



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

June 6, 2023

Electronic Transmittal

Bo Prock, Project Manager
PI Development, LLC
6272 E Pacific Coast Highway, Ste E
Long Beach, CA 90803

RE: 17969 E. Railroad Street, City of Industry, CA

Dear Bo Prock:

Thank you for contacting the U.S. Environmental Protection Agency (EPA or the Agency) on May 17, 2023, about your plans concerning the property referenced above ("Property"). In your inquiry, you described your interest in acquiring the Property for a proposed warehouse redevelopment and requested that we provide you with a Superfund comfort/status letter.

The purposes of this comfort/status letter are to provide you with information that may be relevant to the potential Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) liability concerns you have identified at the Property and summarize the relevant information available to EPA about the San Gabriel Valley Superfund Site Area 4, Puente Valley Operable Unit ("Site") as of the date of this letter. We hope this information will enable you to make informed decisions as you move forward with your plans regarding the Property.

Under CERCLA (commonly referred to as Superfund),¹ the Agency's mission is to protect human health and the environment from risks posed by exposure to contaminated or potentially contaminated land, water, and other media. A Superfund cleanup can help return these properties to productive reuse.

Property Status

Interested parties can find information on sites that are, or potentially are, contaminated and may warrant action under Superfund, including site-specific documents and fact sheets, in the Superfund Enterprise Management System (SEMS).² EPA's website containing information on the San Gabriel Valley Superfund Site Area 4, Puente Valley Operable Unit is:

<https://cumulis.epa.gov/supercpad/CurSites/csitinfo.cfm?id=0902091&msspp=med>

¹ 42 U.S.C. §§ 9601, *et seq.*

² SEMS is available at: <https://cumulis.epa.gov/supercpad/cursites/srchsites.cfm>.

The Property is situated within the San Gabriel Valley Superfund Site Area 4, Puente Valley Operable Unit. This Site is located in SEMS and is on the National Priorities List (NPL).

For the reasons stated below, we are addressing the Site under Superfund remedial authority.

History and Status of the Site

The Site (San Gabriel Valley Area 4, Puente Valley Operable Unit) is an area of contaminated groundwater that runs along San Jose Creek in La Puente. This site is one of four Superfund sites located in the 170-square-mile San Gabriel Valley. The EPA listed several sections of the San Gabriel Valley as Superfund sites in 1984. More than 30 square miles of groundwater under the Valley may be contaminated. The contaminated groundwater associated with all the San Gabriel Valley sites lies under significant portions of Alhambra, Irwindale, La Puente, Rosemead, Azusa, Baldwin Park, City of Industry, El Monte, South El Monte, West Covina, and other areas of the San Gabriel Valley. There are 45 water suppliers in the Valley that use the San Gabriel Basin groundwater aquifer to provide 90 percent of the drinking water for over one million people.

Current Site conditions involve the development of three independent groundwater extraction and treatment systems to address the interim groundwater remedy. These systems are in various stages of development and operation. Groundwater monitoring programs have been in place during design and construction in the shallow, intermediate and deep groundwater zones. A final remedy has yet to be developed for the Site.

History and Status of the Property

The Property has been owned and operated by Reuland Electric Company and used for electric motor manufacturing operations from 1963 to present. According to historical records, the Property formerly utilized dip tanks, solvent parts washers, and paint spray booths. These historical manufacturing operations commonly used chlorinated solvents on a day-to-day basis. The Property owner/operator was identified as a Potentially Responsible Party (PRP) and contributor to groundwater contamination within the Site. EPA and Reuland resolved Reuland's obligations for the interim regional remedy via a 2008 Consent Decree. Property remediation to remove chlorinated solvents included soil vapor extraction. On June 8, 2005, the Los Angeles Regional Water Quality Control Board (LARWQCB) issued the Property a "No Further Requirements for Soil Only" letter. The Property presently includes 11 groundwater monitoring wells, but no groundwater remediation was performed at the Property. A certain number of on-site wells must remain viable for potential use by EPA in the future. There are no CERCLA land use restrictions and no CERCLA deed restrictions for the Property.

Reuse of the Property

Based on the information you provided, EPA understands that you intend to acquire the 9.66-acre site for a proposed 207,000 square foot warehouse redevelopment at the Property. We also understand the development will involve demolition of existing structures along with clearing and leveling land surfaces. These actions will impact and likely destroy existing groundwater wells at the Property that might have been used to monitor shallow groundwater within the Site.

As part of the redevelopment, all currently existing groundwater monitoring wells will likely be destroyed to accommodate the new development, and it has been proposed that five new groundwater wells would be installed to replace those destroyed. Please note that, to ensure the remedy remains protective of human health and the environment, any development must be compatible with the EPA cleanup actions and any future institutional controls designed to protect the remedy and prevent any unacceptable exposure to residual contamination. As the potential owner of the Property, you should not conduct any activities or construct any structures that would interfere with the EPA's investigation or cleanup of the Site. As of the date of this letter, we have not identified any obvious incompatibility between your proposed use of the Property as you have described it to us and EPA's selected cleanup option. As your plans develop further, please continue to discuss the development with us. We understand that you plan to install a vapor intrusion mitigation system (VIMS) for the future building and any grading or movement of soil would be conducted pursuant to an approved Soil Management Plan (SMP) that would be overseen by the LARWQCB.

CERCLA's Bona Fide Prospective Purchaser Liability Protection

EPA is providing you with information regarding the bona fide prospective purchaser (BFPP) provision of CERCLA. Congress amended CERCLA in 2002 to exempt from CERCLA liability certain parties who buy contaminated or potentially contaminated properties if they qualify as BFPPs. The BFPP provision provides that a person who meets the criteria of CERCLA §§ 101(40) and 107(r)(1), and who purchases the property after January 11, 2002, will not be liable as an owner or operator under CERCLA.

