

Colorado Smelter Superfund Site
CERCLA Section 122(h)(1) Cashout Settlement Agreement for Peripheral Parties
CERCLA Docket No. CERCLA-08-2023-0004
Response to Public Comments

A. Overview

On August 2, 2023, EPA, the Department of Justice, and 1000 South Santa Fe LLC and 1100 South Santa Fe LLC (collectively, the Companies) entered into an administrative settlement agreement (Agreement) to recover past response costs and future response costs from the Companies at the Colorado Smelter Superfund Site in Pueblo, Pueblo County, Colorado (Site). The Companies are current owners of a portion of Operable Unit 2 (OU2) at the Site; i.e., two parcels of property located on South Santa Fe Avenue within OU2 and encompassing 12 acres (Property). Under the Agreement, the Settling Parties will pay \$646,100 for past and future response costs for cleanup of contamination with respect to OU2 of the Site. The payment under the Agreement is due upon sale of the Property or within three years, whichever is earlier. EPA has agreed to release its CERCLA Section 107(l) lien for its cleanup costs on the Property in return. On August 10, 2023, EPA announced a thirty-day public comment period relating to the Agreement. Following a request from the Colorado Smelter Community Advisory Group, the public comment period was extended an additional two weeks. The public comment period concluded on September 25, 2023.

EPA received three written comments during the public comment period. These comments were either submitted to the Regulations.gov website or were emailed to EPA staff. One commenter supported EPA's work at the Site. The remaining two commenters provided questions and concerns about contamination at the Site and EPA's ongoing enforcement investigation. These comments, questions and concerns did not pertain directly to the proposed Agreement with the Companies, summarized above, but are addressed herein to the greatest extent possible.

EPA provides many opportunities for public engagement throughout the Superfund process. The Colorado Smelter Community Involvement Plan (2019 Update) provides a blueprint for community involvement at the Site. If members of the public are interested in pursuing additional community involvement activities relating to the Colorado Smelter Superfund site, they are encouraged to contact EPA's remedial project manager, Sabrina Forrest, at Forrest.Sabrina@epa.gov or EPA's community involvement coordinator, Beth Archer, at Archer.Elizabeth@epa.gov.

B. Site Background

The Site includes a former smelter facility located in the City of Pueblo, Pueblo County, Colorado, and the surrounding community which was contaminated with lead and arsenic from smelting operations. The Colorado Smelter (also known as the Colorado Smelting Company and the Eilers Smelter) was one of five smelters in Pueblo at the turn of the last century. The Colorado Smelter processed silver-lead ore from the Monarch Pass area and operated from 1883 to 1908. The Colorado Smelter merged with the Pueblo Smelter as the American Smelting and Refining Company (ASARCO) in 1899. The Colorado Smelter closed in 1908. While most of the historical smelter structures were torn down in 1909, portions of the facility's foundation and waste piles still exist.

The Site is organized into two geographic operable units. Operable Unit 1 (OU1) consists of community properties within an approximate one-half mile radius surrounding the former smelter facility, an area encompassing approximately 700 acres. There are approximately 2,030 residential parcels and another 200 parcels within OU1, including vacant properties, commercial businesses, schools, parks, and city-owned alleys and rights-of-way. Operable Unit 2 (OU2) consists of an approximately 700,000 square-foot (16-acres) slag pile and several more acres that overlie the former smelter footprint. There is a wetland on OU2, and surface water drains through OU2 via stormwater conveyances through the wetland and into the Arkansas River.

In May 2014, EPA proposed listing the Site on the NPL. Thereafter, also in 2014, EPA initiated a removal action that included posting no trespassing and caution signs around the former smelter area to raise community awareness about the presence of heavy metals and warn people about the potential health risk from walking through that area. On December 11, 2014, EPA finalized the listing and added the Site to the NPL. In 2016 and 2017, EPA began to address residential properties with high levels of lead dust inside individual homes. Between June 2016 and July 2018, EPA performed twenty-seven emergency indoor dust cleanups. In addition, in December 2018, EPA performed seven additional priority indoor cleanups. Also, during December 2017, EPA completed a time-critical removal action at Benedict Park to cleanup arsenic and cadmium contamination found a foot or more beneath the eastern play area.

Shortly after the NPL listing was finalized, EPA initiated a remedial investigation/feasibility study for residential properties in OU1. On September 26, 2017, EPA and Colorado Department of Public Health and Environment (CDPHE) signed an early interim action record of decision (IROD) for residential properties within OU1 for the removal and replacement of soils up to 18 or 24 inches below ground surface, as well as indoor dust cleanups, where necessary. As of August 31, 2023, EPA has completed 96% of residential soil sampling, 81% of indoor dust sampling, 92% of soil cleanups, and 78% of indoor dust cleanups. EPA estimates completing implementation of the IROD in 2024.

