirements of MTCA.

For soil, the cleanup levels were established using MTCA Method A and are based on protection of groundwater. The land use is classified as Unrestricted. The cleanup levels are as follows:

- Diesel-range hydrocarbons: 2,000 mg/kg

For soil, the point of compliance is throughout the soils at the Site.

For groundwater, the cleanup levels were established using MTCA Method A and are based on the protection of drinking water beneficial uses. The cleanup levels are as follows:

- Diesel-range hydrocarbons: 500 ug/l

For groundwater, the point of compliance is throughout the Site from the uppermost level of the saturated zone extending vertically to the lowest most depth which could potentially be affected by the Site. This is the standard point of compliance.

3. Selection of cleanup action.

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

The selected cleanup includes the following:

- Removal of source (heating oil underground storage tank).
- Excavation and removal of contaminated soil.
- Installation of a concrete cap over residual contaminated soil.
- Groundwater monitoring.
- Environmental covenant on the property.

4. Cleanup.

Ecology has determined the cleanup you performed meets the cleanup standards established for the Site. This determination is dependent on the continued performance and effectiveness of the post-cleanup controls specified below.

The source (heating oil underground storage tank) was removed and contaminated soil was removed to the maximum extent practicable. Some contaminated soil remains adjacent to the building and was not removed due to the proximity of the building.

The area over the contaminated soil is capped to prevent infiltration and mobilization of contaminated soil left in place adjacent to the building.

An Environmental Covenant was required because the remedial actions resulted in residual concentrations of petroleum-contaminated soil at the Site.

Post-Cleanup Controls and Monitoring

Post-cleanup controls 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 Site:

- Prohibition of activities that may interfere with the cleanup action or result in the exposure to hazardous substances at the Site.
- Prohibition on groundwater use.

To implement those controls, an Environmental Covenant has been recorded on the following parcel of real property in Lincoln County:

- 0401032005000

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

Periodic Review of Post-Cleanup Conditions

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

Listing of the Site

Based on this opinion, Ecology will remove the Site from our Confirmed and Suspected Contaminated Sites List and Leaking Underground Storage Tank List.

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 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).

Termination of Agreement

Thank you for cleaning up the Site under the Voluntary Cleanup Program (VCP). This opinion terminates the VCP Agreement governing this project (#EA0182).

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 or the termination of the Agreement, please contact me by phone at 509/329-3522 or e-mail at patti.carter@ecy.wa.gov.

Sincerely,



Patti Carter
ERO Toxics Cleanup Program

Enclosures (2): A – Description and Diagram of the Site
B – Environmental Covenant for Institutional Controls

cc: Michael Hayes, Nova Consulting
Dolores Mitchell, VCP Financial Manager (without enclosures)

