



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
REGION 5 77 WEST JACKSON BOULEVARD CHICAGO, IL 60604-3590

December 21, 2020

Mr. Stephen G. Torres, P.G.  
Director, Site Investigation & Remediation Group  
RPS Group  
135 S. LaSalle Street, Suite 3500  
Chicago IL 60603

RE: Comfort/Status Letter for Magnetrol Property  
5300 Belmont Road, Downers Grove, Illinois

Dear Mr. Torres:

Thank you for contacting the U.S. Environmental Protection Agency (EPA or “Agency”) on November 20, 2020 about your client’s, Bridge Industrial Acquisition LLC (“Bridge”), plans concerning the property referenced above (the “Property”). In your inquiry, you described Bridge’s intentions to purchase the Property for commercial redevelopment with a new warehouse building (the “Development”) and requested that we provide you with a Superfund comfort/status letter.

Under the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, commonly referred to as Superfund), the Agency’s mission is to protect human health and the environment from the actual or potential risks posed by exposure to contaminated or potentially contaminated land and other media. A Superfund cleanup can help return lands to productive reuse. We are providing this letter consistent with the Agency’s 2019 Comfort/Status letter policy. The purpose of this comfort/status letter includes providing you with information that may be relevant to the potential CERCLA liability concerns you have identified at the impacted Property and summarizing the relevant information available to the EPA about the Property as of the date of this letter. We hope this information will enable you to make informed decisions regarding the Property’s cleanup status and CERCLA’s liability protections as you move forward with making a decision about the Property.

### **Property Status**

Information on sites that are, or potentially are, contaminated with hazardous substances and may warrant action under Superfund, including site-specific documents and fact sheets, is recorded in the EPA’s Superfund Enterprise Management System (SEMS), which may be accessed at <https://cumulis.epa.gov/supercpad/cursites/srchsites.cfm>. SEMS includes a public access database that contains information about sites where there has been EPA regional office involvement under Superfund.

The Property is situated within the Ellsworth Industrial Park Site (“Site”). This Site is listed in SEMS and is not on the National Priorities List (NPL). Information on the Site can also be accessed on-line

through the following EPA web page: <http://www.epa.gov/superfund/ellsworth-industrial-park>. For the reasons stated below, the EPA is investigating and addressing the Site under its Superfund authority.

## **History and Status of the Site**

The following is a summary of the information the EPA currently has regarding the Site and the Property. The Ellsworth Industrial Park Site is an active industrial area in Downers Grove, DuPage County, Illinois. The Site encompasses the contamination source areas in the industrial park and the area in which groundwater contaminated with volatile organic compounds (VOCs) has migrated.

Multiple businesses in the industrial park, including Magnetrol International, Inc. (“Magnetrol”), used solvents containing VOCs. From May 2001 through January 2002, Illinois EPA sampling efforts identified groundwater contamination that threatened private drinking water wells in unincorporated areas of Downers Grove south and east of the industrial park. Sampling data indicated that trichloroethylene (TCE), tetrachloroethylene, and trichloroethane migrated from source areas at several businesses in the industrial park to residential drinking water wells located to the south and east of the industrial park.

To manage this project, EPA divided the Site cleanup into two operable units (OUs). OU1 consists of source areas in the industrial park. OU2 consists of contaminated groundwater, primarily in residential, recreational and commercial areas beyond the boundary of the industrial park.

In August 2003, a group of thirteen potentially responsible parties (PRPs), including Magnetrol, entered into a settlement agreement with EPA in which they funded hookups to a public drinking water supply for more than 800 residences in unincorporated Downers Grove. Water connections to the homes near the industrial park began in the fall of 2003 and were completed in spring 2004. During this time, EPA conducted initial studies of the area to determine groundwater characteristics, distribution and flow direction.

In 2005, a group of PRPs, including Magnetrol, entered into a second settlement agreement for OU1. They agreed to help EPA pay for a Remedial Investigation/Feasibility Study (RI/FS) for identification and control of source areas in the industrial park where releases and potential releases of VOCs presented an unacceptable ongoing threat to groundwater. Properties within the industrial park, including the Property, have been sampled to identify potential sources of VOCs that have contaminated groundwater downgradient of the Ellsworth industrial park. EPA has completed the source control investigation described in that settlement but has decided to defer selection of final source control cleanup steps until after completion of the OU2 groundwater RI/FS.

In 2017, EPA and a group of the PRPs reached a third settlement agreement, in which the PRPs would perform an RI/FS for OU2 to investigate and evaluate the nature and extent of groundwater contamination at and downgradient of the industrial park. Based on that evaluation, EPA will identify appropriate remedial actions for the groundwater and for remaining potential source areas in the industrial park.

In the interim, EPA has been pursuing private settlement agreements with individual PRPs to expedite cleanup of individual source areas identified in the OU1 RI that may present unacceptable risks to human health based on a direct contact threat, VOC migration into groundwater, and/or vapor intrusion concerns. To the extent feasible, all agreed cleanups will be consistent with the anticipated source control remedial actions for OU1.

