



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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

June 18, 2009

Mr. James H. Ross
Manito Shopping Center Associates LLC
150 E 52nd Street, FL 27
New York, NY 10022

Dear Mr. Ross:

Re: No Further Action at the following Site:

- **Site Name:** Manito Shopping Center
- **Site Address:** 802 E 29th Avenue, Spokane, WA
- **Facility/Site No.:** 9406814
- **VCP Project No.:** EA0172

The Washington State Department of Ecology (Ecology) received your request for an opinion on your independent cleanup of the Manito Shopping Center 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:

- Carcinogenic polycyclic aromatic hydrocarbons (cPAHs) and volatile organic compounds (VOCs) into the Soil.

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 parcels 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:

Limited Subsurface Investigation Report, Manito Shopping Center, 802 East 29th Avenue, Spokane, WA: EBI Consulting, June 25, 2007.

Site Characterization and Cleanup Action Plan, Manito Shopping Center, Spokane, Washington: LFR, Inc., January 7, 2009.

Final Groundwater Monitoring Event and Request for Site Closure, April 22, 2009, Manito Shopping Center, Spokane, Washington: LFR Inc., May 26, 2009.

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 soil contamination was defined in the site characterization reports. Groundwater monitoring wells were properly located to monitor groundwater conditions.

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 cleanup levels are as follows:

cPAHs:	0.1 mg/kg
VOCs:	
• Trichloroethylene (TCE):	0.03 mg/kg
• Tetrachloroethylene (PCE):	0.05 mg/kg

The point of compliance for soil is throughout the soils at 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:

SOIL:

- Determine extent of contaminated soil.
- Cap area of contaminated soil.

GROUNDWATER:

- Monitor groundwater to determine impacts due to release in soil.

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 extent of soil contamination was defined by soil borings. The Site is capped to prevent infiltration and mobilization of contaminated soil. An Environmental Covenant was required because the remedial actions resulted in residual concentrations of contaminated soil at the site.

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 control is necessary at the Site:

- A cap over the contaminated soil.

To implement that control, an Environmental Covenant has been recorded on the following parcels of real property in Spokane County:

- 35322.0108
- 35322.0109

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 initiate the process of removing the Site from our lists of hazardous waste sites, including:

- Hazardous Sites List.
- Confirmed and Suspected Contaminated Sites List.

That process includes public notice and opportunity to comment. Based on the comments received, Ecology will either remove the Site from the applicable lists or withdraw this opinion.

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.

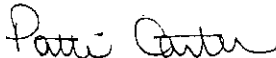
The state, Ecology, and its officers and employees are immune from all liability, and no cause of action of any nature may arise from any act or omission in providing this opinion. *See* RCW 70.105D.030(1)(i).

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 (#EA0172).

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 paca461@ecy.wa.gov.

Sincerely,



Patti Carter
ERO Toxics Cleanup Program

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

cc: Jeff Leppo, LFR
John Bennett, Black Realty
James Black, Lukins & Annis
Dolores Mitchell, VCP Financial Manager (without enclosures)

