



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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January 27, 2010

Richard Leider
Trinity Real Estate
1218 Third Avenue, Suite 2300
Seattle, Washington 98101

Re: No Further Action at a Property associated with a Site: Midway Crossing - Kent

- **Property Address:** 23319 Pacific Highway South, Kent, Washington 98032
- **Facility/Site No.:** 59998561
- **VCP Project No.:** NW 1923

Dear Mr. Leider:

The Washington State Department of Ecology (Ecology or we) received your request for an opinion on your independent cleanup of a property associated with the Midway Crossing - Kent 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.

Issues Presented and Opinion

1. Is further remedial action necessary at the property to clean up contamination associated with the Site?

NO. Ecology has determined that no further remedial action is necessary at the property to clean up contamination associated with the Site.

This opinion is dependent on the continued performance and effectiveness of the post-cleanup controls and monitoring specified below.

2. Is further remedial action still necessary elsewhere at the Site?

YES. Ecology has determined that further remedial action is still necessary elsewhere 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 Property and the Site

This opinion applies only to the property and the Site described below. This opinion does not apply to any other sites that may affect the property. Any such sites, if known, are identified separately below.

1. Description of the Property.

The property includes the following tax parcels in King County, which was affected by the Site and addressed by your cleanup:

- 2500600610
- 2500600611

Enclosure A includes a legal description of the property. **Enclosure B** includes a diagram of the Site that illustrates the location of the property within the Site.

2. Description of the Site.

The Site is defined by the nature and extent of contamination associated with the following releases:

- Total Petroleum Hydrocarbons as gasoline, diesel, oil, benzene, xylenes, and methyl tertiary butyl ether in the soil.

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

3. Identification of Other Sites that may affect the Property.

Please note a parcel of real property can be affected by multiple sites. At this time, we have no information that the property is affected by other sites.

Basis for the Opinion

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

1. Report of Geoenvironmental Services—Remedial Excavation—Midway Crossing Retail Center – King County, Washington, by Geo-engineers and dated February 16, 1993.

2. Draft Report–Limited Phase II Environmental Site Assessment–Midway Crossing Shopping Center – 23201–23325 Pacific Highway South, Kent, Washington, by URS and dated December 4, 2006.
3. Report–Supplemental Phase II Environmental Site Assessment–Midway Crossing Shopping Center – 23201 – 23325 Pacific Highway South, Kent, Washington, by URS and dated April 20, 2007.
4. Additional Phase II Site Assessment–Midway Crossing Shopping Center – 23201–23325 Pacific Highway South, Kent, Washington, by URS and dated October 5, 2007.
5. Subsurface Investigation Report–Midway Crossing Retail Center – 23201–23325 Pacific Highway South, Kent, Washington by SLR and dated April 4, 2008.
6. Additional Investigation Report–Midway Crossing Retail Center – 23319 Pacific Highway South, Kent, Washington, by SLR and dated October 30, 2008.
7. Request for Authorization to Implement Institutional Controls–Midway Crossing Retail Center – 23319 Pacific Highway South, Kent, Washington, by SLR and dated December 10, 2008.

Those documents are kept in Ecology’s Northwest Regional Office (NWRO) Central Files and are available 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

1. Cleanup of the Property located within the Site.

Ecology has concluded that **no further remedial action** is necessary at the property to clean up contamination associated with the Site. That conclusion is based on the following analysis:

a. Characterization of the Site.

Ecology has determined your characterization of the Site is sufficient to establish cleanup standards for the Site and select a cleanup for the property. The Site is described above and in **Enclosure B**.

In 1992, three sumps, a hydraulic hoist, and piping were excavated from the site along with 285 tons of contaminated soil. Confirmational sampling of the soil had no exceedances of MTCA Method A standards for petroleum hydrocarbons except for one sample which had an exceedance of benzene.

The MTCA Method A values used in 1992 was:

TPH Gasoline – 100 mg/Kg
TPH Diesel – 200 mg/Kg
TPH Heavy oil – 200 mg/Kg
Benzene – 0.5 mg/Kg
Toluene – 40 mg/Kg
Ethylbenzene – 20 mg/Kg
Xylenes – 20 mg/Kg]]

In November 2006, two soil borings were drilled to a depth of 10 and 14.5 feet. One soil sample was collected from each boring. Exceedances of methylene chloride (both borings) and naphthalenes (one boring) were found. No groundwater was encountered in either boring.

