

# Responsiveness Summary

## U.S. Smelter and Lead Refinery, Inc. Superfund Site

### Prospective Purchaser Agreement, Administrative Settlement Agreement and Order on Consent, and Proposed Explanation of Significant Differences

August 2022

#### Overview

On March 24, 2020, EPA issued a Record of Decision Amendment (the “2020 ROD Amendment”) for response actions to address soil contamination in a portion (“Modified Zone 1”) of the U.S. Smelter and Lead Refinery, Inc. Superfund Site in East Chicago, Indiana (the “USS Lead Site” or the “Site”). The 2020 ROD Amendment selected a residential remedy for Modified Zone 1, and also selected a contingent commercial/industrial remedy should two conditions be met. The two conditions are (1) a zoning change for Modified Zone 1 from residential to commercial, and (2) the transfer of title to the properties that comprise Modified Zone 1 to an entity that intends to develop the property for commercial/industrial use. The first condition was met on May 26, 2020, when the City of East Chicago (“City”) changed the zoning designation for Modified Zone 1 from residential to light industrial. As set forth in the 2020 ROD Amendment, EPA will issue an Explanation of Significant Differences (ESD) when the second condition has been met.

EPA negotiated a Prospective Purchaser Agreement (PPA) with a developer, Industrial Development Advantage of East Chicago, LLC (IDA). The PPA will require IDA to perform the selected commercial/industrial remedial action at Modified Zone 1 in accordance with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

EPA concurrently negotiated an Administrative Settlement Agreement and Order on Consent (ASAOC) with certain potentially responsible parties (PRPs). The ASAOC will require the PRPs to provide financial assurance for the remedial action to be completed in Modified Zone 1, as well as to pay other costs associated with the Site.

## Background on Public Comment Period

EPA published the PPA, ASAOC, and the proposed ESD for public comment on May 4, 2022. The public comment period closed on June 3, 2022. Prior to the start of the public comment period, EPA advertised the opportunity to comment through a press release, newspaper ad, website posting, direct outreach to stakeholders and government representatives, and publication in the *Federal Register*. EPA also held an in-person public meeting and comment session on Saturday, May 21, 2022.

EPA received public comments via the following media: EPA website comment forms, voicemails, emails, and oral comments at the public meeting. On June 10, 2022, following the close of the public comment period EPA received a request to extend the comment period. Because the request was not timely and the requestors already submitted substantive comments during the comment period, EPA has decided not to extend the comment period.

## Summary of Comments Received and Agency Responses

Comments and responses have been grouped into broad categories below. The placement of a particular comment into a particular category was done solely to facilitate review by the public by providing topical structure to the comments and responses. Placement of a comment into one category rather than another was not meant to convey that EPA was giving greater or lesser weight to any specific comment. All comments were carefully considered. Though some of the comments exceeded the scope of the public comment period by asking about matters other than the PPA, ASAOC, and ESD, EPA has attempted to respond to all comments received during the public comment period.

### Comments in Support of the Settlements and ESD

**Comment:** EPA received comments expressing support for the cleanup and the settlements.

**Response:** EPA appreciates these comments and will ensure the cleanup is done without putting the nearby community at risk and that the settlements are implemented as written.

**Comment:** EPA received comments in support of the development of a logistics center/warehouse within the area of Modified Zone 1, including the sentiment that East Chicago has been waiting a long time for abandoned buildings and properties to be utilized in a way that promotes a lively and progressive city.

**Response:** EPA issued the 2020 ROD Amendment based on available information indicating that a logistics center/warehouse might be constructed on Modified Zone 1. In order to ensure that the remedial action would be consistent with the reasonably anticipated future land use of the property, EPA included two conditions in the 2020 ROD Amendment that would have to be met prior to finalizing the selection of the commercial/industrial use cleanup remedy identified as Alternative 4A: (1) change in zoning to commercial/industrial, and (2) transfer of the property to an entity that intends to develop the property for commercial/industrial use. EPA anticipates these conditions

will be met upon finalization of these settlements and plans to issue the proposed ESD upon the transfer of title. However, EPA was not involved in the rezoning of Modified Zone 1, the selection of IDA as the developer, or the decision to construct a logistics warehouse on the property.

#### Comments on the Remedial Action Alternative 4A

**Comment:** Remediating to only 12 inches and an 800 parts per million (ppm) lead standard under Alternative 4A does not protect health sufficiently.

**Response:** Alternative 4A is protective of human health. In the 2020 ROD Amendment, EPA determined that Alternative 4A meets the threshold criterion of “overall protection of human health and the environment” for commercial/industrial use. For a more complete discussion of the manner in which EPA evaluated the threshold criteria, please see the 2020 ROD Amendment, available on the USS Lead Site webpage, <https://www.epa.gov/uss-lead-superfund-site>.

The principal threats to human health are the risk of inhalation, ingestion, or direct contact with lead and arsenic contaminated soils. Alternative 4A will eliminate these exposure risks by removing contaminated soil and replacing it with clean fill that creates a barrier between people and contaminated soils remaining below 12 inches. The shallower excavation and higher remedial action level are warranted by several considerations. First, children are not expected to play or dig in and around a commercial/industrial development and adults will not be engaged in activities like construction or gardening, which might put them in direct contact with contaminated soils. Second, persons who occupy a commercial/industrial property spend less time at such properties than do persons who live in a residential home. Finally, commercial/industrial property developments typically involve greater use of hardscapes, such as parking lots and buildings, which prevent direct contact.

EPA calculated the remedial action levels for lead in soil using the Integrated Exposure Uptake Biokinetic (IEUBK) model. Default exposure assumptions were used to calculate an acceptable lead concentration for industrial/commercial properties. The remedial action level for lead is 800 ppm for industrial/commercial properties using the IEUBK.

**Comment:** The selected remedial action for Modified Zone 1 constitutes the “minimum” that can be done for the cleanup. EPA is implementing a remediation alternative that is far less expensive and residents are concerned it poses a risk to their health.

