UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 Broadway
New York, NY 10007-1866

MAR 16 2017

GENERAL NOTICE LETTER
URGENT LEGAL MATTER
PROMPT REPLY NECESSARY
CERTIFIED MAIL--RETURN RECEIPT REQUESTED

Andrew Tunnard
Asst. Commissioner, Operations
New Jersey Department of Transportation
1035 Parkway Avenue
Trenton, New Jersey 08625

Re: General Notice Letter for the Diamond Head Oil Refinery Site in Kearny, New Jersey

Dear Mr. Tunnard:

The U.S. Environmental Protection Agency (EPA) received and reviewed the undated New Jersey Department of Transportation (NJDOT) response to EPA's September 6, 2002 Information Request, which was sent to NJDOT in connection with the Diamond Head Oil Refinery Site (the Site) located in Kearny, New Jersey. Based on your department's response and other available information, EPA has determined that NJDOT may be responsible under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), commonly known as the federal "Superfund" law, for cleanup of the Site or costs EPA has incurred in cleaning up the Site.

Explanation of Potential Liability

Under CERCLA, specifically Sections 106(a) and 107(a), potentially responsible parties (PRPs) may be required to perform cleanup actions to protect the public health, welfare, or the environment. PRPs may also be responsible for costs incurred by EPA in cleaning up the Site, unless the PRP can demonstrate divisibility or assert one of the statutory defenses. PRPs include current and former owners and operators of the Site, as well as persons who arranged for treatment and/or disposal of any hazardous substances found at the Site, and persons who accepted hazardous substances for transport and selected the Site to which the hazardous substances were delivered.

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Based on the information collected, EPA believes that NJDOT may be liable under Section 107(a) of CERCLA with respect to the Site, as a (1) arranger, who by contract or agreement, arranged for the disposal, treatment or transportation of hazardous substances at the Site; and/or (2) current or previous owner and/or operator of the Site. Specifically, EPA has reason to believe that NJDOT is the owner of Block 285, Lots 2.01, 4, 6 and 7 designated on the Tax Map of Kearny, which are part of the Site.

To date, EPA has taken response actions at the Site under the authority of the Superfund Program. Below is a brief description of some of the actions taken at the Site:

- From 2003 to 2009, EPA performed several phases of Remedial Investigation (RI) activities to identify the Site characteristics and to define the nature and extent of liquid non-aqueous phase liquid (LNAPL) waste and the risks posed by the Site (Operable Unit 1);

- A Feasibility Study (FS) to evaluate different cleanup options to address the LNAPL waste at the Site (Operable Unit 1) was completed in 2009;

- In 2014, EPA completed a pre-design investigation of the remedy to treat the LNAPL waste (Operable Unit 1) at the site;

- From 2009 to 2015, EPA performed an RI to define the nature and extent of contamination in soil, air, surface water, and groundwater contamination at the Site and the risks posed by the Site (Operable Unit 2); and

- An FS to address contaminants in soil and sediments (Operable Unit 2) was completed in 2016.

***De Minimis* Settlements**

Under Section 122(g) of CERCLA, whenever practicable and in the public interest, EPA may offer special settlements to owners of real property if: (1) such owner did not conduct or permit the generation, transportation, storage, treatment, or disposal of any hazardous substances at the Superfund facility; and (2) the owner did not have actual or constructive knowledge that the property was used for the generation, transportation, storage, treatment, or disposal of any hazardous substance.

Individuals or businesses resolving their Superfund liability as *de minimis* parties are not typically required to perform site cleanup. Instead, EPA requires *de minimis* settlors to pay their fair share of cleanup costs incurred, plus a "premium" that accounts for, among other things, uncertainties associated with the costs of work to be performed in the future. In return, *de minimis* settlors receive: (1) a covenant not to sue, which is a promise that EPA will not bring any future legal action against the settling party for the specific matters addressed in the settlement; and (2) protection from contribution claims, which provides a settling party with protection from being sued in a contribution action by other responsible parties for the specific

matters addressed in the settlement. (The matters addressed in a *de minimis* settlement are typically all cleanup actions and all cleanup costs at the particular site.) Participation in a *de minimis* settlement means that you are settling directly with EPA as soon as it is possible.

