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May 3, 2019

Jonathan Cheng
Surprise Lake Square Hollywood Video, LLC
402 W Broadway, Suite 780
San Diego, CA 92101

Re: Further Action at the following Site; No Further Action Likely at a Property associated with the Site:

- **Site Name:** Hollywood Video aka Surprise Lake Square Hollywood Video
- **Site Address:** 816 Meridian St E, Milton, Pierce County, WA 98354
- **Cleanup Site ID:** 5385
- **Facility/Site ID:** 6012635
- **VCP Project ID:** SW1578

Dear Jonathan Cheng:

The Washington State Department of Ecology (Ecology) received your request for a determination of No Further Action with an environmental covenant on your independent cleanup of the Hollywood Video aka Surprise Lake Square Hollywood Video facility (Site). This letter provides our opinion. We are providing this opinion under the authority of the [Model Toxics Control Act \(MTCA\)](#),¹ chapter 70.105D Revised Code of Washington (RCW)..

Issue Presented and Opinion

Ecology has determined that further remedial action is necessary to clean up contamination at the Site.

Ecology has also determined that a cleanup action you proposed is likely to achieve a No Further Action for a Property associated with the Site. Our No Further Action Likely determination for your proposed cleanup is contingent upon satisfying the requests in this letter.

¹ <https://fortress.wa.gov/ecy/publications/SummaryPages/9406.html>

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, Washington Administrative Code (WAC) chapter 173-340 (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:

- Total Petroleum Hydrocarbons (TPH) and related hazardous substances into the Soil and Groundwater.

Please note a parcel of real property can be affected by multiple sites. The Pierce County tax parcel for Hollywood Video is 0420044126 (Property), with a street address of 816 Meridian Avenue East, Milton. The Property is located within the projected boundaries of the Tacoma Smelter Plume facility (facility site identification [FSID] #62855481). The Edgewood Shopping Center (FSID: 1360; former Edgewood Cleaners) may also be affecting your Site or Property. Ecology does not have any information that other sites are impacting the Site.

Basis for the Opinion

This opinion is based on the information contained in the list of documents included as **Enclosure A**.

Those documents are kept in the Central Files of the Southwest Regional Office of Ecology (SWRO) for review by appointment only. Information on obtaining those records can be found on [Ecology’s public records requests web page](https://ecology.wa.gov/About-us/Accountability-transparency/Public-records-requests).² Some Site documents may be available on [Ecology’s Cleanup Site Search web page](https://fortress.wa.gov/ecy/gsp/CleanupSiteDocuments.aspx?csid=5385).³

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

² <https://ecology.wa.gov/About-us/Accountability-transparency/Public-records-requests>

³ <https://fortress.wa.gov/ecy/gsp/CleanupSiteDocuments.aspx?csid=5385>

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.

A history of Site investigation and interim remedial actions taken to date are provided in the documents listed in **Enclosure A**. In this letter, Ecology refers to the former service station associated with the Hollywood Video Property as “Hollywood Video.” For the SW1578 project, Meridian St E is equivalent to Meridian Avenue East, E Meridian Avenue, and State Route 161. Though Ecology’s opinion letter dated February 19, 2015,⁴ included a brief Site description and history, we provide a summary here.

Cleanup History

A Phase I Environmental Audit completed by EAI in 1995⁵ indicated the presence of a former service station on the Hollywood Video tax parcel. During EAI’s Phase I ESA, they noted one poorly constructed monitoring well installed on the adjacent parcel to the south, along the Hollywood Video property boundary. This monitoring well was presumably decommissioned. In 2003, AEG completed a Phase I ESA and also noted records indicating a former service station on the Property.

In April 2003, AEG advanced eleven soil borings in and around the former service station dispenser islands and underground storage tank (UST) basin. Based on extensive gasoline contamination in soil, AEG started soil excavation in May 2003. The excavation removed 4,128 tons of petroleum contaminated soil (PCS) within the Property boundaries and up to the Meridian Avenue East right-of-way. However, additional petroleum contaminated soils could not be removed to the east because the contamination extended under Meridian Avenue East. Additional soil removal was not possible because it would have undermined the roadway.⁶

AEG documented the remaining contamination in 2003 with photographs.⁷ Soil sample results at the excavation extents indicated that concentrations of gasoline and benzene, toluene, ethylbenzene, and xylenes (BTEX) in soil exceeding the MTCA Method A cleanup

⁴ Available at: <https://fortress.wa.gov/ecy/gsp/CleanupSiteDocuments.aspx?csid=5385>

⁵ See p.24 in EAI’s, *Phase I Environmental Audit*, July 21, 1995.

⁶ See p. 7 in AEG’s *Phase III Site Remediation Report*, May 22, 2003.