**Response:** Implementation of Alternative 4A will protect the health of persons who live near or work within Modified Zone 1 by eliminating the exposure pathways of ingestion, inhalation, and direct contact with contaminated soils. EPA has set forth in the 2020 ROD Amendment the basis for Alternative 4A for the commercial/industrial use of Modified Zone 1. CERCLA Section 121 and the National Contingency Plan (NCP) at 40 C.F.R. § 300.430 dictate how EPA must select a remedy. Section 121 provides that remedial actions shall be protective of human health and the environment and also be cost

effective. EPA has determined that implementation of Alternative 4A, which requires removing the top 12 inches of soil and replacing it with clean fill, will protect human health and the environment. The additional cost of digging deeper is not justified by a corresponding increase in the effectiveness of the remedy.

**Comment:** The proposed settlements and ESD will dramatically reduce the scope of the cleanup of the Site.

**Response:** The cleanup under the terms of the PPA and ASAOC will reduce the volume of soil removed from Modified Zone 1 but will not reduce the scope of the cleanup in Zones 2 and 3. The cleanup will protect human health and the environment. Modified Zone 1 will be used for commercial/industrial purposes and the exposure pathways of ingestion, inhalation, and direct contact will be protectively managed. The proposed settlements and ESD pertain only to Modified Zone 1 of the USS Lead Superfund Site. Soils in Zone 2, Zone 3, and the Carrie Gosch School area of Zone 1 have already been remediated to a depth of at least 24 inches. The proposed settlements and ESD will not affect the scope of the soil remedy where it has already been implemented. The proposed settlements and ESD also will not affect the scope of the groundwater investigation which EPA is continuing to oversee at the Site.

Upon issuance the proposed ESD finalizing the selection of Alternative 4A, the required excavation depth will be 12 inches and the lead remedial action level will be 800 ppm, rather than the 24-inch excavation depth and 400 ppm remedial action level that would be required by Alternative 4B (which was premised on then-anticipated residential land use of Modified Zone 1). The selection of Alternative 4A is appropriate in light of the change in zoning and anticipated light industrial land use of Modified Zone 1. EPA considers the reasonably anticipated future land use of a property when selecting a remedial action.

Despite these changes, EPA estimates that 81,473 cubic yards of contaminated soil will be removed from Modified Zone 1 to implement Alternative 4A.

**Comment:** Under a residential zoning designation, EPA's remedy decision will require excavation of soil up to a depth of 24 inches and will establish funding to excavate to a depth of 36 inches where necessary to lay the footings for residential development. Changing the zoning designation of Modified Zone 1 from residential to light-industrial means that only the top 12 inches of the contaminated soil in Modified Zone 1 will be removed. Therefore, changing the zoning designation of Modified Zone 1 from residential to light-industrial will result in a remediation that removes less contamination from Modified Zone 1, threatening residents' health.

**Response:** Contaminated soils left in place within Modified Zone 1 will not pose a threat to residents' health. The cleanup will provide protection to persons living near or working within Modified Zone 1, such that they will not ingest, inhale, or have direct contact with contaminated soils. EPA determined in the 2020 ROD Amendment that Alternative 4A, a remediation consistent with light industrial zoning, will protect human health and the environment under a commercial/industrial use scenario.

EPA notes that this comment is similar to a comment that was submitted to the City of East Chicago as part of a written objection regarding the then-proposed rezoning. EPA has no role in the zoning decisions within the City of East Chicago.

**Comment:** Alternative 4A does not meet the same remedy evaluation criteria that would be met by Alternative 4B. Specifically, Alternative 4A will not reduce exposure to contaminants and will not deliver a remedy with long-term effectiveness and permanence. There will be a need to dig deeper than 12 inches to place building footings and foundations and run pipes and wires underground, etc. The Indiana building code requires building foundations reach a minimum depth of 36 inches. Contamination exceeds residential and commercial screening criteria (400 ppm and 800 ppm, respectively) at a depth of 30 inches in Modified Zone 1. In light of the depth of contamination, Alternative 4A does not ensure reduction of exposure to contaminants or ensure long-term effectiveness and permanence of the remedy.

**Response:** Alternative 4A meets the remedy evaluation criterion of long-term effectiveness and permanence because the remedy will maintain the overall protection of human health and the environment over time. Alternative 4A will permanently remove soils above 800 ppm from the top 12 inches of the property and replace them with clean fill. The clean fill will create a barrier between persons and contaminated soils remaining below 12 inches. Institutional controls will also be put into place to require that future use of Modified Zone 1 be commercial/industrial. As required by CERCLA Section 121(c), EPA will review the remedy every five years to ensure that it remains effective at protecting human health and the environment.

Alternative 4A also requires owners and operators of Modified Zone 1 properties to comply with existing rules and regulations governing the management of soils that are potentially hazardous. Such rules and regulations include compliance with regulations promulgated by the Occupational Safety and Health Administration to protect the health and safety of construction workers. The rules and regulations also include provisions for the handling, transportation, and disposal of hazardous waste promulgated by the State of Indiana and pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 through 6992k.

In addition, IDA will be required to implement a soil management plan during construction of the building and ensure that workers and the public are protected from potential exposures to contaminated soil. The PPA requires IDA to develop a work plan that ensures IDA will manage contaminated soils during the construction phase of the warehouse facility. IDA is required to take reasonable steps to prevent or limit human, environmental or natural resource exposure to any previously released hazardous substances. Accordingly, Alternative 4A, as implemented by the PPA, will meet the remedy selection criterion for reducing exposure to contaminants despite the fact that soils above screening criteria will remain at depth.

**Comment:** Neither EPA nor IDA have provided details about the institutional controls which they claim will protect public health going forward. Neither EPA nor IDA have provided any drafts of the Institutional Controls Implementation and Assurance Plan to the public.

**Response:** Institutional control requirements are set forth in the 2020 ROD Amendment. Alternative 4A requires the owner of parcels within Modified Zone 1 to record consistently with Indiana law an Environmental Restrictive Covenant (ERC). In the ERC, the property owner will agree not to develop the property for residential use and to use it only for commercial or industrial purposes. The ERC will also provide notice to the public and prospective owners that contaminated soils exist below 12 inches. Persons excavating at depths of greater than 12 inches for commercial/industrial development will be alerted by the ERC and a visual barrier that they are excavating below clean soils. Prospective owners and operators on the Modified Zone 1 properties are subject to existing rules and regulations governing the management of soils that are potentially hazardous. Persons who encounter contaminated soils must comply with all applicable laws and regulations. A groundwater use restriction may be necessary unless IDA can show that the City of East Chicago has enacted an ordinance that prohibits the installation of drinking water wells within Modified Zone 1 for as long as the groundwater remains above drinking water standards.