Enclosure A

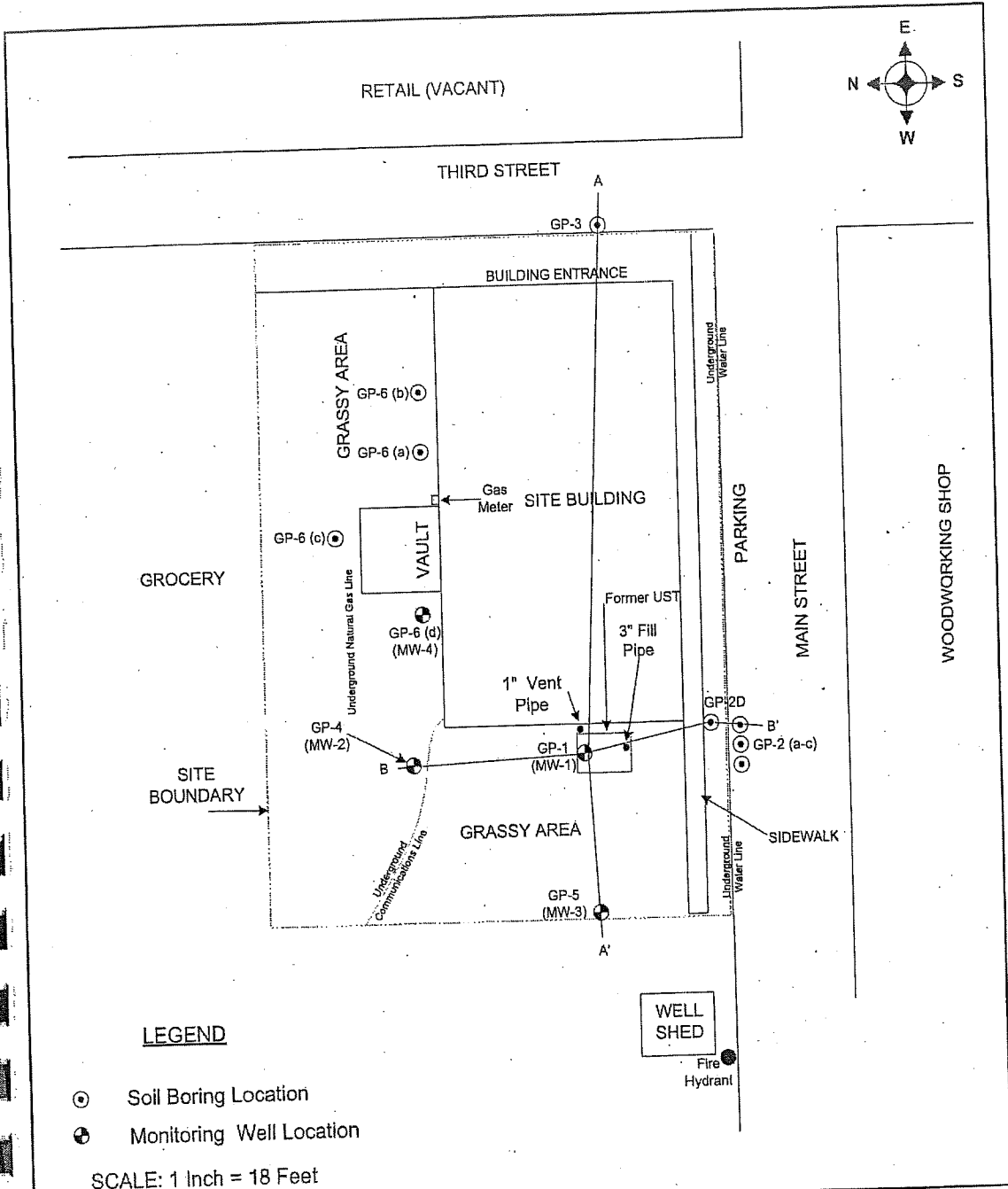
Description and Diagram of the Site

Site Description

- A heating oil UST and associated piping were removed in August 2008. Diesel contaminated soil was encountered during removal of the tank. Contaminated soil was excavated from the tank basin; however, not all contaminated soil was removed due to proximity of the building.
- Groundwater monitoring wells were installed and results indicated that shallow groundwater was impacted with diesel.
- A concrete cap was placed over the contaminated soil.
- An Environmental Covenant was recorded on the property.
- Soil at the Site consists of silt with layers of sandy gravel (basalt gravel), clayey gravel, silty clay and clayey silt overlying basalt. Shallow groundwater was encountered at 12 to 17 feet below ground surface (bgs). Depth to groundwater in a city municipal well west of the Site is 128 feet bgs.

(Nova Consulting Group, Inc.)

Site Diagram



SOIL BORING AND MONITORING WELL LOCATION MAP
 US BANK - HARRINGTON BRANCH (#8223)
 1 North 3RD STREET
 HARRINGTON, WA 99134

NOVA PROJECT E08-1808



May 2010

Figure 2

Enclosure B

**Environmental Covenant
for Institutional Controls**

Additor File #: 2011 0457423

COVEN

Recorded at the request of:

U.S. BANK, N.A.

on 02/16/2011 at 12:08

Total of 6 page(s) Fee: \$ 67.00

LINCOLN COUNTY, WASHINGTON
SHELLY JOHNSTON, AUDITOR

Environmental Covenant

After Recording Return to:
Patti Carter
Department of Ecology
4601 N. Monroe Street
Spokane, WA 99205

RECEIVED

FEB 18 2011

DEPARTMENT OF ECOLOGY
EASTERN REGIONAL OFFICE

Environmental Covenant

Grantor: U.S. Bank, N.A.

