UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

243288

JUN 27 2013

PROMPT REPLY NECESSARY
CERTIFIED MAIL: RETURN RECEIPT REQUESTED

Chapel Street Partners
99 Chapel Street
Newark, NJ 07105
Attn: Mr. Anthony Mellone

Re: Request for Information Pursuant to Section 104 of CERCLA
Barth Smelting Site, Newark, Essex County, New Jersey

Dear Mr. Mellone:

The United States Environmental Protection Agency ("EPA") is charged with responding to the release or threatened release of hazardous substances, pollutants, and contaminants into the environment and with enforcement responsibilities under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §9601, et seq. (also known as the "Superfund" law). For your information, a copy of the Superfund law may be found at www.epa.gov/superfund/action/law/index.htm.

This letter seeks your cooperation in providing information and documents relating to the Barth Smelting Superfund Site (the "Site") located at 99 Chapel Street, Newark, Essex County, New Jersey. EPA encourages you to give this letter your immediate attention. A complete and truthful response should be provided to the attached Request for Information **within 30 days** of your receipt of this letter.

EPA has documented the release and threatened release of hazardous substances into the environment at the Site. The Site has had many uses over the years including various manufacturing and industrial operations and is currently in use today. During its history, the Site was utilized to manufacture batteries, soap and metals. It is currently being used by businesses that maintain and repair containers and commercial and industrial machinery. Our records indicate that your company owns the 99-129 Chapel St. property, which includes Block 2442, Lot 10, the location of the former Barth Smelting facility. Elevated levels of hazardous substances, including but not limited to, lead were found at the Site.

While EPA seeks your cooperation in this investigation, compliance with the Request for Information is required by law. When you have prepared your response to the Request for Information, please sign and have notarized the enclosed "Certification of Answers to Request for Information", and return that Certification to EPA along with your response. Please note that false, fictitious, or fraudulent statements or representations may subject your company to civil or criminal penalties under federal law. In addition, Section 104 of CERCLA, 42 U.S.C. Section 9604, authorizes EPA to pursue penalties for failure to comply with a Request for Information.

Some of the information EPA is requesting may be considered by your company to be confidential. Please be aware that you may not withhold the information upon that basis. If you wish EPA to treat the information confidentially, you must advise EPA of that fact by following the procedures described in the Instructions section which follows this letter, including the requirement for supporting your claim for confidentiality.

If you have information about other parties who may have information which may assist the Agency in its investigation of the Site or may be responsible for the material stored at the Site, that information should be submitted within the time frame noted above.

Please note that if after submitting your response you obtain additional or different information concerning the matters addressed by our Request for Information, it is necessary that you promptly notify EPA. This Information Request is not subject to the approval requirements of the Paperwork Reduction Act of 1980, 44 U.S.C. §3501 et seq.

See the enclosed Instructions for information on how to respond to the enclosed questions and/or information requests. Your response to this Request for Information should be mailed to:

Ms. Bonnie Hriczko
Removal Action Branch
U.S. Environmental Protection Agency, Region II
2890 Woodbridge Avenue, Bldg 205 (MS-211)
Edison, New Jersey 08837

A copy of your reply should be sent to:

Mr. William J. Reilly, Esq.
Office of Regional Counsel
U.S. Environmental Protection Agency, Region II
290 Broadway, 17th Floor
New York, New York 10007

If you have any questions regarding this Request for Information, or would like to discuss this matter with EPA, please contact Ms. Hriczko at (732) 321-6647. Inquiries from attorneys should be addressed to Mr. Reilly at (212) 637-3154.

We appreciate and look forward to your prompt response to this matter.

Sincerely yours,

Nicoletta DiForte

Nicoletta DiForte, Senior Enforcement Policy Advisor
Emergency and Remedial Response Division

Enclosure

bcc: W. Reilly, EPA-ORC
K. Staiger, EPA-ERRD
B. Hriczko, EPA-ERRD

Instructions for responding to request for information

A. Directions

1. A complete and separate response should be given for each question. For each question contained in this letter, if information or documents responsive to this information request are not in your possession, custody, or control, please identify the person(s) from whom such information may be obtained.

