



Minnesota Pollution Control Agency

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NOV - 9 2009

November 6, 2009

Mr. Brian Swanson
University of Minnesota Project Coordinator
335 Morrill Hall
100 Church Street SE
Minneapolis, Minnesota 55455

RE: Gopher Football Stadium Site
2210 6th Street SE, Minneapolis
MPCA Project Number VP20200
Retroactive No Association Determination for Past Actions
No Association Determination for Proposed Actions

Dear Mr. Swanson:

This letter is in response to the request from Janet Dalglish of the University of Minnesota for a determination under Minn. Stat. § 115B.178, subd. 1(b), that certain past actions taken by the University of Minnesota at the portion of the Gopher Football Stadium site formerly occupied by Republic Creosoting, at the address referenced above (the Site), did not constitute conduct that would associate the University of Minnesota with the release or threatened release of hazardous substances, pollutants or contaminants at the Site for the purpose of Minn. Stat. § 115B.03, subd. 3(4) (2008).

The Minnesota Pollution Control Agency (MPCA) staff in the Voluntary Investigation and Cleanup (VIC) Program has reviewed the documents submitted for the Site.

The Site is the former location of the Republic Creosote wood treating facility which was in operation from approximately 1903 to 1913. The Site was also used for railroad purposes. Environmental assessments of the Site conducted from 1990 to 2006 encountered soil and groundwater contaminated with creosote and buried pockets of semi-solid creosote. A partial cleanup of the creosote contaminated soil at the Site, using on-site thermal desorption, was conducted in 1994 and 1995. Subsequent investigations indicate the groundwater contamination has diminished in extent and magnitude since the partial soil cleanup. An area of soil contaminated with polynuclear aromatic hydrocarbons (PAHs) not associated with the creosote facility was also identified.

From June 2007 to March 2009, the University of Minnesota conducted a cleanup of the remaining soil contamination which is documented in the response action plan implementation report, approved by the MPCA in a letter to you dated November 5, 2009. The response actions included:

- 1) Disposal of contaminated soil and mixed debris/fill at the Veolia Landfill Environmental Services Rolling Hills Landfill in Buffalo (2,062 tons of soil containing significant levels of debris, 64 tons of buried treated timbers and railroad ties, and 89 tons of PAH contaminated soil from beneath the current location of 23rd Street SE);

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- 2) Treatment of 28,733 tons of creosote contaminated soil at the AB Environmental thermal treatment facility in Henderson with disposal at the Waste Management Spruce Ridge Landfill in Glencoe; and
- 3) Disposal of 4,088 tons of semi-solid creosote and contaminated debris (710 tons at the EQ Landfill in Belleville, Michigan; 237 tons thermally treated at the Clean Harbors facility in Kimball, Nebraska; and 3,141 tons at the Lambton Landfill operated by Clean Harbors near Sarnia, Ontario, Canada).

The Identified Release for the purpose of this letter is the release of polynuclear aromatic hydrocarbons associated with the creosote release in the soil and groundwater at the Site.

Based upon a review of the information provided to the MPCA VIC Program, and subject to the conditions set forth in this letter, a determination is hereby made pursuant to Minn. Stat. § 115B.178, subd. 1(b) that the past actions (Past Actions) as described in a letter from Janet Dalglish to Wayne Sarappo and Lynne Grigor of the MPCA, dated September 9, 2009 (the Past/Proposed Actions Letter), and as described in the Affidavit of Kathleen O'Brien (Affidavit) will not associate the University of Minnesota with the Identified Release for the purpose of Minn. Stat. § 115B.03, subd. 3(4) (2008). This determination is being sought for the University of Minnesota and the determination is retroactive to October 8, 1990, the date that the University of Minnesota purchased the Site. This determination applies to the following Past Actions:

- Purchase of the Site.
- Construction of the TCF Bank Stadium, associated parking, landscaping and infrastructure at the Site.
- Implementation of the Response Action Plan for the Site which was approved by the MPCA VIC Program.
- Past operation and maintenance of the TCF Bank Stadium, associated parking, landscaping and infrastructure.

This letter also addresses the University of Minnesota request for a determination under Minn. Stat. § 115B.178, subd. 1(a) that certain actions proposed to be taken by the University of Minnesota at the Site will not constitute conduct associating the University of Minnesota with the release or threatened release of hazardous substances, contaminants, or pollutants at the Site for the purposes of Minn. Stat. § 115B.03, subd. 3(4) (2008).

Based upon a review of the information provided to the MPCA VIC Program, and subject to the conditions set forth in this letter, a determination is hereby made pursuant to Minn. Stat. § 115B.178, subd. 1(a) that the proposed actions (Proposed Actions) as described in the Past/Proposed Actions Letter will not associate the University of Minnesota with the Identified Release for the purpose of Minn. Stat. § 115B.03, subd. 3(4) (2008). This determination applies to the following Proposed Actions:

- Future operation and maintenance of the TCF Bank Stadium, associated parking, landscaping and infrastructure at the Site;

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- Future potential expansion of the TCF Bank Stadium, associated parking, landscaping and infrastructure at the Site; and
- Future potential construction of additional University of Minnesota buildings, parking, infrastructure and landscaping at the Site under an MPCA approved construction project specific environmental construction contingency plan.

