



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

NOV 25 2014

Michael Pedone  
Chief Operating Officer  
Sparrows Point Terminal, LLC  
7301 Parkway Drive  
Hanover, Maryland 21076

Re: CERC/RCRA 2014-03-2014-0279PP

Dear Mr. Pedone,

Enclosed please find a copy of the fully executed Settlement Agreement and Covenant Not to Sue (Agreement), Docket No: 2014-03-2014-0279PP. The public comment period for the proposed Agreement ended on October 18, 2014. EPA received one set of comments to the proposed Agreement. Based on the public comments received, EPA has determined that it was not necessary to make any modifications to the proposed Agreement. A copy of EPA's response to these comments is also enclosed.

The Effective Date of the Agreement is November 25, 2014, the date EPA is issuing this notice to you that it has fully executed the Agreement.

If you have any questions, please call me at (215) 814-2992.

Sincerely,

A handwritten signature in blue ink that reads "John A. Armstead".

John A. Armstead, Director  
Land and Chemicals Division

cc: Jeffrey Sands, DOJ  
Cecil Rodrigues, HSCD, EPA Region 3



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

**REGION III**

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REGIONAL HEARING CLERK  
EPA REGION III, PHILA. PA

**IN THE MATTER OF:**

**SPARROWS POINT FACILITY,  
BALTIMORE, MARYLAND**

**Docket Number:**

**CERC/RCRA-03-2014-0279PP**

**SETTLEMENT AGREEMENT  
AND COVENANT NOT TO SUE  
SPARROWS POINT  
TERMINAL, LLC**

**UNDER THE AUTHORITY OF THE  
COMPREHENSIVE ENVIRONMENTAL  
RESPONSE, COMPENSATION, AND  
LIABILITY ACT OF 1980,  
42 U.S.C. §§ 9601 ET SEQ., AS AMENDED,**

**AND**

**THE SOLID WASTE DISPOSAL ACT,  
42 U.S.C. §§6901, ET SEQ., AS AMENDED**

**Response to Comments**

## I. INTRODUCTION

On September 18, 2014, EPA Region III (EPA) provided a 30-day public comment period on the proposed Settlement Agreement and Covenant Not to Sue (Settlement Agreement) between the United States on behalf of the United States Environmental Protection Agency (EPA) and Sparrows Point Terminal, LLC (SPT) for the Sparrows Point Facility (Property) located in Baltimore County, Maryland. The only comments received by EPA were by letter dated October 17, 2014 from the Chesapeake Bay Foundation, Inc. (CBF) and Blue Water Baltimore (BWB), attached hereto as Attachment 1. Based on the public comments received, EPA has determined that it is not necessary to make any modifications to the proposed Settlement Agreement.

## II. DISCUSSION

In their October 17, 2014 letter, before providing their specific comments on the Settlement Agreement, CBF and BWB, by way of background, characterize their interest in the Property and request that EPA expand its investigation of the offshore area. EPA understands the importance of investigating the offshore contamination. Therefore, under the Settlement Agreement, EPA has required SPT to contribute \$3,000,000.00 for the investigation and, to the extent necessary, remediation of Existing Contamination located offshore of the Property. In addition, EPA has also required SPT to take Corrective Action to address contamination that migrates onto or under or from the Property after the date of the Settlement Agreement.

The following is a summary of CBF and BWB's specific comments on the Settlement Agreement, and EPA's responses:

### Comment 1

**“Paragraph 9** - refers to the Site Conceptual Cleanup Plan (SCCP) (Exhibit 3) and EPA/MDE [Maryland Department of the Environment]'s comments concerning that plan (Exhibit 4) recognizing that although EPA has commented on the plan, the Agency has not formally approved of the SCCP. However, the validity of the SA is largely dependent upon the thoroughness of the investigation to be undertaken pursuant to the plan. Because the plan is not final, is mostly conceptual, and has not been subject to public notice and comment, we object to the SA until the SCCP is finalized.”

Comment 1 then lists examples of what CBF and BWB consider “shortcomings” in the SCCP. Please refer to Attachment A for the full text of Comment 1.

