

HEARING OFFICER'S REPORT

TO: The Honorable Collin P. O'Mara
Secretary, Department of Natural Resources and Environmental Control

FROM: Robert P. Haynes, Esquire
Senior Hearing Officer, Office of the Secretary
Department of Natural Resources and Environmental Control

RE: Proposed Plan of Remedial Action for 29984 Pinnacle Way, Dagsboro, Sussex County (SIRS Project DE-1555)

DATE: December 23, 2013

I. BACKGROUND AND PROCEDURAL HISTORY

This Report recommends to the Secretary of the Department of Natural Resources and Environmental Control (Department) that a Secretary's Order be issued approving the Proposed Plan for Remedial Action (Plan) (DNREC Ex.6) as a final Plan of Remedial Action.

The Plan was developed by the Department's Division of Waste and Hazardous Substances, Site Investigation and Remediation Section (SIRS) for the environmental remediation of 29984 Pinnacle Way, Dagsboro (Site),¹ 107.3 acres located in an unincorporated area of Sussex County approximately one mile east of the center of the Town of Millsboro. The Site has Iron Branch Road (County Road 331) as its northeast border, a rail line along its southwestern border, Wharton's Branch, a tidal tributary of the Indian River, along its western border, and farmland and the mobile home park residential community of Holiday Acres along the southeastern border. The farmland is proposed to be included in the redevelopment of the Site. Iron Branch Road separates the Site from the residential community of Colonial Estates and Possum Point Road, which provides access from Iron Branch Road to the residential community of Possum Point located along the Indian River. An asphalt manufacturing facility is located next to the southwest across the rail line. The Site is zoned heavy industry by Sussex County. A federal hazardous waste clean-up site, or Superfund site, was designated for the NCR

¹ The Site consists of 3 parcels, Sussex County parcels 235-5.00-14.00, 235-5.00-15.00, and 235-5.00-16.00, which are owned by Pinnacle Foods Group, LLC.

Corporation property, which is located a half mile northwest of the Site on the other side of the rail line.

The Site was used for agriculture until the early 1970's when a pickle production plant was constructed and known as the 'Vlasic' plant, until pickle production closed December 2012. The pickle production used non-contact process water for the pasteurization, which the Department's Division of Water authorized for treatment by an on-site wastewater treatment plant and disposal of its treated effluent by spray irrigation on the Site's approximately 50 acre fields to the south of the plant. The pickle production used a main production and warehouse building, a chemical storage building, a water treatment building, and a wastewater treatment plant. The history of the Site reports an oil spill that was subject of remediation, and the Department ended authority to spread wastewater treatment plant waste sludge on the spray fields, and required remediation by pumping of groundwater to reduce this contamination until acceptable levels were reached. The Site includes 4 public water supply wells approved by the Department. In addition, the Site's spray irrigation field has monitoring wells required by the Department's spray irrigation permit. The wastewater treatment plant also was authorized to discharge to the surface water.

The HSCA investigation began when a potential buyer of the Site, Allen Harim Foods, LLC (AHF), sought to redevelop the Site for a poultry processing and food production plant. AHF previously acquired Delaware food production facilities from Allen Family Foods following Allen's 2011 bankruptcy.

To conduct a HSCA investigation, AHF retained a Department certified environmental engineering consulting firm, BP Environmental, Inc. (BPE) to conduct a Phase I Environmental Assessment, which was completed on March 8, 2013 (DNREC Ex. 1). AHF directed BPE to conduct a Phase II Subsurface Investigation Study, which was completed on April 24, 2013. (DNREC Ex. 2).

On July 11, 2013 AHF submitted an application for Brownfields certification, which was the subject of a Department public notice on July 17, 2013. The purpose of the certification is to allow redevelopment of possibly contaminated area without exposing a potential buyer to unlimited liability for all past contamination.

On August 5, 2013, SIRS granted the Site a Brownfields certification, and on August 26, 2013 the Department entered into a Brownfield Development Agreement with AHF, which included the approval of a Conceptual Site Model and Sampling and Analysis Plan (SAP). The Brownfield Development Agreement was the subject of a public notice on August 28, 2013, which allowed the public to submit public comments through September 16, 2013.