⁷ See p. 4 in Appendix B – Site Photographs in AEG’s *Phase III Site Remediation Report*, May 22, 2003.

levels remained beneath Meridian Avenue East. Several thousand gallons of petroleum contaminated groundwater were pumped from the excavation and disposed of off-Site.

In June 2003, Robinson-Noble and AEG completed a hydrogeologic evaluation for Hollywood Video, which included installing five new monitoring wells, HVMW-1 through HVMW-5. In July 2003, a sixth monitoring well, HVMW-6, was installed. The groundwater flow direction was reported as generally southwest towards Surprise Lake, but Robinson-Noble noted that local flow direction might be slightly variable.⁸

The monitoring wells within Meridian Avenue East were installed along the right-of-way (HVMW-2, HVMW-3, HVMW-6B) and in the left hand turn lane for the northbound travel lanes (HVMW-7 and HVMW-8).⁹ Monitoring wells HVMW-9A and HVMW-10A were installed within the eastern portion of the parking lot. Most Site monitoring wells have been decommissioned or destroyed (paved over during Meridian Avenue East construction). Currently, monitoring wells HVMW-9A, HVMW-10A, and HVMW-6A remain in the Hollywood Video parking lot.¹⁰

In 2008, Pacific Crest Environmental LLC (Pacific Crest) collected light non-aqueous phase hydrocarbons (LNAPL) from monitoring well HVMW-2. In 2010, Pacific Crest conducted a six-hour soil vapor extraction event. The last groundwater monitoring event at Hollywood Video was completed in October 2012. Monitoring wells located within Meridian Avenue East have been paved over and are considered destroyed.¹¹

Ecology issued multiple opinions for this cleanup, most recently on February 19, 2015, and September 28, 2017. The February 19, 2015, discussed collecting data and establishing cleanup levels for the Property in preparation for a Property-Specific NFA with an environmental covenant (EC). The September 28, 2017, opinion letter required some additional data collection prior to moving forward with the EC.

This opinion letter reviews all historical information and requests limited data collection in order to establish cleanup levels at a conditional point of compliance. This opinion letter also provides comments regarding the EC, presuming no re-contamination of the groundwater within the parking lot area has occurred.

The extent of the EC restrictions would be for areas which might potentially be affected by contamination within the extent of the parking lot and building footprint and the monitoring wells used for the conditional point of compliance. Depending on the results of the

⁸ See p. 3 in Robinson-Noble's *Milton-Hollywood Video hydrogeologic site characterization*, July 22, 2003.

⁹ Groundwater Characterization Map in AEG's *Monitoring Well Installation Report*, August 31, 2004.

¹⁰ See Figure 2 in Pacific Crest's *Property Specific Cleanup Action Completion Report*, October 28, 2014.

¹¹ See Figure 2 in Pacific Crest's *Property Specific Cleanup Action Completion Report*, October 28, 2014.

additional groundwater monitoring, it may be appropriate to have no restrictions on the portions of the parcel which are not contaminated or not necessary to maintain for the conditional point of compliance.

If implemented, any potential EC could exclude the portion of tax parcel 0420044126 which is the Meridian Avenue East right-of-way. This area is physically defined on the eastern boundary of the Hollywood Video parking lot by a concrete retaining wall and the roadway out to the centerline of Meridian Avenue East. Petroleum contaminated soil (and likely groundwater) remains in the Meridian Avenue East right-of-way. As of our opinion letter issued on February 19, 2015, Ecology determined that petroleum contaminated soil and groundwater are not present in the Milton Way right-of-way.

Site Definition

Ecology does not concur that your Site has been adequately defined as described in WAC 173-340-350(7). Please note that the Site is defined the same as “facility” under WAC 173-340-200 and RCW 70.105D.020. Contamination from a Site can exceed Property boundaries.

1. In 2008, Pacific Crest collected LNAPL from monitoring well HVMW-2 and had the sample fingerprinted. Pacific Crest reported that the LNAPL most resembled gasoline from the mid-1970s or earlier.¹²
2. TÖR Environmental (TÖR) suggested that another source, such as the 7-Eleven service station¹³ or the former Jackpot 323 service station,¹⁴ was responsible for the contamination under Meridian Avenue East.
3. Ecology disagrees with TÖR’s assertion regarding other sources of contamination for the Meridian Avenue East right-of-way contamination, based on the following:
 - a. In 2003, AEG took photos¹⁵ of contaminated soils extending from Hollywood Video into the right-of-way of State Route 161/Meridian Avenue East. Soil sampling locations also showed a consistent extension of contamination east from Hollywood Video under Meridian Avenue East. These soil sampling locations were later covered by the widening of Meridian Avenue East, where one additional southbound lane and a retaining wall were added. Based on information available to Ecology, the historical soil sampling locations appear to be located beneath the western portion of the southbound travel lane.

¹² See pp. 2-3 from Pacific Crest, *Property Specific Final Cleanup Action Completion Report*, October 28, 2014.

