



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

July 5, 2016

Mr. Keith Wilkins
Assistant City Administrator
City of Pensacola, Florida
222 West Main Street
Pensacola, FL 32502

SUBJECT: American Creosote Works Superfund Site
Pensacola, Florida
Status Letter

Dear Mr. Wilkins:

I am writing in response to your request for a status letter for the American Creosote Works Superfund Site (Site) located in Pensacola, Florida and the City's interest in acquiring the Site for reuse and redevelopment purposes that would benefit the Pensacola community. My response is based upon the facts presently known to the United States Environmental Protection Agency and is provided solely for informational purposes.

This letter also memorializes the Prospective Purchaser Inquiry conference call discussions that we had on April 28, 2016. In that call, we addressed four (4) issues critical to the successful redevelopment of a Superfund site:

- (1) The current status of the EPA's cleanup and the EPA's future anticipated actions;
- (2) Obvious incompatibilities between the proposed reuse of the Site and the EPA's cleanup and existing or potential institutional controls (See below for related information);
- (3) The Bona Fide Prospective Purchaser (also referred to as BFPP) provisions of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9604, as amended, and other applicable federal landowner liability protections; and
- (4) CERCLA Section 107(l) liens or CERCLA Section 107(r) windfall liens that may apply to the Site.

Superfund Law

In response to the growing concern over health and environmental risks posed by hazardous waste sites, Congress passed CERCLA, commonly referred to as the federal "Superfund" law. The Superfund law required the EPA to establish the Superfund program to address these sites. Contaminated sites are discovered by citizens, businesses, and local, state, or federal agencies. After a potential hazardous waste site is reported to the EPA, the available information is recorded in the EPA's Superfund Site

Information database which is currently available at <http://cumulis.epa.gov/supercpad/cursites/srchsites.cfm>. (Type in [Name of Site] in the Site name field and click Search which will provide the link for the [Name of Site] Superfund Site web page.)

The EPA initially screens a potentially hazardous waste site to determine what type of action, if any, is necessary. The Superfund program may then perform a Preliminary Assessment and possibly a Site Inspection to determine whether contamination at the property is likely to require a federal cleanup response and whether the site should be added to the list of high priority hazardous waste sites known as the National Priorities List (NPL).

History and Status of Site

The approximately 18-acre Site is a former wood-treating facility in Pensacola, Florida, located approximately 1/4 mile north of the confluence of Bayou Chico and Pensacola Bay. American Creosote Works (ACW), a wood-treating company, operated at the Site from 1902 until 1981, when it filed for bankruptcy. Prior to 1950, ACW used creosote exclusively to treat poles. Use of pentachlorophenol (PCP) started in 1950 and steadily increased in later years of operation. As a result, dioxin, a common impurity in commercial grade PCP, is present at the Site. Surface impoundments used for disposal of process wastes often discharged or overflowed through a spillway, into the streets and storm drains, and into Bayou Chico and Pensacola Bay. In later years, liquid wastes were collected and spread onto the ground in designated spill areas on the Site. In 1985, EPA completed a Remedial Investigation and Feasibility Study (RI/FS) for the Site. Major contaminants found in the soil, sediment, and groundwater include volatile organic compounds (VOCs), polycyclic aromatic hydrocarbons (PAHs), PCP, and dioxin from the wood-treating processes.

In 1985, EPA issued a Record of Decision (ROD) for OU1, which originally addressed surface soil contamination from 0 to 3 feet. This ROD, which called for construction of an on-site landfill, was not concurred upon by the State of Florida. EPA conducted additional studies and issued a second soil cleanup ROD in 1989. This ROD described a remedy involving biological treatment to address contamination in on-site surface soils. During the remedial design phase, treatability studies revealed that biological treatment would not adequately address the contaminants in the soil, and the design was halted. However, EPA continued implementing the other long-term response activities selected in the 1989 ROD, which included demolition of old process buildings, plugging and abandoning one private irrigation well, and removing debris.

