



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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ENFORCEMENT CONFIDENTIAL

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MEMORANDUM

DATE: April 7, 2016

SUBJ: Decision Not to Pursue Cost Recovery at the Former Chapman Valve Site, Springfield, Massachusetts (01HD)

FROM: Tina Hennessy *Tina Hennessy*
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THRU: Edward J. Bazen, Chief *Ed Bazen*
Emergency Response and Removal Section 1
Carol Tucker, Chief *CT*
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TO: Bryan Olson, Director
Office of Site Remediation and Restoration

This memorandum is to document the decision not to pursue cost recovery associated with the Former Chapman Valve Site ("Site") located in Springfield, Massachusetts. This Site is not listed on the National Priorities List. The Environmental Protection Agency ("EPA") conducted a Fund-Lead removal action at the Site at a cost of \$656,002.84 from August 17, 2015 through November 4, 2015. The statute of limitations ("SOL") for this cost recovery action expires November 4, 2018.

This memorandum conforms to the "Guidance on Documenting Decisions Not to Take Cost Recovery Action" (OSWER Dir. No. 9832.11), dated June 7, 1988; the "Region I Procedural Guidelines for Removal Cost Recovery," dated March 10, 1994; "Continued Efforts to Enhance CERCLA Cost Recovery," dated July 2, 2010; "Transmittal of Budget Adjustment Implementation Plans for Superfund Enforcement," dated April 22, 2013;¹ and "PRP Search Documentation Summary Requirements for Decision Documents to

¹ This replaces Headquarters guidance "Cost Recovery Where Costs Total Less Than \$200,000," dated May 12, 1995.

Not Pursue Cost Recovery Where Unaddressed Past Costs are Greater Than \$200,000,” dated March 8, 2011.²

SITE DESCRIPTION AND HISTORY

The Site is located at 121 Pinevale Street (Parcel ID# 09755-0086) on approximately 16 acres of commercial property in a residential neighborhood in Indian Orchard, Hampden County, Massachusetts. The Site is abandoned and consists mainly of 12 large building slab foundations, various piles of debris (some of which contain asbestos-containing material (“ACM”)) and scattered trees and small vegetation. A tunnel running north-south under the Site contains debris and ACM. The City of Springfield completed repairs to the fence surrounding the property in 2014. During EPA’s Site Investigation (“SI”), the fence was in disrepair in several areas and evidence of trespassing on the property was clear. The origin of some on-site debris piles is unknown.

The Site is bounded to the: east by Moxon Street and a residential neighborhood; south by Goodwin Street and a solar power station; west by Pinevale Street and a residential neighborhood; and north by industrial property owned by City of Springfield.

The Site is located in a densely populated neighborhood consisting primarily of an even mix of Hispanic, Caucasian and African American residents with homes located directly across Moxon and Pinevale Streets. According to the EPA Region I Environmental Justice Mapping Tool, the Site is in a designated environmental justice area based on ethnicity and income.

The property, formerly owned by Chapman Valve Manufacturing Company (“Chapman Valve”), encompassed 54 acres. EPA’s removal evaluation at the Site, however, focused on approximately 16 acres of the original property. According to Site file information, Chapman Valve, one of the world’s largest valve manufacturers, moved from Boston to the 54-acre property in 1874.

In 1948, Brookhaven Laboratory contracted Chapman Valve to manufacture uranium metal. The work was associated with government defense-related projects conducted under the Manhattan Engineer District (“MED”) and the Atomic Energy Commission (“AEC”). Upon termination of the contract, the MED and AEC decontaminated the Site in accordance with the standards and survey methods in use at the time. In 2004, U.S. Department of Energy (“DOE”) issued a Certification of Radiological Condition of Chapman Valve. The certification provided assurance that reasonably foreseeable future use of the Site would not result in radiological exposure above current U.S. DOE radiological criteria and standards for protecting members of the general public and occupants of the property.

