



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Avenue SE • Bellevue, Washington 98008-5452 • (425) 649-7000

January 6, 2009

Dee J. McGonigle
Merrill Gardens at University Village, LLC
104 South Division
Spokane, WA 99202

Re: No Further Action at the following Site:

- **Site Name:** Merrill Gardens at University Village
- **Site Address:** 5101 15th Ave. NE, Seattle, Washington
- **Facility/Site No.:** 6972853
- **VCP Project No.:** NW1950

Dear Mr. McGonigle:

The Washington State Department of Ecology (Ecology) received your request for an opinion on your independent cleanup of the Merrill Gardens at University Village 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 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 release of petroleum to the soil.

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

Please note that a parcel of real property can be affected by multiple sites. Ecology has no information at this time that the parcel(s) 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:

1. *Explanation of Soil Sampling Procedures*, dated December 3, 2008, by Golder Associates.
2. *Groundwater Monitoring Report September 2008*, dated October 27, 2008, by Golder Associates.
3. *Remedial Action Report*, dated May 19, 2008, by Golder Associates.

These documents are kept in the Central Files of the Northwest 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

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**.

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.

- a. **Cleanup levels:** The cleanup levels used are based on MTCA Method A for unrestricted land use, which are conservative and are protective of all exposure pathways.
- b. **Points of compliance:** The point of compliance is standard, i.e., throughout the site.

3. **Selection of cleanup action.**

Ecology has determined the cleanup action you selected for the Site meets the substantive requirements of MTCA. The cleanup action selected was excavation and removal of the petroleum contaminated soil.

4. **Cleanup.**

Ecology has determined the cleanup you performed meets the cleanup standards established for the Site.

Listing of the Site

Based on this opinion, Ecology will remove the Site from our Confirmed and Suspected Contaminated Sites 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).

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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.

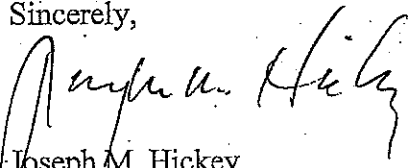
The state, Ecology, and its officers and employees are immune from all liability, and no cause of action of any nature may arise from any act or omission in providing this opinion. *See* RCW 70.105D.030(1)(i).

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 (NW1950).

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 at 425-649-7202.

Sincerely,



Joseph M. Hickey
NWRO Toxics Cleanup Program

JH:jh

Enclosures (1): Description and Diagram of the Site

cc: Bryan Bergstedt, SRM Development
Neil R. Gilham, LG, Golder Associates