The SAP was based upon using 12 new monitoring wells at locations throughout the Site. The SAP identified areas of concern such as the wastewater treatment plant, the chemical storage room, and areas with reported spills. Accordingly, BPE proceeded with a Brownfields investigation pursuant to the Department's HSCA guidelines. BPE worked closely with Department experts in the Brownfields investigation of the Site.

On November 22, 2013, BPE submitted to SIRS a draft Brownfields Investigation (BFI) and SIRS provided comments on the draft. (DNREC Ex. 3). On November 25, 2013, BPE submitted the final BFI to SIRS that reflected SIRS' comments (DNREC Ex. 5). SIRS approved the BIR subject to receiving further groundwater analysis. (DNREC Ex.4).

On November 26, 2013, SIRS issued the Plan, which recommended as the remedial action that AHF/BPE submit a groundwater monitoring plan to determine if they increase or migrate, which may require further remedial action at that time. The Plan was the subject of Department publication of public notices on November 27, 2013 along with the opportunity for public comment at a December 17, 2013 public hearing.²

² Previously the Department had published notice of a December 4, 2013 public hearing, but members of the public requested additional time and consequently the Department rescheduled the public hearing to December 17, 2013.

The public hearing was held at the Millsboro Town Hall. The public comment period closed at the end of the public hearing with 14 public speakers who spoke, and approximately 15 others who declined to speak when called to speak. Approximately 145 people attended and included both supporters and opponents of the Plan.

Following the hearing, I requested SIRS to provide technical response to the public comments, and SIRS prepared the attached Technical Response Memorandum that indicates that the public comments do not warrant any change to the Plan and addresses the public comments on the adequacy of the information that was gathered in the BFI. I consider the below record of decision supports a final decision on this matter approving the Plan.

II. SUMMARY OF RECORD OF DECISION³

This Report is based upon the record of decision, which includes the public hearing transcript, the written documents submitted as exhibits at the hearing, the written public comments timely received during the public comment period, and the post hearing investigation of the issues raised by the public comments and SIRS' technical expertise. The record of decision is voluminous at approximately 2,000 pages, including an 118 page verbatim transcript of the public hearing. The following is a summary of the public comments and exhibits at the public hearing.

The hearing opened with introductory remarks on the hearing's procedures, and SIRS representatives, Timothy Ratsep, Administrator, Quazi Salahuddin, Program Manager, and Morgan Price, Project Manager introduced themselves. Ms. Price spoke while providing a slide presentation on the Site's investigation and the Plan (DNREC Ex. 6).

In addition, SIRS provided the following exhibits to assist the public with their comments and to be part of the record of decision:

³ HSCA uses a 'record of decision,' which also used in federal hazard substance regulation. The record of decision is the same as the record developed to support other Department decisions, including those that do not entail public hearings. The record is the information the Department determines is sufficient to support its decision and in the case of public hearings, any public comments in the record that may be contrary to the Department's decision.

- DNREC Ex. 1.- March 11, 2013 Phase I Environmental Site Assessment Report, BPE,
- DNREC Ex. 2-Limited Subsurface Investigation, BP Environmental, Inc., April 2013
- DNREC Ex. 3- November 22, 2013 SIRS letter to BPE commenting on draft BIR.
- DNREC Ex. 4-November 26, 2013 SIRS letter to BPE approving BIR
- DNREC Ex. 5- BPE November 25, 2013 BIR submitted to SIRS
- DNREC Ex. 6-SIRS signs November 26, 2013 Proposed Plan of Remedial Action for the 29984 Pinnacle Way Site (DE-1555)
- DNREC Ex.7-November 27, 2013 Legal notice of Proposed Plan of Remedial Action for the 29984 Pinnacle Way Site (DE-1555) and Public Hearing.
- DNREC Ex. 8-email communication between SIRS and Maria Payan
- DNREC Ex. 9-December 11, 2013 BPE Addendum to BIR and SIRS December 13, 2013 letter accepting it
- DNREC Ex. 10-SIRS slide presentation at Public Hearing for the Proposed Plan of Remedial Action for the 29984 Pinnacle Way Site (DE-1555)