² As a result of the “Transmittal of Budget Adjustment Implementation Plans for Superfund Enforcement,” dated April 22, 2013, this guidance now applies to Sites where unaddressed past costs are greater than \$500,000.

In 1959, Crane Company (“Crane”) purchased Chapman Valve and continued valve manufacturing operations on-site. In the 1980s, Crane ceased all on-site operations and sold all but 16 acres to various parties. Prior to 1996, Crane demolished the original 12 factory buildings, leaving only the buildings’ slab foundations on-site.

In December 2003, Crane sold the Site to Indian Orchard Property Consultants, LLC (“IOPC”). In October 2005, Goodwin Realty, LLC (“Goodwin Realty”) purchased the Site from IOPC. (Judy Bergdoll is the manager of both IOPC and Goodwin Realty and acquired the property with the intent of resale for industrial purposes). For several years, Ms. Bergdoll worked with a solar power company to try to develop the property as a solar power facility, however, the plans ultimately fell through.

On March 7, 2011, the Massachusetts Department of Environmental Protection (“MassDEP”) Western Regional Office requested assistance from EPA Region I’s Emergency Planning and Response Branch (“EPRB”) to investigate the Site and determine the extent of asbestos contamination in on-site soil and debris piles.

In 2011, EPA performed a preliminary assessment/site investigation (“PA/SI”) which is discussed further below.

In May 2013, the City of Springfield took the property for back taxes and is the current owner.

In July 2014, representatives from EPA and MassDEP met with the City to discuss their plans for the Site and the removal action. The City informed EPA that it was going to send out requests for proposals (“RFP”) to potential developers to determine whether there was redevelopment interest. The City also stated that it planned to use the proceeds from the sale of the property to fund the removal action. In December 2013, the City prepared an RFP seeking a buyer to redevelop the property.

In March 2015, the EPA case team (OSC John McKeown, Attorney Michelle Lauterback, and Enforcement Coordinator Tina Hennessy) had a conference call with City attorney Thomas Moore regarding the status of the RFP and was informed that the City did not receive any offers. The case team explained that since there were no offers to address the property that EPA would like to move forward with a Fund-lead cleanup during this construction season. Mr. Moore stated that the City was considering sending out another RFP this spring but did not think that there were any guarantees that bids would be received from a private entity to redevelop the Site. The conference call concluded with EPA agreeing to send a request for access to the City to proceed with a Fund-lead removal action and that the City would provide in-kind services during the removal action.

On March 30, 2015, EPA sent a Request for Access to the City to perform a removal action. On May 1, 2015, the City provided written consent for EPA to access the property to perform a removal action.

WORK AUTHORIZED AND CONDUCTED AT THE SITE/REMOVAL ACTION

In 2011, EPA performed a PA/SI consisting of reviewing existing data in the Site file and a SI of the 16-acre property using the *Framework for Investigating Asbestos-Contaminated Superfund Sites* (OSWER Directive 9200.0-68 September 2008). The SI results confirmed the presence of ACM in several debris piles (maximum 20% asbestos) located in the central portion of the Site and trace levels of asbestos fibers (below 1%) in surface soils at three isolated locations on-site.

On May 31, 2012, OSC McKeown recommended a time critical removal action in a Site Investigation Closure Memorandum.

In June 2015, EPA signed an Action Memorandum to conduct a fund-lead time-critical removal action.

From August 17, 2015 through November 4, 2015, EPA conducted a Fund-lead removal action at the Site at a cost of \$656,002.84 (cost summary dated April 7, 2016) consisting of: 1) excavation of asbestos-containing debris located in three piles and five surface areas; 2) excavation of asbestos-containing soils from four surface soil grids; 3) disposal of excavated debris and soils at an EPA-approved disposal facility; 4) confirmation sampling of excavated areas to ensure all asbestos was removed from the Site; and 5) repairing response related damage.