2. Identify each answer with the number of the question and the subpart to which it responds. For each document produced in response to this Request for Information, indicate on the document, or in some other reasonable manner, the question to which it applies.

3. Provide responses to the best of your company's ability, even if the information sought was never put down in writing or if the written documents are no longer available. Consult with all present and past employees and agents of your company whom you have reason to believe may be familiar with the matter to which the question pertains.

4. In answering each question, identify each individual and any other source of information (including documents) that were consulted in the preparation of the response to the question.

5. If additional information or documents responsive to this Request becomes known or available to you after you respond to this Request, EPA hereby requests pursuant to CERCLA Section 104(e) that your company supplement its response to EPA within 30 days from the date such information or documents became available to it.

6. If you have reason to believe that an individual other than one employed by your company may be able to provide additional details or documentation in response to any question, state that person's name, last known address, phone number, and the reasons for your belief.

7. If a document is requested but not available, state the reason for its unavailability. To the best of your ability, identify the document by author, date, subject matter, number of pages, and all recipients of the documents with their addresses.

8. If anything is omitted from a document produced in response to the Request for Information, state the reason for, and the subject matter of, the omission.

9. If you cannot provide a precise answer to a question, please approximate but, in any such instance, state the reason for your inability to be specific.

10. Whenever this Request for Information requests the identification of a natural person, or other entity, the person or entity's full name and present or last known address also should be provided.

11. Confidential Information The information requested herein must be provided even though your company may contend that it includes confidential information or trade secrets. Your company may assert a confidentiality claim covering part or all of the information requested, pursuant to Sections 104(e)(7)(E) and (F) of CERCLA, U.S.C. §§ 9604(E)(7)(e) and (F), Section 3007 (b) of RCRA, 42 U.S.C. §6927(b), and 40 C.F.R. §2.203(b).

If you make a claim of confidentially for any of the information your company submits to EPA, your company must prove that claim. For each document or response your company claims is confidential, your company must separately address the following points:

1. the portions of the information alleged to be entitled to confidential treatment;

2. the period of time for which confidential treatment is desired (e.g., until a certain date, until the occurrence of a specific event, or permanently);

3. measures taken by your company to guard against the undesired disclosure of the information to others;

4. the extent to which the information has been disclosed to others, and the precautions taken in connection therewith;

5. pertinent confidentiality determinations, if any, by EPA or other federal agencies, and a copy of any such determinations or reference to them, if available; and

6. whether your company asserts that disclosure of the information would likely result in substantial harmful effects on your business' competitive position, and if so, what those harmful effects would be, why they should be viewed substantial, and an explanation of the causal relationship between disclosure and such harmful effects.

To make a confidentiality claim, please stamp, or type, "confidential" on all confidential responses and any related confidential documents. Confidential portions of otherwise non-confidential documents should be clearly identified. You should indicate a date, if any, after which the information need no longer be treated as confidential. Please submit your response so that all non-confidential information, including any redacted versions of documents are in one envelope and all materials for which you desire confidential treatment are in another envelope.

All confidentiality claims are subject to EPA verification. It is important that your company satisfactorily show that it has taken reasonable measures to protect the confidentiality of the information and that it intends to continue to do so, and that it is not and has not been obtainable by legitimate means without your company's consent. Information covered by such claim will be disclosed by EPA only to the extent permitted by CERCLA Section 104(e). If no such claim accompanies the information when it is received by EPA, then it may be made available to the public by EPA without further notice to your company.

B. Definitions

1. The term "person" shall include any individual, firm, unincorporated association, partnership, corporation, trust, or other entity.

2. The term "Site" shall mean the property located at 99 Chapel Street, Newark, NJ, being the same location of the former Barth Smelting Superfund Site, which encompasses the former Barth Smelting & Refining Works location and the surrounding contaminated area.

3. The term "the Company" or "Chapel St." shall mean Chapel Street Partners and its predecessors, successors, subsidiaries, divisions, branches, officers, managers, employees, contractors, trustees, partners, assigns or agents.

4. The term "waste" or "wastes" shall mean and include trash, garbage, refuse, by-products, solid waste, hazardous waste, hazardous substances including, pollutants, or contaminants, whether solid, liquid, or sludge, including but not limited to containers for temporary or permanent holding of such wastes.