AHF's representatives present were its counsel, Elio Battista of the law firm of Parkowski, Guerke and Swayze, P.A. and Gary Lasako of BPE. Mr. Battista read a prepared statement that explained the background and summarized the proposed remediation consistent with the Department's Brownsfield program. Harim Ex. 1. Mr. Lasako read a prepared statement that discussed the BFI's testing for contaminants and then how the contaminants that were discovered above HSCA screening levels were evaluated using the Human Health Risk Assessment (HHRA).

The first public speaker was John Austin, who had an extensive prepared statement and slide presentation. Austin Exs. 1-9. His comments criticized the underlying investigation and analysis of past environmental problems, particularly with the spray irrigation and wastewater bio solids (sludge) applied to the spray field. He was critical of the well monitoring locations and the absence of off-site well data, which provided well data from wells located on properties in the residential communities of Colonial Estates to the east of the Site and Holiday Acres Mobile Home Park to the south of the Site.

The second public speaker was Maria Payan, who read a prepared statement prepared by Kathy Martin, an Oklahoma engineer with 23 years of experience in the field of environmental

regulation. Ms. Payan criticized the timing of the BFI report's release just before Thanksgiving and only a few days in advance of the previously planned public hearing on the Plan. She expressed her appreciation for the re-scheduled hearing, but then objected to the additional documents to support the Plan becoming available December 13, 2013. Ms. Payan indicated that she had submitted a request for more time to comment.⁴ She also mentioned the sludge disposal issue when Vlastic was operating until the Department required a different disposal method in 1987. She also was critical of the lack of groundwater analysis of the area around the wastewater treatment plant and the brine storage areas. She also protested the lack of any detail on what the Plan's remedial action of groundwater monitoring will actually monitor. She also was critical of the depth of the monitoring wells, particularly the spray irrigation area that had a depth of only 25', which she claimed was insufficient to reach the plume of contaminated water at a greater depth than 25', particularly at depths of 35' to 40'.

The third public speaker was Todd Hurd, who stated he had Ph.D. in biogeochemistry and was a hydrological tracing specialist. He expressed concern with the groundwater contamination by arsenic. He recommended a thorough outlining of the 'contaminant plume' for the Site and off-site prior to any final remedial action is approved.

The fourth public speaker was Cindy Wilton, who spoke as a resident and who requested that the proposed plan not be approved. She claimed AHF has a history of air and water pollution violations. She asked for more complete quantitative assessment of the Site and the nearby communities. She cited the high levels of arsenic and chromium as contaminants of concerns that have not been fully studied. She also expressed concern about the potential for groundwater depletion from the poultry operation that would be built.

The fifth public speaker was Samantha Wilton who briefly spoke about the lack of trust that the Site will be cleaned up.

⁴ This request was not made to me.

The sixth public speaker was Ken Haynes, who spoke briefly in opposition to the smell from Mountaire's chicken processing plant that was the subject of an air quality permit hearing in October 2013.

The seventh public speaker was Jay Meyer, who read from the Department's statutory duty to protect the environment, and he then said that the Department should be accountable for the environmental problems just as Penn State officials were held to be accountable for problems there.

The eighth public speaker was Stephanie Herron, who spoke about the environmental decision-making and the review of a full range of alternative to the Plan. She commented that the Millsboro area has been disproportionately impacted by environmental contamination.

The ninth public speaker was Frank Willcox, who objected to the realtors' advertisement in support of the redevelopment of the Site by use for a poultry plant.

The tenth public speaker was Dottie LeCates who opposed the Plan and questioned the cleanup. She wondered why the Site did not have its permit revoked when there were violations similar to what happens with your driver's license when you break the law. She said she was not against the poultry plant, but only with its proposed location.

The eleventh public speaker was Jim Baxter, who said he was a fifth generation family farmer and that he wanted to respond to the negative comments made about the proposed poultry plant and the farmers that would supply it with chickens. He also wanted the Department to consider the 700 hundred jobs that would be created by the poultry plant.