ENFORCEMENT HISTORY

I. Site History Prior to EPA's Involvement

In 2010, the City of Springfield contracted O'Reilly Talbot and Okun ("OTO") to conduct an asbestos assessment. OTO estimated approximately 34,000 cubic yards of asbestos debris on the property. Subsequently, in September 2010, MassDEP issued a Unilateral Administrative Order ("UAO") against Goodwin Realty to cease all operations on-site. MassDEP issued the UAO based on the large volume of asbestos-containing debris on-site (estimated 30,000 cubic yards) and MassDEP's observations of Goodwin Realty moving the material without approval.

In November 2010, Goodwin Realty responded that it would comply with the UAO. Goodwin stated that since purchasing the property in 2003, it had only brought clean soil and certain building materials on-site, none of which contain any oil, hazardous materials or ACM. Between 2003 and 2008, Goodwin Realty brought concrete sections of sidewalk, clean soil, asphalt, gravel and crushed brick onsite. Goodwin Realty did not bring or remove any materials to or from the property from 2008 until September 29, 2010. Information from MassDEP and expert reports indicated that prior to Goodwin Realty's 2003 purchase of the Site, oil, hazardous material, or ACM may have been discharged, released or buried on the property by the former owner Crane. Goodwin Realty did not participate in any role discharging releasing or burying those materials.

On March 7, 2011, MassDEP requested EPRB to investigate the Site and determine the extent of asbestos contamination in on-site soil and debris piles.

II. Site History Since EPA's Involvement

A) EPA's Sampling Results

From July to November 2011, EPA conducted a PA/SI which confirmed the presence of ACM in several debris piles located in the central portion of the Site and trace levels of asbestos fibers in surface soils at three isolated locations on-site.

On May 31, 2012, OSC McKeown recommended a time-critical removal action in a Site Investigation Closure Memorandum.

On May 17, 2011, EPA sent an information request pursuant to Section 104(e) of CERCLA ("Information Request") to Crane and to Goodwin Realty to obtain information related to building demolition and ACM.

B) Responses to EPA's Information Request Questions (CERCLA Section 104(e))

i) Crane's Information Request Response

On June 16, 2011, Crane, through its attorney Christopher Myhrum, responded that it had performed asbestos abatement under MassDEP oversight before selling the property. In 2010, Goodwin Realty's attorney requested that Crane repurchase the property indicating that soil piles on the property contained asbestos which were left over from Crane's demolition of buildings in 1999. Crane subsequently assembled historic aerial photographs of the Site. Examination of the aerial photographs revealed that extensive alterations had been made to the Site since Crane conveyed the property to IOPC in 2003. Crane provided anecdotal accounts that Michael Bergdoll (Judy Bergdoll's husband and also a principle of Goodwin Realty) and his construction company demolished an office building, from across the street, and spread the debris on the Site.

a) Meeting with Crane

On August 31, 2011, representatives from Crane (Tony Pantaleoni, Mike Hanson and attorney Chris Myhrum) met with the case team to present Crane's position on the ACM. During this meeting Crane provided aerial photos which demonstrated that, during Goodwin's ownership of the Site, material was being brought to the Site from a facility across street which was also owned by Goodwin. During this same time, Goodwin had demolished a building and appears to have disposed of some of the building materials and/or soils at the Site. EPA's sampling data demonstrated that the area where debris and/or soils were disposed of at the Site also contained ACM. Crane further explained during this meeting that between 1995 and 2000, Crane hired an asbestos contractor to perform the building demolition and ACM management. Crane stated that this work was conducted in accordance with federal, state and local requirements. However, Crane was unable to locate the documents and requested that EPA contact the State for records or a final report indicating that the abatement was completed.

EPA subsequently requested that MassDEP perform a file review, which ultimately produced documentation confirming that Crane did in fact perform asbestos abatement during some of the building demolition at the Site. MassDEP indicated, however, that the State does not conduct final inspections on asbestos abatement projects, so there is no final report indicating that the abatement was completed.

ii) Goodwin's Information Request Response

On June 24, 2011, Ms. Bergdoll responded that per discussions with employees from Crane, MassDEP and consultant ATC Associates and review of ATC's 1998 and 2003 reports, Crane demolished all buildings and hired a contractor for an Environmental Site Assessment. Crane closed the USTs and was remediating oil contamination so that the property would be clean when IOPC bought it. Asbestos was never mentioned in their discussions. Ms. Bergdoll reviewed environmental reports before purchasing the property which indicated that the property did not have any activity use limitations and there were no risks for development of the property for residential use.