¹³ FSID: 52177324, located at 817 Meridian Ave E.

¹⁴ FSID: 66296722, CSID: 6482. Located at 823 Meridian Ave E.

¹⁵ See Appendix B in AEG’s *Phase III Site Remediation Report*, May 22, 2003.

- b. LNAPL was present in the right-of-way of Meridian Avenue East at monitoring well HVMW-2, near the former dispenser island and UST nest for Hollywood Video. The duration and volume of the historical gasoline release is not known (though suspected to be substantial based on the presence of LNAPL). The shallow groundwater at Hollywood Video means that LNAPL can spread out at the water table in all directions, not just the downgradient direction.¹⁶
- c. Concentrations of petroleum hydrocarbon contaminants (gasoline and BTEX) in groundwater collected from HVMW-7 and HVMW-8 in August 2004 were either close to or below the MTCA Method A cleanup levels. If LNAPL were present at monitoring well HVMW-2, which is downgradient of monitoring wells HVMW-7 and HVMW-8, and that LNAPL were sourced from the 7-Eleven service station, the concentrations of gasoline and BTEX in groundwater at HVMW-7 and HVMW-8 would be expected to be much greater.
- d. Based on records in Ecology's UST database, the 7-Eleven service station installed a first generation of USTs on September 1, 1986. Ecology does not have any records indicating that a prior generation of USTs were located at the 7-Eleven service station before September 1, 1986. Aerial photographs from 1969 and 1985¹⁷ indicate that prior use of the tax parcel on which 7-Eleven now operates was not a service station. The business that occupied the former building is unknown.
- e. A release has never been reported to Ecology associated with the 7-Eleven service station. As the fingerprint analysis of the LNAPL beneath Meridian Avenue East indicated that it is more likely than not from the mid-1970s or before, the 7-Eleven would not be anticipated to be the source of the LNAPL.
- f. A Jiffy Lube[®] oil change operation currently located at 823 Meridian Avenue East, Edgewood,¹⁸ does not have a release reported to Ecology. The Jiffy Lube[®] appears to not have any USTs.
- g. At the former Jackpot 323 service station, petroleum hydrocarbons were not found in groundwater exceeding the MTCA Method A cleanup levels.¹⁹ Groundwater flow direction at the former Jackpot 323 service station is to the southwest. Some residual petroleum contaminated soil is located along the eastern boundary of the Meridian Avenue East. These soil concentrations do not appear to be significant enough to

¹⁶ See Figure 3-1 in the Interstate Technology Regulatory Council's *Evaluating LNAPL Remedial Technologies for Achieving Project Goals*, December 2009. USEPA Publication EPA/540/S-95/500, *Ground Water Issue: Light Nonaqueous Phase Liquids* also has figures showing how LNAPL can spread out.

¹⁷ From EMS, *Focused Subsurface Investigation*, March 12, 2007.

¹⁸ FSID: 1789713. Jiffy Lube 2755.

¹⁹ EMCON, *December 1995 – Groundwater Monitoring Report*, February 16, 1996.

generate the LNAPL and high concentrations in groundwater identified adjacent to Hollywood Video. Additionally, Hollywood Video is located northwest and cross-gradient of the former Jackpot 323 service station.

- h. Based on Ecology's review of available data, petroleum hydrocarbon contamination beneath Meridian Avenue East is likely sourced from Hollywood Video. Based on current data and information available, Ecology, would **not** issue a preliminary potentially liability persons (PLP) letter at this time to either the operator of the 7-Eleven service station or Time Oil, the former owner of the Jackpot 323 service station, Jiffy Lube[®], or the current property owners of either facility, for the contamination within Meridian Avenue East adjacent to Hollywood Video.
- i. Independent cleanup being completed under WAC 173-340-515 is done without Ecology approval or oversight.²⁰
 - i. As Ecology stated in its opinion letter from January 12, 2005, "Ecology does not determine or cannot make determinations regarding the liability of any party (including whether any party meets any defenses to liability)" under the VCP.
 - ii. If you believe another party is contributing contamination onto your Property (or Site), you may take a private right of action consistent with WAC 173-340-545. Please note that private rights of action have public notice and comment requirements under WAC 173-340-545(3).
 - iii. You could also seek involvement of another party offline without a private right of action and without Ecology engagement.
4. From 1997-1999, the tetrachloroethylene (PCE) concentration in groundwater was reported at well HVMW-6A/MW-7 in excess of the MTCA Method A cleanup level.²¹ Pacific Crest sampled groundwater at HVMW-6 and analyzed for PCE and its breakdown products on September 8, 2011, September 5, 2013, and February 24, 2015. Analytical results were less than the MTCA cleanup levels and Ecology's PCE in groundwater screening levels for vapor intrusion.²²

In April 2003, AEG did not detect PCE in soil sampled at soil boring locations B6 and B8. However, groundwater was not analyzed from these borings. Edgewood Shopping Center (former Edgewood Cleaners), is currently cleaning up releases of PCE under VCP project SW1609. In order for Ecology to concur that the Hollywood Video release is not

²⁰ WAC 173-340-515(1).