5. The term "hazardous substances" shall have the same definition as that contained in Section 101(14) of CERCLA, and includes any mixtures of such hazardous substances, products or other nonhazardous substances.

6. The term “industrial waste” shall mean any solid, liquid or sludge or any mixture thereof which possesses any of the following characteristics:

   a. it contains one or more hazardous substances (at any concentration) as defined in 42 U.S.C. Section 9601(14);
   b. it is a "hazardous waste" as defined in 42 U.S.C. Section 6903(5);
   c. it has a pH less than 2.0 or greater than 12.5;
   d. it reacts violently when mixed with water;
   e. it generates toxic gases when mixed with water;
   f. it easily ignites or explodes;
   g. it is an industrial waste product;
   h. it is an industrial treatment plant sludge or supernatant;
   i. it is an industrial byproduct having some market value;
   j. it is coolant water or blowdown waste from a coolant system;
   k. it is a spent product which could be reused after rehabilitation; or
   l. it is any material which you have reason to believe would be toxic if either ingested, inhaled or placed in contact with your skin.

7. The term "pollutant or contaminant" shall have the same definition as that contained in Section 101(33) of CERCLA, 42 U.S.C. Section 9601(33), and includes any mixtures of such pollutants or contaminants with any other substances. Petroleum products mixed with pollutants and contaminants are also included in this definition.

8. The term "identify" means, with respect to a natural person, to set forth the person's name, present or last known employer and business address and business telephone number, present or last known home address and home telephone number, and present or last known job title, occupation, position or business.

9. With respect to a corporation, partnership, business trust or other association or business entity (including a sole proprietorship) the term "identify" means to provide its full name, address, and affiliation with the individual and/or company to whom/with this request is addressed.

10. The term "document" and "documents" includes any written, recorded computer generated, or visually or aurally reproduced material of any kind in any medium in your possession, custody, or control or known by you to exist, including originals, all prior drafts, and all non-identical copies.

11. The term "arrangement" means every separate contract or other agreement between two or more persons, whether written or oral.

12. The term "material" or "materials" shall mean any and all objects, goods, substances, or matter of any kind, including but not limited to wastes.

13. The term "real estate" shall mean and include, but not be limited to the following: land, buildings, a house, dwelling place, condominium, cooperative apartment, office or commercial building, including those located outside the United States.

14. The term "release" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment, and other closed receptacles containing any hazardous substance or, pollutant, or contaminant.

15. All terms not defined herein shall have their ordinary meaning, unless such terms are defined in CERCLA or RCRA, in which case the statutory definitions shall apply.

REQUEST FOR INFORMATION

1. State your full name and legal address.

2. State the correct legal name and mailing address for Chapel Street Partners. (“Company”).

3. State the name(s) and address(es) of the Partners of the Company.

4. If the Company is a subsidiary of another corporation, identify such other corporation and state the name(s) and address(es) of that corporation=s President, Chairman of the Board and the Chief Executive Officer. Provide such information for any further parent/subsidiary relationships. Identify any successor corporations or other entities of the Company. Provide all documents related to any subsidiary or successor agreements/relationships.

5. Identify the state and date of incorporation, agent for service, and for each entity identified in your response to question 4. above.

6. If the Company has been taken over or has been acquired by another corporation or is a wholly owned subsidiary of another company, please describe the nature of the takeover, how it occurred, and who is now responsible for the company’s prior environmental and financial matters.

7. Has the Company been the subject of or otherwise involved in a bankruptcy filing under the United States Bankruptcy Code, 11 U.S.C. §§ 101-1330? If not, does the Company anticipate filing a petition under the Bankruptcy Code within the next six months? If the Company has been the subject of or otherwise involved in a bankruptcy filing, identify the name of the debtor(s), chapter of the Bankruptcy Code under which the bankruptcy was filed, and provide copies of all bankruptcy petition(s) and schedules which have been filed by or with respect to the Company. In addition, state the current status of the bankruptcy proceedings.