Several years after purchasing the property, Ms. Bergdoll learned that Crane performed an asbestos abatement in 1999 or 2000 and left ACM on the property. A preliminary assessment report conducted by OTO said that based on its review of existing information, and discussions with MassDEP, Crane left thermal ACM insulation around the pipes in the below grade utility trenches that run throughout the Site. When IOPC purchased the property in 2003, there were no buildings and the property was overgrown with shrubs and bushes. The property was fenced with a chain-link fenced with a double gate. Since 2003, there had been problems with illegal dumping of debris. The property was in the same condition when Goodwin bought it from IOPC.

C) Notice of Potential Liability

On July 23, 2012, EPA sent a Notice of Potential Liability ("Notice Letter") to Goodwin Realty as current owner of the Site. Goodwin Realty responded that Ultimate Energy Source, Inc. ("UES") was interested in leasing the Site to construct a solar power facility, Springfield Solar 1, and that UES may be interested in performing the removal action. Goodwin Realty requested an extension to respond to the Notice Letter so it could coordinate the lease agreement with UES and confirm that UES would perform the removal action.

D) Administrative Order on Consent

On September 24, 2012, EPA sent a draft Administrative Order on Consent ("AOC") to Goodwin Realty. Attorney Lauterback and EC Hennessy subsequently spoke with David Michelman, Goodwin Realty's attorney. Mr. Michelman indicated that his client, along with Springfield Solar 1, was willing to enter into the AOC to pay for and perform the work. Mr. Michelman said, however, that Goodwin Realty did not have the financial resources to pay for any portion of the removal action or EPA's past costs. In order to pay for the cleanup, Goodwin Realty was in the process of entering into a lease/sale of

the property with potential purchaser Springfield Solar 1, LLC (“Springfield Solar”). As part of that agreement Springfield Solar would pay for and perform the removal action.

The case team subsequently decided to proceed with 2 separate settlement agreements: 1) enter into a Brownfields Prospective Purchaser (“BFPP”) AOC with Springfield Solar to pay for and perform the removal action; and 2) obtain financial information from Goodwin Realty and perform an ability-to-pay (“ATP”) analysis to confirm its financial status, and then enter into a 122(h) settlement agreement for past costs if Goodwin Realty had some ATP. The case team drafted a BFPP AOC (which was reviewed by DOJ as required for BFPP AOCs) and shared this document with Mr. Michelman. The draft BFPP AOC was then sent to the prospective purchaser for review.

The BFPP AOC ultimately was not finalized and negotiations for the cleanup ceased. In June 2013, EPA performed an ATP analysis on Goodwin Realty which confirmed the company was unable to finance any removal activities.

DISCUSSION OF BASIS FOR DECISION NOT TO PURSUE COST RECOVERY

EPA has determined that it is not in the government’s best interest to pursue the recovery of removal costs at this Site. EPA’s “Guidance on Documenting Decisions Not to Take Cost Recovery Action” (OSWER Dir. No. 9832.11), dated June 7, 1988; and “EPA’s Continued Efforts to enhance CERCLA Cost Recovery,” dated July 2, 2010, sets forth several relevant factors that should be considered in determining the viability of a cost recovery case. These factors are:

- a. the amount of costs at issue;
- b. the strength of evidence connecting the potential defendant(s) to the Site;
- c. the availability and merit of any defense;
- d. the quality of the release, remedy, and expenditure documentation by the Agency;
- e. the financial ability of the potential defendant(s) to satisfy a judgment for the amount of the claim or to pay a substantial portion of the claim in settlement (e.g., the financial viability of the PRPs);
- f. the statute of limitations;
- g. EPA lacks the resources to pursue the case (other cases competing for resources);
- h. no PRPs identified; or
- i. other reasons such as PRP-lead cleanup/cooperativeness, etc.