Paragraph 45(c) of the PPA and Section 5.7(j) of the Statement of Work (SOW) require IDA to prepare and submit an Institutional Controls Implementation and Assurance Plan (ICIAP). The ICIAP will describe plans to implement, maintain, and enforce institutional controls at the property. Among other things, the SOW provides that the ICIAP must ensure that activities which could result in exposure to contaminants are prohibited, and that any new structures on the property will be constructed in a manner which does not interfere with the remedial action or any other response action or undermine the effectiveness of the final remedy.

The deadlines for submittals under the PPA are located in Sections 6.2 and 6.3 of the SOW. IDA must submit the ICIAP to EPA for review and approval at the same time it submits the Preliminary (30%) Remedial Design Plan.

#### Comments on Implementing the Remedy

**Comment:** Failure to provide details of the Remedial Design/Remedial Action Work Plan and the Health and Safety Plan undermines public confidence regarding the quality of the remediation and the precautions IDA will take during the remediation.

**Response:** Once it becomes effective, the PPA requires IDA to submit to EPA a Remedial Design/Remedial Action Work Plan and Health and Safety Plan. Because the PPA is not yet finalized, EPA has not yet received or approved any plans that will be required under the PPA. A precondition of finalizing the PPA is the issuance of an ESD selecting Alternative 4A. Until that time, EPA does not plan to accept or review and approve any work plans. The PPA is consistent in this respect with the terms of model settlement agreements developed by EPA and the U.S. Department of Justice (DOJ),

which do not require the submission of plans until after the public comment period ends and the agreement becomes final.

Before IDA begins constructing the remedy in Modified Zone 1, EPA plans to hold a public meeting to describe plans that will ensure the community is protected during construction of the remedy. Pursuant to the terms of the PPA, IDA will be obligated to submit a work plan and health and safety plan that each meet the requirements of the PPA and the associated SOW. In addition, EPA will perform full-time oversight of the work until the remedial action is completed. IDA has also agreed to allow EPA to maintain a presence during the construction of the logistics center/warehouse to ensure that the construction does not disrupt the remedial action after it has been completed.

The PPA gives EPA the right to take over remedial work if the work performed by IDA does not meet PPA requirements. EPA may intervene to implement the remedy if EPA determines that IDA has (1) ceased implementation of any portion of the SOW; (2) is seriously or repeatedly deficient or late in its performance of the SOW; or (3) is implementing the SOW in a manner which may cause an endangerment to human health or the environment.

**Comment:** IDA should make public its contractors so the public can examine whether those contractors have the necessary experience and have performed safely at prior cleanups. The public is entitled to this information before EPA agrees to the PPA.

**Response:** Once the PPA and the associated SOW become effective, IDA is required to notify EPA and the Indiana Department of Environmental Management (IDEM) of the names, titles, addresses, phone numbers, email addresses, and qualifications of all contractors and subcontractors prior to commencing work. IDA must show that the proposed contractor(s) demonstrate compliance with applicable industry standards. EPA retains the right to disapprove any or all of the contractors. The qualifications for contractors are subject to EPA's review based on objective assessment criteria (e.g., experience, capacity, technical expertise) and EPA's conclusion that the contractors do not have a conflict of interest with respect to the project.

IDA is required to provide a copy of the PPA to each contractor hired to perform the remedial work, and to condition all contracts upon performance of the work in conformity with the terms of the PPA. IDA must also provide written notice of the PPA to all subcontractors hired to perform any of the remedial work. IDA remains responsible for ensuring its contractors and subcontractors perform the work in accordance with the terms of the PPA.

The PPA is consistent in this respect with the terms of model settlement agreements developed by EPA and DOJ, which do not require the submission of the names of the proposed contractors until after the public comment period ends and the agreement becomes final.

**Comment:** Digging will likely re-contaminate soils and expose residents to contaminated particles in the air as well as allow continued seepage of contaminated groundwater from the Site.

**Response:** EPA has determined that the appropriate method for removing contamination from the Site, including Modified Zone 1, is to dig up contaminated soil and replace it with clean fill material. Digging is a necessary component for implementation of the remedial action. Excavation of soils within Modified Zone 1 is not likely to re-contaminate soils in Zones 2 or 3 or expose persons who live nearby to contaminated particles of dust. EPA will monitor Modified Zone 1 throughout the implementation of the remedial action. EPA will use air monitors and require dust suppression action. IDA is required to take reasonable steps to prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substances. Monitoring by EPA during the demolition of the West Calumet Housing Complex (WCHC) demonstrated that dust with concentrations of lead or arsenic above levels of concern did not migrate beyond the boundaries of Modified Zone 1.

The PPA also requires IDA to prepare and adhere to a Soil Management Plan describing measures that will be used to control dust emissions during construction and plans for handling any buried debris and contaminated material encountered during construction.

Before clean backfill is applied to cover excavated areas in Modified Zone 1, IDA must install a visual barrier between the clean fill and the underlying soil to serve as an alert that future digging below 12 inches may encounter contaminated soil.

EPA is currently overseeing the performance of a Remedial Investigation and Feasibility Study (RI/FS) of the groundwater beneath the entire USS Lead Superfund Site. The RI will provide detailed information about the extent of the contamination of groundwater beneath the Site as well as information about the direction of groundwater flow. Currently all residences within the Site receive drinking water from the City of East Chicago, and no one uses private wells to supply drinking water.

**Comment:** There is a nursing home directly across the street from Modified Zone 1. Residents of the home would likely be particularly vulnerable to any contamination that migrates from the Site as a result of excavation activities.

**Response:** EPA is concerned about protecting all nearby residents, including the residents of the nearby nursing home, from exposure to airborne dust with concentrations of lead or arsenic at levels of concern. The PPA requires IDA to develop and implement a dust management plan, including measures for dust suppression, air monitoring, and truck washing. The plan for air monitoring will use airborne screening action levels for lead and arsenic, which have been calculated by EPA and specify the response actions to be implemented if air monitoring detects an exceedance of those levels. EPA will conduct full-time oversight of the implementation of the remedial action, including the air monitoring plan.



