



January 18, 2011

Via email and Overnight Delivery

Mr. Chip Humphrey
Project Coordinator
US EPA, Oregon Operations Office
805 SW Broadway, Suite 500
Portland, OR 97205

Subject: Troutdale Reynolds Industrial Property Imported Fill Material

Dear Chip;

The purpose of this letter is to request EPA's approval for the use of material from off-site sources, that meets the risk-based levels for occupational use and which has been approved for use at TRIP through the DEQ Beneficial Use Determination process, for fill at the Troutdale Reynolds Industrial Property (TRIP). Furthermore, the Port seeks written confirmation from EPA that in using off-site material approved for the site through this process, the Port will continue to be in compliance with the bona fide prospective purchaser landowner liability protections under CERCLA.

Background

The redevelopment of the former Reynolds facility, thus far, has created substantial benefits to the environment and local community through the creation of jobs. Continued redevelopment of TRIP, however, will require a considerable amount of fill material. The Port estimates that approximately 500,000 cubic yards of material will be needed to fill the South Wetlands and level future lot elevations.

The Port met with Mr. Bruce Gillis of DEQ on November 29, 2010 to discuss the need for fill material from off-site sources and the challenges the Port faces finding significant quantities of fill material that meets the DEQ "clean fill" criteria. It has been the Port's experience that often soils and dredged sediments in the region contain traces of various constituents at levels that are above the current DEQ screening level clean fill criteria and/or regional background levels used under DEQ's beneficial reuse regulations.

Use of DEQ Beneficial Use Determination

DEQ has established a Beneficial Use Determination (BUD) process (OAR 340-093-0260 through 0290) for approving for use as fill materials that exceed the default regulatory clean fill criteria for beneficial use of material. The Port wishes to utilize this process for the acceptance of off-site material at TRIP. Acceptable materials would have constituent concentrations (1) below the occupational human health risk criteria for direct contact under which development at TRIP is required to occur and, (2) when metals are at or below such risk criteria (e.g., arsenic), regional background levels. Off-site material would be used at TRIP in a manner consistent with industrial development of the property and current institutional controls and the risk-based criteria upon which the BUD is approved.

Cleanup levels for soils were not established for the Reynolds site because the post-demolition risk assessment (RA) showed that the risk associated with residual levels of contamination in soils were acceptable for the reasonably likely future industrial uses at the site. The RA considered exposure scenarios for direct contact pathways associated with soil for: site trespassers, recreational users, construction workers, excavation/trench workers, and occupational workers. Ecological evaluations were not conducted where the land was disturbed or was to be developed in the future, with the exception of the South Wetlands because it was to remain wetlands until it was developed.

The Record of Decision concluded that the site no longer poses an unacceptable risk based on the exposure scenarios evaluated, and that the use must be restricted to non-residential use. Use institutional controls were established through an Easement and Equitable Servitudes to ensure protection of future users of the site and that future uses of the site are compatible with the cleanup levels achieved.

The use of off-site material that is at or below the risk-based concentrations for occupational workers would allow for material to be beneficially reused at TRIP, while maintaining acceptable risk levels for non-residential use, compatible with EPA's cleanup action and property use restrictions. None of the material would be used north of the ACOE levee, where additional ecological risk considerations are required under the CMMP.

This proposed approach for off-site materials is more protective than what is allowed for on-site soils under the Contaminated Media Management Plan (CMMP) for the former Reynolds Metal Company Facility (October 2007). The CMMP allows for unanticipated materials encountered onsite containing concentrations less than DEQ's less stringent risk based concentrations for construction workers to be managed onsite without restriction. Ecological considerations for the South Wetlands are not relevant for imported off-site fill material, because South Wetlands ecologic considerations are eliminated when material is used to fill the South Wetlands for the contemplated land development.

In a letter dated January 7, 2011, the Port received DEQ's approval of the Port's application to use material from off-site sources that has been approved through DEQ's BUD process and that is at or below risk-based concentrations for occupational workers (the most stringent of the human exposure scenarios evaluated for the Reynolds site under the RA), and when metals are at or below regional background levels. Off-site material would be used in a manner consistent with industrial development of the property and the risk-based criteria upon which the BUD is approved. A copy of DEQ's letter response is attached.

Request for EPA Concurrence

Among other requirements, the Port, as a bona fide prospective purchaser of the property under 42 U.S.C. §9607(r)(1), must take "appropriate care" in the form of "reasonable steps" with respect to stopping continuing releases, preventing threatened future releases of pre-existing contamination, and preventing or limiting human, environmental, or natural resources exposure to earlier releases.¹ EPA interim guidance confirms that reasonable steps relate only

¹ CERCLA section 107(r)(1), 42 U.S.C. §9607(r)(1) provides a limitation on liability for a defined "bona fide prospective purchaser" whose potential liability is based solely on the purchaser's being an owner or operator of a facility, and provided that the purchaser does not impede the performance of a CERCLA action and establishes the following::

1. disposal at the facility occurred prior to acquisition;
2. the person made all appropriate inquiry into previous ownership and uses of the facility in accordance with generally accepted practices and in accordance with the new standards contained in section 101(35)(B);
3. the person provides all legally required notices with respect to hazardous substances found at the facility²;
4. the person exercises "appropriate care" with respect to the hazardous substances found at the facility by taking "reasonable steps" to:
 - a. stop any continuing releases;
 - b. prevent any threatened future release;
 - c. prevent or limit human, environmental or natural resource exposure to any previously released hazardous substance;
5. the person provides full cooperation and access to the facility to those authorized to conduct response;
6. the person is in compliance with any land use restrictions and does not impede the effectiveness or integrity of any institutional control;
7. the person complies with any information request or administrative subpoena under CERCLA; and
8. the person is not potentially liable for response costs at the facility or "affiliated" with any such person through
 - a. direct or indirect familial relationship or
 - b. any contractual, corporate or financial relationship (excluding relationships created by instruments conveying or financing title or by contracts for sale of goods or services).

