



STATE OF DELAWARE  
**DEPARTMENT OF NATURAL RESOURCES  
AND ENVIRONMENTAL CONTROL**

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SECRETARY

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**Secretary's Order No. 2013-WH-0061**

**Re: Approval of Final Plan of Remedial Action for 29984 Pinnacle Way Site (SIRS DE-1555) aka Vlastic/Pinnacle Pickle Plant near Millsboro, Sussex County**

**Date of Issuance: December 24, 2013**

**Effective Date: December 24, 2013**

This Order of the Secretary of the Department of Natural Resources and Environmental Control (Department) considers the attached Report of the presiding hearing officer and the record of decision on the November 26, 2013 Proposed Plan of Remedial Action (Plan) for 29984 Pinnacle Way, Dagsboro, Sussex County (Site). This Order approves the Plan as a final Plan, which will authorize the remedial action that will result in an approved long term groundwater plan and an approved contaminated materials management plan.

**Background**

The Department's Division of Waste and Hazardous Substances, Site Investigation and Restoration Section (SIRS) prepared the Plan pursuant to the *Delaware Hazardous Substance Cleanup Act, 7 Del. C. Chapter 91* (HSCA), the Department's HSCA Regulations, *7 DE Admin. Code 1375*, and the Department's guidance documents for HSCA investigations. The Site was the subject of an extensive investigation to determine what contaminants may be in the groundwater, the soils, and the sediments on the Site and whether the contaminants were migrating offsite.

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The Site is 107.3 acres within an unincorporated area of Sussex County located along on the west side of Iron Branch Road approximately one mile from the center of the Town of Millsboro. The Site's history includes agricultural use until approximately 1973 when the Vlastic pickle production plant was built. In December 2012, the pickle processing plant, now owned by Pinnacle Foods Group, LLC, closed.

Allen Harim Foods, LLC (AHF) of Seaford, Delaware, expressed interest in purchasing the Site, and AHF contracted with a Department certified environmental engineering and consulting firm, BP Environmental, Inc. (BPE) to conduct a Phase 1 Environmental Assessment, which is a preliminary review of environmental conditions often used by prospective buyers of possibly contaminated properties. The Phase I study was completed March 11, 2013, and BPE recommended that a Phase II Limited Subsurface Investigation (LSI) be done because of the presence of possible contamination from the Site's history. BPE completed the Phase II study in April 2013 that provided an additional analysis of the Site's subsurface conditions that indicated possible contaminants that may need remedial action.

Based upon these studies, in June 2013 AHF sought the Department's assistance in the redevelopment of the Site under the HSCA Brownfield program, which the General Assembly created in order to assist prospective purchasers of potentially contaminated properties.

AHF and SIRS began negotiations that were the subject of a HSCA required public notice, and the negotiations concluded with an August 26, 2013 Brownfields Development Agreement (BDA), which committed AHF to conducting a SIRS

supervised Brownfields Investigation (BFI) that would support either a proposed plan of remedial action or a finding that the Site required no remedial action.

The BPE conducted the BFI and contracted another Department certified contractor, Environmental Alliance, Inc. for the required HSCA Human Health Risk Assessment (HHRA). BFI gathered data based upon the Conceptual Site Model and Sampling and Analysis Plan, which SIRS approved on August 20, 2013 and that was also part of the BDA. The samples gathered were tested for the presence of 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 points 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. The BFI was based upon industry and Department policies and resulted in a voluminous amount of data from the sampling. SIRS' experts participated in the BFI and reviewed a draft report and required additional information be provided. On November 25, 2013 the final BFI was approved and SIRS approved the Plan on November 26, 2013 and it was subject of a November 27, 2013 public notice that included a public hearing which was held December 17, 2013.

The Plan found that the Site's investigation detected several hazardous substances above the HSCA screening levels for soil and vapor, and water. These results in excess

of screening levels then were reviewed pursuant to the HSCA approved Human Health Risk Assessment (HHRA), and this review concluded that the proposed use of the property as a poultry processing plant did not pose any undue risk to humans who may reasonably come into contact with the contaminants in excess of the HSCA screening levels. While the HHRA found that the levels of contamination on the Site do not pose risks to human health above the HSCA allowed limits, SIRS determined that a proposed remedial action was appropriate whereby: 1) AHF/BPE would commit to the long term monitoring of groundwater based upon a plan reviewed and approved by SIRS (if the data shows an increase in the level contaminants detected, SIRS may require AHF to take further remedial action), and 2) that AHF/BPE would commit to preparing and following a Contaminated Materials Management Plan based upon a plan reviewed and approved by SIRS and which would protect construction workers from any undue risks when handling of potentially contaminated soils during any construction.