**Comment:** During the remedial action, all trucks removing contaminated soil from Modified Zone 1 should travel west on 151st Street, away from Zone 2, and use the major roads in the area: Railroad Avenue, Indianapolis Boulevard, and Chicago Avenue. The trucks should stay away from residential areas as much as possible and the bed of the trucks should be covered so that soil and dust do not blow out of the truck bed.

**Response:** IDA has informed EPA that its trucks hauling contaminated soil away from Modified Zone 1 will use 151st Street and avoid residential areas as much as possible, consistent with the approach taken during the demolition of the WCHC. Truck beds will be covered to keep soil from blowing out of the truck bed and a truck washing station will be used to keep trucks from tracking contaminated soil off-site. Trucks will be required to comply with state and local roadway requirements.

In addition, for activities during cleanup and construction, IDA is required to comply with Section 5.7(g) of the SOW by submitting to EPA a Transportation and Off-Site Disposal Plan, including proposed routes for off-site shipment of contaminated soil, identification of communities affected by the shipment of contaminated soil, and description of plans to minimize impacts on affected communities.

#### Comments on Community Impact and Involvement

**Comment:** The addition of a new industrial facility to the area and the associated negative health and environmental impacts will further decrease the desirability of Calumet or East Calumet as places to live. The current use plan for Zone 1 would endanger the health of the residents of nearby neighborhoods, will further devalue the properties, and substantially destroy the peaceful enjoyment of residents' homes.

**Response:** The remediation of Modified Zone 1, consistent with CERCLA and the PPA, ASAOC, and proposed ESD, will reduce the health risks posed to residents of nearby neighborhoods by reducing the likelihood that a person will ingest, inhale, or come into direct contact with lead- or arsenic-contaminated soils.

EPA does not make land use decisions. Such decisions are made by the owner of the property subject to local limitations such as zoning ordinances. As set forth in the proposed ESD, on May 26, 2020, the City of East Chicago Common Council changed the zoning designation for Modified Zone 1 from residential to light industrial. The zoning ordinance was sponsored by the City councilman who represents the district that includes the area comprising Modified Zone 1. Eight members of the Common Council voted in favor of the ordinance adopting the zoning change, and one voted against it.

EPA is aware that a hearing on the proposed rezoning occurred on May 4, 2020 (available at: <https://www.eastchicago.com/AgendaCenter/ViewFile/Minutes/06012020-669>), and that the public participated by providing comments on the proposed rezoning. IDA also presented information regarding the proposed development at that meeting. IDA informed attendees that the final user of the facility will determine the expected number of jobs, but IDA anticipates this project will generate long-term jobs.

The 2020 ROD Amendment specified conditions to ensure that the reasonably anticipated future use of the Modified Zone 1 would be commercial/industrial before EPA confirmed selection of Alternative 4A. Now that those conditions will be met, EPA is acting consistent with the findings it already made in the 2020 ROD Amendment, with the City of East Chicago's plans for the community, and with the purchaser's plans for the property it will acquire.

**Comment:** East Chicago needs economic development to provide opportunities for future generations, but the development should not come at the expense of exposing future generations to increased air pollution.

**Response:** The PPA will ensure that lead- and arsenic-contaminated soils in Modified Zone 1 are cleaned up safely in accordance with the law and that the construction does not interfere with the remedy or release any contamination into the community. EPA will use air monitors and require dust suppression action throughout the implementation of the remedial action to make sure that the community is not impacted by concentrations of lead or arsenic above levels of concern.

EPA does not have oversight authority for the potential future operations of the logistical warehouse or surrounding traffic. IDA or local officials are in the best position to answer questions about noise, traffic, and truck exhaust. The City of East Chicago is responsible for enforcing any applicable local ordinances.

**Comment:** There is no hope for the restoration of the residential community that once thrived on the Site. Approving the remedy sanctions the permanent destruction of the West Calumet Community and hobbles the Calumet and East Calumet neighborhood.

**Response:** The selection of Alternative 4A for Modified Zone 1 is based on information provided to the federal and state government indicating that the City of East Chicago and the future property owner have determined that the use of Modified Zone 1 will be commercial/industrial. The cleanup of over 800 parcels of property in Zones 2 and 3 has improved conditions in these neighborhoods and created the opportunity to construct new housing on clean lots.

**Comment:** The plan for Modified Zone 1 will result in further loss of opportunities to address the already limited housing options in East Chicago.

**Response:** EPA lacks authority to address housing options in the City of East Chicago. The City of East Chicago may be able to provide more information about plans for housing throughout the community. EPA will continue to work with the City of East Chicago and private landowners to evaluate how to address potential soil and/or groundwater concerns associated with the Site if those issues are raised during housing construction.

**Comment:** EPA should ensure that it is not perpetuating racial inequity in this cleanup process.

**Response:** Environmental Justice considerations have been and will continue to be an integral component of the USS Lead cleanup. In particular, EPA has engaged in extensive community outreach, and will continue to conduct frequent community outreach within the nearby community. EPA makes remedial decisions as informed by zoning ordinances and the anticipated future use of property communicated by local governments, landowners, and the community. EPA selected Alternative 4A based on the anticipated future use of Modified Zone 1 and the remedy's protectiveness of human health and the environment, as fully set forth in the 2020 ROD Amendment.

**Comment:** Residents need to be involved in decision-making as it pertains to the Site.

**Response:** EPA has invited residents to participate in the decision-making process as it pertains to the Site. EPA has met statutory obligations to provide enforcement documents and Agency decisions for public comment and has and will continue to review those comments. Specifically, EPA held public meetings on the proposed plan and responded to and incorporated comments on the remedial action selected for Modified Zone 1 in the 2020 ROD Amendment. EPA also held a public meeting and is responding to comments received on the PPA, ASAOC, and proposed ESD.

As discussed above, the East Chicago Common Council, not EPA, is the entity authorized to make zoning decisions for the City of East Chicago.

**Comment:** EPA needs to continue to maintain transparency through meetings to ensure the community can obtain updates on the project. Private investors and the developer should attend.

