



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

Mr. Andrew Young
SAFStor Effingham, LLC
444 Seabreeze Blvd., Suite 840
Daytona Beach, Florida 32118

RE: 0 Effingham Street, Portsmouth, Virginia -- Tax Parcel No. 0029-0090

Dear Mr. Young:

Thank you for contacting the U.S. Environmental Protection Agency (EPA or the Agency) by email on April 27, 2020, about your plans concerning the property referenced above (the "Property"). In your inquiry, you described your intentions to purchase the Property and develop it into an approximately 105,000-square-foot, three-story self-storage facility for commercial use (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),¹ 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.² 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 Site 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.

¹ 42 U.S.C. §§ 9601, *et seq.*

² See [2019 Policy on the Issuance of Superfund Comfort/Status Letters](#).



The Property is situated within the Abex Corp. Superfund Site (“Site”). Information regarding this Site is located in SEMS and the Site is on the National Priorities List (NPL). For the reasons stated below, we are addressing the Site under Superfund authority.

History and Status of the Site

As mentioned above, SEMS provides information for NPL sites (i.e., sites proposed to the NPL, currently on the final NPL, or deleted from the final NPL), sites subject to a federal removal action, and sites with a Superfund Alternative Approach agreement.³ The profile includes information such as the status of cleanup efforts and cleanup milestones that have been reached. For more information about the Site, please visit SEMS at <https://cumulis.epa.gov/supercpad/cursites/srchsites.cfm>.

The Site is located in the eastern section of the City of Portsmouth, Virginia. The Abex Corporation/Railroad Products Group (Abex) operated a brass and bronze foundry at the Site from 1928 to 1978. The former foundry area was comprised of five buildings and a former sand disposal area. Soil contamination was found in a number of adjacent or nearby properties including the Washington Park housing complex, the Effingham Playground, the Seventh Street row of homes (adjacent to the foundry), and a two-square block area southwest of the foundry known as the Effingham Residential Area. In 1990, the EPA added the site to the NPL.

From October 1986 to January 1989, Abex conducted a removal action to remove lead-contaminated soil from certain residential areas at the Site. From June to September 1992, Abex conducted a removal action to address soil contamination at the Effingham Playground and Washington Park housing complex. EPA issued a Record of Decision in 1992, selecting a remedy for Operable Unit 1 (OU1), followed by a ROD Amendment in 1994, and an Explanation of Significant Differences (ESD) modifying the OU1 selected remedy in 1995. OU1 addressed the soil contamination within an approximately 700-foot radius of the former foundry. From April to June 1997, Abex demolished the foundry buildings and several adjacent Seventh Street row homes. In August 1998, Abex began the demolition of 20 Effingham Residential Area homes. From January 1999 to April 2000, Abex conducted major soil excavation, treatment, and off-site disposal work throughout the area generally within 700 feet of the former foundry. The OU1 selected remedy included installation of a warning liner two feet below the ground surface in certain areas of the Site. The warning liner indicates that soil below the liner may be contaminated with hazardous substances. From 2001 to 2002, the Portsmouth Redevelopment and Housing Authority (PRHA) permanently relocated the Washington Park residents. In 2002, EPA issued a second ESD modifying the OU1 selected remedy by changing the soil cleanup standards in the former Washington Park housing complex area from residential to commercial and industrial use standards. From June 2003 to November 2003, PRHA demolished the Washington Park housing complex, and from November 2005 to March 2006, Abex conducted soil remediation in the former Washington Park housing complex area. Several portions of the remediated area of OU1 have been redeveloped for reuse under the sponsorship of the PRHA, with oversight by the EPA and the Virginia Department of Environmental Quality (VADEQ).

In 2000, a new portion of the Site cleanup, called OU2, was initiated to determine how far contamination from the former Abex foundry had spread. OU2 consists of site-wide groundwater, site-

³ See *Transmittal of Updated Superfund Response and Settlement Approval for Sites Using the Superfund Alternative Approval (SAA Guidance)* (Sept. 28, 2019), <https://www.epa.gov/enforcement/transmittal-memo-updated-superfund-response-and-settlement-approach-sites-using>.

wide surface water, site-wide sediments, and soil located outside of the OU1 area. In April 2015, EPA approved a Remedial Investigation and Feasibility Study work plan submitted by Abex for OU2. EPA approved the OU2 Remedial Investigation Report in April 2019. The Feasibility Study was accepted as complete on July 13, 2020.