### EPA's Response to Comment 1

The Settlement Agreement requires SPT to complete all cleanup activities on the Property as required by RCRA Corrective Action<sup>1</sup>, including conducting a comprehensive

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<sup>1</sup> See, e.g., Settlement Agreement, Para. 12 & Section VII, citing the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984 (RCRA), 42 U.S.C. §§ 6901-6992k.

investigation of the Property, implementing interim measures as required, preparing a Corrective Measures Study, and implementing the final remedy(ies) selected by EPA subject to a 30-day public comment period. The SCCP does not alter SPT's RCRA Corrective Action obligations; rather, it is a non-binding document used by SPT as a planning tool.

The majority of alleged "shortcomings" in the SCCP cited by CBF and BWB go to their concerns that hazardous wastes at various locations on the Property be properly addressed. The Settlement Agreement reflects the breadth of EPA's RCRA Corrective Action authority, which extends from investigation to cleanup of releases of hazardous waste and hazardous constituents, wherever located on the Property, and as necessary to protect human health and the environment. The SCCP in no way limits SPT's obligations under the Settlement Agreement and in no way restricts EPA's authority under RCRA Corrective Action to require SPT to comprehensively investigate and, as necessary, remediate the entire Property.

Lastly, the proposed Settlement Agreement acknowledges that SPT may use some of its submissions to satisfy requirements under both the MDE Administrative Consent Order (ACO) and the Settlement Agreement. This acknowledgement does not alter SPT's independent RCRA Corrective Action obligations under the Settlement Agreement at the Property.

#### **Comment 2**

" **Paragraph 12** indicates that some of the investigative and remedial work is to be performed by Sparrows Point, LLC - the former owner - but the SA [Settlement Agreement] does not make clear what that work will be. The nature and extent of the work should be specified in the final agreement so that the public will understand who will be doing what. The SA should also make clear that even if SPLLC is doing some of the work, presumably pursuant to the Purchase and Sale Agreement between SPT and SPLLC, SPT as the current owner must remain legally liable and responsible for performance of all of the identified work."

#### **EPA's Response to Comment 2**

The Settlement Agreement sets forth SPT's comprehensive RCRA Corrective Action obligations at the Property. While certain provisions of the Settlement Agreement recognize that SPT anticipates assigning the performance of some work to SPLLC (which has independent obligations to address contamination at the Property<sup>2</sup>), SPT remains subject to all of its obligations under the Settlement Agreement.

#### **Comment 3**

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<sup>2</sup> In 1997 the U.S. District Court for the District of Maryland (District Court) approved a Consent Decree signed by EPA, MDE, and then Property owner Bethlehem Steel Corporation under, among other federal authorities, Section 3008(h) of RCRA, 42 U.S.C. § 6928(h), and various provisions of the Environmental Article of the Annotated Code of Maryland, C.A. Nos. JFM-97-558 and JFM-97-559, which addressed environmental impacts of the Property. On July 28, 2014 the District Court entered an amendment to the 1997 Consent Decree adding SPLLC as a respondent, making it responsible for completing certain remaining work required under the 1997 Consent Decree.

**“Paragraphs 20.d, Section D.** Public Participation, among others, provide that selection of any final remedial measures will be subject to public comment before they are finalized. We support these provisions and request that they not be omitted.”

### **EPA’s Response to Comment 3**

No response required.

### **Comment 4**

**“Paragraph 42** states that SPT represented to EPA that it had no ownership interest in the Sparrows Point property and that EPA relied on that representation. It is not clear to what extent this representation affects EPA's decision to enter into the SA, but according to the Maryland ACO, SPT purchased the site on or about September 12, 2014, six days before the signing of the SA.”

### **EPA’s Response to Comment 4**

The proposed Settlement Agreement was signed by EPA and SPT on September 12, 2014, and by the Department of Justice on September 16, 2014. The sale’s closing was conducted on September 18, 2014.

### **Comment 5**

**“Paragraph 55** provides that SPT shall implement the investigation and remediation of the Coke Oven Area "on a schedule equal to that of Area A." The provision is not clear. We assume that it means that the work in the Coke Oven Area will be undertaken and completed on the same schedule as that of Area A, but that schedule is not provided nor is the identification of Area A given. We ask that the location of Area A and the schedule be provided within the terms of the agreement. We also do not understand why completion of the Coke Oven Area investigation and remediation is tied to the definition of Areas A and B. Without knowing why this connection is being made, we object to this provision.”