In November 2007, six additional borings were drilled to depths of 32 to 50 feet. Two to three soil samples from each boring were analyzed for petroleum hydrocarbons. The following exceedances of MTCA Method A standards were found: boring B-6 – gasoline at 17.5 and 35 feet, boring B-9 – gasoline and methylene chloride at 25 feet, boring B-10 – gasoline and total xylenes at 18 feet, and boring B-11 – gasoline, total xylenes, ethylbenzene, and methyl tertiary butyl ether at 15 feet. A groundwater well was bored to 47 feet but remained dry in two subsequent sampling rounds.

In January 2008, three additional borings were drilled; two on property and one off property, to 26 to 30 feet. One to two soil samples from each boring were analyzed for gasoline and volatile organic compounds. Both on – and off – property borings had exceedances of MTCA Method A standards for gasoline.

In October 2008, two additional borings were drilled; one on the property and one off the property. The borings were drilled to 30 to 33 feet, with soil samples collected every 2.5 to 5 feet. No exceedances of MTCA Method A standards for petroleum hydrocarbons was found in any of the samples from the on – property

soil boring. Gasoline contamination was found at 25 feet in the off – property soil boring, but the level was below the MTCA Method B calculated site-specific standard for petroleum hydrocarbons for direct contact exposure pathway in soil.

b. Establishment of cleanup standards for the Site.

i. Substance-specific standards.

Cleanup Levels:

The land is designated for commercial use and the selected MTCA Methods A & B cleanup levels used at this site for soils are protective:

Petroleum hydrocarbons – 3,047 mg/Kg (Method B – Direct Contact)

Benzene – 30 µg/Kg (Method A)

Xylene – 9,000 µg/Kg (Method A)

Methyl tertiary butyl ether – 100 µg/Kg (Method A)

Methylene chloride – 20 µg/Kg (Method A)

Naphthalenes – 5,000 µg/Kg (Method A)

In January 2008, three borings were drilled, two on property and one off property at 26 to 30 feet below ground surface (BGS). The on – property soil sample with the highest gasoline concentration (2,900 mg/Kg) was analyzed for volatile organic hydrocarbons and naphthalenes. The results of the analysis were used to calculate a site – specific remediation level for total petroleum hydrocarbons in soil (3,047 mg/Kg) (reference 5 above) according to MTCA Method B. The cleanup level was based on the risk of direct human contact, due to the depth to groundwater (47 feet) and the depth to the contaminated soil (14 – 28 feet).

Points of Compliance:

A standard horizontal point of compliance, the property boundary, was used for soil contamination.

A standard vertical point of compliance, fifteen feet, for soils was established in the soils throughout the site from the ground surface to fifteen feet below the ground surface. Fifteen feet is protective for direct contact with the contaminated soil.

The selected remedy of excavation of most of the contaminated soil meets the minimum requirements for cleanup actions by providing a permanent solution to the extent practicable, an immediate restoration time frame,

provides for confirmation monitoring, and protects human health and the environment.

c. Selection of cleanup for the Property.

Ecology has determined the cleanup you selected for the property meets the substantive requirements of MTCA. The cleanup meets the minimum cleanup requirements and does not exacerbate conditions or preclude reasonable cleanup alternatives elsewhere at the Site.

Because the contamination was limited to petroleum hydrocarbons in the property soil, the remediation method chosen was excavation and off – property treatment of the contaminated soil. In 2007, it was determined that a small volume of contaminated soil had not been removed. Due to the depth of the contaminated soil (14 to 28 feet BGS), and the depth to groundwater (greater than 47 feet), a disproportionate cost analysis showed that it was not cost effective to excavate the residual soil, and that use of an asphalt cap and/or dense soils above the residual contamination and institutional controls would achieve an equivalent level of protection of human health and the environment.

In 1992, an independent remediation using MTCA Method A soil standards was done. Three sumps, a hydraulic hoist, and piping were excavated from the Site along with 285 tons of contaminated soil. The soil was taken off site and disposed of at a regional landfill. Confirmational sampling of the soil had no exceedances of MTCA Method A standards for petroleum hydrocarbons except for one sample which had an exceedance of benzene.

However, subsequent soil investigations in 2007 and 2008 showed that two areas of contaminated soil remained on the property above the MTCA Methods A unrestricted land use and B standards for direct contact for petroleum hydrocarbons. Access to this soil will be prevented by capping the soil with asphalt and by placing an environmental covenant on the property deed.

