



Revitalizing RCRA Facilities Using Enforcement and Other Tools: Case Studies

Office of Site Remediation Enforcement

Overview

One of EPA's top priorities is to restore contaminated properties to environmental and economic vitality.¹ Land is a valuable resource and its reuse potential can be an incentive to cleanup, benefiting the community in which it is located. EPA recognizes that there may be certain concerns, including cleanup liability, in the redevelopment of facilities subject to the Resource Conservation and Recovery Act (RCRA). This document provides case studies highlighting the tools parties can use to address these concerns. The following case studies provide examples of:

- (1) a RCRA Prospective Purchaser Agreement (PPA),
- (2) a RCRA Prospective Lessee Agreement (PLA),
- (3) a RCRA Comfort Letter, and
- (4) RCRA Corrective Action Complete Determinations.

Case Studies

1. RCRA PROSPECTIVE PURCHASER AGREEMENT (PPA) BKK LANDFILL, CALIFORNIA

In some situations where a party is interested in acquiring a property potentially subject to RCRA corrective action, RCRA PPAs can be effective in encouraging site

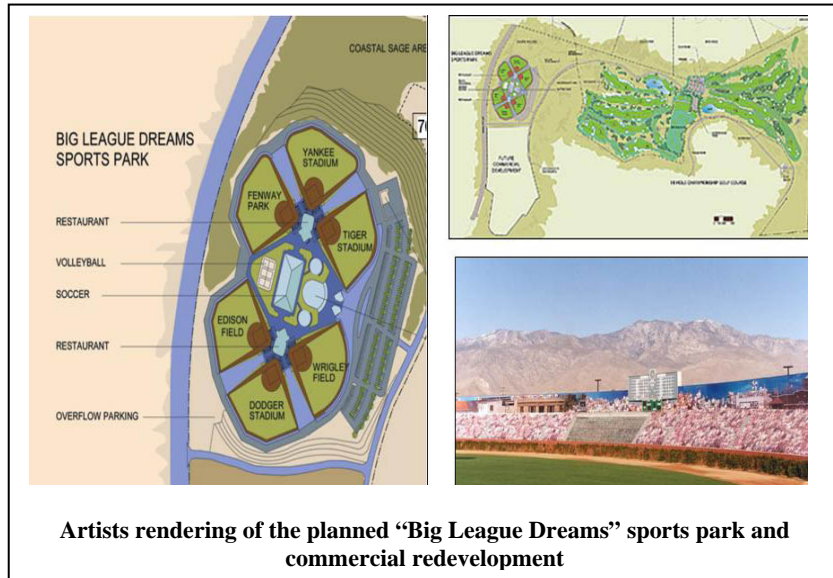
cleanup and reuse. RCRA PPAs are used at both the State and federal level and may specify the activities related to corrective action for which the purchaser is responsible. The purpose of a Federal RCRA PPA is to provide the acquiring entity, who seeks to reuse the site, a Federal covenant not to sue, subject to conditions specified in the RCRA PPA, in return for some specified benefit to the community, environment, or government.

Federal RCRA PPAs typically entail research, coordination and negotiation among all parties involved with the agreement, including the State program and the Department of Justice (DOJ). DOJ must approve all Federal RCRA PPAs. They are resource intensive and are reviewed and considered on a case-by-case basis. Therefore, RCRA PPAs are used when the benefits to the

¹ Source: EPA Administrator Stephen L. Johnson's Action Plan, The Action Plan is available on EPA's Web site at <http://www.epa.gov/adminweb/administrator/actionplan/index.htm>.

government, community, environment, or benefits from the redevelopment at the facility, warrant the required time and expense. At the BKK Landfill, a Federal RCRA PPA facilitated the reuse of the property.

The BKK Landfill is a 583 acre site located in West Covina, CA. The City of West Covina (“The City”) has more than 100,000 residents and is about 20 miles east of Los Angeles, CA. The property is surrounded by an ethnically and culturally diverse community, and valuable property. The facility includes hazardous waste and municipal solid waste landfills with adjacent undeveloped land.



Between 1972 and 1984, 3.4 million tons of hazardous wastes were disposed of at the landfill. During the 1980s, it was discovered that groundwater contamination had migrated under nearby residential neighborhoods. EPA worked with BKK to clean up the contamination at the facility until the fall of 2004, when the California Department of Toxic Substances Control (DTSC) took over cleanup operations.

