



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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

July 29, 2019

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

**RE: No Further Action at the following Site – Groundwater Model Remedy No. 1:**

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

Dear Niels Brown:

The Washington State Department of Ecology (Ecology) received your request for an opinion on your independent cleanup of the Kelloggs corner site (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**

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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 on the following pages.



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## **Description of the Site**

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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:

- Petroleum (Gasoline) into Soil, Surface Water, and Groundwater

The Site is located at 270 Midvale Road, at the northwest corner of Emerald and Midvale Roads in Sunnyside. The property, formerly a convenience store and gasoline service station until the early 1990s, consists of a vacant field. Surrounding properties include farm fields, rural residences, and a milk transportation company.

An irrigation ditch was formerly located on the eastern side of the property, and surface water was previously a concern at the Site. However, when the irrigation ditch was replaced with underground piping, surface water was no longer a media of concern at the Site.

## **Basis for the Opinion**

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

1. Letter RE: Subsurface Investigation, Kelloggs Korner, prepared by Farallon Consulting, dated March 31, 2016.
2. Letter from Ecology to Farallon Consulting RE: Further Action at the following Site, dated August 15, 2016.
3. *“Remedial Investigation Report, Kelloggs Korner, Midvale and Emerald Roads, Sunnyside, Washington,”* prepared by Farallon Consulting, dated April 2018.
4. Letter RE: *“Request for Opinion Letter on Remedial Investigation, Kelloggs Korner,”* prepared by Farallon Consulting, RE: Further Action at the following Site dated April 9, 2018.
5. Letter from Ecology to Farallon Consulting dated April 27, 2018.
6. *“Conformational Groundwater Monitoring Report, Kelloggs Korner, Midvale and Emerald Roads, Sunnyside Washington,”* prepared by Farallon Consulting and dated June 21, 2019.

Those documents are kept at the Central Regional Office of Ecology (CRO) for review by appointment only. You can make an appointment by calling Ecology’s Records Officer at 360-407-6040 or emailing [RecordsOfficer@ecy.wa.gov](mailto:RecordsOfficer@ecy.wa.gov).

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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 **no further remedial action** is necessary to clean up contamination at the Site.

That conclusion that no further remedial action is necessary 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 for the identified release. Site Plans are presented in **Enclosure A**.

Petroleum (gasoline) contamination was observed in an irrigation ditch at the Site in 1990. Since that time, several investigations have been performed defining the extent of contamination in soil and groundwater. The irrigation ditch was replaced with subsurface piping, so the surface water media pathway was addressed.

After remedial efforts were completed in the early 1990s, additional investigations were conducted in 2015 through 2019. These investigation activities have shown that no cleanup level exceedances of gasoline or related constituents remain in soil or groundwater at the Site.

### **2. Establishment of cleanup standards.**

#### **Soil Cleanup Levels**

The following Method A Cleanup Levels for unrestricted land uses have been used at the Site:

Constituent	Method A Soil Cleanup Level (mg/kg)	Method A Groundwater Cleanup Level (µg/L)
Gasoline Range Organics (benzene present)	30	800
Benzene	0.03	5



Constituent	Method A Soil Cleanup Level (mg/kg)	Method A Groundwater Cleanup Level (µg/L)
Toluene	7	1,000
Ethylbenzene	6	700
Xylenes	9	1,000

Point of Compliance (POC): Standard, throughout the Site extending from the surface to 15 feet below ground surface (ft bgs).

Terrestrial Ecological Evaluation (TEE): A simplified TEE was performed as presented in the 2018 RI Report. The simplified TEE was concluded based on criteria presented in WAC 173-340-7492

### 3. **Cleanup.**

Ecology has determined the cleanup meets the cleanup standards established for the Site. Site cleanup activities reportedly occurred in the early 1990s, including product recovery, excavation of contaminated soil, and installation and operation of groundwater recovery and infiltration trenches. Little information is available regarding these cleanup activities.

Compliance with the selected cleanup levels (Method A cleanup levels for soil and groundwater) has been demonstrated through soil and groundwater sampling conducted in 2015 through 2019. This included confirmation sampling for vadose zone soils and groundwater sampling via direct push and monitoring wells.

### **Listing of the Site**

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Based on this opinion, Ecology will initiate the process of removing the Site from our lists of contaminated 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.



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## **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).

## **Termination of Agreement**

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Thank you for cleaning up the Site under the Voluntary Cleanup Program (VCP). This opinion terminates the VCP Agreement governing this project (#CE0441).

