



**REGION 8**

DENVER, CO 80202

December 18, 2024

***Sent via Electronic Mail***

Mike Economos, President  
Eagle Rock Distributing Company of Colorado  
15080 Terrazzo Drive  
Monument, Colorado 80921  
[MEconomos@eaglerocks.com](mailto:MEconomos@eaglerocks.com)

Re: Property located at 1045 S. Sante Fe Avenue, Pueblo, Colorado; Colorado Smelter  
Superfund Site located in Pueblo, Colorado

Dear Mr. Economos:

Thank you for having your attorneys contact the U.S. Environmental Protection Agency on December 16, 2024, about your plans concerning the property referenced above (Property). Your attorneys described your interest in leasing the Property for commercial use and requested that we provide you with a Superfund comfort/status letter.

The purpose of this comfort/status letter is to provide you with information that may be relevant to the potential Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) liability concerns you have identified at the Property and summarize the relevant information available to the EPA about the Colorado Smelter Superfund Site as of the date of this letter. We hope this information will enable you to make informed decisions as you move forward with your plans regarding the Property.

Under CERCLA (commonly referred to as Superfund),<sup>1</sup> the Agency's mission is to protect human health and the environment from risks posed by exposure to contaminated or potentially contaminated land, water, and other media. A Superfund cleanup can help return properties to productive reuse. We are providing this letter consistent with the Agency's 2019 Comfort/Status letter policy.<sup>2</sup>

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<sup>1</sup> 42 U.S.C. §§ 9601, *et seq.*

<sup>2</sup> See 2019 Policy on the Issuance of Superfund Comfort/Status Letters (Aug. 21, 2019), available on the Agency's website at <https://www.epa.gov/enforcement/comfortstatus-letters-guidance>.

## Property Status

The Property is situated within Operable Unit 2 (OU2) of the Site. Interested parties can find information on sites that are, or potentially are, contaminated and may warrant action under Superfund, including site-specific documents and fact sheets, in the Superfund Enterprise Management System (SEMS).<sup>3</sup> This Site is located in SEMS and has been on the National Priorities List (NPL) since December 2014. Site-specific information for the Site can also be found at: [www.epa.gov/superfund/colorado-smelter](http://www.epa.gov/superfund/colorado-smelter). For the reasons stated below, we are addressing the Site under Superfund remedial authority.

## History and Status of the Site

The Colorado Smelter was a silver and lead smelter that operated in Pueblo, Colorado, from 1883 to 1908. The EPA listed the Site on the NPL in December 2014 due to concerns about high levels of arsenic and lead in smelter slag (waste from the smelting process) and neighborhood soils. The Site includes the former Colorado Smelter facility, designated as OU2, and residential, commercial, and city-owned properties within an approximate 0.5-mile radius of the former smelter, designated as Operable Unit 1 (OU1). OU2 includes building remains from the former smelter, buildings built on top of the historic footprint of former smelter buildings, and an approximately 700,000-square-foot pile of slag that is up to 30 feet high in some places.

Based on the human health risks associated with exposure to arsenic and lead, the EPA prioritized sampling and cleanup of the residential properties within OU1. As of December 2024, the EPA has completed sampling and cleanup at OU1 residential properties. In total, the EPA completed soil sampling at 1,967 homes, indoor dust sampling at 1,811 homes, soil cleanup and restoration at 824 homes, and indoor dust cleanup at 517 homes.

At OU2, the EPA is currently conducting the remedial investigation. In 2018 and 2019, the EPA conducted air monitoring, surface soil sampling, surface water, pore water, and sediment sampling. Elevated levels of heavy metals, including lead and arsenic, have been identified within all media sampled. In 2023 and 2024, the EPA conducted additional sampling of subsurface soils, slag, biota, surface water, pore water, sediments, and groundwater. Following completion of the remedial investigation and feasibility study for OU2, and a public comment period, the EPA will issue a record of decision selecting the remedy to be implemented at OU2.

