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MAR 28 2008

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March 27, 2008

Sent by E-mail
Original by Regular Mail

Mr. Steven Plunkett ✓
Alameda County
Environmental Health Services
1131 Harbor Bay Parkway, Suite 250
Alameda, CA 94502-6577

Mr. Mark Malinowski
Sacramento Office – Schools Unit
Schools Program and Engineering/Geology Support Division
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, CA 95826-3200

Re: Crow Canyon Cleaners, 7272 San Ramon Rd., Dublin, CA 94568

Dear Messrs. Plunkett and Malinowski:

This responds on behalf of my clients, Bruce Burrows and Jim Roessler, to your letters respectively dated March 19, 2008 (from Mr. Plunkett), and March 24, 2008 (from Mr. Malinowski), both of which I received on March 25, on the subject of spills, leaks, investigations and cleanup at the above site, SLIC Case No. RO0002863.

Mr. Plunkett's March 19 letter was addressed to Mr. Burrows and a number of other parties. It closely followed Mr. Plunkett's February 6, 2008, letter, which I responded to on February 20. Once again, I am only responding directly on behalf of my clients, not any other parties. I have stated it in the past, but it bears repeating: as you know, my clients themselves are responsible only insofar as they are in a contractual relationship with the current owner of the property, the Chiu Family Trust, Gabriel Chiu, Trustee. Mr. Plunkett's March 19 letter was also addressed to Mr. Chiu, as the current property owner, Messrs. William Kartoizian, Richard Wiebe and Richard Jaha (note these are corrected spellings from those in the letter), partners in the Dublin Town and Country Associates, the past property owner, and the past and present operators of the dry cleaning business at the site: the Perrys; the Lees; and the Parks.

Mr. Plunkett's February 6 and March 19 letters, among other things, asked for coordination and cooperation among the parties, entry into a voluntary agreement with the DTSC for public

Mr. Steven Plunkett and Mr. Mark Malinowski

March 27, 2008

Page 2

participation services, including notification of parents of children at the Montessori Plus School adjacent to the dry cleaning business at the site, and notification by each of the parties to the County by a date definite on involvement and/or progress on the voluntary agreement with DTSC for implementing the public participation/notification process. The notification date in Mr. Plunkett's March 19 letter is "by March 31, 2008." This is the response by Messrs. Burrows and Roessler.

Mr. Malinowski's March 24 letter was addressed only to Mr. Plunkett, but indicated copies to Ms. Donna Drogos of Alameda County, Mr. Burrows, myself, and Howard J. Wong, who is connected with the Montessori Plus School adjacent to the Crow Canyon Cleaners site. Mr. Malinowski's letter, among other things, referenced a February, 2008, proposed draft agreement whereby DTSC offered to provide consultative toxicological and public participation services for this project. It was to this proposed draft agreement that Mr. Plunkett's letters referred.

Mr. Malinowski's letter also strongly recommended that a draft fact sheet, originally prepared by my clients' consultants in January, and submitted for review, be revised, updated and then issued to parents of the children attending the Montessori Plus School.

On behalf of my clients, who are taking action based on their contract with the current property owner, I have made numerous efforts to coordinate a response to the DTSC proposed agreement, with representatives of the current owner and the two of the three dry cleaner operators that have been located, the Perrys and the Parks. My February 20 letter detailed those efforts up to that time. Following my efforts to coordinate in February, that did not succeed, I was able to arrange coordination in mid-March, and the representatives of those parties consulted by conference telephone call on March 14 for almost an hour on this subject and other subjects in regard to the site and the related lawsuit in the federal court. To this time, however, I have not been successful in obtaining participation by the dry cleaners in the matter of the agreement with DTSC, nor cooperation otherwise by the dry cleaners in investigation and remediation at the site, though I am still hopeful that this will be possible. Communications are open among the parties' attorneys, at least, and a settlement conference is presently scheduled before a federal Magistrate Judge in San Francisco on May 1.

My clients believe that notification of the parents of children at the Montessori School and other actions should now go forward, as part of a community relations and public participation effort supporting environmental response actions at the site. To this end, on behalf of my clients, who are acting under contract with the current property owner, the Chiu Family Trust, with this letter I am submitting a revised draft Fact Sheet which is updated from the draft Fact Sheet submitted on behalf of my clients in January.

In addition, I am submitting with this letter a draft "Community Relations and Public Participation Plan" for review by the County and DTSC, and all those receiving copies of this letter and their clients. My clients are committed, subject to a complete reservation of rights,

Mr. Steven Plunkett and Mr. Mark Malinowski
March 27, 2008
Page 3

with funds available, to implementing the Plan and to distributing the Fact Sheet, per the Plan, even without coordination/cooperation, which so far has not been forthcoming.