Please note that Site monitoring wells must be decommissioned by a licensed well driller.

Further information can be found in: <https://ecology.wa.gov/Water-Shorelines/Water-supply/Wells/Information-for-drillers/Abandoned-wells>.

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For more information about the VCP and the cleanup process, please visit our web site: [www.https://ecology.wa.gov/Spills-Cleanup/Contamination-cleanup/Cleanup-process/Cleanup-options/Voluntary-cleanup-program](http://www.https://ecology.wa.gov/Spills-Cleanup/Contamination-cleanup/Cleanup-process/Cleanup-options/Voluntary-cleanup-program).

If you have any questions about this opinion or the termination of the Agreement, please contact me by phone at (509) 454-7835 or e-mail at [frank.winslow@ecy.wa.gov](mailto:frank.winslow@ecy.wa.gov).

Sincerely,



Frank P. Winslow, P.G.  
Toxics Cleanup Program  
Central Regional Office

FPW:rl

Enclosure: (1) A – Site Plans

cc: Joe Rounds, Farallon Consulting  
Lyndsay Gordon, VCP Financial Manager, Ecology

# **Enclosure A**

## **Site Plans**









5/29/2018 <100 <0.20 <1.0 <0.20 <0.60 <1.1 <1.0 <0.0097 <0.20 <0.20

9/27/2018 <100 <0.20 <1.0 <0.20 <0.60

12/19/2018 <100 <1.0 <1.0 <1.0 <2.0

3/8/2019 <100 <1.0 <1.0 <1.0 <2.0

FMW-4

5/29/2018 <100 <0.20 <1.0 <0.20 <0.60 <1.1 <1.0 <0.0097 <0.20 <0.20

9/27/2018 <100 <0.20 <1.0 <0.20 <0.60

12/19/2018 <100 <1.0 <1.0 <1.0 <2.0

3/8/2019 <100 <1.0 <1.0 <1.0 <2.0

FMW-5

5/29/2018 <100 <0.20 <1.0 <0.20 <0.60 <1.1 <1.0 <0.0097 <0.20 <0.20

9/27/2018 <100 <0.20 <1.0 <0.20 <0.60

12/19/2018 <100 <1.0 <1.0 <1.0 <2.0

3/8/2019 <100 <1.0 <1.0 <1.0 <2.0

**LEGEND**

- MONITORING WELL (FARALLON, 2017)
  - RECOVERY WELL (CHEN-NORTHERN INC., 1992)
  - MONITORING WELL HISTORICAL (CHEN-NORTHERN INC., 1991)
  - RECOVERY WELL HISTORICAL (CHEN-NORTHERN INC., 1992)
  - BORING (FARALLON, 2015)
  - BORING (CHEN-NORTHERN INC., 1991)
  - GROUNDWATER TRENCH
  - APPROXIMATE PROPERTY BOUNDARY
  - 220901-22405 YAKIMA COUNTY PARCEL IDENTIFIER
- GROUNDWATER RESULTS REPORTED AS:  
DATE (GRO|B|T|E|X|Pb-T|Pb-D|EDB|EDC|MTBE)  
CONCENTRATIONS SHOWN IN MICROGRAMS PER LITER

**BOLD** = RESULTS DENOTE CONCENTRATIONS EXCEEDING THE MODEL TOXICS CONTROL ACT (MTOA) CLEANUP LEVEL  
 < = DENOTES ANALYTE NOT DETECTED AT OR EXCEEDING THE REPORTING LIMIT LISTED  
 - = NOT ANALYZED  
 GRO = TPH AS GASOLINE-RANGE ORGANICS  
 B = BENZENE  
 T = ETHYL BENZENE  
 E = TOLUENE  
 X = XYLENES  
 Pb-T = TOTAL LEAD  
 Pb-D = DISSOLVED LEAD  
 EDB = 1,2-DIBROMETHANE  
 EDC = 1,2-DICHLOROETHANE  
 MTBE = METHYL TERTIARY-BUTYL ETHER

NOTES:  
 1. ALL LOCATIONS ARE APPROXIMATE.  
 2. FIGURES WERE PRODUCED IN COLOR.  
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**FIGURE 2**  
 SITE PLAN SHOWING GROUNDWATER ANALYTICAL RESULTS  
 KELLOGGS KORNER  
 MIDVALE AND EMERALD ROADS  
 SUNNYSIDE, WASHINGTON  
 FARALLON PN: 1432-001



