UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

October 11, 2017

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In Reply Refer to:
EPA File No. 08R-97-R9

Barbara A. Lee, Director
Department of Toxic Substances Control
P.O. Box 806
Sacramento, CA 95812-0806

Re: Closure of Administrative Complaint No. 08R-97-R9

Dear Director Lee:

This letter is to advise you that the U.S. Environmental Protection Agency's (EPA) External Civil Rights Compliance Office (ECRCO) (formerly, the Office of Civil Rights (OCR)) is administratively closing, as of the date of this letter, EPA File No. 08R-97-R9 against the California Department of Toxic Substances Control (DTSC). This complaint generally alleged that DTSC violated Title VI of the Civil Rights Act of 1964, as amended, 42 United States Code 2000d *et seq.* (Title VI) and EPA's nondiscrimination regulation found at 40 Code of Federal Regulations (C.F.R.) Part 7.

EPA ECRCO is responsible for enforcing several federal civil rights laws that prohibit discrimination on the bases of race, color, national origin (including limited-English proficiency), disability, sex and age in programs or activities that receive federal financial assistance from EPA.

On June 5, 1997, EPA received a complaint that was filed on behalf of the Chester Street Block Club Association (CSBCA). The complaint specifically alleged that DTSC subjected the African-American and Latino residents of the South Prescott Park neighborhood in Oakland, California to discrimination based on race, color, or national origin when it approved the California Department of Transportation's (CalTrans) Removal Action Work plans (RAWs)[1] for remediation of contaminated soil to meet cleanup criteria for the

1 Final Feasibility Study/Remedial Action Plan, South Prescott Neighborhood Park (CalTrans March 1998); Final

intended recreational use of developing the area as a park. The complaint further alleged that DTSC discriminated by approving the RAWs which, allegedly, failed to require adequate remediation of South Prescott Park.[2] The complaint alleged that the choice of remediation to a recreational standard was not adequate given the health of residents and other sources of pollution in the community. The complaint also alleged that the recreational cleanup approved in the RAWs for this African American and Latino community would not have been selected for a white community and, even if it was, it would not have the same adverse impacts.[3]

On September 11, 1997, EPA accepted the complaint for investigation.[4] As discussed below, ECRCO obtained credible information during the course of this investigation indicating that the issue raised by the complaint has been resolved. EPA's Office of Land and Emergency Management (OLEM) reviewed South Prescott Park's clean-up remedy decision documents and confirmed that the clean-up of the South Prescott Park area exceeded the remediation required to satisfy standards for recreational use. As a result, there are no current issues appropriate for further resolution. Accordingly, EPA File Number 08R-97-R9 is administratively closed as of the date of this letter.[5]

During its investigation, ECRCO gathered and reviewed information relevant to the complaint. This information included the complaint submitted to ECRCO and information relating to the remediation of the South Prescott Park site, including the RAWs, Final Feasibility Study - Remedial Action Plan (FS/RAP), Design and Implementation Plan (RDIP)[6] and Remediation Completion Report (RCP).[7]

As part of its investigation, ECRCO attempted to contact the complainant on several occasions, both in writing and by telephone, to obtain additional information from the complainant about its concerns and to discuss the remediation of South Prescott Park. However, the complainant did not respond to our attempts to reach out to the complainant.

BACKGROUND

In 1989, the Loma Prieta Earthquake destroyed the double deck Cypress Freeway in Oakland, California.[8] CalTrans "designed the replacement of the Cypress Freeway so as to circumvent West Oakland, which the original Cypress Freeway had bisected."[9] The new freeway alignment

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Feasibility Study/Remedial Action Plan Interstate 880, Cypress Replacement Project, Oakland, California (CalTrans June 1995); Final Removal Action Plan, Soundwall Installation, Former SPTCO Rail Yard, Oakland, California (CalTrans May 1997).