My clients invite any who are interested to offer comments, but my clients intend, as part of their response to the situation at the site, to move forward on this diligently in the near future, whether or not comments are received.

There has been enough delay. Who will eventually bear the cost is not the most important issue, and my clients reserve all their rights to recover the costs from the responsible parties. I have learned that Mr. Plunkett has plans to be out of the country between approximately April 1 until May 1. Though Ms. Drogos, Mr. Plunkett's colleague at the County, will be overseeing this matter in his absence, my clients want Mr. Plunkett to have the opportunity comment and to see this move forward timely as his departure approaches.

The matter of the proposed agreement with DTSC remains to be resolved. At this point, my clients wish to use available funds, which are not unlimited, for response work at the site. When my clients were informed earlier this month that anticipated future costs were increasing, they took immediate action to obtain additional bids and have retained another consulting firm, Ceres Associates of Benicia, to take over from ERM of Walnut Creek, in order to keep costs reasonable consistent with quality work. The priority is to get work done and to get the public informed, with an opportunity to participate. My clients and I are still hopeful that all the responsible parties currently not participating will step forward and help fund the agreement and other response actions at the site. For the immediate present, however, my clients feel they have to proceed without the cost of the DTSC agreement and hope that this is understood and that DTSC will assist with their expertise and involvement without the requirement for advance payment, proposed under the agreement.

Anyone receiving a copy of this letter that needs to see earlier correspondence need only contact me. My clients will continue their efforts to get cooperation from the truly responsible parties – which my clients believe are the past and present operators.

Sincerely,



Karl R. Morthole

Encs. (Revised Draft Fact Sheet and Draft Community Relations and Public Participation Plan)

LAW OFFICES OF **KARL R. MORTHOLE**

Mr. Steven Plunkett and Mr. Mark Malinowski

March 27, 2008

Page 4

CC: (by e-mail only)

Mr. Bruce Burrows

Mr. James Roessler

Mr. Ryan Meyer, Ceres Associates

Mr. Howard Wong, Montessori Plus School

Ms. Donna Drogos, Alameda County

Mr. Bud Duke, DTSC Sacramento

Thomas Downey, Esq., Attorney for the Perrys

Derek Lim, Esq., Attorney for the Perrys

Jan Greben, Esq., Attorney for the Parks

Martin Deutsch, Esq., Attorney for the Parks

Edward Polson, Esq., Attorney for the Chiu Family Trust

(by regular mail, envelopes individually addressed)

Mr. William Kartoian

Mr. Richard Wiebe

Mr. Richard Jahe

Dublin Town & County Associates

318 Diablo Road, Suite 255

Danville, CA 94526

Fact Sheet on Environmental Assessment

Crow Canyon Cleaners Site
7272 San Ramon Road, Dublin,
Alameda County
ACHCSA File No. RO0002863
March 25, 2008

KRM DRAFT 03/27/2008

This fact sheet is being provided to describe site background, past work to investigate site contamination, next steps, the oversight process for the site, and how you can obtain more information.

Background

The site is located at 7272 San Ramon Road, in the City of Dublin, west of Amador Valley Road (see Figure). The site is located in a commercial strip mall, which includes a dry-cleaning facility and a Montessori School. Land use in this area is mixed: commercial and residential.

Site Assessment

A release of tetrachloroethylene (PCE), a chlorinated dry-cleaning solvent, was identified in soil and groundwater beneath the site during a preliminary investigation in January 2005. Shallow soil and groundwater in the immediate vicinity of the dry-cleaning unit were shown to be impacted with PCE and its breakdown product trichloroethylene (TCE). Follow-up investigations at the site and at the adjacent Montessori School, performed in 2006 and 2007 at the direction of the Alameda County Health Care Services Agency (ACHCSA), documented that PCE and TCE are present in soil, groundwater, and soil vapor at concentrations that do exceed applicable regulatory standards used to judge the necessity for further investigation, although not at levels that are cause for immediate concern.

To assess the potential presence of PCE within the Montessori School, indoor air samples were collected in late October and reported in early November 2007. Although PCE was detected, it was not present at concentrations that represent an imminent risk to children or staff at the school. Follow-up indoor air sampling was performed in