The twelfth public speaker was Wolf von Baumgart who spoke as the State Chairman of the Independent Party of Delaware. He spoke about the need for public access to the information. He also criticized the lack of discussion at the public hearing of the specific amounts of contaminants.

The thirteenth public speaker was Ken Currie, who spoke of the need for offsite testing and mentioned the new nearby development of Millwood. He also questioned why the Department had not discovered the contaminants prior to the BFI when it was monitoring the Site for water pollution. He concluded with questioning how can the people trust the Department when the pollution occurred under the Department's past regulation.

The fourteenth public speaker was Linda Dystra who spoke complaining that the hearing was likely a waste of time.

There were documents placed into the record and the complete record of decision is set forth as an appendix. I specifically include the Brownfields documents cited above in the procedural history and the approval of the SAP that was the subject of many of the public comments.

Finally, I requested assistance from SIRS to respond to public comments and the SIRS technical response memorandum is attached hereto that explains the groundwater monitoring and answers the questions raised on this issue and also indicates that nothing in the public comments warrants any change to the Plan.

III. DISCUSSION AND REASONS

I find that the Department's Plan is a reasonable and sound method of environmental remediation of the Site. I find that the record of decision supports approval of the Plan based upon the data from a comprehensive Site investigation that test samples for many different hazardous substances, but which the results revealed only a few samples with levels of contamination that were in excess of HSCA screening levels.

The BFI determined that Trichloroethene (TCE) and Tetrachloroethene (PCE) levels exceeded safe drinking water standards at one well location at the center of the Site. In addition, nitrate/nitrite levels were detected above standards in three locations. Lead was detected above drinking water standards at one location at the southern perimeter of the property. The soil

investigation detected iron, above HSCA screening levels at one location. The sub-slab investigation of gases detected chloroform above HSCA screening levels in one location. The sediment sample from the tidal contamination was detected elevated levels of cyanide, mercury and toluene. The contaminants were then subject to the Human Health Risk Assessment, which is set forth in Appendix VIII of the BFI. A Department certified consultant, Alliance Environmental, Inc. reviewed the contaminants levels in the BPE and determined that the levels did not pose any undue human health risk based upon the projected use as a poultry processing plant, including the construction workers involved in the redevelopment. The results of the HHRA found that a human organ specific analysis of the contaminants was within the acceptable range of risk.

SIRS' Plan recommends a long term groundwater monitoring plan be developed and implemented once approved by SIRS. In addition, SIRS recommends a Contaminated Material Management Plan be developed and implemented once approved by SIRS.

Many of the public comments that opposed the Plan allege that the BFI did not have adequate information on the groundwater from the well locations and samples taken. The testing and methodology used was explained in detail in the BFI and includes a chain of custody and use of the Department laboratory and a certified laboratory. The data gathering was to test for a large number of possible chemicals in the groundwater, the sediment, the surface and subsurface soils and the vapor from the soil underneath the buildings. In total BPE gathered samples from 51 soil boring locations, 12 new monitoring wells and 7 existing monitoring and public water supply wells located throughout the property, and 6 subslab vapor monitoring point for measurement of gases underneath the plant's concrete floors, 3 sediment sample locations along Wharton's Branch, the tidal tributary of Indian River that runs along the Site's northwestern boundary and next to the Site's manufacturing, wastewater treatment plant and waste storage structures, and 3 sediment sample locations along an unnamed tidal tributary on the Site's southeastern boundary.

In sum, the testing and sampling may be subject to differing opinions by experts, but I consider it to be reasonable and consistent with the comprehensive examination of the Site's soils, groundwater, sediment under the Site's surface waters, and subsurface vapor emissions underneath the buildings.

