



REGION 5

CHICAGO, IL 60604

Jonathan Hohenstein
Treasurer
Howell Township
3525 Byron Road
Howell, MI 48855

VIA: treasurer@howelltownshipmi.org

RE: Shiawassee River Superfund Site, Howell, Michigan

Dear Mr. Hohenstein:

Thank you for meeting with the U.S. Environmental Protection Agency (EPA or the Agency) on January 15, 2025, about Howell Township's plans concerning two of its properties, parcel numbers 4706-15-300-002 and 4706-22-100-001, ("Properties") at the Shiawassee River Superfund Site ("Site") in Howell, Livingston County, Michigan. In your inquiry, you described your interest in developing a public park that includes a walking trail and parking stalls at the Properties and requested that we provide you with a Superfund comfort/status letter.

The purposes of this comfort/status letter are to provide you with information that may be relevant to the potential Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) liability concerns you have identified at the Properties and summarize the relevant information available to EPA about the Site as of the date of this letter. We hope this information will enable you to make informed decisions as you move forward with your plans regarding the Properties.

Under CERCLA (commonly referred to as Superfund),¹ the Agency's mission is to protect human health and the environment from risks posed by exposure to contaminated or potentially contaminated land, water, and other media. A Superfund cleanup can help return these

¹ 42 U.S.C. §§ 9601, *et seq.*

properties to productive reuse. We are providing this letter consistent with the Agency's 2019 Comfort/Status letter policy.²

Property Status

Interested parties can find information on sites that are, or potentially are, contaminated and may warrant action under Superfund, including site-specific documents and fact sheets, in the Superfund Enterprise Management System (SEMS)³.

<https://www.epa.gov/superfund/shiawassee-river>

The Properties may be part of the Site since contaminated sediment could have been transported to the Properties through flooding events. The Site is located in SEMS and is on the National Priorities List (NPL). For the reasons stated below, we are addressing the Site under Superfund remedial authority.

History and Status of the Site

SEMS provides information on (1) whether an NPL site is proposed, final, or deleted, (2) sites subject to a federal remedial or removal action, and (3) sites with a [Superfund Alternative Approach](#) agreement.⁴

From 1969 through approximately 1974, the former Cast Forge Company (CFC) facility, discharged polychlorinated biphenyls (PCBs) process water into an unlined lagoon that overflowed to an on-Site drainage ditch that discharged to the Shiawassee River. The unlined lagoon was closed and replaced with an underground settling tank that occasionally overflowed into a storm drain that led to the river. In the 1970s, the State of Michigan found elevated levels of PCBs in the river's sediment and identified CFC as the primary source of the contamination. CFC ceased using the settling tank and discharging PCBs. Site investigations by the State of Michigan revealed PCB contaminated soils, river sediment, and fish.

In 1983, the Site was listed on the NPL to address PCB contamination of Shiawassee River sediment and floodplain soils, groundwater, and on-Site soils at the CFC facility. In 1999, EPA took over the Site investigation and issued a Record of Decision (ROD) in 2002. EPA presented in its 2002 ROD the selected remedial action consisting of limited removal and disposal of PCB-contaminated soil at the former CFC facility and on the river floodplain, removal and disposal of PCB-contaminated sediment, post remediation monitoring, and implementation of institutional controls for the former CFC property. In 2004 and 2005, remedial action cleanup work was

² See 2019 Policy on the Issuance of Superfund Comfort/Status Letters available on the Agency's website at <https://www.epa.gov/enforcement/comfortstatus-letters-guidance>.

³ SEMS is available at on the Agency's website at <https://cumulis.epa.gov/supercpad/cursites/srchsites.cfm>.

⁴ See *Transmittal of Updated Superfund Response and Settlement Approach for Sites Using the Superfund Alternative Approach (SAA Guidance)* (Sept. 28, 2012), <https://www.epa.gov/enforcement/transmittal-memo-updated-superfund-response-and-settlement-approach-sites-using>. See *Transmittal of Updated Superfund Response and Settlement Approach for Sites Using the Superfund Alternative Approach (SAA Guidance)* (Sept. 28, 2012).

undertaken. Currently, the monitored natural recovery remedy is being implemented and evaluated to ensure remedial goals - including the long-term PCB cleanup of Shiawassee River sediments aimed at protecting ecological receptors such as mink through dietary consumption of fish – are achieved. Depending on the monitoring results, there may be a need for additional work. Please note, the Michigan Department of Health and Human Services has a safe fish guide for the Shiawassee River which indicates that no amount of any species of fish should be eaten by humans (See [Eat Safe Fish Guide-Southeast Michigan](#)). That advisory is in effect due to the presence of PCBs in river sediments and to protect human health.

Reuse of the Properties

Based on the information that you provided, EPA understands that Howell Township intends to develop a public park at the Properties consisting of a walking trail located approximately 500-1000 feet away from the Shiawassee River and parking stalls. We also understand the development may involve grading, excavation and material installation to construct the walking trails and parking stalls. Please note that, to ensure the remedy remains protective of human health and the environment, any development must be compatible with any further response actions, if applicable, that EPA may require to achieve the performance standards or to maintain the effectiveness of the remedy set forth in the ROD. This requirement is designed to protect the remedy and prevent unacceptable exposure to residual contamination. As of the date of this letter, we have not identified any obvious incompatibility between your proposed use of the Properties as you have described it to us and EPA's selected cleanup option. As your plans develop further, please continue to discuss the development with us.