Grantee: State of Washington, Department of Ecology

Legal: The south 45 feet of Lots 7 and 8, in Block 32, of the Original Town of Harrington, situated in the County of Lincoln, State of Washington.

Tax Parcel Nos.: 0401032005000

Grantor, U.S Bank N.A., hereby binds Grantor, its successors and assigns to the land use restrictions identified herein and grants such other rights under this environmental covenant (hereafter "Covenant") made this 10th day of December, 2010 in favor of the State of Washington Department of Ecology (Ecology). Ecology shall have full right of enforcement of the rights conveyed under this Covenant pursuant to the Model Toxics Control Act, RCW 70.105D.030(1)(g), and the Uniform Environmental Covenants Act, 2007 Wash. Laws ch. 104, sec. 12.

This Declaration of Covenant is made pursuant to RCW 70.105D.030(1)(f) and (g) and WAC 173-340-440 by U.S. Bank N.A., its successors and assigns, and the State of Washington Department of Ecology, its successors and assigns (hereafter "Ecology").

A remedial action (hereafter "Remedial Action") occurred at the property that is the subject of this Covenant. The Remedial Action conducted at the property is described in the following documents:

- Remedial Investigation Report, US Bank, 1 North 3rd Street, Harrington, Washington:
Nova Consulting, May 28, 2010.

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- Subsurface Investigation, US Bank – Harrington Site, 1 North 3rd Street, Harrington, WA: Nova Consulting, October 15, 2008.
- Underground Storage Tank Site Assessment Report, 1 North 3rd Street, Harrington, WA: Nova Consulting, October 16, 2008.
- Underground Storage Tank Removal Assessment, US Bank – Harrington Branch, Third and Main Street, Harrington, WA: Nova Consulting, November 6, 2008.

These documents are on file at Ecology's Eastern Regional Office.

This Covenant is required because the Remedial Action resulted in residual concentrations of petroleum hydrocarbons which exceed the Model Toxics Control Act Method A Cleanup Levels for SOIL and GROUNDWATER established under WAC 173-340-740 and WAC 173-340-720.

The undersigned, U.S. Bank N.A., is the fee owner of real property (hereafter "Property") in the County of [Lincoln], State of Washington, that is subject to this Covenant. The Property is legally described as The south 45 feet of Lots 7 and 8 in Block 32, of the Original Town of Harrington, situated in the County of Lincoln, State of Washington.

U.S. Bank N.A. makes the following declaration as to limitations, restrictions, and uses to which the Property may be put and specifies that such declarations shall constitute covenants to run with the land, as provided by law and shall be binding on all parties and all persons claiming under them, including all current and future owners of any portion of or interest in the Property (hereafter "Owner").

Section 1. No groundwater may be taken for any use from the Property.

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

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deforms or stresses the surface beyond its load bearing capability, piercing the surface with a rod, spike or similar item, bulldozing or earthwork.

Section 2. 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.

Section 3. 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.

Section 4. The Owner of the property must give thirty (30) day 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.

Section 5. 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.

Section 7. 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. Ecology needs to give the owner prior notice of coming on the site.

Section 8. 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.

U.S. Bank N.A.

Ralph I. Tinsley
Ralph I. Tinsley
AVP, Property Manager

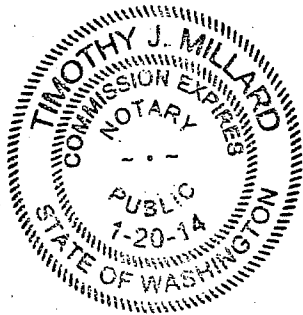
Dated: 12-8-2010

[CORPORATE ACKNOWLEDGMENT]

STATE OF Washington
COUNTY OF Spokane

On this 13th day of January, 2011, I certify that Ralph Tinsley personally appeared before me, acknowledged that he/she is the Property Manager of the corporation that executed the within and foregoing instrument, and signed said instrument by free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument for said corporation.

[Signature]
Notary Public in and for the State of
Washington, residing at
Spokane
My appointment
expires 1-20-14



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

[Signature]
Michael A. Hibbler
Section Manager, Toxics Cleanup Program

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Exhibit A
Legal Description

The south 45 feet of Lots 7 and 8, in Block 32, of the Original Town of Harrington,
situated in the County of Lincoln, State of Washington.

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