EPA Questions and Comments on Draft Land Use Covenant
Former Pechiney Cast Plate Inc. Facility, South Parcel
August 28, 2016

Comment Number	Location	Question/Comment	Response (*NOTE - EPA Comment Numbers are included in the redline of the draft LUC in comment format*)
1	Page 1, Top of page	Once recorded, a copy of the Land Use Covenant and Agreement should be sent to U.S. EPA Region 9 (in addition to DTSC).	Information added to the intro of LUC
2	1.1	This section should roughly note steps that will be taken if any changes in zoning occur.	See Section 1.1 revision
3	1.2.2 and 1.2.5	These sections should reference the PCB cleanup application ("Polychlorinated Biphenyls Notification Plan") and EPA-issued risk-based cleanup approvals and amendments (which were issued under 40 CFR 761.61(c)), since conditions for cleanup may have amended the Notification Plan but not the RAP.	See Section 1.2.2 revision
4	1.2.2, Last sentence	The phrase "*will be* mitigated" should be changed to "*has been* mitigated" as site cleanup in areas for redevelopment has been concluded. In general, this LUC should only describe two types of actions: 1) those that have already occurred and 2) conditional actions that must occur if any changes at the site occur (e.g., change in land use or ground disturbance).	See Section 1.2.2 revision
5	1.2.7	Since grading and site redevelopment activities will be in progress by the time this LUC will be recorded, "earthwork will be conducted" should be changed to "earthwork has been and will continue to be conducted". Please refer to comment 4.	See Section 1.2.7 revision
6	1.2.7	It may be helpful to include a table in this section showing equivalent depths by phase area: with respect to native	See Section 1.2.7 revision. A table will be added to the referenced Exhibit to summarize this information

		grade, mean sea level, and final (current) ground surface.	
7	1.2.7	A reference to a remediation goal of "above 23 mg/kg" for "below 15 feet below native grade" should be removed. This is not so much a remediation goal as the absence of one below 15 feet bgs.	See Section 1.2.7 revision.
8	1.2.8, 2nd sentence	A point-by-point comparison of sampling results to the cleanup levels was also used to demonstrate that remedial goals were achieved.	See Section 1.2.8 revision.
9	1.2.8, Last sentence	Please explain what a de minimus target is. 1.0 should be noted to be a hazard quotient.	See Section 1.2.7 revision.
10	1.2.10	Exhibit E has not been provided for EPA review.	Draft Exhibits were sent via email to EPA on June 20, 2016
11	1.2.10	Please note options for disposal of the crushed concrete maintained offsite if future owners will dispose of the material.	See Section 1.2.10 revision
12	1.2.11	Appendix F should list the titles of the documents required by EPA's conditional approval. For example: "Pursuant to the EPA's conditional approval of the PCB remediation, attached as Exhibit F are the following documents: ____, ____."	See Section 1.2.2 and Section 1.2.11 revisions
13	Article II	A definition for "Original Property" should be included in this section.	See Article II, definition added
14	4.2(a)	The last sentence in this section seems to imply that the Soil Management Plan is only required during pre-construction grading (short-term redevelopment. The soil management plan, however, must be implemented both during near-term redevelopment as well as all future ground disturbance activities. Please rewrite the last sentence so that this is clear.	See Section 4.2(a) revisions
15	4.2(a)(i), Last sentence	Documentation of areas where disturbance occurs should be recorded in the LUC.	See Section 4.2(a)(i) revision
16	4.2(a)	Disturbance or removal of soils onsite should not involve the following:	See Section 4.2(a) revisions

		1) moving of soils to other depth intervals with respect to the final grade 2) mixing of soils in different depth intervals (0-5 ft, 5-15 ft, and 15+ ft with respect to native grade) 3) reuse of soils offsite (they must be sent for disposal according to the cleanup levels for the PCBs or sampled adequately in-situ) Please revise this section to reflect these requirements.	
17	4.2(a)(iv)	A generic cap inspection, maintenance, and repair plan should be prepared and added to the Covenant in case such plan is needed in the future.	See Section 4.2(a)(iv) revision. If a cap is implemented then a plan will be prepared and submitted to EPA for approval and the covenant will be amended to include the plan
18	4.2(a)(iv)	This draft LUC constitutes the "restrictive covenant" referenced in the second sentence. Thus, the second sentence is unnecessary and should be removed. Instead, this section should note that the LUC must be amended if a cap is built. The LUC at that point in time will be amended to contain certain information required in 40 CFR 761.61(a)(8): - the existence of the cap - the requirement to maintain the cap - levels of PCBs in soil under the cap - a certification signed by the site owner that he/she has recorded the notation to the EPA regional administrator Any PCB-contaminated material consolidated under the cap shall be assumed to contain PCBs at the concentrations specified by the cleanup level for that depth interval.	See Section 4.2(a)(iv) revision
19	4.2(b)	Add the words "For Disposal," before the sentence "Soil containing PCBs…"	Section 4.2(b) applies to the movement of soils with

		If soils containing 50 mg/kg are stored onsite, applicable requirements in 40 CFR 761.65 must be followed.	other constituents rather than disposal. "For disposal" and the requirement for soil containing PCBs at 50 mg/kg has been added to Section 4.2(d).
20	4.4(b)	Engineering controls should be listed. If activities will disturb engineering controls for PCB-impacted material, EPA will need to provide prior approval in writing.	See Section 4.3(b) revision
21	4.5	Please clarify what constitutes "reasonable notice" for inspection	See Section 4.4 revision
22	4.5	Please clarify what is meant by the statement: "Pechiney will not require further notice under this section"	See Section 4.4 revision
23	4.8	If any engineering controls at the property have been required by EPA and such controls need to be inspected, maintained and repaired, then EPA should receive reports associated with such inspections.	See Section 4.6 revision
24	6.1	EPA should be included here in addition to DTSC.	EPA has been included in Section 6.1
25	6.1	How many days prior to actions that would violate LUC restrictions will such applications for variances need to be submitted?	See Section 6.1 revision for 7 calendar days.
26	6.2	The phrase "the Department or the EPA" should be changed to "the Department and the EPA".	Section 6.2 has been revised
27	6.2	The following phrase should be added to the end of the last sentence in the paragraph: "and with the TSCA regulations in 40 CFR 761."	Section 6.1 and 6.2 have been revised
28	7.2	This section should note how many days after recording of the covenant EPA will be sent a copy of the covenant.	See Section 7.2 revision for 10 calendar days.
29	7.3	Notices to EPA should be addressed to the following address: US EPA Region 9 PCB Coordinator, Land Division	Section 7.3 has been updated

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