CERCLA § 101(20)(D) State and Local Government Liability Exemption

EPA understands that you are interested in information regarding the state and local government liability exemption provision of CERCLA. In 2018, Congress enacted the Brownfields Utilization, Investment, and Local Development Act of 2018 (BUILD Act).⁵ CERCLA § 101 (20)(D), as amended by the BUILD Act, provides liability protection to local governments⁶ that may exempt them under certain circumstances from being an “owner” or “operator” and thus may protect them from potential CERCLA liability.

The BUILD Act amended CERCLA § 101(20)(D) to add a new category of exempt acquisitions, “through seizure or otherwise in connection with law enforcement activity” and to remove the requirement that state and local governments must acquire title to property “involuntarily.” Section 101(20)(D) now states that a “unit of State or local government which acquired ownership or control through seizure or otherwise in connection with law enforcement activity, or through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government acquires title by virtue of its function as sovereign” is exempt from the definition

⁵ Brownfields Utilization, Investment, and Local Development Act of 2018, Division N of Pub. L. No. 115-141, 132 Stat. 1052 (March 23, 2018).

⁶ Many of the references to “local governments” in this letter and to CERCLA’s liability protections are also applicable to state governments.

of “owner or operator” if that government entity did not cause or contribute to the release or threatened release of a hazardous substance from the facility. Please note that some actions or omissions during ownership (such as dispersing contaminated soil during excavation and grading and failing to prevent the release of hazardous substances) may cause or contribute to a release of hazardous substances from a property and make the local government ineligible for the exemption.⁷

CERCLA § 101(20)(D) identifies “through tax delinquency” as a circumstance or process that may trigger the use of government-specific acquisition methods that are exempt from CERCLA liability. Based on the information currently known to the EPA on the circumstances of Howell Township’s acquisition of the Properties, the CERCLA § 101(20)(D) exemption may apply.

On June 15, 2020, EPA issued guidance that describes the Agency’s enforcement discretion policies that may apply to state and local governments and to your situation. The Local Government Guidance provides:

The CERCLA § 101(20)(D) exemption from owner or operator liability includes circumstances in which a local government acquires title to property “by virtue of its function as sovereign.” This phrase is undefined in the statute. To provide clarity to local governments, the EPA generally intends to exercise its enforcement discretion to treat a local government acquisition as “by virtue of its function as sovereign” only when the government acquires title to the property by exercising a uniquely governmental authority via a function that is unique to its status as a governmental body.

Pursuant to the Local Government Guidance, enforcement discretion may apply in limited circumstances when a governmental entity purchases property in the exercise of a uniquely governmental authority. Furthermore, the Local Government Guidance also provides enforcement discretion for certain transfers of property between governmental units in the exercise of their “by virtue of function as sovereign” authority. Based on the information the EPA currently has on Howell Township’s situation, the Local Government Guidance may apply.

Please note, application of the Local Government Guidance is conditioned on Howell Township not causing or contributing to a release and not otherwise being potentially liable. Courts, not EPA, are the final arbiter of whether a party has achieved a liability protection. Thus, EPA recommends that you consult your legal counsel to assess whether you satisfy each of the statutory requirements necessary to achieve and maintain the state and local government liability exemption.

⁷ For additional discussion of post-acquisition activities that may or may not be considered releases under CERCLA, see the disposal discussion beginning on page 8 of the EPA’s *Enforcement Discretion Guidance Regarding Statutory Criteria for Those Who May Qualify as CERCLA Bona Fide Prospective Purchasers, Contiguous Property Owners, or Innocent Landowners* (“Common Elements Guidance”), July 29, 2019, available on the Agency’s website at <https://www.epa.gov/enforcement/common-elements-guidance>.

State Actions

We can only provide you with information about federal Superfund actions at the Site, federal law and regulations, and EPA guidance. For information about potential state actions and liability issues, please contact Jason Harnick, Project Manager, Michigan Department of Environment, Great Lakes, and Energy at (517) 599-7421 or harnickj1@michigan.gov.

Conclusion

EPA remains dedicated to facilitating the cleanup and beneficial reuse of contaminated properties and hopes the information contained in this letter is useful to you. You may find it helpful to consult your own environmental professional, legal counsel, and your state, tribal, or local environmental protection agency before taking any action to acquire, clean up, or redevelop the Property. These consultations may help you obtain a greater level of comfort about the compatibility of the proposed use and ensure compliance with any applicable federal, state, local, and/or tribal laws or requirements. If you have any additional questions or wish to discuss this information further, please feel free to contact Jeff Thomas.

Sincerely,

Karen Kirchner
Manager, Remedial Response Branch 1
Superfund & Emergency Management Division

*cc (via Email): Jason Harnick, EGLE
Polly Synk, MI AG
Luanne Laemmerman, MI AG
Matthew Sander, EPA OECA/OSRE
Tom Bloom, Jeff Thomas, EPA SEMD
Natalie Romain, EPA ECO
Tammy Carnovsky, EPA ORC*