²¹ Alisto Engineering Group, *Groundwater Monitoring and Sampling Report*, August 2000.

²² <https://fortress.wa.gov/ecy/clarc/FocusSheets/CLARC%20Vapor%20Intrusion%20Method%20B.pdf>

comingled with a PCE release:

- a. **In a Site-specific determination, Ecology requests one additional groundwater sampling event at HVMW-6A for PCE, as long as the analytical result is less than the MTCA Method A cleanup level. As previous sampling events were collected in the first and third quarters of the year, Ecology requests that you collect this new groundwater sample in the second or fourth quarter of the year, to ensure data are collected across seasonal fluctuations.**
- b. Ecology recommends low flow groundwater sampling methodology. Ecology recommends placing the tubing intake at a level in the well screen so that the sample collected best represents current groundwater quality.
- c. Depending on the concentration of PCE in groundwater, the air/vapor pathway may need to be updated. Compare any concentrations of PCE in groundwater collected to Ecology's MTCA Method B screening levels for groundwater concentrations protective of vapor intrusion.
- d. If concentrations suggest that a vapor risk from PCE may be present because of concentrations in groundwater exceeding the MTCA Method B screening level, Ecology suggests using the new data to conduct a Tier I assessment of the vapor intrusion risk at the Site. Any Tier I assessment should be consistent with Section 3.1 in Ecology publication no. 09-09-047, *Draft Guidance for Evaluating Soil Vapor Intrusion in Washington State*²³ and using recent Ecology implementation memos pertaining to soil vapor intrusion.

Comments about a Property at the Site:

Environmental Covenant (EC) Path Forward:

Per the previous determination in our opinion letter dated February 19, 2015, Ecology concurs that your Property-Specific No Further Action request using institutional controls with an environmental covenant for a portion of Pierce County tax parcel, excluding the Meridian Ave E right-of-way, meets the minimum substantive requirements of MTCA. However, Ecology requests the items below be completed prior to proceeding with a Property-Specific NFA with an EC.

²³ Revised June 2016, available at: <https://fortress.wa.gov/ecy/publications/documents/0909047.pdf>

The Property includes Pierce County tax parcel 0420044126, excluding that portion of the Property which is the right-of-way of Meridian Avenue East. Tax parcel 0420044126 is understood to extend to the centerlines of Meridian Avenue East and Milton Way.

1. As the last groundwater monitoring event was in October 2012, please sample monitoring wells HVMW-9A and HVMW-10A per the table below.
 - a. The purpose of this groundwater monitoring before implementing any potential EC at the Property is to determine if groundwater within the Property area potentially to be subject to institutional controls currently has concentrations of hazardous substances exceeding the MTCA Method A cleanup levels.
 - b. If no concentrations exceed the MTCA Method A cleanup levels – proceed with the EC process.
 - c. If concentrations exceed the MTCA Method A cleanup levels, then additional cleanup may be necessary.
2. It appears Ecology should provide some clarification on the EC process. We apologize for any past direction that may have caused confusion. A detailed EC process for a property associated with your Site is provided as **Enclosure B**.

Groundwater monitoring

Ecology concurs with TÖR's assessment that HVMW-6A does **not** need to be included in the proposed long term groundwater compliance monitoring plan. A draft long term groundwater compliance monitoring plan was submitted by Pacific Crest.²⁴ Ecology encourages continued low flow groundwater sampling methodology at the Property and Site.

Ecology believes the historical discussion surrounding whether or not to include well HVMW-6A in any long term groundwater compliance plan was the result of a miscommunication. Well HVMW-6A is also known as MW-7, and is being used as the downgradient groundwater monitoring point for the Circle K 2705501/SW1097 cleanup.²⁵ Well HVMW-6A/MW-7 is located cross-gradient of Hollywood Video.

No exceedances of the MTCA Method A cleanup levels for petroleum hydrocarbons and related hazardous substances have been reported at well HVMW-6A/MW-7.²⁶ However, Ecology requests that access to well HVMW-6A/MW-7 be maintained so that the parties

²⁴ WAC 173-340-410(3).

²⁵ <https://fortress.wa.gov/ecy/gsp/CleanupSiteDocuments.aspx?csid=1072>

²⁶ Antea Group, *Annual Groundwater Monitoring Report*, January 5, 2018. Groundwater flow direction is to the southwest.

involved with the SW1097 cleanup can continue their groundwater sampling. Access could be maintained by a paragraph in the draft EC, or under a separate agreement.