The Plan was the subject of public notice and comment, including at a December 17, 2013, public hearing held in Millsboro Town Hall. Following the close of the public comment period, the Hearing Officer requested SIRS' technical expertise on the public comments. SIRS' experts did not recommend any change to the Plan as a result of the public comments, and responded to the public comments that criticized the BFI as not looking at enough data. The presiding hearing officer prepared a Report of recommendation that reviews the record of decision and the public comments, and recommends approval of the Plan as a final Plan of Remedial Action.

### **Findings and Reasons**

The Department finds that the Plan should be approved as a reasonable environmental remedial action for the Site. The Plan is supported by a vast amount of data and analysis in the record of decision. The Plan is based upon extensive studies of the groundwater, soil, and subsurface vapor. The Report provides a review of the procedural history and record of decision and it is hereby adopted to the extent it is consistent with this Order.

The Department's approval of the Plan as a final Plan will allow the remedial action to commence, which is in the best interest of the public. The remedial action in long term groundwater monitoring is consistent with some of the public comments, which sought more sampling of the Site's groundwater and even the possibility of off-site sampling as part of the approved groundwater plan. The results of the additional ongoing groundwater monitoring will be made available to the public and, if higher levels of contaminants are detected, additional remediation may be required.

The public comments also questioned some of the groundwater sampling claiming that the locations and depth were inadequate to detect all possible contaminants. A review of the monitoring locations finds that the locations cover the Site. Moreover, the well locations were selected by experts, who supported the locations in SAP that SIRS' experts approved August 20, 2013 and which was included in the BDA. Thus, the Department's determination of testing locations and methods is supported by considerable expertise in the record, albeit even if contested by other experts in their public comments. Expert opinions often can differ, and the Department employs experts that it relies on to assist in such decisions.

Although SIRS concluded that no pathway existed that could link the contamination identified at offsite locations, as presented during the public hearing comments, with the on-site contamination based upon the monitoring results, the Department will share all data received with the Division of Public Health within the Department of Health and Social Services to ensure that the two agencies are working together to take additional steps to improve drinking water quality, as warranted.

The Plan approved by this Order will result in SIRS receiving more monitoring results to review. The review of these results will allow SIRS to detect any increase in the contaminants to levels that may trigger directing AHF to take further remedial action. In addition, the long term monitoring will allow for detection of any movement of the contaminants in the groundwater, which could change the pathways for potential human contact and may require additional remediation should a greater human health risk be identified. Thus, the approval of a final Plan is one that is subject to change as may be needed, but approval is appropriate now to allow the long term monitoring to commence.

Many of the public comments opposed the proposed redevelopment of the Site into a poultry processing plant. The purpose of the approval of the final Plan is to address the past potential environmental contamination at the Site. The BFI in the HHRA looks to future use in the possible pathways contaminants that may be present in the Site from past use of the Site may impact with workers and visitors to the Site in the future. The Department understands the concerns of nearby residential property owners not wanting the closed industrial plant to be used for another industrial operation, but the future use of the Site is not within the Department's authority to determine.

The opposition to redevelopment as a poultry processing plant is a matter of land use control, and Sussex County government has the exclusive authority to determine if poultry production is a land use consistent with its zoning. The record indicates that the land is zoned heavy industry. The Department's role is to ensure that the land is environmentally safe from contaminants for its intended use, and the Plan indicates that it will be. While some public comments supported the poultry plant's location elsewhere, the Department considers any Brownfield redevelopment preferable to utilizing undeveloped property, such as farmland, forestland or other open space, for the facility.

Finally, the Department will have a role in any future redevelopment of the Site should the proposed use require permits for wastewater discharges, emissions into the air or for the disposal of wastes. As required by *7 Del. C. Chap. 60*, the Department's will provide the public with the notice of these future permit applications and provide the public with an opportunity to comment on them.

### **Conclusions**

In sum, as more fully described in the reasons and findings above and in the Report, the record of decision supports that the Department adopts the following findings and conclusions:

1. The Department has jurisdiction under its statutory authority to make a determination in this proceeding;
2. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;
3. The Department held a public hearing in a manner required by the law and regulations;

4. The Department considered all timely and relevant public comments in making its determination;

5. The Department shall issue the Final Plan of Remedial Action based upon the Proposed Plan of Remedial Action in order to allow the remedial action to occur at the Site; and

6. The Department shall provide notice of this action in a manner consistent with the law and regulations and shall publish the Order on its web page.



Collin P. O'Mara  
Secretary