



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

1250 W Alder St • Union Gap, WA 98903-0009 • (509) 575-2490

August 15, 2016

Mr. Niels Brown
Executor of the Estate of Arthur Leyendekker
c/o David Ubaldi, Davis Wright Tremaine LLP
777 108th Ave NW, Suite 2300
Bellevue, WA 98004

Re: Further Action at the following Site:

Site Name:	Kelloggs Korner
Site Address:	270 Midvale Road, Sunnyside
Facility Site No.:	473
Cleanup Site No.:	4921
VCP Project No.:	CE0441

Dear Mr. Brown:

The Washington State Department of Ecology (Ecology) received your request for an opinion on your independent cleanup of the Kelloggs Korner 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?

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 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:

- Gasoline-Range Petroleum Hydrocarbons (GRPH), associated Volatile Organic Compound (VOC) constituents (benzene, toluene, ethylbenzene, and xylenes), and Lead (Pb) into both soil and groundwater.



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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:

- PLSA Engineering & Survey, 1990. *Engineering Report on Leaking Underground Storage Tank Cleanup, Excavation, Dewatering, & Disposal, Kellogg's Korner, Sunnyside, Washington.* November 16.
- Chen-Northern, Inc., 1991. *Action Plan, Environmental Site Assessment and Site Cleanup, Kellogg's Korner, Sunnyside, Washington.* August.
- Chen-Northern, Inc., 1993. *Corrective Action Plan, Kellogg's Korner, Sunnyside, Washington.* March.
- Land Profile Services, 1993. *"Soil Sampling at Three Locations where Potentially Petroleum Contaminated Water (from Kellogg's Korner site) was Discharged",* Sunnyside, Washington. July 25.
- Chen-Northern, Inc., 1994. *Groundwater Sampling and Analysis Plan (revised), Kellogg's Korner Monitoring Wells, Sunnyside, Washington.* March 2.
- Chen-Northern, Inc., 1994. *Groundwater Monitoring Reports, Kellogg's Korner, Sunnyside, Washington.* May & July 1994.
- Huntingdon Engineering & Environmental, Inc., 1994. *Results of Third Quarter 1994 Groundwater Sampling at the Kellogg's Korner Site, Sunnyside, Washington.* October 7.
- Farallon Consulting, 2016. *Subsurface Investigation, Kellogg's Korner, Sunnyside, Washington.* March.
- Ecology Correspondence File, 1992 – Present.

The most recent Subsurface Investigation (Farallon, 2016), references a May 22, 2015 groundwater sampling event. A report documenting this information has not been submitted to Ecology.

These documents are kept at the Central Regional Office (CRO) of Ecology for review by appointment only. You can make an appointment by calling the CRO resource contact at 509-575-2027.

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 establish cleanup standards and select a cleanup action.

The Subsurface Investigation did not address known off-property impacts to soil, groundwater, surface water, or sediments.

Further review of documentation contained in the Site file is necessary to understand the preliminary Conceptual Site Model (CSM) and prepare an investigation work plan that addresses the vertical and horizontal extent of contamination in all impacted media.

2. Establishment of cleanup standards.

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

Cleanup levels were not established for surface water and sediments, and a Terrestrial Ecological Evaluation (TEE) was not performed to evaluate the potential risk to aquatic or terrestrial receptors.

The POC appears to be established at the Property boundary; however, contamination is known to extend to properties at the northeast, southeast, and southwest corners of the intersection of Alexander Road and Midvale Road.

3. Selection of cleanup action.

Ecology has determined the cleanup actions performed by others in 1990 and 1991 **do not** meet the substantive requirements of MTCA.

The cleanup actions consisted of the installation of an interceptor trench to prevent petroleum migration, excavation of petroleum contaminated soil, and placement of a steel culvert to prevent petroleum from entering the irrigation canal.

4. **Cleanup.**

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

The Site must be characterized before cleanup standards can be selected.

Data Submittal Requirements

Toxic Cleanup Program (TCP) Policy 840: Data Submittal Requirements (Pub. No. 16-09-050, revised April 2016) requires site-specific environmental sampling data be entered into the Environmental Information Management System (EIM) database at the time any report is submitted requesting an opinion on the sufficiency of the action under the Voluntary Cleanup Program (VCP), and before Ecology will review independent remedial action reports under the VCP.

Future document reviews and opinions will be postponed until the sampling data has been entered into EIM.

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.

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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 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 web site: www.ecy.wa.gov/programs/tcp/vcp/vcpmain.htm. If you have any questions about this opinion please contact me by phone at (509) 454-7839 or e-mail at JenniferLind@ecy.wa.gov.

Sincerely,



Jennifer Lind
CRO Toxics Cleanup Program

cc: Matt Alexander, VCP Financial Manager
Joe Rounds, Farallon Consulting