2 Administrative Complaint No. 08R-97-R9 (June 10, 1997)

3 Administrative Complaint No. 08R-97-R9 (June 10, 1997)

4 Letter from Rafael DeLeon, Acting Director EPA OCR, to Jesse Huff, Director DTSC (Sept. 11, 1997).

5 ECRCO Case Resolution Manual, § 3.4 (January 12, 2017).

6 Remedial Design and Implementation Plan (RDIP), South Prescott Neighborhood Park (CalTrans August 1999).

7 South Prescott Neighborhood Park Remediation Completion Report (RCP) (CalTrans May 18, 2001).

8 *Id.* at 1.

9 *Id.*

was planned to pass alongside Oakland's South neighborhood.[10] Therefore, in order to reduce potential noise impacts in the neighborhood, CalTrans, along with local agencies and citizens, proposed a tree-lined green space buffer, which then further evolved into the idea for a landscaped community park with concrete walkways and children's play equipment.[11]

In 1992, CalTrans began subsurface investigation of the areas to be included in the park. These areas included "two automobile salvage yards, a portion of a railroad yard, and abandoned former residential lots."[12] During the investigation of the areas, CalTrans found that lead and polynuclear aromatic hydrocarbons were site-wide contaminants that required remediation."[13] In addition, the investigation found the existence of pesticide chlordane, diesel fuel, higher boiling point petroleum hydrocarbons, volatile aromatics, volatile aliphatic hydrocarbons, and polychlorinated biphenyls, but to a much lesser extent.[14] CalTrans used the findings of the site investigation to develop a risk assessment in 1997.[15] Based on the risk assessment, CalTrans established cleanup goals for the site that reduced the estimated health risks to "acceptable protective levels."[16]

CalTrans then submitted a Final Feasibility Study/ Remedial Action Plan (FS/RAP) to the DTSC in March 1998.[17] The FS/RAP recapped the findings of previous site assessments and outlined the results of the remedial alternatives available. These were:

Alternative 1: No Action
Alternative 2: Soil Excavation with Off-Site Disposal
Alternative 3: Soil Excavation with Off-Site Thermal Desorption Treatment and Disposal.[18]

The FS/RAP outlined the following: contaminants of concerns (COCs) (both carcinogenic and non-carcinogenic); receptors; the pathways; Remedial Action Objectives (RAOs); and the final remedy selected. The COC's identified were as follows:

Carcinogenic:
1-Metals (arsenic, beryllium)
2-PCBs (aroclor 1254, aroclor 1260)
3-Pesticides (chlordane, DEE, DDT, Dieldrin Heptachlor, and others)
and

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10 *Id.*
11 *Id.*
12 *Id.*
13 *Id.*
14 *Id.*
15 *Id.*
16 *Id.*
17 Final Feasibility Study/ Remedial Action Plan (FS/RAP) (Cal Trans March 1998)
18 *Id. at 4-5.*

Non-Carcinogenic:
1-Metals (antimony, cadmium, Cooper, Lead, Nickel, Thallium, and Zinc.
2-SVOCs (Anthracene, Phenanthrene, Pyrene)[19]

The FS/RAP stated that the future land use was anticipated to be recreational, and as such, cleanup levels were set for that use. To that end, CalTrans explained that Alternative 2 had been selected "because it will meet the Remedial Action Objectives (RAOs), will be protective of human health and the environment and complies with Applicable or Relevant and Appropriate Requirement (ARARs)."[20] DTSC approved the cleanup criteria for the intended recreational use[21] and in 1999, remedial excavation work began at the site.