### **EPA’s Response to Comment 5**

SPT requested that EPA and MDE divide the Property into Areas A and B, with Area A to be addressed on an accelerated schedule to meet SPT’s initial development expectations. EPA and MDE agreed to do so, in the Settlement Agreement and the ACO, respectively, provided that the Coke Oven Area would be addressed on the same accelerated schedule as Area A. The schedules for addressing Areas A and B will be developed and approved in accordance with the terms of the Settlement Agreement. A map of Area A is shown in SPT's September 10, 2014 Voluntary Cleanup Program (VCP) application to MDE.

### **Comment 6**

**“Paragraph 56** provides that SPT shall not be required to do any Work off the Property to address Existing Contamination. “Existing Contamination” is defined to include any Waste Material presently at the Site that migrates onto or under or from the Property after the date of the Agreement. Paragraph 20(i)(iii). We object to this provision as it will negate SPT's obligation to address contamination that leaves the site during its ownership in violation of RCRA.”

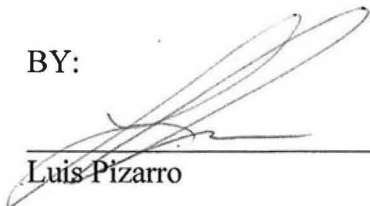
**EPA’s Response to Comment 6**

The Settlement Agreement does require SPT to take Corrective Action to address contamination that migrates onto or under or from the Property after the date of the Agreement. Additionally, under the Settlement Agreement, SPT would contribute \$3,000,000.00 for the investigation and, to the extent necessary, remediation of Existing Contamination which is located offshore of the Property. Paragraph 56 of the Settlement Agreement merely clarifies that the Settlement Agreement itself does not require SPT to do work offshore of the Property. In Paragraphs 93 and 94, EPA has reserved certain rights to compel SPT to address Waste Materials that migrate from the Property after SPT acquisition, in specified circumstances.

**III. CONCLUSION**

For the reasons detailed above, EPA has determined the Settlement Agreement as proposed should be finalized. EPA believes that SPT’s implementation of the Settlement Agreement, in conjunction with work that will be completed by SPT under the ACO, and by SPLLC under the original 1997 federal Consent Decree, will best assure that a comprehensive cleanup of this complex Property, contaminated by over a century of steelmaking operations, will be completed and the Property be made available for productive reuse. Accordingly, the Settlement Agreement will become effective on the date EPA issues written notice to SPT that EPA has reviewed and responded to all public comments that it received.

BY:



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Luis Pizarro

11/24/14

Date

Associate Director  
Office of Remediation, Land & Chemicals Division  
United States Environmental Protection Agency  
Region III

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## Attachment A

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**CHESAPEAKE BAY FOUNDATION**  
***Saving a National Treasure***

October 17, 2014

Via Regular and Electronic Mail

Luis A. Pizarro  
United States Environmental Protection Agency  
Region III  
1650 Arch St.  
Philadelphia, PA 19103-2029

Pizarro.luis@epa.gov

**RE: The Chesapeake Bay Foundation's and Blue Water Baltimore's Comments on the Sparrows Point Facility Settlement Agreement between US EPA and Sparrows Point Terminal, LLC, dated September 18, 2014.  
Docket No.: CERC/RCRA-03-2014-0279PP**

Dear Mr. Pizarro:

The Chesapeake Bay Foundation, Inc. and Blue Water Baltimore appreciate this opportunity to comment on the Sparrows Point Facility Settlement Agreement and Covenant Not to Sue with Sparrows Point Terminal, LLC (SPT) dated September 18, 2014 (SA). While we understand the object of this document and support many of its terms, there are certain terms that we request be amended and others that we ask to be added.

Before discussing our specific comments, it is important for the Agency to remember and for SPT to be aware of our long time interest in the environmental and human health issues concerning the Sparrows Point facility. CBF filed its first citizen suit against Bethlehem Steel for Clean Water Act violations in the 1980s. We supported the Agency's decision to file a Resource Conservation and Recovery Act (RCRA) action against Bethlehem Steel in the late 1990s and the resulting consent decree which we believed would bring about a long overdue evaluation of the site and much needed changes in operation. But, as you know, we have been extremely frustrated by the pace and level of investigation and remediation both on and off the site.