**Response:** EPA is committed to transparency during the cleanup activities and will do a combination of outreach activities including public meetings, fact sheets, and updating the USS Lead Site web page (<https://www.epa.gov/uss-lead-superfund-site>) to ensure the public is informed about the progress of the cleanup. As was done successfully in the past, EPA expects to have two community involvement coordinators assigned to the Site, including a Spanish speaking staff member, to ensure the community has easy access to EPA staff to discuss any issues or concerns. EPA welcomes participation by IDA and other parties at outreach activities. The PPA requires IDA's participation in community involvement activities if requested by EPA.

**Comment:** Based on past actions, how can the community trust EPA since actions in 2022 are similar to actions in 1970. The residents want to be involved. EPA has no plan in place to offer scientific assurance that this will not happen again.

**Response:** Since listing the Site on the National Priority List, EPA has evaluated conditions at the Site, developed protective remedies for the Site, and implemented those remedies at over 800 individual properties in Zones 2 and 3 using both judicial and administrative enforcement mechanisms. The PPA, ASAOC, and proposed ESD will enable the cleanup to continue in Zone 1.

EPA is committed to keeping the community informed as to the progress of the cleanup activities. EPA plans to continue community outreach throughout the cleanup activities including providing cleanup updates on the USS Lead Site webpage, <https://www.epa.gov/uss-lead-superfund-site>. EPA will conduct full-time oversight during the cleanup activities.

EPA will also continue to involve residents consistent with the July 1, 2021 EPA policy “Strengthening Environmental Justice Through Cleanup Enforcement Actions” (available at: <https://www.epa.gov/system/files/documents/2021-07/strengtheningenvirjustice-cleanupenaction070121.pdf>). Specifically, EPA will participate in community engagement, as it has in the past at the Site, by regularly updating Superfund Site Cleanup Fact Sheets, providing status information on compliance and schedules, and scheduling and participating in public meetings.

**Comment:** The East Chicago Common Council’s public meeting on May 18, 2020, did not address residents’ concerns or provide an adequate opportunity for the public to speak.

**Response:** EPA does not have the authority to address the City of East Chicago’s zoning procedures or related public meetings.

**Comment:** Maintaining the residential zoning designation for Modified Zone 1 provides a broader range of opportunities for future use of Modified Zone 1 and better protects the health of nearby residents.

**Response:** EPA does not have the authority to address or change the City of East Chicago’s zoning procedures or outcomes. In the 2020 ROD Amendment, EPA selected a contingent remedy to ensure that, whether the zoning designation for Modified Zone 1 remained residential or was changed to commercial/industrial, the remedial action performed at the Site would protect human health and the environment.

**Comment:** The industrial development planned for Modified Zone 1 will bring additional truck and car traffic to East 151st Street and Kennedy Avenue. The City and the developer should conduct a traffic management study to determine the best and safest ways to manage this additional traffic. The City should also develop plans for maintaining the roads that will bear the additional traffic.

**Response:** EPA does not have the authority to require the City or IDA to perform a traffic management study or develop road maintenance plans. IDA or local officials are in the best position to answer questions about traffic and road maintenance.

For activities during cleanup and construction, IDA is required to comply with Section 5.7(g) of the SOW by submitting to EPA a Transportation and Off-Site Disposal Plan, including proposed routes for off-site shipment of contaminated soil, identification of communities affected by the shipment of contaminated soil, and description of plans to minimize impacts on affected communities.

**Comment:** Families who lived in and were displaced from the WCHC should receive compensation for their pain and suffering and should be placed in an uncontaminated residential area rent-free for the next forty years.

**Response:** EPA is limited to the authority provided under CERCLA. CERCLA does not provide the authority to require or provide pain and suffering compensation to families who lived in and were displaced from the WCHC. Individuals may wish to consult with a private attorney regarding their personal rights.

**Comment:** The site was a residential neighborhood for decades before the City of East Chicago asked the U.S. Department of Housing and Urban Development to tear down the former WCHC, where more than 1000 people lived and raised families. This is the kind of neighborhood that should be allowed to rebuild and thrive again at the site.

**Response:** EPA selected the remedial action based on a change to the zoning ordinance from residential to light-industrial and the reasonably anticipated future land use for Modified Zone 1. EPA lacks authority to enact zoning ordinances or require rebuilding of residential housing on Superfund sites.

**Comment:** The proposed redevelopment and the implementation of Alternative 4A will negatively impact the desirability and value of homes within Calumet and East Calumet.

**Response:** EPA lacks information regarding the assertion that the implementation of Alternative 4A and the proposed redevelopment will negatively impact the desirability and value of homes within Calumet and East Calumet.

#### Comments on Operations of the Warehouse

**Comment:** The logistics center should use innovative approaches to reduce diesel exhaust such as using trucks powered by compressed natural gas.

**Response:** EPA does not have the authority to require the future owners or operators of the logistics center to use specific types of trucks during operations.

**Comment:** IDA should release building plans before they are finalized, as it is difficult to get information from the City of East Chicago.

**Response:** EPA does not have the authority to require IDA to release its building construction plans. The PPA authorizes EPA to oversee construction of the building to ensure that construction does not cause the release of contaminants or threaten human health or the environment. EPA may ultimately obtain building plans in order to evaluate the potential impact on the remedial action. The PPA requires IDA to implement a soil management plan during not only performance of the remedial action, but during general building construction as well.

**Comment:** The construction of the logistics center will increase the harmful environmental effects for nearby residents. Diesel trucks will emit diesel pollution worsening the already high levels of air pollution in the area and potentially increasing health impacts in a population that already experiences significant challenges from existing exposures.

**Response:** The cleanup of lead- and arsenic-contaminated soils in Modified Zone 1 consistent with CERCLA and the terms of the PPA, ASAOC, and proposed ESD will reduce the likelihood that a person ingests, inhales, or comes into direct contact with lead- or arsenic-contaminated soils. IDA and the future owner of the logistics center will be obligated to follow Federal, State and local regulations during and after the construction of the logistics center is complete.

**Comment:** Construction and operation of a light-industrial development in Modified Zone 1 will further degrade the air quality for residents in Calumet and East Calumet. Air monitors for particulate matter and other air pollutants should be installed around Modified Zone 1 and in the nearby residential neighborhoods during the construction and operation of the planned development.

