

## **RESPONSE TO PUBLIC COMMENTS**

**In the Matter of:  
Allied Paper/Portage Creek/Kalamazoo River Superfund Site  
Operable Unit 1, Panelyte Property  
Kalamazoo, Michigan  
CERCLA Docket No.: V-W-19-C-003**

**Comment 1:** Commenter characterizes the Agreement and Order on Consent (AOC) as “an attempt to cloak the Redevelopment Authority in the mantle of “stewardship” by assigning it tasks . . . already addressed in the ROD, the SOW or existing law” for Operable Unit 1 of Allied Paper Inc./Portage Creek/Kalamazoo River Superfund Site (OU1).

The commenter contends that the work to be performed under the Agreement and Order on Consent (AOC) is otherwise addressed by the ROD, the SOW, or existing law, suggesting that inclusion of such work in the AOC is improper. However, this comment confuses the remedy selection process with subsequent actions necessary to implement that remedy. Selection of a remedy is only one step in achieving the clean-up of a contaminated site. Importantly, that remedy must still be implemented. The AOC is one step in implementing that remedy, and the response actions set forth in the AOC are all response actions necessary for that implementation. By securing the response actions set forth in the AOC, the level of response action commitments that will need to be secured in the future is reduced. It would be nonsensical for EPA to enter into agreements for actions unrelated to implementation of the remedy.

EPA’s remedy selection is based in part on the concept of “stewardship,” which helps to assure the protectiveness of the remedy. The City of Kalamazoo (City) (and its redevelopment instrument, the Redevelopment Authority) has previously expressed an interest in being involved in the stewardship at the Site and may eventually own, or at least control the redevelopment of, some or all of the Allied Landfill and Panelyte properties. By agreeing to perform certain response actions under the AOC, the City is committing to some of the necessary response actions (e.g., oversight of institutional controls) which coincidentally are consistent with its redevelopment interests. Currently, no other party has committed to perform those types of activities. In light of the City’s desire to be involved with the properties in the future, it is well-situated to provide that stewardship.

**Comment 2: Commenter claims that EPA has entered into the AOC as an “after-the-fact attempt to bolster” EPA’s remedy selection for OU1.**

The commenter’s assertion that EPA entered into this AOC to bolster the remedy selection for OU1 reflects a misunderstanding of the purpose of the AOC. EPA’s rationale in selecting its remedy is thoroughly described and justified in the ROD, including the Responsiveness Summary included in the ROD. The AOC does not purport to serve as a justification of EPA’s selected remedy. In contrast, as set forth above, EPA entered into the AOC simply to secure the performance of certain response actions at OU1 and the Panelyte Property (which will be impacted by the remedy). In the future the U.S. may well enter into an additional agreement(s) related to response actions, including response actions related to long-term stewardship of OU1, including, as appropriate, the Panelyte property. Those agreements will similarly focus on securing performance of response actions, not on justifying EPA’s remedy selection.

The AOC reflects the policy set forth in U.S. Environmental Protection Agency and the U.S. Department of Justice joint memorandum “*Agreements with Third Parties to Support Cleanup and Reuse at Sites on the Superfund National Priority List*,”<sup>1</sup> which encourages Regions to consider more frequent use of site-specific agreements with third parties at sites on the Superfund National Priorities List (NPL). Considering the City’s previously expressed interest in being involved with stewardship at the Site, the AOC is particularly appropriate in light of this policy.

---

<sup>1</sup> Available at: [https://www.epa.gov/sites/production/files/2018-04/documents/sftf25-memo-ppa-bfpp-final-2018\\_2.pdf](https://www.epa.gov/sites/production/files/2018-04/documents/sftf25-memo-ppa-bfpp-final-2018_2.pdf) (last accessed, 5/6/2019).

**Comment 3: Commenter reasserts and resubmits comments made to EPA during the public comment period on the proposed remedy for OU1.**

The U.S. acknowledges the re-submittal of these comments and general statements of opposition to EPA's ROD for OU1. EPA thoroughly responded to those comments and statements in the Responsiveness Summary which accompanied the ROD. In any event, these comments pertain only to EPA's remedy selection, as reflected in the ROD, and do not in any way pertain to the provisions or propriety of the AOC. As such, these comments provide no basis for EPA revising or withdrawing from the AOC.