In the Spring of 2003, EPA Region 9 signed a RCRA PPA with the City for one of three parcels² at the property. The City was interested in a Federal PPA since EPA had been involved in the cleanup. The documents associated with the property transfer established mechanisms to assure that all sale proceeds were used for expenditures related to RCRA cleanup work at the site. The PPA is facilitating redevelopment - including a golf course, restaurants, commercial & retail space, and a sports park complex called "Big League Dreams" which includes replicas of great professional ballparks from across the country.

Under the sales agreement between BKK and the City, \$2.3 million was put into two escrow accounts. \$420,000 of the sales price was used to pay for implementing the Environmental Monitoring Protocol (EMP) that includes the requirements for environmental monitoring of the recreational area or to purchase a financial assurance mechanism that will ensure funds are available for the implementation of the EMP workplan. The balances of the sales proceeds were put into the other escrow account and used exclusively by BKK for specified compliance and remedial activities before DTSC took over cleanup operations.

² Parceling is a process in which a portion of a facility is separated from the whole through lease, sale, or donation.

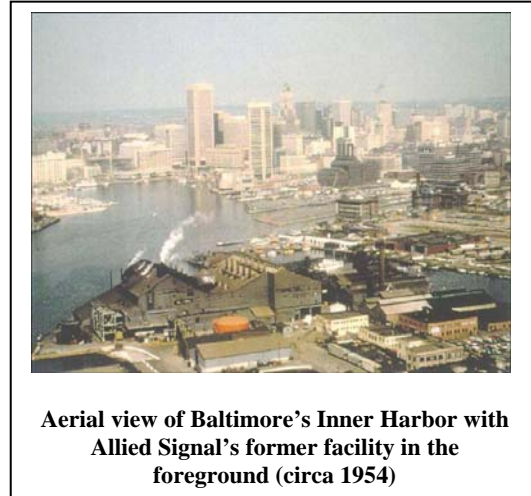
**2. RCRA PROSPECTIVE LESSEE
AGREEMENT (PLA)
FORMER ALLIED SIGNAL, MARYLAND**

A PLA is similar to a PPA, however the agreement is reached with a long-term lessee instead of a purchaser. A PLA provides the developer, or lessee, with relief

from certain future environmental liabilities while ensuring that the developer complies with certain requirements.

The former Allied-Signal (now Honeywell) chromium processing facility located in Baltimore's Inner Harbor has undergone a nearly \$100 million cleanup resulting in a 27 acre parcel of prime real estate ideal for redevelopment.

The Allied Signal Baltimore Works Facility was constructed in the mid-nineteenth century on approximately 18 acres of waterfront property. Chromium ore was processed at the site for the production of chromium chemicals until 1985. Investigations in the early to mid-1980's found large quantities of chromium migrating from the site into the Harbor and into the groundwater below the Harbor.



Aerial view of Baltimore's Inner Harbor with Allied Signal's former facility in the foreground (circa 1954)

The solution was a containment remedy, selected with public review and comment, and extensive coordination among EPA, the Maryland Department of the Environment (MDE), and Honeywell. The remedy included an impermeable cap, barrier wall, and a hydraulic gradient control system, as well as long term environmental monitoring. Dismantlement of the plant, preparation of the property, construction of the remedy, and construction of a water transfer station above the cap took more than 10 years and \$100 million to complete. In 1993, the Baltimore City Council approved entitlements to allow for mixed use of the property including office space, retail outlets, residential units, parking, and a public space adjacent to the water.

Based on EPA's involvement in the cleanup and to facilitate redevelopment, in May 2003, EPA and MDE were signatories to the nation's first Federal PLA. The PLA provided the developer with relief from certain future environmental liabilities while ensuring they complied with requirements relating to institutional controls and agreeing not to begin any new hazardous waste activities on the property. Additionally, in August 2003, the developer applied for and was approved to participate in MDE's Voluntary Cleanup Program, which affords liability protection under state law.

Honeywell is currently working with Struever Bros. Eccles & Rouse (SBER) to market and develop this prime piece of property along Baltimore's Inner Harbor. As a temporary use, the touring circus of Cirque du Soleil used part of the site for performances in the Spring of 2003 and 2005. Other interim uses have included community and fundraising events, and an ice-

skating rink. The latest proposal by developers is a \$500 million project to include a signature waterfront public building, office space, retail stores, restaurants, 3000 parking spaces and a six-acre waterfront park. The current focus is on finalizing the design and associated infrastructure for construction of the first office building, the Thames Street Wharf Building. EPA and MDE have worked closely with the developer providing technical review of the proposed designs.