I requested SIRS to provide their technical expertise to try to satisfy this concern and SIRS provided reasons why the testing was reasonable. Moreover, SIRS states that the Plan is consistent with the public comments to the extent that they seek additional testing and SIRS leaves open the possibility of offsite testing and other locations in the following excerpt:

As stated within the PPRA, a Groundwater Long Term Monitoring Plan will be implemented at the Site. If the results of the required monitoring show that the contaminants are migrating or showing an increasing trend, DNREC may require further remedial actions. This remedial action may include offsite monitoring. Specifics of the groundwater monitoring, including which wells will be sampled, will be outlined within the Long Term Monitoring Plan.

Thus, the Plan should be implemented to gain more data as requested by the public comments, and the monitoring may include offsite wells and new wells as determined appropriate from the testing.

The public comments objecting to the groundwater testing essentially seeks the same result as the Plan, which will provide more data from ongoing long term groundwater monitoring. SIRS has not reviewed or approved the groundwater monitoring plan that is to be developed if the Plan is approved. Consequently, the concerns raised by the public comment may be addressed in an approved groundwater monitoring plan. To the extent that the public comments seek input into the groundwater monitoring plan, the Department could provide the proposed study for public comment although not legally obligated to do so. There was criticism of the process whereby the Plan was developed, but the source documents used by the Department became available for public inspection on the Department's web site not long after they were issued.

The proposed remedial action for a long-term groundwater monitoring plan will ensure the contaminant levels do not increase or move from their current locations. The Department will make this information available to the public upon request if they public wants to review these results. The public comments may be useful to SIRS when it reviews the proposed groundwater monitoring plan for approval and SIRS may seek input from those who provided public comments in this record. Thus, the Plan and the public comments opposing it for lack of groundwater data are not in conflict as the groundwater monitoring plan will provide more data.

Many of the public comments on the Plan focused on the possible future use of the Site as a poultry processing plant. The possible future use does not change the scientific investigation except for the HHRA that assumed workers using the Site. The Site is zone heavy industry by Sussex County and such the public should expect that heavy industrial would operate the Site. I do not know how Sussex County's regulates poultry processing plants under it authority to regulate land uses in Sussex County, but then that information is not needed for consideration of the Plan. What is important is the level of contamination present on the Site, and whether is poses any undue risk to human health or the environment. I find that the record supports the remedial action as reasonable.

While Sussex County determined the Site's suitability for various uses, the Department will have a central role in any redevelopment to the extent that permits are required for air, water or wastes produced by the new use. Any future redevelopment of the Site will be the subject of further opportunities for public comment on any applications submitted to obtain permit authority for such releases into the air or water or the management of wastes.

In sum, based upon my review of the record of decision, I recommend approval of the Plan in final in order that its remedial actions may be implemented.

IV. CONCLUSION

Attached is a draft Order should the Secretary accept this Report.



Robert P. Haynes, Esquire
Senior Hearing Officer

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL
DIVISION OF WASTE AND HAZARDOUS SUBSTANCES
SITE INVESTIGATION & RESTORATION SECTION

MEMORANDUM

To: Robert Haynes, Hearing Officer, DNREC

Through: Marjorie Crofts, Division Director *MC 12.20.13*
Timothy Ratsep, SIRS Program Administrator *TR 12/20/13*

From: Qazi Salahuddin, SIRS Program Manager I *QS 12/20/13*
Morgan M. Price, SIRS Environmental Scientist III *MP 12/20/13*

Date: December 20, 2013

Subject: Response Document for the Site Investigation and Restoration Section (SIRS) for the Public Hearing Held on December 17, 2013 for the Proposed Plan of Remedial Action (PPRA) for the 29984 Pinnacle Way Site (DE-1555)

A public hearing was held on December 17, 2013 to receive comments on the Proposed Plan of Remedial Action (PPRA) for the 29984 Pinnacle Way Site. The PPRA was noticed on November 27, 2013. The public hearing was held on the last day of the comment period. During the hearing several comments and statements were made by the public. DNREC-SIRS' has reviewed the public's comments made at the hearing and trusts that the PPRA will effectively address the remedial goals for the Site. The following provides DNREC-SIRS' responses to comments that are relevant and applicable to the PPRA.

GENERAL COMMENT: Why offsite monitoring of contaminants was not performed and whether offsite monitoring will be performed?