As part of this strategy, EPA entered an Administrative Order on Consent (AOC) on July 24, 2018, for completion of a time-critical removal action by Magnetrol at the Property.

Sampling activity at the Magnetrol Property, as part of the RI and other investigations, included soil borings inside and outside the building, sub-slab passive soil gas samples, and indoor air samples. RI sampling identified TCE concentrations in soils at the Property at levels as high as 178 milligrams per kilogram (mg/kg) and in passive sub-slab soil gas samples as high as 113,071 nanograms. Subsequent sampling by Magnetrol identified TCE concentrations in sub-slab passive soil gas samples as high as 1,350,000 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ) and in indoor air samples as high as  $18.8 \mu\text{g}/\text{m}^3$ . EPA confirmed these high TCE concentrations. EPA split-sample results for the sub-slab were at  $710,000 \mu\text{g}/\text{m}^3$  and indoor air was detected at  $22 \mu\text{g}/\text{m}^3$ . The aforementioned TCE concentrations exceed EPA commercial and industrial vapor intrusion screening levels.

The OU1 RI evaluated the soil cleanup levels necessary to abate unacceptable risk of soil contamination migrating to groundwater and established a preliminary soil cleanup level of 1.2 mg/kg for TCE. Magnetrol agreed to excavate and remove soil contamination to meet that cleanup level in order to assure consistency with the final remedial action at the Property.

The draft RI estimated that TCE-impacted soil was located entirely within the building footprint, covering approximately 5,673 square feet, and extending in depth from just below the building concrete floor slab to at least ten feet below the floor slab. Supplemental investigation by Magnetrol modified the horizontal coverage estimate to 6,717 square feet. TCE contamination was detected in the area where the degreaser was located (near the building's center), and at an area at the southwest end of the building.

Magnetrol excavated and removed TCE-contaminated soil as required by the AOC. According to the February 20, 2019 Remedial Action Completion Report prepared by its contractor, KPRG and Associates, Inc., 183 dump-truck loads of non-hazardous soil totaling 3,173.03 tons from two areas of concern were excavated and disposed as special waste. In addition, 49.45 tons of hazardous soil were removed. Soil samples from the bottom and sidewalls of each excavation area were collected on an approximate 20-foot spacing, i.e., one soil sample for every 20 feet of excavation area floor and sidewall, and submitted to a laboratory for analysis to verify that soil removal achieved the EPA-established cleanup level for TCE.

Magnetrol also installed and has been operating a vapor monitoring program under an EPA-approved Sub-Slab Depressurization System Operation, Maintenance and Monitoring Plan. The most recent semi-annual indoor ambient air sample contained TCE at a concentration of  $2.96 \mu\text{g}/\text{m}^3$ , which is less than the established Removal Management Level (RML) of  $3.0 \mu\text{g}/\text{m}^3$ . TCE also was detected in the sub-slab vapor sample at a concentration of  $242 \mu\text{g}/\text{m}^3$ , which exceeds the RML of  $100 \mu\text{g}/\text{m}^3$ . The sub-slab depressurization system must continue to operate until cleanup levels are met and maintained.

Under the AOC, Magnetrol also recorded an Environmental Restrictive Covenant on the Property. The provisions of that document help define some of the reasonable steps expected from any current or future owner of the Property, as discussed in more detail below.

You may also wish to view a copy of the Site's Administrative Record which is available at the Site's public information repository located at the Downers Grove Public Library, at the EPA Region 5 Records Center in Chicago, Illinois, and on-line through the following EPA web link:  
<https://cumulis.epa.gov/supercpad/SiteProfiles/index.cfm?fuseaction=second.docdata&id=0508246>.

## **Reuse of the Property**

Based on the information you provided, the EPA Region 5 understands that your client intends to demolish the existing 70,000 square foot building, including the foundation, and construct a new 126,000 square foot warehouse building with typical improvements. We also understand the new building and pavement will overlay the current building footprint and will have slab-on-grade floors (no basement or sumps) with isolated and continuous-spread footings. Please note that, to ensure the remedy remains protective of human health and the environment, any development must be compatible with the EPA cleanup actions and recorded Environmental Covenant dated March 13, 2020.

The Environmental Covenant requires, among other things, implementation and compliance with post-removal site controls, which in this case include land use limitations in order to prevent unacceptable exposures from hazardous substances remaining at the Property. The Environmental Covenant also requires a vapor mitigation system (i.e., sub-slab depressurization system) to be in place at the Property pursuant to the AOC, which must be operated and maintained until the Owner receives written approval from the EPA and Illinois EPA to cease operation.