The residual contamination that is deed restricted is located at 14 to 28 feet BGS and it is contained by the asphalt cap used to pave a portion of the property (partial asphalt cap) and by dense subsurface materials; this ensures the continued protection of future workers (redevelopment and utility upgrades) via the direct contact exposure pathways. Because of the depth of the remaining soil contamination 14 to 28 feet BGS, no annual inspection or Operation and Maintenance plan is needed for the partial asphalt cap. The environmental covenant will prohibit activity on the property which may result in the release or

exposure to the environment of the contamination that remains on the property or result in a new exposure pathway.

The presence of a partial asphalt cover and the environmental covenant on the Property will not preclude further remedial actions at the Site.

d. Cleanup of the Property.

We have determined the cleanup you performed meets the applicable Site cleanup standards within the property. This determination is dependent on the continued performance and effectiveness of the post-cleanup controls specified below.

In 1992, an independent remediation using MTCA Method A soil standards was done. Three sumps and a hydraulic hoist were excavated from the site along with 285 tons of contaminated soil. The soil was taken offsite to a regional landfill. Confirmational sampling of the soil had no exceedances of MTCA Method A standards for petroleum hydrocarbons except for one sample which had a benzene exceedance. No groundwater was encountered in the excavation to a depth of 7 1/2 feet.

Either an asphalt cap or dense subsurface materials, or a combination of both, will remain over the area of contaminated soil located on the property. The cap or dense materials must prevent an exposure route to the contaminated soil that would impact human health.

An environmental covenant has been placed on the property deed to prohibit activity on the property which may interfere with the remedial action, result in the release or exposure to the environment of the contamination that remains on the property or result in a new exposure pathway.

2. Cleanup of the Site as a whole.

Ecology has concluded that **further remedial action** under MTCA is still necessary elsewhere at the Site. In other words, while your cleanup constitutes the final action for the property, it constitutes only an **“interim action”** for the Site as a whole.

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 property:

- Restriction on actions that will result in the release or exposure to the environment of contaminated subsurface soils or result in a new exposure pathway.

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

- 2500600610
- 2500600611

Ecology approved the recorded Covenant. A copy of the Covenant is included in Enclosure C.

2. Operation and maintenance of engineered controls.

Engineered controls prevent or limit movement of, or exposure to, hazardous substances. The following engineered control is necessary at the property:

- Asphalt cap on the surface above the volume of contaminated soil, or dense subsurface materials above the volume of contaminated soil, or a combination of both.

3. Performance of confirmational monitoring.

Due to the depth of contamination, confirmational monitoring is not necessary at the property. Ecology does not require annual inspection or Operation and Maintenance plan for the partial asphalt cap.

Periodic Review of Post-Cleanup Conditions

Ecology will conduct periodic reviews of post-cleanup conditions at the property to ensure that they remain protective of human health and the environment. These reviews will occur no less frequent than every five years. If Ecology determines, based on a periodic review, that further remedial action is necessary at the property, then Ecology will withdraw this opinion.

Listing of the Site

Based on this opinion, Ecology will update the status of remedial action at the Site on our database of hazardous waste sites. However, because further remedial action is still necessary elsewhere at the Site, we will not remove the Site from our lists of hazardous waste sites. Furthermore, the property will remain listed as part of the Site because the cleanup of the property does not change the boundaries of the Site.

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**:

- Change the boundaries of the Site.
- 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

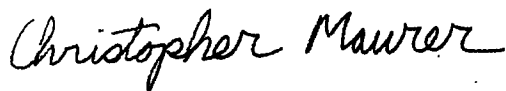
Thank you for cleaning up your property under the Voluntary Cleanup Program (VCP). This opinion terminates the VCP Agreement governing this project (NW 1923). If you should decide

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to clean up the remainder of the Site, please do not hesitate to reapply and request additional services under the VCP.

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 360-407-7223 or by e-mail at cmau461@ecy.wa.gov or christopher.maurer@ecy.wa.gov.

Sincerely,



Christopher Maurer, P.E.
HQ - Toxics Cleanup Program

Enclosures (3): A – Legal Description of the Property
 B – Description and Diagrams of the Site (including the Property)
 C – Environmental Covenant for Institutional Controls

cc: Mike Staton, SLR
 Dolores Mitchell, Ecology