DNREC-SIRS RESPONSE: As reported in the Brownfield Investigation (BFI) contaminants present on site are not migrating off-site, therefore offsite monitoring was not performed. This determination was made based on the groundwater sampling results collected during the BFI from wells located down gradient and along the perimeter of the Site. Volatile Organic Compounds (VOCs) detected in the groundwater at the Site are localized to an area in the central portion of the Site, specifically around monitoring well MW-21. However, VOCs were not detected in other monitoring wells located down gradient and along the Site boundary. The exceedance of dissolved lead at concentration of 17.3 parts per billion (ppb), which is slightly above the Delaware Drinking Water Standard of 15 ppb, was not in a public well but was in a monitoring well (MW-4). Dissolved lead was not detected in any other wells on site including the perimeter wells. Dissolved arsenic detected in the groundwater at MW4, with a concentration of 5.6 ppb, was below the drinking water standard of 10 ppb but was not detected in down gradient and perimeter wells. Arsenic that was present in monitoring well MW24, at 18.2 ppb, was found only in the total concentration and not in the dissolved concentration. Non-filtered samples are reflective of soil particles present in the sample and not in ground water. In addition arsenic was not detected in any other wells on site including the down gradient and perimeter wells. Nitrates are present in groundwater throughout the Site; however, as stated

within the Brownfield Investigation Report (page 4-16) "Nitrate and Nitrite are ubiquitous groundwater contaminants on the Delmarva Peninsula due to the predominance of agricultural activity and residential septic systems, among other sources." Therefore, offsite monitoring for nitrate do not direct correlate to offsite migration. Please note that sodium is not regulated under the Delaware Safe Drinking Water Act or the Hazardous Substance Cleanup Act (HSCA). Chloride and sulfate are considered Secondary Maximum Contaminant Levels (SMCL) by the Delaware regulations Governing Public Drinking Water Systems, which states a SMCL involves a "biological, chemical, or physical characteristic of water that may adversely affect the taste, odor, color or appearance (aesthetics), which may thereby affect public confidence or acceptance of the drinking water." Chloride and sulfate are not listed as regulated compounds in the HSCA Screening Level Table.

As stated within the PPRA, a Groundwater Long Term Monitoring Plan will be implemented at the Site. If the results of the required monitoring show that the contaminants are migrating or showing an increasing trend, DNREC may require further remedial actions. This remedial action may include offsite monitoring. Specifics of the groundwater monitoring, including which wells will be sampled, will be outlined within the Long Term Monitoring Plan.

GENERAL COMMENT: Monitoring wells are not screened at proper locations and depths to correctly monitor groundwater contamination at the site.

DNREC-SIRS RESPONSE: Three deep monitoring wells were installed on top of a confining clay layer as documented in the BFI report. It is a general technical protocol to screen monitoring wells at the top of the first confining layer to detect contaminants that have the potential to migrate vertically, such as PCE and TCE that were detected at the Site. These contaminants were not detected in the three on site deep monitoring wells or the deep drinking water wells. There are 21 monitoring wells screened at the top aquifer, which are placed down gradient of any potential sources and along the perimeter of the Site. Based on these facts, as documented in the BFI report, DNREC concludes that the wells are placed and screened properly to monitor groundwater contamination.

GENERAL COMMENT: Recently posted documents to the DNREC-SIRS database related to the 29984 Pinnacle Way site.

DNREC-SIRS RESPONSE: As stated in an email from Timothy Ratsep to M. Payans, dated December 18, 2013, the majority of the documents relate to the to the DNREC -Division of Water and are not relevant to the Proposed Plan of Remedial Action. The two documents that were added and pertain to the subject matter of the hearing are Addendum to the Brownfield Investigation Report and the Approval Letter to the Brownfield Investigation Addendum. They support and clarify the original BFI and in no way provide information that would lead to changes in the remedial decision as set forth in the Proposed Plan of Remedial Action. DNREC-SIRS hopes this information will assist you in reviewing the issues and making your recommendation to the Secretary. If you have any questions, please feel free to contact Morgan Price or Qazi Salahuddin at 302.395.2600.

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