## Reuse of the Property

Based on the information that was provided on your behalf, the EPA understands that Eagle Rock Distributing Company of Colorado, LLC, a Colorado limited liability company (Eagle Rock) intends to lease warehouse and office space at the Property for the commercial purposes. It is the EPA's understanding that Eagle Rock will be using the Property for wholesale distribution of alcoholic and non-alcoholic beverages, outdoor storage of materials, and administrative use of office space. It is also the EPA's understanding that Eagle Rock does not currently contemplate any development or alterations to the Property, in particular, there are no plans for removal of existing asphalt or crushed

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<sup>3</sup> SEMS is available at on the Agency's website at <https://cumulis.epa.gov/supercpad/cursites/srchsites.cfm>.

asphalt surfaces and no plans to disturb the building foundations and floors. Please note that, to ensure the remedy remains protective of human health and the environment, any future development must be compatible with the EPA's cleanup actions and institutional controls designed to protect the remedy and prevent unacceptable exposure to residual contamination. As of the date of this letter, we have not identified any obvious incompatibility between your proposed use of the Property as it has been described to us and the EPA's cleanup actions.

### **CERCLA's Bona Fide Prospective Purchaser Liability Protection**

The EPA is providing you with information regarding the bona fide prospective purchaser (BFPP) provision of CERCLA. Congress amended CERCLA in 2002 to exempt certain parties who buy contaminated or potentially contaminated properties from CERCLA liability if they qualify as a BFPPs. The BFPP provision provides that a person who meets the criteria of CERCLA §§ 101(40) and 107(r)(1), and who purchases the property after January 11, 2002, will not be liable as an owner or operator under CERCLA. The statutory definition of a BFPP also includes a party who acquires a leasehold interest in a property after January 11, 2002, where the leasehold is not designed to avoid liability and the interested party meets certain conditions and criteria.

A key advantage of the BFPP provision is that it is self-implementing; therefore, the Agency is not involved in determining whether a party qualifies for BFPP status. A party, on its own, can achieve and maintain status as a BFPP, which provides statutory protection from CERCLA liability, without entering into an agreement with the EPA, so long as that party meets the threshold criteria and continuing obligations identified in the statute.<sup>4</sup>

Based on the information that was provided on your behalf, the BFPP provision may apply. Note that a court, rather than the EPA, ultimately determines whether a landowner has met the criteria for BFPP status. Thus, the EPA recommends that you consult with your legal counsel to assess whether you satisfy each of the statutory requirements necessary to achieve and maintain BFPP status.

### **Reasonable Steps**

Among other criteria outlined in CERCLA, a BFPP must take "reasonable steps" to stop continuing releases, prevent threatened future releases, and prevent or limit human, environmental, or natural resources exposure to any previously released hazardous substances as required by CERCLA § 101(40)(B)(iv). This requirement is explored further in the Common Elements Guidance.<sup>5</sup>

By making the BFPP Exemption subject to the obligation to take reasonable steps, the EPA believes Congress intended to protect certain landowners from CERCLA liability while at the same time recognizing that these landowners should act reasonably, in conjunction with other authorized parties, in protecting human health and the environment. As noted above, the Agency is currently conducting the remedial investigation at OU2 of the Site and has identified several environmental concerns. Based

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<sup>4</sup> See EPA's *Enforcement Discretion Guidance Regarding Statutory Criteria for Those Who May Qualify as CERCLA Bona Fide Prospective Purchasers, Contiguous Property Owners, or Innocent Landowners* ("Common Elements Guidance") (Office of Enforcement and Compliance Assurance, July 29, 2019) available on the Agency's website at <https://www.epa.gov/enforcement/common-elements-guidance>.