**Response:** The PPA requires that IDA develop and implement dust suppression measures and perform air monitoring to ensure the community and workers are not impacted by the cleanup work at Modified Zone 1.

IDEM also conducts air monitoring in northwest Indiana for particulate matter (i.e., PM<sub>2.5</sub>) and other air pollutants. The monitoring data can be viewed at: <https://www.in.gov/idem/airmonitoring/air-quality-data/>.

The operator of any facility constructed at Modified Zone 1 will be required to comply with applicable federal, state, and/or local air pollution laws and regulations.

**Comment:** Trucks and other equipment have been observed entering and exiting Modified Zone 1 without measures to prevent the migration of contaminated soils from Modified Zone 1 into the streets and nearby neighborhoods. A truck-washing station should be used to remove contaminated soil from trucks before they exit the Site.

**Response:** EPA is not aware of recent truck traffic at Modified Zone 1. EPA visited the Site on May 21, 2022 and observed that Modified Zone 1 appeared to be fenced and locked.

EPA is requiring, and IDA has indicated it will agree to use, a truck-washing station during the implementation of the remedial action to remove contaminated soil from trucks before they exit Modified Zone 1.

**Comment:** Construction and operation of the planned distribution center will harm the residential character of the Calumet and East Calumet neighborhoods. The City and the developer should plant trees or other vegetation to provide a barrier between the development and the adjacent residential areas. The City and developer should invest in beautification of the

Calumet and East Calumet neighborhoods. The City and the developer should provide job training and resources to residents of East Chicago, so that City residents have access to jobs created by the construction and operation of the planned distribution center in Modified Zone 1.

**Response:** EPA does not have the authority to require the developer to plant trees or other vegetation to provide a barrier between the development and the adjacent residential areas, or to require an investment in the beautification of the Calumet and East Calumet neighborhoods. These suggestions can be directed to the City of East Chicago or directly to IDA. Generally speaking, EPA policy promotes the redevelopment of contaminated or formerly contaminated sites, and cooperation between developers, local governments, and communities can help further the goals of those policies.

#### Comments on Sitewide Environmental Concerns

**Comment:** Failing to excavate to native sand will leave in place soil that will continue to contaminate groundwater. This groundwater seeps into homes and leaves contamination that residents are exposed to when they use their basements.

**Response:** For a complete discussion on why excavating to native sand was not selected as the preferred remedy for Modified Zone 1, please see the 2020 ROD Amendment, available on the USS Lead Site webpage, <https://www.epa.gov/uss-lead-superfund-site>.

EPA is currently overseeing the performance of a Remedial Investigation and Feasibility Study (RI/FS) of Operable Unit 2 (OU2) of the USS Lead Site, including the groundwater beneath the entire Site. Groundwater monitoring wells were installed in December 2018, March 2019, June 2019, and August 2019. The RI will provide detailed information about the extent of the contamination of groundwater beneath the Site as well as information about the direction of groundwater flow. Currently, all residences within the Site receive drinking water from the City of East Chicago, and no one uses private wells to supply drinking water.

EPA is evaluating as part of the OU2 RI/FS the potential exposure pathway for inhalation of dust that remains on a basement floor after contaminated groundwater intrudes into a basement and then recedes or evaporates. Sample results from shallow groundwater monitoring wells and from sump water, basement dust, and soil (in the sump discharge zone) collected at certain residences in Zone 3 have not indicated that intrusion of shallow groundwater into basements is causing an unacceptable threat to human health. EPA's investigation of this potential pathway is ongoing as part of the current OU2 RI/FS.

**Comment:** The canal immediately adjacent on the west of the Site has overflowed. Water flowed from the Site, spreading contamination from both the canal and the Site. We have not heard that IDA or EPA are aware of these problems and are taking sufficient precautions to address them.

**Response:** The removal of soils in the top 12 inches with concentrations of lead or arsenic greater than the remedial action levels and replacement of these soils with clean fill will reduce the likelihood that overflow from the canal will wash contaminated soils from Modified Zone 1 into Zone 2 or Zone 3. During performance of the remedial action, EPA will require that IDA address stormwater runoff at Modified Zone 1. In particular, the SOW requires IDA to submit a description of monitoring and control measures to be implemented during the remedial action—including stormwater, air monitoring, and dust suppression—to protect human health and the environment.

As noted above, completion of the remedial action and construction in Modified Zone 1 will reduce stormwater runoff concerns because the surface will be covered by clean fill and hardscapes. Industrial stormwater permitting is overseen by IDEM.

**Comment:** The settlement should provide for water and air in the Calumet neighborhood to be monitored in perpetuity with periodic reports on air, water, and groundwater quality.

**Response:** EPA or its representatives will be doing full-time oversight during the performance of the remedy. EPA will ensure the contractor performing the cleanup will do the necessary monitoring to prevent fugitive emissions from leaving the construction site. As was completed during the demolition, a robust monitoring program will be implemented. Results of the monitoring will be made available on EPA's USS Lead Site webpage (<https://www.epa.gov/uss-lead-superfund-site>). EPA will also continue oversight during construction of the building at Modified Zone 1.

EPA is overseeing a groundwater study to determine if groundwater must be remediated.

The ROD Amendment does not currently include a requirement for air, water, and groundwater quality monitoring in perpetuity in association with the Site under CERCLA. Because hazardous substances above health-based limits will remain at depths lower than 12 inches, EPA will conduct a review of the Modified Zone 1 remedy's protectiveness every five years, consistent with Section 121(c) of CERCLA and if warranted, take appropriate action.

**Comment:** The public should be assured that future Five-Year Reviews at the Site performed by EPA provide trustworthy information.

**Response:** Five-Year Reviews are required under CERCLA whenever contamination is left in place as part of a remedial action. Five-Year Reviews provide an opportunity to evaluate the implementation and performance of a remedy to determine whether it remains protective of human health and the environment.

EPA completed the first Five-Year Review for the Site on August 24, 2021. The Five-Year Review evaluated the portions of Operable Unit 1 (OU1) in which remedial action is complete. EPA followed applicable guidance in performing the Five-Year Review. The Five-Year Review summarized the response actions taken to date, the steps taken in



evaluating the Site's status, a technical assessment, and issues and recommendations. EPA determined that the remedy at OU1 is expected to be protective of human health and the environment upon completion. In the interim, remedial activities that have been completed to date in OU1 have adequately addressed all exposure pathways that could result in unacceptable risks in these areas.