The most recent groundwater sampling at monitoring wells HVMW-9A and HVMW-10A was from October 2012. In order to move forward with a Property-Specific NFA with an EC, Ecology requests current groundwater data to ensure that re-contamination of groundwater within the Property boundaries has not occurred. The groundwater data are also necessary for Ecology to concur that HVMW-9A and HVMW-10A are an acceptable conditional point of compliance.

Methyl tertiary-butyl ether (MTBE), 1,2-dibromoethane /ethylene dibromide (EDB), and 1,2 dichloroethane (EDC)

In Ecology's September 28, 2017, opinion letter, sampling of Site groundwater for MTBE, EDB, and EDC was requested. AEG collected sufficient MTBE data from gasoline contaminated groundwater on March 26, 2004, to satisfy the requirement under WAC 173-340-900, Table 830-1, footnote #11. No additional MTBE testing is necessary.

EDB was analyzed for in the LNAPL sample from HVMW-2, collected in 2008, to fingerprint the LNAPL. However, the practical quantitation limit (0.1 micrograms per Liter [$\mu\text{g/L}$]) used by the lab did not resolve to a value less than the MTCA Method A cleanup level of 0.01 $\mu\text{g/L}$. See WAC 173-340-830(2)(f) for analytical reporting limit requirements.

Consistent with WAC 173-340-900, Table 830-1, footnote 10, sample EDB and EDC in groundwater. Please include EDB and EDC with the groundwater sampling requested at HVMW-9A and HVMW-10A. Coordinate with the laboratory to use an analytical method which resolves the laboratory reporting limit of EDB to less than the MTCA Method A cleanup level.

For future groundwater monitoring at the Site, sample EDB and EDC at a monitoring well with gasoline contaminated groundwater, consistent with Section 10.3 in Ecology publication no. 10-09-057, *Guidance for Remediation of Petroleum Contaminated Sites*, Revised June 2016.

This table summarizes the requested one time groundwater event prior to proceeding with an EC for the Property:

Hazardous Substance	HVMW-9A	HVMW-10A	HVMW-6A/MW-7
Gasoline	X	X	
Diesel	X	X	
Heavy oil	X	X	
Benzene	X	X	
Toluene	X	X	
Ethylbenzene	X	X	
Total Xylenes	X	X	
1,2-dibromoethane/ ethylene dibromide (EDB)	X	X	
1,2-dichloroethane (EDC)	X	X	
Tetrachloroethylene (PCE)			X

Terrestrial Ecological Evaluation (TEE)

Ecology concurs with the proposed exclusion from further TEE, as presented by Pacific Crest Environmental (Pacific Crest) in their *Property Specific Cleanup Action Completion Report*, October 28, 2014.

Updated Conceptual Site Model Development Needed:

This section is for the Site overall and not for the Property. After you complete the additional needed remedial investigation for the Site, submit an updated conceptual site model, such that Ecology can concur that the nature, lateral, and vertical extents of contamination are sufficiently understood and documented to select a cleanup action for the Site.

In Ecology’s opinion letter dated September 28, 2017, we requested a work plan to further characterize the Site contamination (i.e., the remaining contamination under the Meridian Avenue East right-of-way). However, Ecology determines in this letter that the work plan submittal is not a necessary requirement to proceed with a Property-Specific No Further Action with an EC.

The conceptual site model needs to include delineated concentration isopleth maps in both plan view and geologic cross section. These maps should delineate and illustrate the extents of contamination at the Site to background concentrations, irrespective of cleanup levels or property boundaries. Concentration isopleths should be bounded by data results from soil and groundwater analytical samples. Areas of uncertainty not bounded by data results should be clearly labelled using dashed lines, question marks, or other clear indications that the extents of contamination are not fully evaluated. Delineated plan view and cross section maps of remaining contamination at the Site will also be necessary to support any eventual environmental covenant.

Environmental Covenant (EC):

- Comments on the EC are included as **Enclosure B**.

Environmental Information Management System Database (EIM) Reporting:

- Please upload the data for monitoring well location HVMW-2 collected on or after August 1, 2005.
- Though sampled in August 2004, Ecology encourages upload of data for HVMW-7 and HVMW-8. These monitoring wells were installed as part of an effort to delineate the Hollywood Video Site.²⁷ Data in EIM provide an incomplete picture without them.
- Ensure all location identification labels and associated study information in EIM reflect that the cleanup is being completed under VCP project SW1578 and no longer SW0822.
- Prior to requesting another opinion from Ecology, all Site data must be uploaded to EIM. Please comply with the requirements provided in [Ecology Policy 840](#).²⁸

²⁷ AEG, *Monitoring Well Installation Report*, August 31, 2004.