3. RCRA COMFORT LETTER DUPONT GLASGOW, DELAWARE

EPA and States are issuing comfort/status letters at RCRA sites that provide EPA's or the

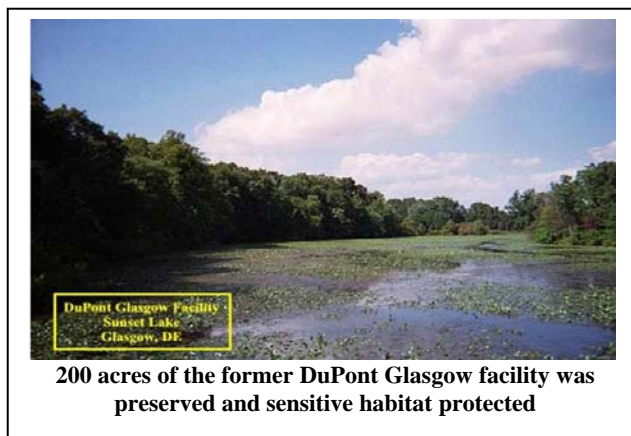
State regulator's current knowledge about particular properties targeted for redevelopment or reuse. These letters provide information to prospective purchasers, lenders, and insurers about the current regulatory and environmental status of the site. They help interested parties better understand the likelihood of EPA or State involvement at a potentially contaminated property. The release of as much information as possible enables the party to better understand the potential applicability of RCRA cleanup provisions to individual parcels of property and to make informed decisions. Comfort/status letters are not "no action assurances." A no action assurance generally is provided to a person who would otherwise be the subject of an enforcement action, while a comfort letter generally is provided to a person who would not be the subject of an enforcement action. Comfort/status letters can be and are often used by States with authorized RCRA programs and by EPA where a State is not authorized or at facilities where EPA has had the lead in conducting the cleanup.

Located in Glasgow, New Castle County, Delaware, the DuPont Glasgow facility's redevelopment was encouraged after the issuance of a RCRA comfort letter. When DuPont originally acquired the facility in 1966, this 977-acre property was farmland and undeveloped woodland. DuPont constructed several buildings, which it used as a manufacturing facility for medical instrument systems and products, and for the assembly of reverse osmosis water filters.

DuPont had been performing cleanup at the contaminated portion of the site under EPA and the State of Delaware's direction for more than 10 years. The company was nearing the end of its work under an EPA RCRA corrective action consent order when W.L. Gore & Associates ("Gore") became interested in purchasing part of the site to build a new manufacturing complex. Before the real estate transaction could proceed, Gore was concerned about potential environmental liability from contamination that might be discovered in the future.

EPA provided a comfort letter to Gore which described the current status of the investigation by DuPont and the expectation that cleanup was nearly complete. Gore also purchased environmental insurance which provided an additional measure of comfort. Delaware entered into an agreement with Gore under its Voluntary Cleanup Program (VCP) in September 1998. A site investigation was completed by the Delaware Department of Natural Resources and Environmental Control (DNREC) in February 1999. Sampling results revealed no contamination in the groundwater, soil, sediment or surface water at concentrations that may adversely affect human health or ecological receptors. Based on the results of the investigation, DNREC recommended no further action. After a public comment period was completed, a Certificate of Completion was issued on March 15, 1999.

The parcel of property was sold and split between the State of Delaware and Gore. Gore acquired approximately 150-acres to build a new manufacturing complex which will house research and development, manufacturing, office, and storage/distribution activities. This new complex will have a positive impact on the area because there is the potential for the creation of more than 1,000 new high-wage, skilled jobs. The State of Delaware obtained a total of approximately 300 acres,



of which 200 acres will be preserved as a state park and the remaining 100 acres will be leased to New Castle County to build a neighborhood park for use by the local community. Delaware's portion of the site will preserve a sensitive wildlife habitat that includes a wetlands preserve and part of Sunset Lake, which is a popular recreation area for fishing and boating.

4. RCRA CORRECTIVE ACTION COMPLETION DETERMINATIONS

EPA's February 25, 2003 document, *Final Guidance on Completion of Corrective Action*

Activities at RCRA Facilities (reference 68 FR 8757) or "completion determinations," provides an official recognition that RCRA corrective action activities are complete at a facility. This acknowledgement can, among other things, promote the transfer of property ownership and help return underutilized properties to productive use. There are two types of completion determinations – "Corrective Action Complete without Controls" and "Corrective Action Complete with Controls." The first type is a so-called "walk away" remedy where the owner or operator has satisfied all corrective action obligations. The second type, "Corrective Action Complete with Controls," is a remedy where all that remains is performance of required operation, maintenance and monitoring actions, and/or compliance with and maintenance of any institutional controls. The following are examples of each type of completion determination.