Modified Zone 1 was not evaluated in the Five-Year Review because the remedial action had not yet been implemented in that area.

EPA will continue to perform the statutorily required Five-Year Reviews. Funding for these reviews is provided by potentially responsible parties under the ASAOC.

**Comment:** The cleanup required by the proposed settlements is a "Band-Aid" and a piecemeal cleanup, not a permanent solution to the contamination at the Site.

**Response:** As set forth in the 2020 ROD Amendment and in the proposed ESD, Alternative 4A constitutes a complete remedial action that will ensure that human health and the environment are protected from releases of lead and arsenic in Modified Zone 1. The PPA provides for the implementation of this remedial action for Modified Zone 1. Other areas of the Site have and will continue to be addressed through a variety of EPA actions. The remedy that will be implemented in Modified Zone 1 is permanent because the protections afforded by the remedy – the interruption of the ingestion, inhalation, and direct contact exposure pathways – will be maintained over time. Every five years, EPA will evaluate the remedy to ensure that it remains protective.

**Comment:** Some of the most contaminated soils will remain at the Site very close to residents' homes, posing a threat of contamination during construction and by any future disturbance of site materials. Such disturbances might include everyday events, such as sewer or plumbing maintenance.

**Response:** Contaminated soils will remain at the Site beneath a 12-inch barrier of clean soil in Modified Zone 1 and at depths greater than 24 inches in some areas within Zones 2 and 3.

For Modified Zone 1, the PPA requires IDA to prepare and adhere to a Soil Management Plan describing measures that will be used to control dust emissions during construction and plans for handling any buried debris and contaminated material encountered during construction. In addition, before clean backfill is applied to cover excavated areas in Modified Zone 1, IDA must install a visual barrier between the clean fill and the underlying soil to serve as an alert that persons digging below 12 inches may encounter contaminated soil.

While a soil management plan is a component of the work to be performed under the PPA, the selected remedy does not require future property owners to submit to EPA for approval a Site Safety Plan or Soil Management Plan. Future property owners may, however, want to submit such plans to EPA for review and comment. Future property

owners who encounter contaminated soils must comply with all applicable laws and regulations. Future property owners may also want to take reasonable steps to prevent any threatened future release to maintain their status as bona fide prospective purchasers or other defenses against liability.

Corresponding measures were required for Zone 2 and Zone 3, including institutional controls tailored for the residential properties in those areas. Institutional controls are non-engineered instruments, such as administrative and legal controls, that help to minimize the potential for exposure to contamination and/or protect the integrity of a response action. The 2021 Five-Year Review for the Site identified the need to determine and implement institutional controls for Zone 2 and Zone 3 properties. For example, in those areas, the institutional controls may include property restrictions requiring that all subsurface work (utility maintenance, foundation work, etc.) be done in a manner that protects workers and residents.

Pursuant to the ASAOC, PRPs have agreed to reimburse costs that the United States incurs in implementing institutional controls that are consistent with the 2012 Record of Decision for Zones 2 and 3 and the 2020 ROD Amendment and proposed ESD for Modified Zone 1.

**Comment:** Adjacent neighborhoods include persons with health sensitivities and vulnerabilities, including elderly residents and children. EPA must take those residents' health conditions into account before approving this plan.

**Response:** EPA evaluated human health risk when selecting Alternative 4A. As set forth in the 2020 ROD Amendment and the proposed ESD, Alternative 4A will protect human health based on the expected potential exposure pathways in Modified Zone 1.

#### Comments about the West Calumet Housing Project

**Comment:** More information should be shared on the closure of the WCHC such as why it happened, who knew it, when did they know it and what did they do about it.

**Response:** EPA was not involved in the decision to close the WCHC. The WCHC was closed by the City of East Chicago and the East Chicago Housing Authority. The City of East Chicago and the East Chicago Housing Authority may have further information pertaining to the closure.

**Comment:** The buildings in the WCHC were demolished because the levels of lead inside the residences were too high for EPA to remediate.

**Response:** The levels of lead inside the residences were not too high for EPA to remediate. EPA completed cleaning of WCHC apartment interiors during the summer of 2016. EPA planned to follow up the interior cleanings with removal of contaminated soils surrounding the former WCHC buildings in the late summer/fall of 2016, however the WCHC was demolished, making it impossible to implement the original plan for

addressing outdoor contaminated soils. EPA was not involved in the decision to demolish the WCHC.

**Comment:** It would bring peace of mind to the residents of the former WCHC to understand the timeline of EPA's soil testing and the federal, state, and local government response to the findings of contamination at the former WCHC.

**Response:** Historical information pertaining to EPA's activities at the Site, including soil testing and results, are available on EPA's website. The administrative record collection for the Site (available at: <https://semspub.epa.gov/src/collection/05/AR62604>) contains EPA documents dating back to 1999.

The results of the most recent Zone 1 sampling completed in the fall of 2020 are located on the USS Lead Site webpage, which includes an interactive map of the sampling results and can be found at the following link:

<https://epa.maps.arcgis.com/apps/instant/minimalist/index.html?appid=7ba38bad68ed43388fa7a344bfb9d24c>

The 2021 Five-Year Review, which is available at <https://semspub.epa.gov/work/05/968656.pdf>, provides an account of the Site's recent history and EPA's response activities performed to date.

**Comment:** Lead and arsenic contamination in soils surrounding residences in the WCHC caused a health risk to those inside the residences due to blowing wind and open windows and doors for ventilation. EPA should provide information about testing it performed inside residences in the WCHC and federal, state, and local responses to the results of the testing. EPA should also provide information about its response action to clean the interiors of residences in the WCHC.

**Response:** During the summer of 2016, EPA sampled dust inside residences in the WCHC. The results of the indoor dust sampling may be viewed at <https://epa.maps.arcgis.com/apps/MapSeries/index.html?appid=d45c8610b7364b8f931fdbb748d607c1>. Clicking on a block group, each of which is designated by a blue outline, opens a table which summarizes the indoor dust results for the block group and includes access to "All Dust Results" for the block group.