A key advantage of the BFPP provision is that it is self-implementing; therefore, the Agency is not involved in determining whether a party qualifies for BFPP status. A party, on its own, can achieve and maintain status as a BFPP, which provides statutory protection from CERCLA liability, without entering into an agreement with EPA, so long as that party meets the threshold criteria and continuing obligations identified in the statute.³

Based upon your representation of your situation, the BFPP provision may apply. Note that a court, rather than EPA, ultimately determines whether a landowner has met the criteria for BFPP status. Thus, EPA recommends that you consult with your legal counsel to assess whether you satisfy each of the statutory requirements necessary to achieve and maintain BFPP status.

Reasonable Steps

Among other criteria outlined in CERCLA, a BFPP must take "reasonable steps" to stop continuing releases, prevent threatened future releases, and prevent or limit human, environmental, or natural resources exposure to any previously released hazardous substances as

³ See EPA's *Enforcement Discretion Guidance Regarding Statutory Criteria for Those Who May Qualify as CERCLA Bona Fide Prospective Purchasers, Contiguous Property Owners, or Innocent Landowners* ("Common Elements Guidance") (July 29, 2019) available on the Agency's website at <https://www.epa.gov/enforcement/common-elements-guidance>.

required by CERCLA § 101(40). This requirement is explored further in the Common Elements Guidance.⁴

By making the BFPP Exemption subject to the obligation to take “reasonable steps,” EPA believes Congress intended to protect certain landowners from CERCLA liability while at the same time recognizing that these landowners should act reasonably, in conjunction with other authorized parties, in protecting human health and the environment. As noted above, the Agency has identified shallow groundwater monitoring at the Site and has identified environmental concerns. Based on the information we have evaluated; we believe that the following may be reasonable steps related to the hazardous substance contamination found at the Site:

1. Installation of five replacement wells at the Property, with a concurrent sampling of groundwater to provide monitoring information within the Site.
2. Provide reasonable access to EPA, the State, and any PRPs performing work at the Site, to the Property for performing future cleanup, groundwater monitoring, five-year reviews, and for monitoring compliance with any future institutional controls.

Any reasonable steps suggested by EPA are based on the nature and extent of contamination currently known to the Agency and are provided as a guide to help you as you seek to reuse the Property. Because a final determination about which steps are reasonable would be made by a court rather than EPA, and because additional reasonable steps may later be necessary based on Site conditions, this list of reasonable steps is not exhaustive. You should continue to identify reasonable steps based on your observation and judgment and take appropriate action to implement any reasonable steps whether or not EPA regional staff have identified any such steps.⁵

Liens

Superfund Lien Pursuant to CERCLA § 107(l)

No Superfund lien has arisen against the Site or Property pursuant to CERCLA § 107(l).

Windfall Lien Pursuant to CERCLA § 107(r)

Although Congress provided liability protection under CERCLA for BFPPs to encourage the purchase and reuse of contaminated properties, the property they acquire may be subject to a windfall lien pursuant to CERCLA § 107(r) if there are unrecovered response costs incurred by the United States and the response action increases the fair market value of the property. Unlike a CERCLA § 107(l) lien (aka “Superfund lien”), a windfall lien is not a lien for all the Agency’s

⁴ *Id.*

⁵ CERCLA § 101(40)(B)(iv) provides that “The person exercises appropriate care with respect to hazardous substances found at the facility by taking reasonable steps to (i) stop any continuing release; (ii) prevent any threatened future releases; and (iii) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substance.”

unrecovered response costs. The windfall lien is limited to the lesser of the Agency's unrecovered response costs or the increase in fair market value attributable to EPA's cleanup.⁶

EPA has not filed notice of a windfall lien under CERCLA § 107(r) on this Property. In accordance with EPA policy, the Agency, generally, will not file notice of a windfall lien where a bona fide prospective purchaser acquires the property at fair market value after cleanup.

State Actions

We can only provide you with information about federal Superfund actions at the Site or Property, federal law and regulations, and EPA guidance. For information about potential state actions and liability issues, including any requirements regarding redevelopment, such as the VIMS or SMP, please contact the Los Angeles Regional Water Quality Control Board.

Conclusion

EPA remains dedicated to facilitating the cleanup and beneficial reuse of contaminated properties and hopes the information contained in this letter is useful to you. You may find it helpful to consult with your own environmental professional, legal counsel, and your state, tribal, or local environmental protection agency before taking any action to acquire, clean up, or redevelop the Property. These consultations may help you obtain a greater level of comfort about the compatibility of the proposed use and ensure compliance with any applicable federal, state, local, and/or tribal laws or requirements. If you have any additional questions or wish to discuss this information further, please feel free to contact Raymond Chavira, Remedial Project Manager at (415) 947-4218, or have your attorney contact Michele Benson in the Office of Regional Counsel at (415) 972-3918.

Sincerely,

Dana Barton
Assistant Director
Superfund and Emergency Management Division
US EPA Region 9

cc: Elisabeth Freed, OSRE, USEPA
Arthur Heath, LARWQCB
Mark Cousineau, HMC

⁶ For more information, please refer to the Agency's *Interim Enforcement Discretion Policy Concerning "Windfall Liens" Under Section 107(r) of CERCLA July 16, 2003* ("Windfall Lien Policy") available at <https://www.epa.gov/enforcement/interim-guidance-enforcement-discretion-concerning-windfall-liens-cercla-section-107r>].