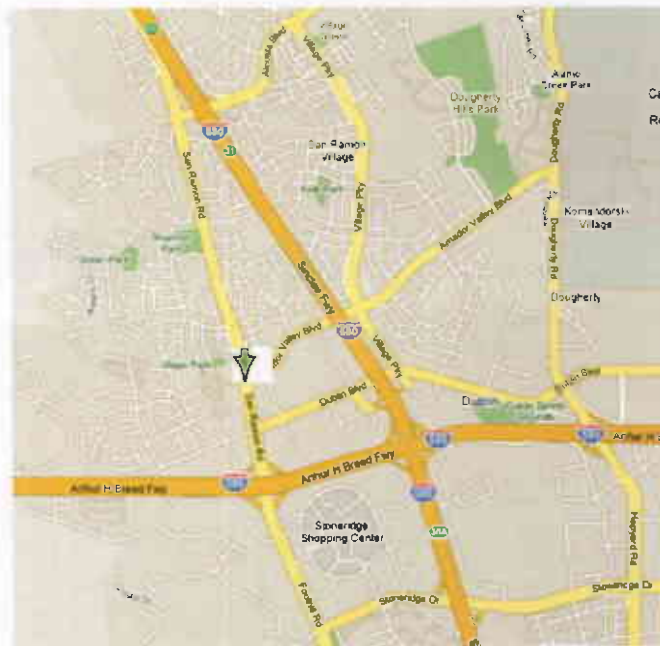
December 2007, and the results were consistent with those for the October 2007 sampling event. Adjustments to ventilation were made to help ensure there is no threat to building occupants.

Next Steps

Additional site assessment has been requested by ACHCSA, including further soil and soil vapor sampling, and is scheduled to be performed within the next 90 days, to be followed thereafter by remedial action, if necessary.

Cleanup Activity

Preliminary cleanup plans have been coordinated with the ACHCSA. These activities may include



soil removal in the areas of highest PCE

For additional information, please contact:

Alameda County Oversight Manager: Steven Plunkett, 510-383-1767 or steven.plunkett@acgov.org
Consultant: Cerres Associates: Nick Patz, 707-748-3170 or nickpatz@ceresassociates.com

Fact Sheet on Environmental Assessment

Crow Canyon Cleaners Site

KRM DRAFT 03/27/2008

Page 2

concentrations, and soil vapor extraction from around and beneath the building. Finalization of these plans with the ACHCSA is underway, and a work plan documenting a proposed interim remedial approach has been submitted and will be implemented in late spring or summer of 2008, after there has been an opportunity for the public to receive more information, ask questions and make comments.

Timeline

As noted above, discussions are presently ongoing among ACHCSA staff and those undertaking investigation and response. Additional testing and investigation is planned for the spring, and the results of that work should be available in the next 60 to 90 days. Thereafter, if additional remediation appears to be necessary, workplans will be prepared, public participation will be arranged, questions answered and comments received and responded to. When that process has taken place, any work necessary will be implemented. At this point, implementation looks as if it will last into the summer of 2008.

How to Get More Information

There are several ways that interested parties will be informed of future work. First, information repositories are being established where reports, data, workplans and other materials can be viewed during normal business hours. One is located at the offices of the Alameda County Department of Environmental Health, located at 1131 Harbor Bay Parkway, Suite 250, Alameda, CA 94502-6577. Contact Mr. Steven Plunkett at the phone or e-mail address on the first page of this Fact Sheet. Another information repository is located at [Shopping Center Office or Public Library, Address, City, CA ZIP (Name, telephone, etc. if different than that included above).]

A second way interested parties can obtain information is to contact the site representatives/spokespersons listed above at the bottom of the first page of this Fact Sheet.

Yet a third way is for interested members of the public to participate in the Community Relations process which is planned to be carried out. When the planned testing and investigations currently under way are completed, a report of the results and a draft workplan for any necessary remedial actions will be made available for public review and will be explained at a community meeting. A period of 30 days will be allowed, during which time the community meeting will occur, and comments from any interested members of the public will be received, and thereafter a responsiveness summary will be prepared, as well.

Advance notice will be given of the 30-day period and the date, time and place for the community meeting. The advance notice will be posted at the cleaners and at the Montessori School, as well as being published in the local newspaper. The exact times have not been established, as of the date of this Fact Sheet, but will be sometime this spring. Interested persons can contact the site representatives/spokespersons listed above at the bottom of the first page of this Fact Sheet.

_____, 2008

Crow Canyon Cleaners Site, 7272 San Ramon Road, Dublin, CA

Community Relations and Public Participation Plan

Prepared On behalf of
Bruce Burrows and Jim Roessler
Acting Under Contract with
The Chiu Family Trust

This document sets forth activities to be conducted, or arranged to be conducted, by Bruce Burrows and Jim Roessler, acting under contract with The Chiu Family Trust, the current property owner, and which are intended to be consistent with the federal National Contingency Plan ("NCP") and equivalent State and local requirements for conducting community relations and allowing for public participation in regard to the plans for investigation and, if necessary, remediation of hazardous substances present at the Crow Canyon Cleaners Site.