As of the date of this letter, we have not identified any obvious incompatibility between the proposed use of the Property as you have described it to us and the EPA's selected cleanup option, subject to continued compliance with the requirements of the Environmental Covenant. However, because TCE vapors are still present underneath the existing building slab, EPA remains concerned that TCE-contaminated soils are still present. Thus, TCE could be exposed and potentially released during excavation in areas currently underneath the existing building. The EPA at a minimum recommends that your client develop a soil or waste management plan and provide it for Agency review prior to any excavation activities. Given the extensive excavation, grading, and construction your client is planning, it may wish to consider entering an agreement with EPA, as discussed further below. As your plans develop further, please continue to discuss the development with us. The EPA recommends that you consult with your own legal counsel and environmental professional to ensure that your proposed reuse will not affect EPA's cleanup response.

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

The EPA understands that you are interested in 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 BFPPs. The BFPP provision provides that a person meeting 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 Agency has issued guidance discussing some of the BFPP criteria. See *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")* ("Common Elements Guidance") (July 29, 2019) (<https://www.epa.gov/enforcement/common-elements-guidance>). Based upon your representation of your situation, 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 your legal counsel to assess whether you satisfy each of the statutory requirements necessary to achieve and maintain BFPP status.

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.

## **Reasonable Steps**

You have asked what actions by the owner of the Property may constitute reasonable steps. As noted above, the RI/FS work is ongoing for the Site as a whole, and EPA has not yet selected a final remedy for the Site. The RI for properties in the industrial park, however, has been largely completed. Based on the information we have evaluated to date, we believe that the following may be reasonable steps related to the hazardous substance contamination found at the Site:

- Avoid any activities that may result in the exposure of individuals and ecosystems to the contaminated soils and groundwater, including the installation or use of any drinking wells or any residential use of the Property;
- Refrain from any activities that would involve the penetration of the water table;
- Refrain from the tampering, opening, or damaging of any monitoring wells or extraction wells, and associated equipment, that may be located on or near the Property;
- Continue operation and maintenance of a vapor mitigation system at the Property, consistent with the terms of the Environmental Covenant dated March 13, 2020.
- Refrain from interfering with response activities at or around the Property as conducted by EPA or under EPA’s direction.
- Refraining from digging, disturbing soil, or constructing non-mobile structures or parking lots in areas currently located under the building slab without taking appropriate precautions to sample and manage exposed soil appropriately, to avoid exacerbating any TCE contamination present at the Property.

Any reasonable steps suggested by the EPA Region 5 are based on the nature and extent of contamination currently known to the Agency and are provided as a guide to help you as 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 step whether or not the EPA regional staff have identified any such steps.<sup>1</sup> We recommend that you consult with your environmental professional and legal counsel to ensure that you take the reasonable steps necessary with respect to any hazardous substance contamination. Your client may also wish to consider a BFPP Agreement for Removal Action or a Prospective Purchaser Agreement to help assure construction activities are coordinated with EPA to address concerns about triggering potential liability. See <https://www.epa.gov/enforcement/guidance-model-bfpp-agreement-removal-action>.

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<sup>1</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.”

## Windfall Lien Pursuant to CERCLA § 107(r)

Although Congress provided liability protection under CERCLA for BFPPs to encourage the purchase and reuse of contaminated properties, the property they acquire may be subject to a windfall lien pursuant to CERCLA § 107(r) if there are unrecovered response costs incurred by the United States and the response action increases the fair market value of the property. Unlike a CERCLA § 107(l) lien (aka “Superfund lien”), a windfall lien is not a lien for all the Agency’s unrecovered response costs. The windfall lien is limited to the lesser of the Agency’s unrecovered response costs or the increase in fair market value attributable to the EPA’s cleanup. For more information, please refer to the Agency’s *Interim Enforcement Discretion Policy Concerning “Windfall Liens” Under Section 107(r) of CERCLA July 16, 2003* (“Windfall Lien Policy”) [<https://www.epa.gov/enforcement/interim-guidance-enforcement-discretion-concerning-windfall-liens-cercla-section-107r>].

## 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 Mark Gurnik of the Illinois EPA for more information about potential state actions and liability issues or Gregory Miller of the Illinois EPA for technical-related issues.

## Conclusion

The EPA Region 5 remains dedicated to facilitating the cleanup and reuse of contaminated properties and hopes the information contained in this letter is useful to you. Please note that the letter does not offer conclusive statements about Site conditions or liability. You may find it helpful to consult 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 impacted 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 feel free to contact Leslie Blake, Remedial Project Manager for the Site, by telephone at 312-353-7921 or by e-mail at [blake.leslie@epa.gov](mailto:blake.leslie@epa.gov).

Sincerely,

12/21/2020

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Timothy Fischer, Chief  
Remedial Response Branch 2  
Signed by: DiCosmo, Nefertiti

cc: Leslie Blake (EPA, SEMD)  
Matthew Dawson (EPA, ORC)

Thomas Krueger (EPA, ORC)  
Greggory Miller (Illinois EPA)  
Mark Gurnik (Illinois EPA)