In 1999, the 1989 ROD was amended to address the contamination in surface and subsurface soils, sediments, and solidified sludge. This remedy required, among other actions, excavating contaminated soils and sediments that had migrated beyond the boundary of ACW's property and the Property you are interested in selling. This excavated soil was consolidated on the ACW parcel. Following completion of the excavation work, clean backfill was placed in the excavated areas and confirmation samples were collected. This work is documented in the "Close-Out Report for Waste Consolidation Activities Conducted at the American Creosote Works Superfund Site, Pensacola, FL" (January 2004).

In 2003, when EPA conducted the excavation of contamination in the surrounding neighborhood, there were areas underneath existing buildings which were excluded from the response. If the building's foundation is still present it is very difficult to excavate underneath. Therefore, it is possible that soil

contamination remains under some buildings, including on the Property. It could be possible that foundations and parking lots could act as a form of engineering control on those portions of the property.

A ROD addressing groundwater contamination at the Site was issued in 1994. The remedy consists of two phases. The first phase, which began in 1998, requires the recovery of dense non-aqueous phase liquids (DNAPLs). Phase I began in 1998. The Mobile District Corps of Engineers is currently operating the DNAPL recovery system, which has recovered and recycled over 160,000 gallons of DNAPL to date. Five new DNAPL extraction wells were installed in November 2009 and the DNAPL recovery rate approximately doubled with the new wells. The DNAPL recovery system was shut down in 2011 due to the end of the 10 year Long term Remedial Action period. The State of Florida did not want to take over operation of the system so it was shut down.

EPA installed groundwater monitoring wells in 10 locations in 2007 to characterize the extent of groundwater contamination. Surface water, pore water, and sediments were collected and work was done to determine the extent of the DNAPL located beneath Cypress Street and the Pensacola Yacht Club property. The groundwater is sampled on an annual basis by EPA. The plume appears to be relatively stable. A new remedy for the DNAPL and dissolved plume will be included in the site wide ROD.

In January 2010, EPA performed another offsite soil excavation in the area called the Southeast Ditch. The area excavated is bordered by Pine Street, Cypress Street and a property owner's driveway. All excavated soil was brought back to the ACW Site. The Southeast Ditch area was backfilled with clean fill.

Operable Unit 3 (OU3) at the Site was designated in 2007 to address dioxin in light of new risk-based Florida Department of Environmental Protection (FDEP) regulations regarding the cleanup of hazardous substances. A dioxin sampling event was performed in December 2007 in order to delineate the contamination in the area. The information generated was used to prepare a Baseline Risk Assessment (BRA) in January 2009 and an RI in April 2009. The dioxin sampling event was updated in February 2010 and included PAH samples in the offsite area. A site wide Feasibility report was issued in March 2014 including all this information.

There are activities being performed concurrently for all three OUs. All three OUs may be combined into a site wide remedy decision that is projected to be completed by Fall 2016. The site wide ROD would incorporate OU1, OU2 and OU3. After review by the state and public notice, a ROD will be issued. After the ROD is issued, it will take approximately one year of remedial design to calculate exact soil volumes and sample more soil locations. The remedial action would start approximately December 2017.

Pensacola Yacht Club is currently being cleaned up. The impacted soil in the ditch is being excavated and immediately back filled. The impacted soil will be transported to the ACW site. The cleanup of the entire ditch should be finished by early July 2016. Once the cleanup of the ditch is completed the fence will be taken down. The impacted soil will have a cap of clean clay put over it after the cleanup is finished.

Proposed Reuse of the Site

You indicated that the City would like to use the ACW property as a park or other recreation facility. This could likely take the form of more passive activity uses such as walking/running trails, open/green space, neighborhood playground areas and athletic fields. Depending on the integrity of the Site cap and the available funding for the City, the construction of a one story building for indoor recreation could be a possible use of a portion of the property as well. If that is likely to occur, the City expressed interest in coordinating the remedial capping with the City's reuse construction plans and activities. If the City does construct a structure for indoor recreation, the City should coordinate the development of that area so that it does not exacerbate any contamination on the Site.

However, the EPA cannot approve any specific use of the Site. It is your sole responsibility to ensure that the proposed use of the Site does not interfere with or impede the cleanup at the Site or interfere with any institutional controls identified now or in the future or further contribute to contamination at the Site. You must consult with your own environmental professionals to obtain advice on the compatibility of the proposed reuse with the EPA's cleanup.