²⁸ <https://fortress.wa.gov/ecy/publications/documents/1609050.pdf>

2. Establishment of cleanup standards.

At this independent cleanup conducted under WAC 173-340-515, Ecology may concur with cleanup standards you propose. Cleanup standards consist of (a) points of compliance, (b) cleanup levels, and (c) other regulatory requirements that apply to the Site because of the type of action and/or location of the Site.²⁹

- a. **Site Points of Compliance:** Ecology concurs with the appropriate use of the following points of compliance for the Site:

Media	Points of Compliance
Soil-Direct Contact	Based on human exposure via direct contact, the standard point of compliance is throughout the Site from ground surface to fifteen feet below the ground surface. ³⁰
Soil- Protection of Groundwater	Based on the protection of groundwater, the standard point of compliance is throughout the Site. ³¹
Soil-Protection of Plants, Animals, and Soil Biota	Based on ecological protection, the standard point of compliance is throughout the Site from ground surface to fifteen feet below the ground surface. ³²
Groundwater	Based on the protection of groundwater quality, the standard 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. ³³
Groundwater	HVMW-9A and HVMW-10A are set as conditional points of compliance, consistent with WAC 173-340-720(8)(c). These monitoring wells are located as close as possible to the remaining petroleum contaminated soil under the Meridian Avenue East right-of-way.
Air Quality	Based on the protection of air quality, the point of compliance is indoor and ambient air throughout the Site. ³⁴

Soil cleanup levels have been met on the Property, excluding the Meridian Avenue East right-of-way. Groundwater cleanup levels were met in October 2012 on the Property at a conditional point of compliance: HVMW-9A and HVMW-10A.

Ecology requests current groundwater data to ensure that the conditional point of compliance is still valid. Per WAC 173-340-720(8)(c), Ecology concurred with the

²⁹ WAC 173-340-700(3)(c)

³⁰ WAC 173-340-740 (6)(d)

³¹ WAC 173-340-747

³² WAC 173-340-7490(4)(b)

³³ WAC 173-340-720(8)(b)

³⁴ WAC 173-340-750(6)

proposed conditional point of compliance in its February 19, 2015, opinion letter. The conditional point of compliance appears to be located as close as practicable to the petroleum contaminated soil remaining beneath the Meridian Avenue East right-of-way.

- b. Cleanup Levels:** Pacific Crest proposed MTCA Method A cleanup levels for soil and groundwater for Site hazardous substances, except for MTBE, EDB, and EDC, which had no cleanup level proposed. Cleanup levels are set on a Site basis,³⁵ but apply to the Site and Property. Naphthalenes are not required to be sampled for when MTCA Method A cleanup levels are used for petroleum hydrocarbons.³⁶

Ecology concurs with the cleanup levels proposed for soil and groundwater:

Site Hazardous Substance (Site COC)	MTCA Method	Soil (mg/kg)	Groundwater (µg/L)
Gasoline	A	30	800
Diesel	A	2,000	500
Heavy oil	A	2,000	500
Benzene	A	0.03	5
Toluene	A	7	1,000
Ethylbenzene	A	6	700
Total Xylenes	A	9	1,000
MTBE	A	0.1	20
1,2-dibromoethane (EDB)	A	0.005	0.01
1,2-dichloroethane (EDC)	B ³⁷ /A	0.00156	5
Lead	A	250	15

³⁵ WAC 173-340-700.

³⁶ WAC 173-340-900, Table 830-1, footnote #14.

³⁷ There is no MTCA Method A cleanup level for EDC in soil. Soil cleanup value is from Ecology's CLARC table, soil protective of groundwater saturated. Use of MTCA Method A and B at petroleum Sites is allowed per WAC 173-340-700(7)(b)(i).

- c. **Applicable Laws and Regulations:** For the remaining Site remedial investigation, please identify all applicable state and federal laws for the cleanup action.³⁸ This requirement may impact cleanup standards applicable to the Site. Cleanup levels may be refined in accordance with WAC 173-340-700(5).

3. Selection of cleanup action.

Limited additional data are requested by Ecology prior to moving forward with an EC and then a Property-Specific NFA. Ecology concurred with the request for a Property-specific NFA with an EC in its letter dated February 19, 2015. A conditional point of compliance for groundwater is proposed at monitoring wells HVMW-9A and HVMW-10A. If groundwater has become contaminated at the conditional point of compliance, a feasibility study with a disproportionate cost analysis may be necessary to select and implement a new cleanup alternative.

Based on Ecology's September 28, 2017, opinion letter request, additional remedial investigation appears to be necessary prior to selecting a cleanup action for the Site.

4. Cleanup.

Ecology has determined the cleanup you performed does not meet any cleanup standards at the Site. However, cleanup standards are likely met at a conditional point of compliance for the Property. To date, interim cleanup actions have included:

- In 2003, removal and off-Site disposal of 4,128 tons of PCS. Additionally, 14,800 gallons of contaminated groundwater was pumped from the excavation pit and disposed of off-Site.
- In 2009, removal of LNAPL from monitoring well HVMW-2.
- A six hour soil vapor extraction event on April 14, 2010, to remove petroleum hydrocarbons at HVMW-2.