Site Remediation

As set forth in the RCP, "areas containing excessive levels of contamination were excavated, the soils removed to a designated stockpile site, and confirmation samples collected from within the excavations."[22] In November 1999, the excavators removed a total of "17,000 yd^3 of soil over the next 2-plus months."[23] During the course of the remedial excavations, two underground storage tanks were found near the site of South Prescott Neighborhood Park. The excavators removed the tanks and a groundwater study was conducted in which was "found no lasting contamination problems associated with the tanks."[24] CalTrans reported that "[s]tatistical analyses of the confirmation sample analytical results indicate that the cleanup goals for the park were easily met."[25]

As a result of the removal of the contaminated soil, the cleanup results reached for the park were:[26]

Contaminant	Cleanup Goal	95%UCL**
Lead	400 mg/kg*	264 mg/kg
Arsenic	19.0 mg/kg	5.6 mg/kg

19 *Id.* at 4.
20 *Id.* at 11. The FS/RAP explains:

> Remedial Action Objectives (RAOs) are goals developed for media-specific or area-specific protection of human health and the environment. RAOs for protecting public health address both chemical concentrations and potential exposure routes. Protection can be achieved by either reducing concentrations and/or reducing potential exposures. RAOs for protecting the environment typically seek to minimize impacts on resources by addressing the media of concern and the target cleanup levels. RAOs are developed from information obtained from previous investigations, review of pertinent laws, regulations and other criteria. The RAO for the Site is to reduce the immediate risks to human health and to reduce potential sources of shallow groundwater contamination. *Id.* at 54.

21 *See* RDIP §1.3, at 2.
22 RCP, at 1.
23 *Id.*
24 *Id.* at 1-2.
25 *Id.* at 2.
26 *Id.*

Chlordane	1.77 mg/kg	.29 mg/kg
Benzo(a)pyrene	.40 mg/kg	.10 mg/kg

* With no single result over 840 mg/kg

** Upper confidence limits (UCL) on the true mean concentrations after the remediation was completed.

CalTrans reported that the "the excavated soils were taken to a designated nearby stockpile site for disposal characterization sampling."[27]

The final remediation step was "the emplacement of a 3-foot-thick cover of clean, imported soil over the entire graded, post-excavation park site." [28] The material used for the cover came from a 20-foot-deep excavation made for the replacement Cypress Freeway/Seventh Street undercrossing near the park site and a quarry located in Fremont, California.[29] According to the RCP, "both sources were tested and approved for use as cover material at the park site by the City of Oakland and DTSC." [30]

Results of Site Remediation

In October 2000, the construction for the South Prescott Park was completed and it was deeded to the City of Oakland.[31] In May 25, 2001, DTSC asserted that all appropriate response actions had been completed, all acceptable engineering practices had been implemented and that no further removal/remedial action is necessary.[32]

Based on its review of the available information referenced above, EPA determined that DTSC achieved a degree of cleanup originally included in the cleanup plan. Furthermore, based upon review of the confirmation sampling results, OLEM confirmed on February 22, 2017, that risk-based soil cleanup levels based on recreational future land use for four risk driver contaminants (lead, arsenic, chlordane, and benzo(a)pyrene) either met or were below the FS/RAP cleanup levels. In addition, the excavated areas were backfilled with 3 feet of imported clean fill over the entire park site and soil sources were tested and approved for use as cover material at the park. Therefore, as the remediation has exceeded what was required under the FS/RAP, the allegation accepted for investigation stemming from the remedy selected in the FS/RAP is no longer grounded in fact.

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27 *Id.*
28 *Id.*
29 *Id.*
30 *Id.*
31 *Id.*
32 Remedial Action Certification Form (CalTrans May 25, 2001).

Conclusion

Based on the foregoing, there are no current issues appropriate for further resolution. Accordingly, ECRCO is administratively closing this complaint (EPA File No. 08R-97-R9) as of the date of this letter.

This letter sets forth EPA's disposition of the referenced complaint. This letter is not a formal statement of EPA policy and should not be relied upon, cited, or construed as such. Please do not hesitate to contact me at (202) 564-9649, or at Dorka.Lilian@epa.gov, regarding any questions you may have.

Sincerely,

Lilian S. Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel

cc: Kenneth Redden
Acting Associate General Counsel
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Deborah Jordan
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