42 U.S.C. § 9601(40).

to responding to pre-existing contamination for which the bona fide prospective purchaser is not responsible (page 11 of EPA, 2003).

The Port requests EPA's written approval for use of material at TRIP from offsite sources, that is approved for use at the site through DEQ's BUD process and which is at or below risk-based levels for occupational use, and request EPA's concurrence that the use of material that meets these requirements is consistent with the Port taking "appropriate care" and preventing unacceptable exposure in respect of pre-existing hazardous substance releases at TRIP, as required under CERCLA §107(r)(1).

Please feel free to call me at (503) 415-6811 or David Ashton at (503) 415-6090 if you have any questions.

Sincerely,
Port of Portland

David J. Breen
Environmental Project Manager

References:

CH2MHill and Alcoa, Inc. (2007); *Contaminated Media Management Plan (CMMP) for the Former Reynolds Metals Company Facility in Troutdale, Oregon.*

EPA (2003), *Interim Guidance Regarding Criteria Landowners Must Meet in Order to Qualify for Bona Fide Prospective Purchaser, Contiguous Property Owner, or Innocent Landowner Limitations on CERCLA Liability (Common Elements)*; March 6, 2003.

Attachments:

Oregon DEQ Letter to the Port of Portland, January 7, 2011

c (with attachment):

Bruce Gillis, Oregon DEQ
Charlie Landman, Oregon DEQ

c (without attachment):

David Ashton, Port of Portland

Ryan Parker, Port of Portland

Debra Crawford, Port of Portland



Oregon

Theodore R. Kulongoski, Governor

Department of Environmental Quality

Northwest Region-Eastside Office

1550 NW Eastman Parkway, Suite 290

Gresham, OR 97030-3832

(503) 667-8414

FAX (503) 674-5148

OTRS 1-800-735-2900

January 7, 2011

Mr. David J. Breen
Port of Portland
7200 NE Airport Way
Portland, OR 97208

Re: Troutdale Reynolds Industrial Property Imported Fill Material

Dear Mr. Breen:

This letter is in response to your letter, dated December 16, 2010 to Charlie Landman of DEQ requesting DEQ's approval for use of fill material at the Reynolds Industrial Property. The fill would be subject to DEQ's Beneficial Use Determination process. The Port requested confirmation from DEQ that importing fill material under this process would not impair the Release of Liability provisions found in Section 5 of the DEQ-Port Consent Judgment (Mult. Co. Case No. 0712015146).

The release from liability provisions under Subsection 5.A of the consent judgment applies to hazardous substances located at or from the subject site at the time of Port's acquisition of ownership. The importing of fill with hazardous substances would not invalidate the Port's protections under Section 5.A. for existing contamination at the site at the time of acquisition.

The Port would be potentially liable under the Consent Judgment for any release of hazardous substances contained in imported fill brought to the facility following the date of acquisition by the Port. Specifically, Subsection 5.B of the Consent Judgment addresses liability under new releases or exacerbation of existing contamination following acquisition. We interpret subsection 5.B to mean that the Port would be potentially liable for releases of hazardous substances in newly-placed fill brought to the Reynolds site if these hazardous substances resulted in unacceptable risk to human health or the environment. For example, the Port could be liable for releases of hazardous substances through storm water erosion of fill material into sensitive ecological habitat or waters of the state.

To address potential liability associated with imported fill, DEQ recommends the following actions be taken by the Port:

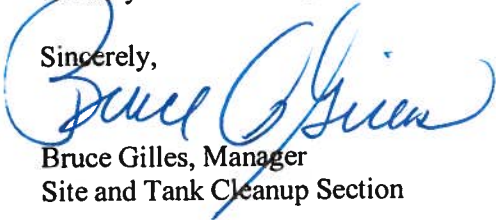
- 1) The Port's characterization of the fill and completing the Beneficial Use Determination for DEQ approval prior to importing the material should assure protection of present and future public health, safety and welfare and the environment; and
- 2) The Port should also inspect the material as it is either being loaded for transport to the site or at the site during unloading. If evidence of significant contamination is discovered, the Port should characterize the suspect material, and prevent placement of suspect material at the site if it exceeds the criteria specified in the Beneficial Use Determination.

Based on your orientation site visit discussions, the Port needs fill material primarily for planned Lots 4, 5 and 6 located between Swigert Way and the Troutdale Airport. I reviewed the Port's Beneficial Use Determination that was prepared for the Post Office Bar project assuming that similar concentrations of

hazardous substances might be present in potential fill material to be used at the Reynolds site. The maximum detected concentrations of hazardous substances in Willamette River sediment at the proposed Post Office Bar dredge area is well below any risk-based concentration for site workers or terrestrial ecological receptors applicable to the new Reynolds lots noted above that would be located significant distances from any aquatic habitat. Subject to due care precautions noted above, no additional action would be required for placement of this material in the lots planned for industrial development under the Reynolds site development plan.

Please contact me by email at bruce.gilles@oregon.gov or by phone at (503) 667-8414 extension 55009 should you wish to discuss this matter further.

Sincerely,



Bruce Gilles, Manager
Site and Tank Cleanup Section

Cc: Charlie Landman, DEQ
Tom Roick, DEQ
Audrey Obrein, DEQ
Chip Humphrey, EPA Oregon Ops Office
David Ashton, Port of Portland