PRP search has been conducted at the CP Clear, Massachusetts Secretary of State, MassDEP, City of Springfield, and Google websites.

PRP search to date indicates that there are three potentially responsible parties, City of Springfield, MA, Goodwin Realty and Crane.

1) Current Owner – City of Springfield, MA (2013-Present)

As noted above, the City took the property for back taxes in May 2013. The case team believes the City has a defense to liability as a current owner pursuant to Section 101(20)(D) of CERCLA as it took the property involuntarily through tax foreclosure. The City has maintained this defense to liability by taking steps to secure the property by installing a fence around the perimeter; cooperating with EPA by providing access; and offering to pay for in-kind services to off-set the costs of the removal action. Therefore, EPA does not plan on pursuing cost recovery against the City.

2) Former Owner – Goodwin Realty, LLC (2003-2013)

Goodwin Realty is a Massachusetts domestic limited liability company which organized on October 6, 2005. Judy Bergdoll is the Manager.

Photo documentation provided by Crane indicated that ACM contamination may be a result of Goodwin Realty demolishing a building across the street and transporting the demolition debris and/or soils (which contained ACM) to the Site.

As noted above, Goodwin Realty tried to enter into a lease/purchase agreement with UES (“Springfield Solar”), a renewable energy company based in Knoxville, TN. Springfield Solar planned to construct a solar energy facility on the Site and pay for and perform the removal action under a BFPP AOC. EPA sent a draft BFPP AOC to UES, however the document was never finalized.

Goodwin Realty provided financial information to EPA. In June 2013, an ATP analysis was performed which confirmed that the company was unable to pay for the removal action. To EPA’s knowledge, Goodwin’s financial situation has not changed since the 2013 ATP analysis. Goodwin was unable to afford the property taxes and ultimately lost the property. Therefore, EPA will not pursue cost recovery against Goodwin Realty because it has no ATP.

3) Former Owner/Operator – Crane Company (1959-2003)

In 1959, Crane bought Chapman Valve. As stated above, Crane hired an asbestos abatement contractor to demolish buildings under MassDEP oversight. EPA has concluded that Crane took an active approach to removing ACM with state oversight per the information obtained from MassDEP. Crane provided aerial photos of ACM piles which appeared to be a result of Goodwin’s operations. Based on the information available, the case team believes that the ACM contamination, subject to EPA’s removal action, did not occur during Crane’s ownership. Therefore, the case team will not pursue cost recovery against the company.

Arranger(s)/Transporter(s)

Based on aerial photography and sampling data, Goodwin may have transported debris and/or soils containing ACM to the Site. Therefore, at this time the only potential transporter and arranger at the Site is Goodwin. As mentioned above, EPA will not pursue Goodwin because it has no ATP.

Lien

The property is assessed at \$613,500. EPA does not plan on filing a CERCLA Section 107(l) or 107(r) windfall liens since the City took the property for back taxes. Future anticipated use of the property is for a solar farm.

In-Kind Services

The City reduced the cost of the removal action by providing water during the removal action estimated to cost \$2,000.

CONCLUSION

EPA has past costs of \$656,002.84 for the removal action performed at the Site. The City has an exemption to liability since it took the property for back taxes and did not cause or contribute to the contamination. The ACM contamination onsite was a result of Goodwin Realty's operations. Goodwin was unable to afford the property taxes and ultimately lost the property. An ATP analysis performed by EPA confirmed that Goodwin Realty does not have the resources to reimburse EPA's response costs. The case team concluded that Crane was not responsible for the ACM contamination subject to EPA's removal action.

We recommend that you give your approval to close out this case with no further cost recovery action planned. The Office Director should signify his acceptance of the recommendation in the appropriate space below.

Approve: 
Bryan Olson, Director
Office of Site Remediation and Restoration

Date: 04/19/16