



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7**

11201 Renner Boulevard
Lenexa, Kansas 66219

VIA EMAIL

Nick Galla, P.E.
Director of Public Works
City of St. Charles, Missouri
Nicholas.galla@stcharlescitymo.gov

RE: Findett Superfund Site, Operable Unit 4 (MOD006333975), St. Charles, St. Charles County, Missouri

Dear Mr. Galla:

On February 16, 2023, the EPA sent a letter to Ameren invoking the additional work clause of the Administrative Settlement Agreement and Order on Consent for Remedial Investigation/Feasibility Study, Docket No. CERCLA-07-2017-0129 (ASAOC), requiring Ameren to perform a focused feasibility study. By this letter, the EPA is seeking consent for entry by representatives of Ameren to access property owned by the city of St. Charles (City) for the purposes of investigating and responding to environmental conditions at this location and complying with the ASAOC. Access is required for both 1) monitoring existing (and future) monitoring wells located on city property, and 2) performing work, such as the installation of new monitoring wells and additional work to protect city wells within the Elm Point Wellfield.

Current Status of Access Discussions

The EPA understands that, while the City has been working with Ameren in negotiating access over the last few months, the parties have not yet agreed upon access. The EPA strongly encourages the City to finalize an access agreement with Ameren soon, as Ameren's work under the ASAOC will likely require work to be conducted on city property. Any delay in finalizing an access agreement between the City and Ameren could delay both important monitoring and work Ameren is required to perform under the ASAOC and delay cleanup of wellfield contamination, as detailed further below.¹

The EPA's right to access a site is governed by CERCLA § 104(e)(3), which provides that the EPA can access a property at reasonable times to investigate or perform a response action. Entry to property is authorized under CERCLA to, among other things, "determine the need for response or the appropriate

¹ If the City has concerns with granting access to Ameren to city property within the Elm Point Wellfield in a single access agreement, the parties may consider granting access to the sampling of existing and future monitoring wells (both those installed by Ameren and by the City) located on city property, and then entering into a second access agreement regarding work that will be conducted as part of the focused feasibility study. This work may likely include installation of additional monitoring wells or injections to help keep contamination from spreading in the Elm Point Wellfield.

response or to effectuate a response action” (see section 104(e)(3)(D) of CERCLA, 42 U.S.C. § 9604(e)(3)(D)). This right to access extends to the EPA’s contractors and potentially responsible parties (PRPs) conducting work under an order, such as Ameren (see 40 C.F.R. § 300.400(d)(3)).

The EPA understands that the City has requested conditions on Ameren’s access to city property consisting of: (1) the City’s or its consultants’ ability to access the Ameren substation, or the City’s ability to use Ameren’s consultants to sample within the substation at the City’s request and direction; (2) requesting Ameren’s use of sampling protocols that differ from the EPA-approved QAPP; and (3) requesting the access agreement be limited to a specific scope of work.²

When the EPA or its representatives are performing work, every effort is made to accommodate logistical considerations for property owners and to work with stakeholders to ensure they are aware of the work to be performed and answer any questions they may have. However, a property owner placing unreasonable conditions on access to a property is tantamount to a denial of access. Where consent to enter property is not provided or if consent is conditioned in any manner, the EPA may issue an administrative order requiring that access be provided or request that the U.S. Department of Justice file an action in federal court seeking court-ordered access (see section 104(e)(5) of CERCLA, 42 U.S.C. § 9604(e)(5), and 40 C.F.R. § 300.400(d)(4)(i)).

Next Steps

The EPA shares the City’s concerns over contamination in its drinking water supply wells and places a priority on a prompt cleanup of the Elm Point Wellfield. Ameren receiving access to city property to conduct the focused feasibility study, as discussed above, is imperative to addressing the groundwater contamination that has been detected and the subject of concern to the EPA and the City.

The importance of the City reaching an agreement on access with Ameren is twofold: 1) With access, Ameren can conduct necessary groundwater sampling of municipal wells and existing (and future) monitoring wells installed on city property within the Elm Point Wellfield. This sampling will allow the EPA and Ameren to monitor changes to groundwater concentrations of COCs and determine whether there is movement of contaminants that could have a potential impact on city wells; update the conceptual site model which will be used to update the Record of Decision if necessary; and conduct performance monitoring of the interim response actions being conducted inside and outside of the Ameren substation, as well as any future remedial actions; 2) Access will allow Ameren to perform work as required under the focused feasibility study, which may include the installation of additional monitoring wells and/or direct push technology sampling to define the current plume boundary. Failure to obtain city access for this work threatens a delay to the completion of the focused feasibility study.

To this end, the City and Ameren need to reach an agreement on access within the next 21 days. If agreement is not reached, the EPA may pursue enforcement options, such as the issuance of an access order requiring the City to grant Ameren access pursuant to CERCLA § 104. In the interim, the EPA is happy to convene a meeting with Ameren and the City to discuss remaining barriers to reaching an agreement on access.

² While the EPA encourages a scope of work to be included, the EPA recommends that such scope of work be sufficiently broad that it could anticipate flexibility in the work being conducted. The EPA does not want the collection of necessary data or an important change in monitoring frequency to be curtailed by city notification requirements.

I thank you in advance for your prompt attention to this matter. The EPA is committed to continuing discussion of this issue or any remaining concerns with you. Please contact the site attorney, Cathie Chiccine, at chiccine.catherine@epa.gov or (913) 551-7917, if you want to schedule a time to discuss remaining barriers to achieving an agreement on access. We look forward to discussing this matter with you.

Sincerely,

TONYA HOWELL

Digitally signed by TONYA
HOWELL
Date: 2023.04.03 13:39:25 -05'00'

Tonya Howell
Remedial Project Manager
Remediation Branch
Superfund and Emergency Management Division

cc: Portia Kayser, Harris Dowell Fisher & Young L.C.
Michael Cullen, City of St. Charles
Catherine Chiccine, EPA Office of Regional Counsel