8. Does Chapel St. own the real property identified as Block 2442, Lot 10 and located at 99 Chapel Street, Newark, Essex County, New Jersey (“Site”) or was there a partnership in owning the property? If yes, specify the name of the owner/partnership and the date the Site was acquired. Describe the Site at the time it was acquired and if there were any businesses at the Site. Provide the name of the property owner(s) prior to Chapel St.'s ownership of the property?

Describe the prior operations at the Site, if known. Was or is there a relationship with any of the prior owner(s) of the property? If so, please describe in detail what that relationship is/was? Did Chapel St. ever perform a Phase 1 Environmental Site Assessment ("Phase 1") on the property prior to ownership? If so, please provide the details of the Phase 1 and provide a copy. Are you aware of any other previous Phase 1's that have occurred on the property? If so, provide the details of those other Phase 1's and provide copies, if available.

9. During what period of time has the the Company owned and/or operated at the Site? Describe in detail all previous and current operations on the Site.

10. Describe in detail any earth moving activities that have occurred on the Site during your ownership of the property and the locations of those activities. Have any new fences or structures been erected on the property during your ownership? Provide any lease agreements and/or property relationship documents during your ownership of the property.

11. To your knowledge were the prior owner(s)/operator(s) of the Site property in the metals/battery manufacturing or smelting business? If known, describe in detail what those prior operations were on the Site and when they occurred. Do you have any knowledge of the Barth Smelting & Refining Works or the General Lead Batteries Company operations at the Site, since they both operated at that location prior to your ownership? Please provide all information you have regarding these two entities and their occupation of the Site. If you are aware of their ownership of the property at one time, please provide documentation to substantiate that information. In addition, if you are aware of any earth moving activities occurring on the property prior to your ownership, describe the details of that operation and the location of those activities.

12. Describe in detail what condition the Site was left in after the prior owner(s) vacated it, including but not limited to, any waste products, containers of product or waste chemicals and contaminated soils. Describe any other conditions that may be deemed hazardous to the area residents. Provide all information and documentation you have with regard to the history of environmental contamination on the property.

13. Describe the nature of the businesses that are currently being occupied on the Site and if they involve any earth moving activities. This explanation should include, but not be limited to, a statement of the number of people employed, the procedure followed in their business, a description of the

chemicals or product used in their operation, and a description of how the various chemicals or products are handled or disposed of. If the nature of the current operations on the Site has changed over the years, please so indicate and describe the various business activities in which the companies have been involved.

14. Describe each position, formal and/or informal, that the operators of Chapel St. held or hold with the company and for each company that currently operates or has operated at the Site. Your description should include, but not be limited to, the person(s) names who held/hold the positions, the duties and responsibilities of each position, the actual tasks that they perform(ed), both routinely and occasionally, and the dates that they held/hold the positions.

15. For each of the positions identified in question 15, list any responsibilities with respect to management, control, and day-to-day operations, including waste handling practices and all other operations at the Site.

16. State whether any business records of the current and prior owner(s)/operator(s) of the Site exist. If the answer is yes, state the location of these records and produce:

    a. All documents relating to the disposal of any wastes; and

    b. All documents relating to the disposal of any hazardous substances, hazardous waste, or solid waste at the Site.

17. State whether any containers, tanks, vessels, equipment, pipes, or systems on Site may still have contained any quantity of materials used while you owned/operated there and:

    a. Whether any materials were discharged by pipe to the ground;

    b. Whether any underground tanks or vessels are located on Site. If yes, identify the location, size, and contents of each; and

    c. How materials were disposed of. For each shipment of waste material, state the name of the transporter, quantity shipped, and the name of the disposal facility.

18. Identify all current and/or past production records kept by all owners/operators on the Site and describe the contents of such records.

19. Identify any persons who concurrently with the owner/operator exercised actual control or who held significant authority to control activities at the Site. In addition, identify:

    a. Partners or joint venturers;

    b. Any contractor, subcontractor, or licensor with any presence or activity on the Site; (service contractors, remediation contractors, management and operator contractors, licensor providing technical support to licensed activities, construction contractors, heavy equipment operators);

    c. Any person subleasing land, equipment, or space on-site;

    d. Utilities, pipelines, railroads, and any other person with activities and/or easements regarding the Site;

    e. Major financiers and lenders;

    f. Any person who exercises or exercised actual control over any activities or operations at the Site;

    g. Any person who held or holds significant authority to control any activities or operations at the Site;

    h. Any person who had or has a significant presence or who conducted significant activities at the Site.

    i. Government entities that had proprietary (as opposed to regulatory) interest or involvement with regard to the current or previous activities at the Site.