We met with the Agency on numerous occasions to explain the reasons for our frustration and, as a result, believed that progress would be made. Unfortunately, that did not occur and we, along with several residents of the surrounding community who were concerned about their safety, were compelled to file suit against Severstal in the hopes of rectifying on and offsite contamination.

While we pursued our lawsuit, we continued to support the Agency in its efforts to fully implement the terms of the 1997 consent decree. As a result, we spent hundreds of hours and over a hundred thousand dollars investigating the legal and scientific issues concerning the site. In the process, we developed several extremely thorough scientific and legal assessments of the issues presented by the on and offsite contamination emanating from the site which we have presented to both the Agency and SPT.

As we have expressed in each of our meetings with the Agency and SPT, we believe that hazardous wastes generated by the facility are present on and offsite. We contend that those wastes must be properly addressed to ensure environmental health and the safety of the people who use and enjoy the waters surrounding the site and who will eventually use the site itself. With respect to the offsite investigation we have asked that the Agency expand its investigation of the offsite areas beyond those currently identified in the Agency's offsite work plan based upon existing reports identifying contaminants far from the shoreline of the site.<sup>1</sup>

Those requests have not been approved because the Agency has stated that there is no evidence that hazardous waste generated by the site is located offshore. We note with approval that the Agency has now determined to exercise its authority under CERCLA to investigate and, if necessary, remediate offshore areas. SA Paragraph 43. That authority is dependent upon a finding that hazardous substances have been released or are threatened to be released into the area. 42 U.S.C. § 9604(a)(1). The definition of "hazardous substances" includes RCRA hazardous wastes. 42 U.S.C. § 9601(14). Presumably the Agency's determination is based, at least in part, upon the identification of hazardous wastes associated with the site by prior scientific reports. Accordingly, we again ask that EPA expand the scope of its offsite investigation to include areas that have been identified by prior studies, which we have provided to the Agency, to contain contaminants associated with the Sparrows Point facility.

As it has been throughout, our ultimate objective is to ensure that the site and adjoining offsite areas are fully investigated for contamination – past and present, a valid scientific determination is made concerning any hazards presented by that contamination, and appropriate remediation is undertaken. The following comments are intended to fulfill those objectives.

## SPECIFIC COMMENTS

- 1. Paragraph 9** - refers to the Site Conceptual Cleanup Plan (SCCP) (Exhibit 3) and EPA/MDE's comments concerning that plan (Exhibit 4) recognizing that although EPA has commented on the plan, the Agency has not formally approved of the SCCP. However, the validity of the SA is largely dependent upon the thoroughness of the

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<sup>1</sup> See, Ashley, J.T.F., and J.E. Baker. 1999. Hydrophobic organic contaminants in surficial sediments of Baltimore Harbor: Inventories and sources. *Environ. Toxicol. Chem.* 18:838–849; McGee, B.L., D.J. Fisher, L.T. Yonkos, G.P. Ziegler, and S.D. Turley. 1999. Assessment of sediment contamination, acute toxicity and population viability of the estuarine amphipod *Leptocheirus plumulosus* in Baltimore Harbor. *Environ. Toxicol. Chem.* 18:2151–2160; McGee, B.L., D.J. Fisher, D.A. Wright, et al. 2004. A field test and comparison of acute and chronic sediment toxicity tests with the estuarine amphipod *Leptocheirus plumulosus* in Chesapeake Bay, USA. *Environ. Toxicol. Chem.* 23:1751–1761; Rattner, et al. 2003. Contaminant exposure and nesting success of ospreys (*Pandion haliaetus*) nesting in the Chesapeake Bay Regions of Concern. *Arch. Environ. Cont. Toxicol.* 47: 126-140; Exponent (2011).

investigation to be undertaken pursuant to the plan. Because the plan is not final, is mostly conceptual, and has not been subject to public notice and comment, we object to the SA until the SCCP is finalized.

The following examples highlight the shortcomings in the SCCP and, hence, the SA.

EPA notes in its comments on the plan, for areas where hazardous waste remains, there will need to be a RCRA post-closure permitting process (see, e.g. comments on closure plans for Grey's Landfill and Coke Point Landfill), along with a minimum of 30 years' post-closure monitoring and financial assurance, as required by RCRA. However, the SCCP fails to acknowledge that listed hazardous wastes were disposed of and remain in Tin Mill Canal (TMC), which will also need full RCRA closure and financial assurance.