Bona Fide Prospective Purchaser

On January 11, 2002, the Superfund law was amended by Congress to encourage prospective purchasers to buy and redevelop Superfund property. Prior to this amendment, purchasers of Superfund sites were potentially liable for the cleanup of the contaminated property upon purchasing the property. The amendment allows purchasers to buy Superfund sites and avoid potential liability by qualifying as a "bona fide prospective purchaser." A prospective purchaser must achieve and maintain bona fide prospective purchaser status for as long as the potential Superfund liability exists. The bona fide prospective purchaser provision states that a person meeting the criteria of Section 101(40) of the Superfund law is protected from Superfund liability; however, to the extent that the EPA's cleanup efforts increase the fair market value of the property, the EPA may have a windfall lien on the property.

To qualify as a bona fide prospective purchaser a person must meet certain threshold criteria and satisfy certain continuing obligations found in Section 101(40) of the Superfund law. Enclosed for your convenience is a copy of the March 6, 2003, "Interim Guidance Regarding Criteria Landowners Must Meet in Order to Qualify for Bona Fide Prospective Purchaser, Contiguous Property Owner, or Innocent Landowner Limitations on CERCLA Liability" (Common Elements Guidance). The bona fide prospective purchaser provision is designed to be self-implementing. This means that the purchasers are responsible for achieving and maintaining bona fide prospective purchaser status. You and your legal counsel will need to assess whether you satisfy each of the eight (8) statutory requirements necessary to achieve bona fide prospective purchaser status and continue to meet the applicable conditions.

Among other requirements, a bona fide prospective purchaser must take "reasonable steps" with respect to stopping continuing releases, preventing threatened future releases, and preventing or limiting human, environmental, or natural resources exposure to earlier releases. You have asked what actions you must take, as the prospective owner of the property, to satisfy the "reasonable steps" criterion.

Based on the information the EPA has evaluated to date, the EPA believes that, for an owner of the property, the following would be appropriate reasonable steps with respect to the existing hazardous substance contamination found at the property:

Examples:

1. Prohibit public or private wells to be installed on the property for irrigation or consumption purposes.
2. Refrain from digging, disturbing soil, or constructing non-mobile structures or parking lots, in the areas in red on the map that is attached.
3. Call EPA Region 4's Emergency Response Center hotline at 800-424-8802 to report the discovery or release of any hazardous substances.
4. Implement and record institutional controls in the deed pursuant to Section 101(40)(F) of the Superfund law.

If you exacerbate contaminated conditions at the Site or cause a release of hazardous substances due to your construction or operations, you may lose bona fide prospective purchaser status and all resulting liability protections.

Superfund Lien

The EPA has not perfected a Superfund lien on this Site. Pursuant to Section 107(l) of the Superfund law, as well as EPA policy and guidance, the EPA will generally not perfect a Superfund lien on property owned by a non-liable party.

Windfall Lien

The EPA has not perfected a windfall lien on this Site. On July 16, 2003, the EPA issued a policy entitled the "EPA Interim Enforcement Discretion Policy Concerning 'Windfall Liens' Under Section 107(r) of CERCLA" (Windfall Lien Policy). The Windfall Lien Policy provides that the EPA, in an exercise of its enforcement discretion, will generally not perfect a Section 107(r) windfall lien when the conditions and criteria described in the Windfall Lien Policy for not perfecting a windfall lien are met. I am enclosing a copy of the Windfall Lien Policy for your review.

State Actions

The EPA is only providing you with information regarding the EPA's actions at the Site and the federal BFPP law. You should contact Kelsey Helton, FDEP, at (850) 245-8969, for more information about potential state actions and liability issues.

Conclusion

The EPA remains dedicated to supporting the revitalization of contaminated properties and hopes this information is useful to you. This letter does not provide a release from Superfund liability, or from other liability or obligations under any other law. If you have any questions please do not hesitate to call me at (404) 562-9688 or Site Attorney, Rudy Tanasijevich, at (404) 562-9557.

Sincerely,

A handwritten signature in cursive script that reads "Pete Thorpe". The signature is written in black ink and is followed by a long horizontal line extending to the right.

Pete Thorpe
Remedial Project Manager

Enclosures

cc: Kelsey Helton
Regional Counsel Land Revitalization Contact