20. In the event that ownership of the Site was transferred by foreclosure or its equivalent (including purchase at foreclosure sale, acquisition or assignment of title in lieu of foreclosure, acquisition of a right to title or possession, an agreement in satisfaction of an obligation, or any other formal or informal manner by which a lender may acquire title to or possession of secured property), state whether the lender at any time:

    a. Participated in the management or operational affairs of the debtor? If so, describe such participation;

b. Exercised decision making control over the debtor's environmental compliance? If so, describe such exercise of decision making control; and

c. Exercised control at a level comparable to that of a manager of the debtor's business with respect to (i) environmental compliance, or (ii) all or substantially all, of the operational (as opposed to financial or administrative) aspects of the debtor's business other than environmental compliance? If so, describe such exercise of control.

21. State whether Hug Holdings ("Hug") or 99 Chapel St. LLC ("99 Chapel") and Chapel St. are or were previously affiliated with each other. If so, describe in detail what these relationships are/were and provide all documentation related to them.

If there is such an affiliation please answer questions 22 and 23.

22. State whether Hug or 99 Chapel have ever had a warrant to purchase stock in Chapel St., and if so, produce all documents related to, or that refer to, such warrant. In addition, state if Hug or 99 Chapel pledged any stock in Chapel St., including common and preferred stock, as collateral for any loans made to the company by Hug or 99 Chapel.

23. State whether Hug or 99 Chapel or any director, officer, employee, or agent of Hug or 99 Chapel has ever provided or offered any advice to Chapel St. relating to its operations, company management or its handling or disposal of hazardous wastes or hazardous substances (as defined in the "Instructions") at the Site. Describe the nature of any such advice given to Chapel St.

24. Provide all reports, information or data related to soil, water (ground and surface), or air quality and geology/hydrogeology at and about the Site. Provide copies of all documents containing such data and information, including both past and current aerial photographs as well as documents containing analysis or interpretation of such data.

25. Identify all prior operators of the Site, including lessors, of the Site. For each such operator, further identify:

a. The dates of operation;

b. The nature of prior operations at the Site;

c. All evidence that they controlled access to the Site; and

d. All evidence that a hazardous substance, pollutant, or contaminant was released or threatened to be released at or from the Site and/or its solid waste units during the period that they were operating the Site.

26. At the time Chapel St. acquired or operated the Site, did the Company know or have reason to know that any hazardous substance (as defined, above) was disposed of on, or at the Site? Describe all investigations of the Site that the company undertook prior to acquiring the Site and all of the facts on which you base the answer to the preceding question. Provide copies of all relevant documents.

27. Other than Chapel St. and/or Hug, did any other company own, operate or lease the Site, or portions of the Site, to operate a metals manufacturing or smelting business? If yes, list the names of each of the companys, its address,and the nature of its business. Provide copies of all relevant documents.

28. Did Chapel St. generate or have knowledge of hazardous wastes at the Site? Please describe the Company's treatment, storage, and/or disposal practices for any hazardous wastes generated at the Site or any knowledge thereof. Provide copies of all relevant documents

29. Describe in detail how and where the hazardous wastes, industrial wastes, and hazardous substances generated, handled, treated, and stored at the Site were disposed of. If any hazardous wastes, hazardous substances, or industrial wastes were taken off-site for disposal or treatment, state the names and addresses of the transporters and the disposal facility used. Provide copies of all relevant documents

30. Who determined where to treat, store, and/or dispose of the hazardous substances and/or hazardous wastes handled at the Site? Provide the names and current or last known addresses of any entities or individuals which made such determination. Provide copies of all relevant documents

31. Identify all leaks, spills, or releases into the environment of any hazardous substances, pollutants, or contaminants that have occurred at or from the Site. In addition, identify:

a. When such releases occurred;

b. How the releases occurred;

c. The amount of each hazardous substances, pollutants, or contaminants so released;

d. Where such releases occurred;

e. Whether the releases affected any surface water or if they were released to any storm drains;

f. Any and all activities undertaken in response to each such release or threatened release, including the notification of any agencies or governmental units about the release;

g. Any and all investigations of the circumstances, nature, extent, or location of each release or threatened release including, the results of any soil, water (ground and surface), or air testing undertaken; and

h. All persons with information relating to these releases.