<sup>5</sup> *Id.*

on the information we have evaluated, we believe that the following may be reasonable steps related to the hazardous substance contamination found at the Site:

1. Provide the EPA and its contractors with access to the Property for purposes of site investigatory activities, performing the cleanup, conducting five-year reviews, and monitoring compliance with environmental institutional controls.
2. Refrain from using the Property in a manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of any response actions being performed by the EPA.
3. Refrain from using the Property in a manner that would exacerbate contaminated conditions at the Site.
4. Limit public exposure to contamination, to the extent practicable, by maintaining the existing hardscaping as a protective cap for any contaminated soils on the Property.
5. With respect to any construction activities or characterization work that involves soil disturbance on the Property:
  - a. Provide the EPA with detailed information about any soil disturbing activities prior to taking action.
  - b. Utilize best management practices to minimize potential health risk from exposure to elevated metals in soils.
  - c. Develop a materials management plan for characterization and proper disposal of soils.
6. Share any sampling data with the EPA (including those collected through “All Appropriate Inquiry”).
7. Call the EPA’s regional Emergency Response Center hotline to report the discovery or release of any hazardous substances.

Any reasonable steps suggested by the EPA are based on the nature and extent of contamination currently known to the Agency and are provided as a guide to help you should you seek to reuse the Property. Because a final determination about which steps are reasonable would be made by a court rather than the EPA, and because additional reasonable steps may later be necessary based on site conditions, this list of reasonable steps is not exhaustive. You should continue to identify reasonable steps based on your observation and judgment and take appropriate action to implement any reasonable steps whether EPA regional staff has identified any such steps.<sup>6</sup>

### **Superfund Lien Pursuant to CERCLA § 107(I)**

A Superfund lien has arisen on the Property pursuant to CERCLA § 107(I). The EPA has filed a notice of its Superfund lien on this Property pursuant to CERCLA § 107(I). According to the Settlement Agreement between the Agency and 1000 South Santa Fe, L.L.C. and 1100 South Santa Fe, L.L.C. (Property Owners), the EPA will release this lien upon compliance by the Property Owners with the terms of the Settlement Agreement.

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<sup>6</sup> CERCLA § 101(40)(B)(iv) provides that “The person exercises appropriate care with respect to hazardous substances found at the facility by taking reasonable steps to (i) stop any continuing release; (ii) prevent any threatened future releases; and (iii) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substance.”

## State Actions

We can only provide you with information about federal Superfund actions at the Site, federal law and regulations, and EPA guidance. For information about potential state actions and liability issues, please contact Sarah Graves at the Colorado Department of Public Health and Environment (CDPHE) by phone at (303) 692-3394 or by email at [sarah.graves@state.co.us](mailto:sarah.graves@state.co.us) or Jonathon Lubrano at the State of Colorado Attorney General's Office by phone at (720) 508-6864 or by email at [Jonathon.Lubrano@coag.gov](mailto:Jonathon.Lubrano@coag.gov).

## Conclusion

The EPA remains dedicated to facilitating the cleanup and beneficial reuse of contaminated properties and hopes the information contained in this letter is useful to you. You may find it helpful to consult with your own environmental professional, legal counsel, and your state, tribal, or local environmental protection agency before taking any action to acquire, clean up, or redevelop the Property. These consultations may help you obtain a greater level of comfort about the compatibility of the proposed use and ensure compliance with any applicable federal, state, local, and/or tribal laws or requirements.

If you have any additional questions or wish to discuss this information further, please contact me at (303) 312-6713 or by email at [Serna.Erica@epa.gov](mailto:Serna.Erica@epa.gov). If you have any legal questions, please contact Sarah Rae, EPA Enforcement Attorney, at (303) 312-6839 or by email at [rae.sarah@epa.gov](mailto:rae.sarah@epa.gov).

Sincerely,

ERICA SERNA

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Date: 2024.12.18 17:00:21  
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Erica Serna, Remedial Project Manager  
Superfund Remedial Program

cc: Sarah Rae, EPA  
Diana Lim, EPA  
Sarah Graves, Superfund Project Manager, CDPHE  
Jonathon Lubrano, Colorado Attorney General's Office