



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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May 19, 2011

Mr. Terry Montoya, P.E.  
Senior Project Engineer  
Sound Earth Strategies Construction LLC  
2811 Fairview Avenue East, Suite 2000  
Seattle, Washington 98102-3167

**Re: Further Action at the following Site:**

- Name: Port Orchard Bulk & Cardlock
- Address: 134 Bay Street West, Port Orchard WA 98366
- Facility/Site No.: 26185147
- VCP No.: NW1306

Dear Mr. Montoya:

The Washington State Department of Ecology (Ecology) received your request for an opinion on your independent cleanup of the Port Orchard Bulk & Cardlock 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 releases:

- TPH-gasoline, TPH-diesel, TPH-oil & BETX in the soil and ground water and/or air



## **Basis for the Opinion**

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

1. Addendum – Closure Report: Port Orchard Bulk Plant & Cardlock. 134 Bay Street West 98366 of May 3, 2011 by Sound Earth Strategies Consulting, LLC
2. Closure Report: Port Orchard Bulk Plant & Cardlock. 134 Bay Street West 98366 of Oct. 4, 2010, Project # 0644-001 by Sound Earth Strategies Consulting, LLC

Those documents are kept in the Central Files of the North West Regional Office of Ecology (NWRO) for review by appointment only. You can make an appointment by calling the NWRO resource contact at 425-649-7190.

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

## **Analysis of the Cleanup**

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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. Closure Report & Addendum to the Closure Report.**

#### **A. Soil Excavation Pit #1:**

1. You did not conduct a Feasibility Study Analysis (FS) to document the engineering/technical justification why it is not practicable to remove the residual contaminated soils above the state cleanup levels at the west and southwest corners of the soil excavation pit #1.
2. As part of the FS, you did not show that the incremental cost of removing this residual contamination is disproportionate to the environmental benefit that could be derived from such additional cleanup action implementation.

#### **B. Soil Excavation Pit #2:**

3. You did not conduct a Feasibility Study Analysis (FS) to document the engineering/technical justification why it is not practicable to remove the residual contaminated soils above the state cleanup levels at the north corner of the soil excavation pit #2.

4. As part of the FS, you did not show that the incremental cost of removing this residual contamination is disproportionate to the environmental benefit that could be derived from such additional cleanup action implementation.

**C. Public-Right-of- Way:**

5. The State is in receipt of the letter from the City of Port Orchard, Public Works expressing their concerns over the removal and replacement of soils located in or around the existing utilities.
6. You have failed to provide engineering/technical justification as noted in the above, why it is not practicable to remove the residual contaminated soils in order to put the City of Port Orchard's concerns into proper perspective for an NFA determination.

**D. Ground water Consideration:**

7. Ecology does not concur that you have adequately addressed the groundwater issue at this site.
8. The extent of groundwater contamination northwest of the site, emanating from MW-16 from March 25, 2005 through June 23, 2008 is not known. This is because, the front of the plume has moved beyond MW-16 during this period. Subsequent monitoring results from 12/30/08 through 12/14/09 represents the tail of the plume at MW-16 and not the extent of the plume at this site.
9. As a result, Ecology does not concur that MW-16 (and MW-7) represents the points of compliance to measure whether the cleanup action implementation met cleanup standards for the groundwater media northwest and west at this site (see enclosed Fig. 4, Closure Report).

**E. Definition of the Site: Parcels**

10. The boundaries of the site/property are not clear to Ecology. It appears that you have multiple sources of releases that can be defined as multiple sites provided that the contaminated groundwater plumes are not commingled. This can translate into multiple NFA determinations at this property.
11. Based on the submitted data on Exhibit A, of the Legal Descriptions, Ecology is not able to determine the extents of the listed tax parcels on any of the enclosed maps.

**F. Restrictive Covenant:**

12. From the above, Ecology does not concur at this time to putting an Environmental Covenant at this site until the above listed substantive requirements are addressed.

**Limitations of the Opinion**

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**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).

**Contact Information**

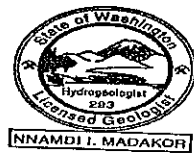
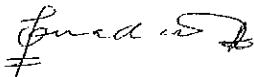
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Thank you for choosing to clean up the Site under the Voluntary Cleanup Program (VCP). After you have addressed our concerns, you may request another review of your cleanup. Please do not hesitate to request additional services as your cleanup progresses.

Port Orchard Bulk & Cardlock  
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Ecology is committed to working with you to accomplish the prompt and effective cleanup of the Site. For more information about the VCP and the cleanup process, please visit our web site at: [www.ecy.wa.gov/programs/tcp/vcp/vcpmain.htm](http://www.ecy.wa.gov/programs/tcp/vcp/vcpmain.htm). If you have any questions about this opinion, please contact me by phone at (360) 407-7244 or e-mail at [nmad461@ecy.wa.gov](mailto:nmad461@ecy.wa.gov).

Sincerely,



Nnamdi Madakor, PHg, P.G.  
VCP Statewide Coordinator  
HQ - Policy & Technical Manager  
Toxic Cleanup Program

cc: Dolores Mitchell - VCP Financial Manager  
Russ Olsen - VCP Unit Manager, NWRO

Enclosure