Details about the cleanup of the Site, as well as additional information on the history of the Site, can be found in SEMS at <https://cumulis.epa.gov/supercpad/cursites/csinfo.cfm?id=0302667>.

Reuse of the Property

Based on the information you provided, the EPA Region understands that you intend to build an approximately 105,000-square-foot, three-story self-storage facility for commercial use at the Property. We also understand the development to involve a driveway, parking, and landscaped areas. 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 institutional controls (ICs) 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 the proposed use of the Property as you have described it to us and the EPA's selected cleanup option. We note for your attention that Chapter 11, Article II, Section 11-41 to 11-49 of the Code of the City of Portsmouth provides, in part, that "[n]o person shall excavate any soils located within the Abex Site Operable Unit 1 (OU1) Area, as defined in Section 11-41, prior to obtaining an environmental compliance excavation permit for such excavation from the city engineer or his/her designee." The ordinance sets forth the terms and conditions to be included in an Environmental Compliance Excavation Permit. 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), available at <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 Agency has addressed soil contamination within a 700-foot radius of the former foundry building as OU1, and is currently addressing site-wide groundwater, site-wide surface water, site-wide sediments, and soil located outside of the OU1 area as OU2 at the Site and has identified several environmental concerns. 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:

- a. Recognize and adhere to all existing or future land use restrictions and ICs covering the Property, including, but not limited to, Sections 11-41 to 11-49 of Chapter 11, Article II, of the Code of the City of Portsmouth, and implement any future ICs required by EPA at the Property;
- b. If the subsurface warning liner is removed from any area at the Property during excavation, the warning liner should be replaced and either (i) covered with two feet of clean fill, or (ii) covered with fill and an asphalt, concrete, or other impervious hard surface that will act as a barrier. If soil is excavated in an area where there is no subsurface warning liner and the excavated material is used as fill on the Property, such fill should be covered with an asphalt, concrete, or other impervious hard surface that will act as a barrier. Provide EPA, VADEQ, and the City of Portsmouth with a drawing or map depicting any area at the Property where the subsurface warning liner is removed during excavation and is not replaced. Any such area should be covered with two feet of clean fill and an asphalt, concrete, or other impervious hard surface that will act as a barrier;
- c. Notify EPA and VADEQ in writing upon discovery of conditions at the Property which may adversely affect or interfere with the implementation, protectiveness, or effectiveness of the response activities that were completed at the Site;
- d. Allow only commercial and/or industrial use of the Property that does not interfere with the implementation, protectiveness, or effectiveness of the response activities at the Site;
- e. Do not extract or use the groundwater at the Property for any purpose, other than for construction dewatering pursuant to a plan approved by the City of Portsmouth;
- f. Do not interfere with the ongoing groundwater monitoring activities at the Property;
- g. Provide EPA, VADEQ, and the potentially responsible party for the Site with access to the Property for five-year review activities, monitoring compliance with ICs, and other work relating to the response actions at the Site; and
- h. Ensure appropriate measures are implemented during any construction to minimize the potential for excess worker exposure to soils at the Property impacted by contamination including, but not limited to, soils below the warning liner that was installed two feet below the ground surface in certain areas of the Site as part of the OU1 selected remedy.

Any reasonable steps suggested by the EPA Region 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.⁴ 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.

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 Angie McGarvey of VADEQ. She may be reached at (804) 698-4084. Her email is Angela.McGarvey@deq.virginia.gov.

Conclusion

The EPA 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 Mr. Christopher P. Thomas, Team Leader, Region III Land Revitalization Action Team at (215) 814-5555. For legal matters, please contact Senior Assistant Regional Counsel Gwen Pospisil at (215) 814-2678.

Sincerely,

Paul Leonard, Director
Superfund and Emergency Management Division

cc: Angela McGarvey, VADEQ
Thomas Cinti (3RC20)
Lisa Denmark (3SD23)
Gwen Pospisil (3RC20)
Christopher Thomas (3SD12)

⁴ 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.”