Ecology has determined that further remedial action is still necessary elsewhere at the Site upon completion of your proposed Property cleanup. While your proposed cleanup may constitute the final action for the Property within a Site, it will constitute only an "interim action" for the Site as a whole.

³⁸ WAC 173-340-710(2)

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.

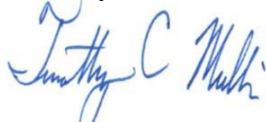
The state, Ecology, and its officers and employees are immune from all liability, and no cause of action of any nature may arise from any act or omission in providing this opinion. *See* RCW 70.105D.030(1)(i).

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 [Voluntary Cleanup Program web site](#).³⁹ If you have any questions about this opinion, please contact me by phone at (360) 407-6265 or email me at tmul461@ecy.wa.gov.

Sincerely,



Tim Mullin, LHG
VCP Site Manager
Toxics Cleanup Program
Southwest Regional Office

TCM: tam

Enclosures (2): A – Document List
B – Environmental Covenant Comments

cc: Jeffrey Borum, TÖR Environmental, Inc.
Todd Vanek, Antea Group
Public Works Director, City of Milton
William Halbert, Insight Geologic, Inc.
O D S Investments, LLC
Jeff Sawyer, Olympic Regional Office, WSDOT
Marc Westfall, 7-Eleven, Inc.
Nicholas Acklam, Ecology (by email)
Mark Gordon, Ecology (by email)
Carol Johnston, Ecology (by email)
Rebecca Lawson, Ecology (by email)
Ecology Site File

³⁹ <https://www.ecy.wa.gov/vcp>

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Enclosure A

Document List

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for double-sided copying.*

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

1. TÖR Environmental, Inc. (TÖR), *Request for No Further Action Designation with Environmental Covenant, Response to 28 September 2017, Department of Ecology Opinion Letter, Review of Environmental Covenant and Associated Compliance Monitoring Plan*, November 29, 2018.
2. Ecology, Re: *Review of Environmental Covenant and Associated Compliance Monitoring Plan*, September 28, 2017.
3. Ecology, Re: *Review of the July 28, 2016, Cleanup Action Completion Report for the Surprise Lake Shopping Center (former VibraClean Facility) Site*, May 8, 2017.
4. Ecology, Re: *Opinion on Proposed Cleanup of a Property associated with a Site*, February 19, 2015.
5. Ecology, Re: *Further Action at the following Site*, September 20, 2013.
6. Pacific Crest Environmental, LLC (Pacific Crest), *Compliance Monitoring Plan*, October 28, 2014.
7. Pacific Crest, *Cleanup Action Completion Report*, June 21, 2013.
8. Pacific Crest, *Groundwater Monitoring and LNAPL Mitigation Report*, May 17, 2010.
9. Ecology, Re: *Opinion pursuant to WAC 173-340-515(5) on Proposed Remedial Action for the following Hazardous Waste Site*, July 10, 2006.
10. Pacific Crest, *Disproportionate Cost Analysis – Cost Estimate Tables*, June 27, 2006.
11. Pacific Crest, *Selection of a Cleanup Action and Disproportionate Cost Analysis*, June 15, 2006.
12. Ecology, Re: *Further Action Determination under WAC 173-340-515(5) for the following Hazardous Waste Site*, September 28, 2005.
13. Farallon Consulting, LLC (Farallon), *Site Closure Report and Request for No Further Action Determination*, July 7, 2005.
14. Ecology, *letter to Mr. Thomas C. Morin of Environmental Partners, Inc.*, January 12, 2005.
15. Associated Environmental Group, LLC (AEG), *Monitoring Well Installation Report*, August 31, 2004.

16. AEG, *Groundwater Monitoring Report*, October 27, 2003.
17. AEG, *Monitoring Well Installation Report*, August 5, 2003.
18. Robinson-Noble, *Milton-Hollywood Video hydrogeologic site characterization*, July 22, 2003.
19. AEG, *Phase III Site Remediation Report*, May 22, 2003.
20. Ecology, *Re: Requirements for Reporting Environmental Conditions at Leaking Underground Storage Tank Contaminated Sites*, April 30, 2003.
21. AEG, *Phase II Site Characterization*, April 29, 2003.
22. EMCON, *December 1995 – Groundwater Monitoring Report*, February 16, 1996. (This report is from the Jackpot 323 Site.)
23. Environmental Associates, Inc., *Phase I Environmental Audit*, July 21, 1995.

Enclosure B

Environmental Covenant Comments

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Ecology has the following comments regarding the proposed institutional controls to be implemented using an Environmental Covenant (EC).

The Property is defined as that portion of Pierce County tax parcel 0420044126 which excludes the Meridian Avenue East (State Route 161) right-of-way. It has not been confirmed if the City of Milton's right-of-way along Milton Way is to be excluded from the EC.

