

Welcome!

Today's meeting will focus on the Buick City Prospective Purchaser Agreement.

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Prospective Purchaser Agreement

Buick City
Flint, Michigan

Introduction

- ▶ **Purpose of the meeting:**
 - ▶ Provide information on the Prospective Purchaser Agreement (PPA)
 - ▶ Answer questions
 - ▶ Receive written public comments on the PPA

What is a PPA?

- ▶ A Prospective Purchaser Agreement is the primary legal settlement tool to address the liability concerns of a prospective purchaser who wants to clean up and reuse a site of federal interest.
- ▶ Under normal circumstances, PPAs provide a covenant not to sue and contribution protection in exchange for cleanup work and reimbursement of EPA's costs.
- ▶ However, where a RACER Trust property has been involved, a prospective buyer has not been obligated to perform cleanup work because RACER is already responsible for cleanup.

Why is a PPA being used at Buick City?

- ▶ Consent Decree obligates EPA, the States, and the Tribe to work with prospective purchasers to address liability concerns
- ▶ Flint Commerce Center, LLC (FCC), an entity created by land development company Ashley Capital, requested a PPA
- ▶ FCC has acquired one parcel, which is not covered by the PPA, and will acquire 15 more, which will be covered by the PPA
- ▶ FCC plans to construct buildings suitable for warehousing, distribution, and light manufacturing



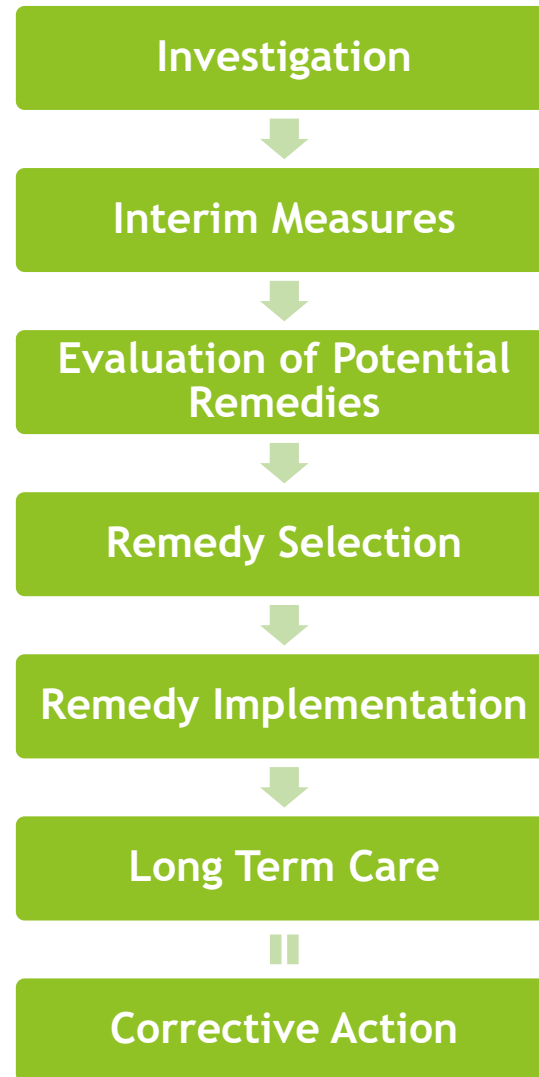
Key Components of the PPA

- ▶ Section 3: Statement of Facts (paragraphs 10-22)
- ▶ Section 4: Settlement Agreement (para. 23-24)
- ▶ Section 5: Access/Cooperation (para. 25-27)
- ▶ Section 6: Due Care (para. 28-23)
- ▶ Section 8: United States' Covenant Not to Sue (para. 34)
- ▶ Section 9: Reservation of Rights (para. 35-38)
- ▶ Section 10: Purchaser's Covenant Not to Sue (para. 39-41)
- ▶ Section 11: Parties Bound/Transfer of Covenant (para. 42-45)
- ▶ Section 15: Effective Date (para. 49)
- ▶ Section 19: Public Comment (para. 55)

Cleanup Process Under RCRA

Corrective Action

- ▶ Chemicals were released on the property
- ▶ The responsible party is required to evaluate and address contamination on the property according to the RCRA Corrective Action Process



PPA Section III: Statement of Facts

- ▶ Investigation conducted by General Motors under EPA oversight from 2000 to 2002
- ▶ EPA selected a remedy for the Southend of the property in 2010 - RACER is implementing the remedy
- ▶ Interim measures have been implemented by GM and RACER for the Northend - final remedy has not been selected
- ▶ Transfer of lead agency from EPA to the Michigan Department of Environment, Great Lakes, and Energy (EGLE) in March 2020
- ▶ RACER will continue to implement the corrective action under government oversight