For purposes of reference, 40 C.F.R. §300.700(c)(6) is the provision of the NCP which sets forth the public participation/ community relations requirements for "consistency" with the NCP in response actions conducted by third parties (other than the United States Environmental Protection Agency or state or local government agencies). Pertinent portions of 40 C.F.R. §300.700 are set forth at the end of this document.

[This plan was prepared by attorney Karl R. Morthole, at the direction of his clients, Bruce Burrows and Jim Roessler. Mr. Morthole's contact information is as follows: Law Offices of Karl R. Morthole, 57 Post Street, Suite 801, San Francisco, CA 94104; Phone: 415-986-0225, Fax: 415-986-1734; e-mail karl@mortholelaw.com. Mr. Morthole gives no warranty nor has any obligation to any other parties than Messrs. Burrows and Roessler, and any other parties should consult with and may only rely upon their own attorney or attorneys on this subject matter.]

Pertinent Portions of

Title 40, Code of Federal Regulations

§300.700 Activities by other persons.

(a) *General.* Except as provided (e.g., in CWA section 311(c)), any person may undertake a response action to reduce or eliminate a release of a hazardous substance, pollutant, or contaminant.

(b) *Summary of CERCLA authorities.* The mechanisms available to recover the costs of response actions under CERCLA are, in summary:

(1) Section 107(a), wherein any person may receive a court award of his or her response costs, plus interest, from the party or parties found to be liable;

(2) Section 111(a)(2), wherein a private party, a PRP pursuant to a settlement agreement, or certain foreign entities may file a claim against the Fund for reimbursement of response costs;

(3) Section 106(b), wherein any person who has complied with a section 106(a) order may petition the Fund for reimbursement of reasonable costs, plus interest; and

(4) Section 123, wherein a general purpose unit of local government may apply to the Fund under 40 CFR part 310 for reimbursement of the costs of temporary emergency measures that are necessary to prevent or mitigate injury to human health or the environment associated with a release.

(c) *Section 107(a) cost recovery actions.* (1) Responsible parties shall be liable for all response costs incurred by the United States government or a state or an Indian tribe not inconsistent with the NCP.

(2) Responsible parties shall be liable for necessary costs of response actions to releases of hazardous substances incurred by any other person consistent with the NCP.

(3) For the purpose of cost recovery under section 107(a)(4)(B) of CERCLA:

(i) A private party response action will be considered "consistent with the NCP" if the action, when evaluated as a whole, is in substantial compliance with the applicable requirements in paragraphs (5) and (6) of this section, and results in a CERCLA-quality cleanup; and

(ii) Any response action carried out in compliance with the terms of an order issued by EPA pursuant to section 106 of CERCLA, or a consent decree entered into pursuant to section 122 of CERCLA, will be considered "consistent with the NCP."

(4) Actions under §300.700(c)(1) will not be considered "inconsistent with the NCP," and actions under §300.700(c)(2) will not be considered not "consistent with the NCP," based on immaterial or insubstantial deviations from the provisions of 40 CFR part 300.

(5) The following provisions of this part are potentially applicable to private party response actions:

(i) Section 300.150 (on worker health and safety);

(ii) Section 300.160 (on documentation and cost recovery);

(iii) Section 300.400(c)(1), (4), (5), and (7) (on determining the need for a Fund-financed action); (e) (on permit requirements) except that the permit waiver does not apply to private party response actions; and (g) (on identification of ARARs) except that applicable requirements of federal or state law may not be waived by a private party;

(iv) Section 300.405(b), (c), and (d) (on reports of releases to the NRC);

(v) Section 300.410 (on removal site evaluation) except paragraphs (f)(5) and (6);

(vi) Section 300.415 (on removal actions) except paragraphs (a)(2), (b)(2)(vii), (b)(5), and (g); and including §300.415(j) with regard to meeting ARARs where practicable except that private party removal actions must always comply with the requirements of applicable law;

(vii) Section 300.420 (on remedial site evaluation);

(viii) Section 300.430 (on RI/FS and selection of remedy) except paragraph (f)(1)(ii)(C)(6) and that applicable requirements of federal or state law may not be waived by a private party; and

(ix) Section 300.435 (on RD/RA and operation and maintenance).

(6) Private parties undertaking response actions should provide an opportunity for public comment concerning the selection of the response action based on the provisions set out below, or based on substantially equivalent state and local requirements. The following provisions of this part regarding public participation are potentially applicable to private party response actions, with the exception of administrative record and information repository requirements stated therein:

(i) Section 300.155 (on public information and community relations);

(ii) Section 300.415(n) (on community relations during removal actions);

(iii) Section 300.430(c) (on community relations during RI/FS) except paragraph (c)(5);

(iv) Section 300.430(f)(2), (3), and (6) (on community relations during selection of remedy); and

(v) Section 300.435(c) (on community relations during RD/RA and operation and maintenance).

* * *