Based on the indoor dust sampling results, EPA determined that lead-contaminated soils had been tracked into the apartments of WCHC residents, which resulted in elevated levels of interior lead dust in some apartments. To address the indoor dust issue, EPA implemented the following for residences in Zone 1: an indoor sampling program; an interior cleaning program; and a temporary relocation program to house residents displaced by the interior cleaning program. Between August 12, 2016 and November 5, 2016, EPA cleaned the interiors of 270 WCHC units and temporarily relocated hundreds of residents while their homes were being cleaned.

**Comment:** In a different community, a public housing project never would have been built on top of a demolished lead smelter.

**Response:** EPA had no role in selecting the location of the WCHC.

**Comment:** The Department of Justice should initiate criminal prosecutions against the individuals responsible for siting public housing on top of the contaminated debris from demolition of the former Anaconda Copper Company lead smelting facility.

**Response:** The decisions that led to the construction of the WCHC were made by local officials in the 1960s and early 1970s. In the 1970s, a local official and the builders involved in the construction of the WCHC were prosecuted and convicted on charges involving bribery related to the project. The convictions of the builders were subsequently upheld by the United States Court of Appeals for the Seventh Circuit. *See U.S. v. Bursten*, 560 F.2d 779 (7th Cir. 1977), available online at: [https://scholar.google.com/scholar\\_case?case=10366302705347940281&q=560+F.2d+779&hl=en&as\\_sdt=20003](https://scholar.google.com/scholar_case?case=10366302705347940281&q=560+F.2d+779&hl=en&as_sdt=20003).

#### Comments about Settling with IDA and the PRPs

**Comment:** EPA has been too eager to work with the developer and the corporations responsible for the contamination at the Site.

**Response:** EPA and DOJ are committed to addressing liability concerns to encourage third-party cleanup and reuse at Superfund sites. EPA developed an agreement that will allow IDA, a non-liable party, to implement the remedy that the proposed ESD selects for Modified Zone 1. The nine cleanup alternative evaluation criteria provided by the NCP form the basis for the remedy selection. EPA and DOJ followed statutory, regulatory, and applicable policies for working with PRPs at the Site.

**Comment:** PRPs should pay for remediation of Modified Zone 1 for future residential use.

**Response:** In accordance with CERCLA and the NCP, EPA selects remedies that are consistent with future land use. In the 2012 Record of Decision, EPA identified the Remedial Action Objective (RAO) as follows: “Reduce to acceptable levels human health risk from exposure to contaminants of concern (COCs) in impacted surface and subsurface soils through ingestion, direct contact, or inhalation exposure pathways, assuming reasonable anticipated future land-use scenarios.” The 2020 ROD Amendment and the draft ESD adopt the same RAO. As contemplated by the 2020 ROD Amendment, EPA now reasonably anticipates that the future land use will be industrial because the zoning for Modified Zone 1 has been changed to light industrial and IDA intends to take ownership of the property and develop it for industrial use. Accordingly, EPA plans to issue the ESD to trigger the contingency in the 2020 ROD Amendment for the selection of Alternative 4A.

**Comment:** With the proposed logistics center scheduled to be built, additional funding should be provided to improve the West Calumet area. For example, area parks are in need of improvement and the residents would benefit from a community garden. In addition, the Carrie Gosch school is not being utilized fully and the former school should be used as a training facility for children in computer science, or to obtain GEDs and for other activities. Improvements are needed in this area other than bringing in more diesel truck fumes into this area.

**Response:** EPA does not have the authority to provide funding for the type of activities suggested here. IDA and the City of East Chicago may be able to address these concerns.

**Comment:** EPA's pursuit of an administrative settlement impedes independent federal judicial review.

**Response:** The administrative approach is better suited to address implementation of the cleanup and redevelopment of Modified Zone 1 by a non-labile party. EPA and DOJ recognize that a site-specific agreement with the federal government addressing the liability concerns of a prospective purchaser can facilitate the cleanup and reuse at Superfund sites. When a non-labile prospective purchaser will be conducting a cleanup, CERCLA does not require a judicial consent decree.

A 2014 Consent Decree provided for the remediation of Zones 1 and 3 of OU1 of the Site to residential standards. Zone 3 was cleaned up under the terms of the 2014 Consent Decree, but Zone 1 still requires remediation.

In 2017 and 2018, the East Chicago Housing Authority demolished the WCHC in Zone 1, exposing contaminated soil. The City then stated its intention to redevelop the property for commercial use. In recognition of this, EPA decided to allow for a contingent remedy in the event that the development was to proceed. The new contingent remedy would be consistent with the anticipated use of the property.

The City has since rezoned the property for commercial/industrial use and the property is expected to be acquired by the developer, IDA, if and when these agreements are finalized after the public comment period. This means that the residential cleanup requirements of the 2014 Consent Decree are inconsistent with the future use of Modified Zone 1 and EPA's new remedy as set out in the ESD.

The PPA proposed by EPA will enable IDA, a non-labile party who did not cause the contamination and is not a party to the 2014 Consent Decree, to clean up and redevelop Zone 1. An administrative agreement is suitable to ensure implementation of the work by IDA.

EPA has also negotiated the ASAOC requiring the PRPs to obtain financial assurance for completion of the remediation work which IDA has agreed to perform. The ASAOC does not require the PRPs to perform any work in Modified Zone 1, so no judicial consent

decree is required. The ASAOC also includes parties who were not signatories to the 2014 Consent Decree and addresses issues unrelated to the Decree.

The Department of Justice filed with the federal district court on May 2, 2022, a *Notice Filing*, which explains the purposes and functions of the PPA, ESD, and ASAOC and their relationship to the 2014 Consent Decree.

**Comment:** EPA, the City, and the developer should not sign any agreements related to Modified Zone 1 until the comment period closes and the community has an opportunity to review the responses.

**Response:** EPA, DOJ, and the State of Indiana have evaluated and responded to all public comments in this Responsiveness Summary. Though the agreements were signed prior to the comment period, they do not become effective until after the issuance of this Responsiveness Summary and the finalization of the ESD. The City of East Chicago is not a party to any of the agreements that were put forth by EPA and DOJ.