EPA's comments on the plan relative Grey's Landfill refer to "the hazardous waste cell." (p.2). Presumably this is a reference to the tar decanter sludge cells (undisputed RCRA hazardous waste disposal location) within the landfill. However, in addition to these cells, listed hazardous waste was removed from TMC and disposed of in Grey's Landfill. As we have explained in the past, under EPA's "mixture and derived from" rule that waste remains hazardous despite its relocation. Accordingly, a comprehensive RCRA site investigation and characterization of Grey's (as well as the TMC) will be necessary, followed by application of the RCRA facility regulations at 40 CFR Part 264.

Other hazardous wastes are present at Grey's. During the construction of the stormwater berm around the shoulders of the landfill, drums of hazardous waste were discovered and removed to a licensed landfill. Given the long history of operation and the lack of records concerning material deposited in the landfill historically, it is highly likely that hazardous waste other than that found in the sludge cells is present at the landfill requiring a more thorough investigation of the area than that outlined in the SCCP.

In addition, our expert reports which have been provided to you note that groundwater monitoring around Grey's is inadequate to determine the nature and extent of the contamination present. Those inadequacies must be addressed in any post-closure care permit.

These examples of flaws in the SCCP, upon which the SA depends, support our request that finalization of the SA be withheld until the SCCP is corrected and finalized.

We also note that several aspects of the SA are conditioned upon the Administrative Consent Order (ACO) between SPT and the State of Maryland. We note that the public was not permitted to comment on the ACO and that the ACO, like the SA, is dependent upon finalization of a remedial action plan under Maryland's Voluntary Cleanup Plan. To the extent that the SA relies upon the ACO and final RAP, we object to the finalization of the SA until the RAP is approved.

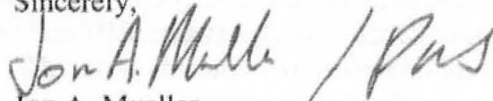
- 2. Paragraph 12** indicates that some of the investigative and remedial work is to be performed by Sparrows Point, LLC - the former owner - but the SA does not make clear what that work will be. The nature and extent of the work should be specified in the final agreement so that the public will understand who will be doing what. The SA should

also make clear that even if SPLLC is doing some of the work, presumably pursuant to the Purchase and Sale Agreement between SPT and SPLLC, SPT as the current owner must remain legally liable and responsible for performance of all of the identified work.

3. **Paragraphs 20.d, Section D. Public Participation**, among others, provide that selection of any final remedial measures will be subject to public comment before they are finalized. We support these provisions and request that they not be omitted.
4. **Paragraph 42** states that SPT represented to EPA that it had no ownership interest in the Sparrows Point property and that EPA relied on that representation. It is not clear to what extent this representation affects EPA's decision to enter into the SA, but according to the Maryland ACO, SPT purchased the site on or about September 12, 2014, six days before the signing of the SA.
5. **Paragraph 55** provides that SPT shall implement the investigation and remediation of the Coke Oven Area "on a schedule equal to that of Area A." The provision is not clear. We assume that it means that the work in the Coke Oven Area will be undertaken and completed on the same schedule as that of Area A, but that schedule is not provided nor is the identification of Area A given. We ask that the location of Area A and the schedule be provided within the terms of the agreement. We also do not understand why completion of the Coke Oven Area investigation and remediation is tied to the definition of Areas A and B. Without knowing why this connection is being made, we object to this provision.
6. **Paragraph 56** provides that SPT shall not be required to do any Work off the Property to address Existing Contamination. "Existing Contamination" is defined to include any Waste Material presently at the Site that migrates onto or under or from the Property after the date of the Agreement. Paragraph 20(i)(iii). We object to this provision as it will negate SPT's obligation to address contamination that leaves the site during its ownership in violation of RCRA.

In conclusion, we thank you for the opportunity to comment on the SA and hope that the Agency considers these comments in the spirit in which they were given - to improve the SA and to ensure the full and rapid investigation and necessary remediation of on and off-site areas. Should you have any questions about these comments we would welcome the opportunity to discuss them with you.

Sincerely,



Jon A. Mueller

Vice President for Litigation

cc:

Ridgway Hall  
Patrick Coyne  
Will Baker  
Kim Coble