Pursuant to Minn. Stat. § 115B.178, subd.1, when the University of Minnesota takes the Proposed Actions in accordance with the determination in this letter, subject to the conditions stated herein, the Proposed Actions will not associate the University of Minnesota with the Identified Release for the purpose of Minn. Stat. § 115B.03, subd. 3(4) (2008).

The Retroactive No Association Determination and No Association Determination made in this letter are subject to the following conditions:

1. The representations made in the Past/Proposed Actions Letter and Affidavit are accurate and the Past Actions were carried out as described in the Past/Proposed Actions Letter and Affidavit;
2. The Proposed Actions shall be carried out as described herein;
3. The University of Minnesota shall cooperate with the MPCA, its employees, contractors, and others acting at the MPCA's direction, in the event that the MPCA takes, or directs others to take, response actions at the Site to address the Identified Release or any other as yet unidentified release or threatened release of a hazardous substance, pollutant, or contaminant, including, but not limited to, granting access to the Site so that response actions can be taken;
4. The University of Minnesota shall avoid actions that contribute to the Identified Release or that interfere with response actions required under any MPCA-approved response action plan to address the Identified Release;
5. The University of Minnesota shall not conduct any activity that may lead to an increase in the magnitude or extent of the groundwater plume without the prior approval by the MPCA of a contingency plan or response action plan specific to the planned activity, including, but not limited to, ground water extraction, dewatering and increased water infiltration;
6. In the event that any suspected hazardous substances are encountered during Site activities (i.e., utility maintenance, landscaping maintenance, etc.), the University of Minnesota shall notify the MPCA project staff immediately in order to determine appropriate handling, sampling, analysis, and disposal of such wastes; and
7. Prior to any further construction on the Site, the University of Minnesota shall submit for MPCA review and approval, a construction contingency plan specific to the planned construction; and

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8. The University of Minnesota shall record, at its own expense, in the office of the County Recorder or Registrar of Titles, whichever is appropriate, in and for Hennepin County, an affidavit describing the contamination remaining at the Site. The University of Minnesota shall record the affidavit within thirty (30) calendar days after receipt of MPCA approval. The University of Minnesota shall submit a copy of the affidavit as recorded to the MPCA within thirty (30) days after the affidavit is officially recorded.

The determinations made in this letter apply to the University of Minnesota's successors and assigns if the successors and assigns: 1) are not otherwise responsible for the Identified Release at the Site; 2) do not engage in activities with respect to the Identified Release which are substantially different from the activities which the University of Minnesota proposes to take, as described herein; and 3) comply with the conditions set forth in this letter.

Please be advised that the determinations made in this letter are subject to the disclaimers found in Attachment A and are contingent on compliance with the terms and conditions set forth herein including the submittal of the copy of the recorded affidavit. If you have any questions about the contents of this letter, please contact Wayne Sarappo at 651-757-2690 or Lynne Grigor at 651-757-2399.

Sincerely,



Barbara Jackson
Supervisor
Superfund, RCRA and Voluntary Cleanup Section
Remediation Division

BJ/LG:jmp

Attachment

cc: Janet Dagleish, University of Minnesota
Kathleen O'Brien, University of Minnesota
Susan Weinberg, University of Minnesota
Rick Kubler, Gray, Plant, Mooty
David Spillman, Hines Interests, LP
Joe Otte, Wenck Associates
Thomas Frame, City of Minneapolis
David Jaeger, Hennepin County Environmental Services

UMR-07606

ATTACHMENT A
DISCLAIMERS
Gopher Football Stadium
MPCA Project Number VP20200

1. Reservation of Authorities

The MPCA Commissioner reserves the authority to take any appropriate actions with respect to any release, threatened release, or other conditions at the Site. The MPCA Commissioner also reserves the authority to take such actions if the voluntary party does not proceed in the manner described in this letter or if actions taken or omitted by the voluntary party with respect to the Site contribute to any release or threatened release, or create an imminent and substantial danger to public health and welfare.

2. No MPCA Assumption of Liability

The MPCA, its Commissioner and staff do not assume any liability for any release, threatened release or other conditions at the Site or for any actions taken or omitted by the voluntary party with regard to the release, threatened release, or other conditions at the Site, whether the actions taken or omitted are in accordance with this letter or otherwise.

3. Letter Based on Current Information

All statements, conclusions and representations in this letter are based upon information known to the MPCA Commissioner and staff at the time this letter was issued. The MPCA Commissioner and staff reserve the authority to modify or rescind any such statement, conclusion or representation and to take any appropriate action under his authority if the MPCA Commissioner or staff acquires information after issuance of this letter that provides a basis for such modification or action.

4. Disclaimer Regarding Use or Development of the Property

The MPCA, its Commissioner and staff do not warrant that the Site is suitable or appropriate for any particular use.

5. Disclaimer Regarding Investigative or Response Action at the Property

Nothing in this letter is intended to authorize any response action under Minn. Stat. § 115B.17, subd. 12.