PPA Section IV: Settlement Agreement

- ▶ FCC agrees to comply with all requirements of the PPA and paragraph 73 of the Consent Decree
- ▶ FCC is not required to take response actions with respect to "Existing Contamination" so long as it complies with Sections V (Access/Cooperation) and VI (Due Care)
- ▶ "Existing Contamination" is defined at page 3

PPA Section V: Access/Cooperation

- ▶ Provide access to the "Property" to EPA, EGLE and their representatives. FCC cannot withdraw its agreement to allow access.
- ▶ FCC agrees to comply with all land use controls and ICs on the Property
- ▶ If the Property is transferred prior to recording of necessary restrictive covenants, FCC is obligated to file the covenants with the appropriate governmental agency.
- ▶ Restrictions on the Property must include:
 - ▶ Preventing groundwater use
 - ▶ Maintaining appropriate cover material
 - ▶ Managing soil properly
 - ▶ Evaluation and possible mitigation for vapor intrusion into new buildings
- ▶ FCC must ensure that transfer agreements contain the same access, cooperation and IC obligations.

PPA Section VI: Due Care

- ▶ FCC agrees to exercise due care with respect to Existing Contamination
- ▶ If FCC or its (sub)contractors encounter Existing Contamination, they must handle that material in accordance with all applicable laws, land use restrictions and ICs.
- ▶ FCC must respond to a release or threat of release of "Waste Material" that is not being addressed by the Trust and that constitutes an emergency/immediate threat to public or environment. If not, and EPA responds, FCC must reimburse EPA.
- ▶ FCC agrees to cooperate fully with EPA and EGLE implementing the response actions, corrective action, and environmental monitoring and agrees to not interfere with these activities.
- ▶ FCC recognizes response actions may interfere with use of the Property and EPA will use reasonable efforts to minimize interference.
- ▶ FCC must handle "Waste Material" in accordance with applicable environmental laws.

PPA Sections VIII, IX, X and XI: Covenants Not to Sue, Reservation of Rights, and Transfer of Covenant

- ▶ U.S. covenants not to sue or take civil or administrative action against FCC under CERCLA 106 or 107 or RCRA 3008h or 7003 regarding Existing Contamination.
- ▶ FCC covenants not to sue or assert causes of action (with limited exception) against the U.S. and its representatives with respect to the Property, this Settlement Agreement, or claims arising out of response activities at the Property.
- ▶ U.S. reserves all rights against FCC with respect to things like an FCC failure to meet a requirement of the Settlement Agreement, exacerbation by FCC of Existing Contamination, and if FCC causes or contributes to a future release of Waste Material at or from the Property.
- ▶ The rights, benefits and obligations conferred on FCC may be transferred, but only with the prior written approval of EPA.

PPA Sections XV and XIX: Effective Date and Public Comment

- ▶ The Effective Date of the PPA is the date upon which EPA issues written notice to FCC that EPA has signed the PPA and after review of and response to any public comments received.
- ▶ The PPA is subject to notice in the Federal Register and no less than a 30-day comment period.
- ▶ After the comment period, EPA may modify or withdraw its consent to the PPA if comments disclose facts or considerations that indicate the PPA is:
 - ▶ Inappropriate,
 - ▶ Improper, or
 - ▶ Inadequate.

PPA Public Comment Timeline

- ▶ EPA issued a Federal Register Notice on June 21 requesting public comment on the Prospective Purchaser Agreement (PPA) between EPA and Flint Commerce Center, LLC
- ▶ The initial comment period ended July 24, but a public meeting was requested prior to that date
- ▶ Public comment period has been reopened until September 13 to give EPA an opportunity to hold a public meeting and the community to have additional time to comment

How to Submit Comments

Deadline: September 13, 2023

There are several different ways to submit comments on the Prospective Purchaser Agreement:

- Federal eRulemaking Portal: <https://www.regulations.gov/>
Follow the online instructions for submitting comments.
- Mail: U.S. Environmental Protection Agency
ATTN: Mark Koller, Associate Regional Counsel
Office of Regional Counsel (C-14J)
77 W. Jackson Blvd.
Chicago, Illinois 60604
- Electronic Mail: koller.mark@epa.gov
- Handwritten Notes: Submitted to EPA representatives at the public meeting