



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

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Ref: EPR-SA

DEC 04 2017

Ms. Diane Foster
City Manager
Park City Municipal Corporation
445 Marsac Avenue
Park City, UT 84060

RE: Acquisition Properties near the Uintah Mining District Site and Marsac Mill Site, Summit County, Utah

Dear Ms. Foster:

I am writing in response to the May 11, 2017, inquiry to the U.S. Environmental Protection Agency from legal counsel for Park City Municipal Corporation (Park City), concerning the acquisition of property known as Ontario Tunnel/100 Marsac, which includes the following tax parcels: PC-730 (parcels A, C, D, and E), PC-430-R (parcel B), PC-S-46-B (parcel F), as well as an area known as the Ontario Mine West and Northwest/Mine Bench, which consists of approximately 27,811 acres of land and is depicted in the attachment to the May 11, 2017, letter (collectively, "Properties"). In that inquiry, your legal counsel described Park City's intentions to acquire the Properties for use in part for residential development (Development) and requested a Superfund comfort/status letter from the EPA. The purpose of this comfort/status letter is to provide you with information the EPA has about the Properties and potentially applicable federal Superfund statutory and regulatory provisions and Agency policies, as of the date of this letter. I hope the information in this letter enables you to make informed decisions as you move forward with the Development on the Property.

Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, commonly referred to as Superfund), the EPA's mission is to protect human health and the environment from the risks posed by contaminated or potentially contaminated lands. In doing so, it is the Agency's priority to return lands to productive reuse. The EPA is issuing this letter consistent with the EPA's current guidance.

History and Status of the Properties

The Properties are not currently being addressed under Superfund authority, and the EPA has not assessed environmental conditions at the Properties. The Properties are situated near the Uintah Mining District Site and the Marsac Mill Site. Information on these sites has been recorded by the EPA in the Superfund Enterprise Management System (SEMS), which may be accessed at <http://cumulis.epa.gov/supercpad/cursites/srchsites.cfm>. SEMS is a public access database that contains non-enforcement confidential information about sites where there has been some EPA involvement under Superfund. Additional information may be found at the following web address: https://response.epa.gov/site/site_profile.aspx?site_id=9291.

Reuse of the Properties

Based on the information provided in your request, the EPA understands that Park City intends to utilize portions of the Properties for residential development. The EPA understands the Development to involve potentially moving materials and building affordable housing units on the Properties. Based on the facts presently known to the EPA, the Agency has not identified any obvious incompatibility between the proposed use of the Properties and the EPA's work at the nearby Superfund sites. As your plans develop further, you should continue to discuss the Development with the EPA, as well as consult with your own legal counsel and environmental professional.

CERCLA's Bona Fide Prospective Purchaser Liability Protection

CERCLA was amended in 2002 to allow certain parties who purchase contaminated or potentially contaminated properties to buy such properties and to avoid potential CERCLA liability if they qualify as a "bona fide prospective purchaser" (BFPP). The BFPP provision provides that a person meeting the criteria of CERCLA §§ 101(40) and 107(r)(1) and who purchases after January 11, 2002 will not be liable as an owner or operator under CERCLA. The BFPP provision is designed to be self-implementing, meaning the purchaser is responsible for achieving and maintaining BFPP status.

To assist the purchaser and their legal counsel, the EPA has issued guidance regarding some of the criteria landowners must meet in order to qualify for the BFPP protections under CERCLA. See *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)* (Mar. 6, 2003) ("Common Elements Guidance")

<http://www.epa.gov/enforcement/interim-guidance-common-elements-landowner-criteria-qualify-bfpp-cpo-or-ilo-superfund>. CERCLA requires a party to perform "all appropriate inquiries" prior to acquiring real property. There are other BFPP requirements such as providing certain notices, taking "reasonable steps," providing cooperation, assistance, and access, and complying with institutional controls. Please note that there are additional criteria addressed in CERCLA §§ 101(40) and 107(r)(1) that a landowner must meet in order to qualify as a BFPP under CERCLA. You and your legal counsel will need to assess whether you satisfy each of the statutory requirements necessary to achieve BFPP status and continue to meet the applicable criteria.

Among other criteria outlined in the "Common Elements Guidance, a BFPP" must take "reasonable steps" related to stopping continuing releases, preventing threatened future releases, and preventing or limiting human, environmental, or natural resources exposure to earlier releases as required by CERCLA § 101(40)(D). You have asked what actions would constitute reasonable steps by "the owner" of the Properties.

As noted above, the EPA has not assessed environmental conditions at the Properties. Based upon the history of large scale mining operations throughout the area, the EPA believes that the following would be appropriate reasonable steps related to the hazardous substance contamination found at the Properties:

Compliance with Park City's Soil Ordinance (Park City Code 11-15-1 to -12), which requires 6 inches of cover material with lead concentrations at or below below 200 parts per million.

Any reasonable steps suggested by the EPA are based on the likely nature and extent of contamination and are provided solely for informational purposes. If additional information regarding the nature and extent of hazardous substance contamination at the Properties becomes available, additional actions may be necessary to satisfy the "reasonable steps" criterion. You should ensure that you are aware of the condition of the Properties so that you are able to take reasonable steps with respect to any hazardous substance contamination. In particular, if new areas of contamination are identified, you should ensure that reasonable steps are undertaken.

State Actions

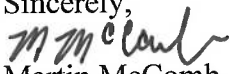
The EPA is only providing you with information regarding the EPA's actions at the Properties and federal law and guidance. You should contact Sandra Allen of the Utah Attorney General's Office for more information about potential state actions and liability issues.

Conclusion

The EPA generally issues Superfund comfort/status letters to facilitate the cleanup and reuse of contaminated or formerly contaminated properties. This comfort/status letter is intended to help you make informed decisions by providing you with the Superfund information that the EPA has about the Properties and by identifying the CERCLA statutory protections, guidance, resources, and tools that may be potentially available for the Properties.

This letter is not intended to limit or affect the EPA's authority under CERCLA or any other law or to provide a release from CERCLA liability. The EPA encourages you to consult with legal counsel, an environmental professional, and the appropriate state, tribal, or local environmental protection agency before taking any action to acquire, clean up, or reuse potentially contaminated property. It is your responsibility to ensure that the proposed use of the Properties complies with any federal, state, local, and/or tribal laws or requirements that may apply.

The EPA supports appropriate reuse of contaminated properties and hopes the information in this letter is useful to you. If you have any additional questions or wish to discuss this information further, please feel free to contact me at (303) 312-6963. Legal questions can be directed to Amelia Piggott, Superfund attorney, at (303) 312-6410.

Sincerely,

Martin McComb
On-Scene Coordinator
U.S. EPA Region 8

cc: Sandra Allen, Assistant Attorney General