In 2018, EPA initiated the remedial investigation for OU2 conducting air monitoring, and in 2019, EPA initiated surface soil sampling, surface water, pore water, and sediment sampling. Additional sampling of subsurface soils, slag, and groundwater was on hold during 2020-2021 due to the lack of funding; however, receipt of Bipartisan Infrastructure Law (BIL) funds allowed EPA to resume work on the OU2 remedial investigation in 2022 with plans to complete the investigation by 2025. EPA's goal is to issue an OU2 Record of Decision by 2027.

C. Summary of Comments Received During the Public Comment Period

EPA received three written comments during the public comment period. One commenter supported EPA's work at the Site. The remaining two commenters provided questions and concerns about the contamination at the Site and EPA's ongoing enforcement investigation.

One commenter expressed concern for their home and questioned whether the future of their family will be impacted. The other commenter expressed appreciation for EPA's efforts to clean up the Bessemer community, and also expressed concern that the proposed Agreement and any potential future settlement

agreements would be cost prohibitive and be in direct conflict with the community's redevelopment goals. The commenter further explained that they are concerned that liability risks for current and future property owners within the Site will deter investment in improving the properties and business located within the Superfund Site.

D. EPA Responses

a. Contamination at the Site

Based on the human health risks associated with exposure to arsenic and lead, EPA prioritized sampling and cleanup of the residential properties within OU1. EPA estimates completing implementation of the IROD in 2024. In 2018, EPA initiated the remedial investigation for OU2 and plans to complete the investigation by 2025. Following completion of the remedial investigation and feasibility study for OU2, EPA will issue a proposed cleanup plan for OU2, which will include a public meeting and will have a public comment period. After public comments have been taken into consideration, EPA will issue a record of decision (ROD) selecting the remedy to be implemented at OU2. EPA's goal is to issue a ROD and begin implementing the selected remedy by 2027.

EPA adheres to the Colorado Smelter Community Involvement Plan (2019 Update), which outlines specific activities and resources EPA uses to help the public be actively involved in the cleanup process. EPA also maintains a public website that contains current information on current and past Site activities along with publicly available documents to view. The website is: www.epa.gov/superfund/colorado-smelter.

b. EPA's Enforcement Investigation at the Site

Under EPA's Superfund authority, the agency has an obligation to conduct a comprehensive investigation of any parties that may have contributed waste to the site, or that may have liability through ownership. This process ensures that the burden of paying for costly cleanups does not fall solely on the general public. An enforcement investigation is a normal part of the Superfund process and is consistent with EPA's "enforcement first" policy at Superfund sites. EPA utilizes various enforcement tools to address liability at Superfund sites (i.e., cashout settlement agreements, agreements to perform work, ability to pay settlements, Superfund liens, and enforcement discretion). To learn more about Superfund liability and enforcement, visit EPA's webpage at: <https://www.epa.gov/enforcement/superfund-enforcement>.

c. Reuse and Redevelopment at the Site

The sustainable reuse of previously contaminated property is an important goal of EPA's hazardous substances cleanup programs. EPA is committed to encouraging the reuse of contaminated properties because it helps EPA achieve its enforcement and environmental protection goals, such as long-term site stewardship and sustainable land use planning. To learn more about EPA's efforts to address liability concerns to support cleanup and reuse of contaminated lands, visit EPA's webpage at: <https://www.epa.gov/enforcement/addressing-liability-concerns-support-cleanup-and-reuse-contaminated-lands>.

Often, enforcement can support a community's reuse and revitalization goals. For example, under the terms of the proposed Agreement, upon payment of the settlement amount EPA has agreed to release the Superfund liens that have been perfected on the two parcels that are owned by 1000 South Santa Fe LLC and 1100 South Santa Fe LLC. Releasing the Superfund liens may assist the current property owners' efforts to sell the property. Additionally, a prospective purchaser may be able to utilize the Bona Fide Prospective Purchaser (BFPP) liability protection. To learn more about the BFPP liability protection, visit EPA's webpage at: <https://www.epa.gov/enforcement/bona-fide-prospective-purchasers>. Prospective purchasers interested in acquiring property within the Site can also contact EPA's remedial project manager, Sabrina Forrest, at Forrest.Sabrina@epa.gov or EPA's community involvement coordinator, Beth Archer, at Archer.Elizabeth@epa.gov to request a prospective purchaser inquiry call.