**A. RCRA Corrective Action Complete without Controls
International Metals Reclamation Company (INMETCO), Pennsylvania**

The International Metals Reclamation Company (“INMETCO”) facility is located in eastern Ellwood City, in Lawrence County, Pennsylvania. The property is approximately 92 acres and is the former site of the U. S. Steel Ellwood City Tube Mill, which began operations prior to 1919 and closed in 1975. INMETCO later purchased the property and began operations in 1978. The facility currently operates as a RCRA Treatment Storage and Disposal facility (TSD) and produces chrome and nickel steel alloy ingots from blast furnaces.

In July 2000, EPA, the US Army Corps of Engineers, and the Pennsylvania Department of Environmental Protection (PADEP) conducted a site visit. The visit consisted of a facility tour and information gathering to assess the current status of the facility. No obvious areas of concern were identified during the visit. After an extensive review of existing information and the site visit, EPA determined that there was no unacceptable human exposure to contamination, nor was there any evidence of groundwater contamination caused by the facility.

EPA issued a RCRA Corrective Action Complete without Controls Determination following the 45 day comment period that ended on March 12, 2003. (EPA issued the determination, because Pennsylvania is not authorized for RCRA corrective action.) The Determination was based on:

- (1) all closure and post-closure requirements applicable at the regulated units had been fulfilled; and
- (2) all corrective action obligations had been met.

After consideration of all comments received, EPA’s decision was substantially unchanged from the original proposed decision of no further action. Therefore, EPA determined that no further corrective action was necessary at the facility. This Determination completed the corrective action process under RCRA. However, the facility must continue to comply with all applicable parts of RCRA.

**B. RCRA Corrective Action Complete with Controls
Rosedale Landscape Depot, Maryland**

The State Highway Administration (SHA) Rosedale Landscape Depot site is located in Rosedale, Maryland. During past activities at the facility, twenty-two drums of herbicide/pesticide residue were stored on the property. Over time, these drums deteriorated and, when discovered in 1984, the partially buried drums had released dioxin contamination over approximately 1/3 of an acre.

Under the direction and oversight of EPA’s Superfund program and the Maryland Department of the Environment (MDE) approximately 500 tons of contaminated soil and solid materials were removed. To ensure the cleanup efforts were effective in removing all dioxin contamination

above the action level, confirmation soil samples were taken and a protective, multi-layer cap was placed over the former disposal area to prevent any exposure from residual contamination. At the time of the excavation, there was no approved method for disposing of the dioxin contaminated materials. Therefore, the drums of waste needed to be stored on-site until an alternative could be found. From 1984 to 1988, the drums were stored in temporary containers. Based on recommendations from EPA and MDE, the SHA determined that a more permanent storage facility was needed for the potential long-term storage of the drums. As a result, SHA constructed a 7,200 square foot storage building with secondary containment at the facility. SHA received a Maryland state permit to store the hazardous waste in the containment building and performed weekly inspections of the area to ensure no contaminants were being released into the environment.

In November 1994, an approved disposal facility for dioxin was located and all dioxin wastes were transported there for proper treatment and disposal. SHA proceeded with the clean-closure of the Hazardous Waste Storage building and received approval from MDE in 1995.

In May 2002, EPA's proposed remedy cited that, with the exception of activities to ensure the multilayer cap remains in good condition, no further corrective action was necessary. Following a forty-five calendar day comment period on the proposed remedy in a local newspaper, EPA made a final determination of "Corrective Action Complete with Controls" for the Rosedale Landscape Depot.

Consistent with EPA's Completion Guidance:

- (1) a full set of corrective measures had been defined;
- (2) the facility had completed construction and installation of all required remedial actions;
- (3) site-specific media cleanup objectives had been met; and
- (4) all that remained was performance of required operation, maintenance and monitoring actions, and/or compliance with and maintenance of any institutional controls.

The final remedy of the Rosedale facility met these objectives and is protective of human health and the environment. In issuing this determination, EPA recognized the significant progress and resulting reduction in risk made at the Rosedale facility.

Conclusion

The case studies provided here are just some examples of how EPA and the States are using their creativity and initiative to revitalize properties. EPA continues to engage with the redevelopment community on innovative approaches to get contaminated properties back into productive reuse. For detailed information about the tools discussed in this document, please visit EPA's Web site at: <http://cfpub.epa.gov/compliance/resources/policies/cleanup/rcra/index.cfm>. If you would like further information on any of the specific sites please contact Tessa Hendrickson at 202/564-6052.

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