Provide copies of all relevant documents.

32. Has there ever been a spill, leak, release, or discharge of hazardous substances into any subsurface disposal system, septic system, or floor drain inside or under the building? If the answer to the preceding question is anything but an unqualified "no", identify:

a. Where the disposal system, septic system, or floor drains were located;

b. When the disposal system, septic system, or floor drains were installed;

c. Whether the disposal system, septic system, or floor drains were connected to pipes;

d. Where such pipes were located and emptied;

e. When such pipes were installed;

f. How and when such pipes were replaced, or repaired; and

g. Whether such pipes ever leaked or in any way released hazardous substances into the environment.

Provide copies of all relevant documents

33. Did Chapel St. conduct any assessments, investigations, or cleanup of hazardous substances or wastes at the Site? If yes, identify all environmental contractors and consultants and describe the remediation/action they conducted or planned to conduct at the Site and the date(s) that the action(s) took place. Provide copies of all letters, reports, and conclusions issued by the contractors and consultants regarding the Site, including the names of the wastes that were disposed of and the location of the facility.

Pursuant to the authority in Section 104(e)(2)(C) of CERCLA, 42 U.S.C. §9604(e)(2)(C), EPA may require any person to furnish information relating to the ability of a person to reimburse EPA's past response costs. Therefore, please answer all of the following questions.

34. Respond to the following requests:

    a. Provide Chapel St.'s financial statements for the past three fiscal years, including, but not limited to, those filed with the Internal Revenue Service.

    b. Identify all of the company's current assets and liabilities and the persons who currently own or are responsible for such assets and liabilities.

35. Please provide copies of all insurance policies and indemnification agreements held or entered into by Chapel St. that arguably could indemnify the company against any liability which the company may be found to have under CERCLA for releases and threatened releases of hazardous substances, pollutants, or contaminants at and from the Site. In response to this request, please provide not only those insurance policies and agreements which currently are in effect, but also those which were in effect during the period of the company's operations at the Site. For any policy that you cannot locate or obtain, provide the name of the carrier, years in effect, nature and extent of coverage, and any other information you have.

36. For each legal action brought against current or prior owners, tenants, or site operators/managers of the Site regarding Site operations, permitting, or environmental matters, provide:

    a. The caption name, jurisdiction, and docket number (e.g., U.S. v. Owner (D.N.H. 92-003));

    b. The date such action was initiated;

    c. The names of parties to the action; and

d. The final disposition or current status of the action.

37 Identify all individuals with knowledge of facts relating to the responses provided to this Request for Information. Identify each individual who assisted or was consulted or who answered on behalf of the company in the preparation of its response to this Request for Information, and specify the question with which each person assisted in responding.

38. a. Do you have any additional information or documents that may help EPA identify other companies that may have been the source of, or otherwise responsible for, the hazardous substances or industrial wastes that came to be located at the Site? If so, please provide that information and those documents and identify the source(s) of your information.

b. In addition, identify all individuals (other than those identified in your response to Question 37.) who may have information or documents relating to the generation, handling, storage, transportation, or disposal of the hazardous substances or industrial wastes that came to be located at the Site.

CERTIFICATION OF ANSWERS TO REQUEST FOR INFORMATION
Barth Smelting Site, Newark, Essex County, New Jersey

State of _____:

County of _____:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document (response to EPA Request for Information) and all documents submitted herewith, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete, and that all documents submitted herewith are complete and authentic unless otherwise indicated. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment. I am also aware that I am under a continuing obligation to supplement my response to EPA's Request for Information if any additional information relevant to the matters addressed in EPA's Request for Information or my response thereto should become known or available to me.

_____
NAME (print or type)

_____
TITLE (print or type)

_____
SIGNATURE

Sworn to before me this
day of____ , 2013

_____
Notary Public