- 1) Please review Ecology Procedure 440A: *Establishing Environmental Covenants under the Model Toxics Control Act*, available at:
<https://fortress.wa.gov/ecy/publications/documents/1509054.pdf>
- 2) For any No Further Action (NFA; Property-specific or Site) which uses institutional controls by an EC: 1) the EC is finalized, signed, and recorded and 2) the NFA would be issued.
 - a. A copy of the recorded EC is attached to the NFA.
 - b. Ecology retains the original EC.
- 3) Provide a complete current title search. Typically, Ecology cannot use a title search which is more than six months old for its evaluation of an EC.
- 4) Please verify that the legal description presented to Ecology excludes the Meridian Avenue East right-of-way.
- 5) Provide a current Property survey with platting and dedications that describes the Property and adjacent right-of-way.
- 6) Provide the location and extent of specifically where any engineered and institutional controls are applicable on the Property.
- 7) Revise the figure as an attachment to the EC to clearly define the conditional point of compliance relative to the remaining petroleum contaminated soils. This figure should also clearly define the Property boundaries and the right-of-way excluded from those property boundaries, as well as the known location of petroleum contaminated soils.
- 8) Please report to Ecology how the local government notification requirements of WAC 173-340-440(10) has been met.
- 9) Revise the draft Compliance Monitoring Plan to include the diesel and heavy oil sampling of groundwater at HVMW-9A and HVMW-10A as described in Ecology's opinion letter dated February 19, 2015.
 - a. Though Ecology concurs with the proposed project schedule in Pacific Crest's draft

Compliance Monitoring Plan,¹ Ecology suggests, under section 1.5 Project Schedule, that you considering giving yourself more than 6 weeks from receipt of the laboratory report to report the groundwater compliance monitoring event. Consider proposing a total of 90 days from the date of the groundwater compliance monitoring event to submit the progress report.

- b. Upload all data collected to Ecology's EIM database in accordance with WAC 173-340-840(5) and Ecology Policy 840.
 - c. Add diesel and heavy oil to the draft compliance monitoring plan for groundwater, as outlined in Ecology's opinion letter dated February 19, 2015.
 - d. Contingency plan needed. Provide how exceedances of groundwater cleanup levels during compliance monitoring will be handled, including your reporting to Ecology and resampling approach.
 - e. If a separate agreement is not to be used to provide access for third parties to sample HVMW-6A/MW-7, then add a paragraph under section 3 in the draft EC to allow that access.
- 10) Often, other parties which hold an interest in the parcel may be affected by the EC and might have to subordinate their rights to the EC. These parties might include municipalities with a right-of-way across a portion of the affected parcel, utilities holding easements, or holders of mortgages. From the title search, identify any parties who might have to subordinate their rights to the EC.
- a. It is Ecology's opinion that it is beneficial to show a boundary for your Property-Specific cleanup which clearly excludes all of the Meridian Avenue East right-of-way. Based on the October 2016 Memorandum of Understanding (MOU) between Ecology and the Washington State Department of Transportation (WSDOT), additional requirements are necessary for any EC which includes the Meridian Avenue East right-of-way portion.
 - b. If the EC does not restrict any portion of the Meridian Avenue E right-of-way, Ecology does not believe that terms and conditions of the MOU between Ecology and WSDOT apply. If the terms and conditions of the MOU do not apply, then no review of the EC by WSDOT is necessary.
- 11) Revise the proposed environmental covenant:
- a. Revise those sections which don't meet the current boilerplate. The current boilerplate

¹ October 28, 2014.

is available at: <https://fortress.wa.gov/ecy/publications/SummaryPages/1509054.html>.

- b. In heading, please revise the Ecology Site Manager name from “Ms. Carol Johnston” to “Tim Mullin”
 - c. Ecology concurs that for your cleanup, any EC would be recorded on Pierce County tax parcel 0420044126, with a street address of 816 Meridian Avenue East.
 - d. Please use “State Route 161” instead of “Highway 161” as the alternative term to refer to “Meridian Avenue East.” State Route is the designation that WSDOT uses to describe roads under their jurisdiction.
 - e. Update the Grantor information.
- 12) Ecology concurs with the proposed language regarding contact information: “As an alternative to provided written notice and change in contact information by mail, these documents may be provided electronically in an agreed upon format at the time of submittal.”
- 13) The revised draft EC will be reviewed by Ecology and likely the Washington State Attorney General’s Office.
- 14) Per WAC 173-340-440(11), report on any required financial assurance mechanisms and implementation of those required financial assurances. If no financial assurances are needed, include sufficient explanation for Ecology to concur.
- a. For additional details about financial assurance under MTCA, see: <https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Dangerous-waste-guidance/Dispose-recycle-or-treat/Financial-assurance>.