The protection from contribution actions for *de minimis* settlors is based on Sections 113(f)(2) and 122(g)(5) of the CERCLA law, which provide that a person "who has resolved its liability to the United States" in an administrative or judicially approved settlement "shall not be liable for claims for contribution regarding matters addressed in the settlement." This protection against contribution claims, however, may not extend to claims by third parties that have incurred their own response costs and seek to recover them under Section 107(a)(4)(B). *See United States v. Atlantic Research Corporation*, 127 S.Ct. 2331, 168 L.Ed. 2d 28 (June 11, 2007) (in certain situations, a liable party who has incurred cleanup costs at a site can sue other liable parties under CERCLA § 107(a)(4)(B)).

If NJDOT believes that it may be eligible for a *de minimis* settlement at this Site, please contact Clay Monroe, Assistant Regional Counsel at 212-637-3142 for additional information on *de minimis* settlements. Additional information will be sent to you, and you may be asked to respond in writing to questions about NJDOT's involvement with the Site to assist EPA in making a determination as to whether it may be eligible for such a settlement.

Financial Concerns/Ability to Pay Settlements

EPA is aware that the financial ability of some PRPs to contribute toward the payment of response costs at a site may be substantially limited. If you believe, and can document, that you fall within that category, please contact Clay Monroe, Assistant Regional Counsel at 212-637-3142 for information on ability to pay settlements. In response, you will receive a package of information about the potential for such settlements and a form to fill out with information about your finances, and you will be asked to submit financial records including business federal income tax returns. If EPA concludes that NJDOT has a legitimate inability to pay the full amount of EPA's costs, EPA may offer a schedule for payment over time or a reduction in the total amount demanded.

Also, please note that because EPA has a potential claim against NJDOT, it must include EPA as a creditor if it files for bankruptcy. EPA reserves the right to file a proof of claim or an application for reimbursement of administrative expenses.

Information to Assist You

EPA would like to encourage communication between NJDOT, other PRPs, and EPA at the Site. To assist you in your efforts to communicate, please find (enclosed) a list of names and addresses of PRPs to whom this letter is being sent, and a fact sheet that describes the Site.

EPA has established an Administrative Record that contains documents that serve as the basis for EPA's selection of a cleanup action for the Site. The Administrative Record is located at Kearny Public Library, 218 Kearny Avenue, Kearny, NJ 07031, and is available to you and the

public for inspection and comment. The Administrative Record is also available for inspection and comment at the Superfund Records Center, EPA Region 2, 290 Broadway, 18th Floor, New York, NY 10007, Telephone 212-637-4308.

Please give these matters your immediate attention and consider consulting with an attorney. If you have any questions regarding this letter, please contact Richard Ho, Remedial Project Manager at 212-637-4372; for questions relating to legal matters please contact Clay Monroe, Assistant Regional Counsel at 212-637-3142. Thank you for your prompt attention to this matter.

Sincerely,

Eric J. Wilson
Deputy Director for Enforcement & Homeland Security
Emergency and Remedial Response Division

Enclosures

List of Names and Addresses of PRPs Being Issued a General Notice Letter

Andrew Tunnard
Asst. Commissioner, Operations
New Jersey Department of Transportation
1035 Parkway Avenue
Trenton, New Jersey 08625

Mr. Jerry Turco, Jr.
Principal Owner
Hudson Meadows Urban Renewal Corp.
525 Riverside Avenue
Lyndhurst, New Jersey 07071

Alberto G. Santos, Mayor
Town of Kearny
402 Kearny Avenue
Kearny, New Jersey 07032

Diamond Head Oil Refinery – OU1 ROD Amendment & OU2 ROD

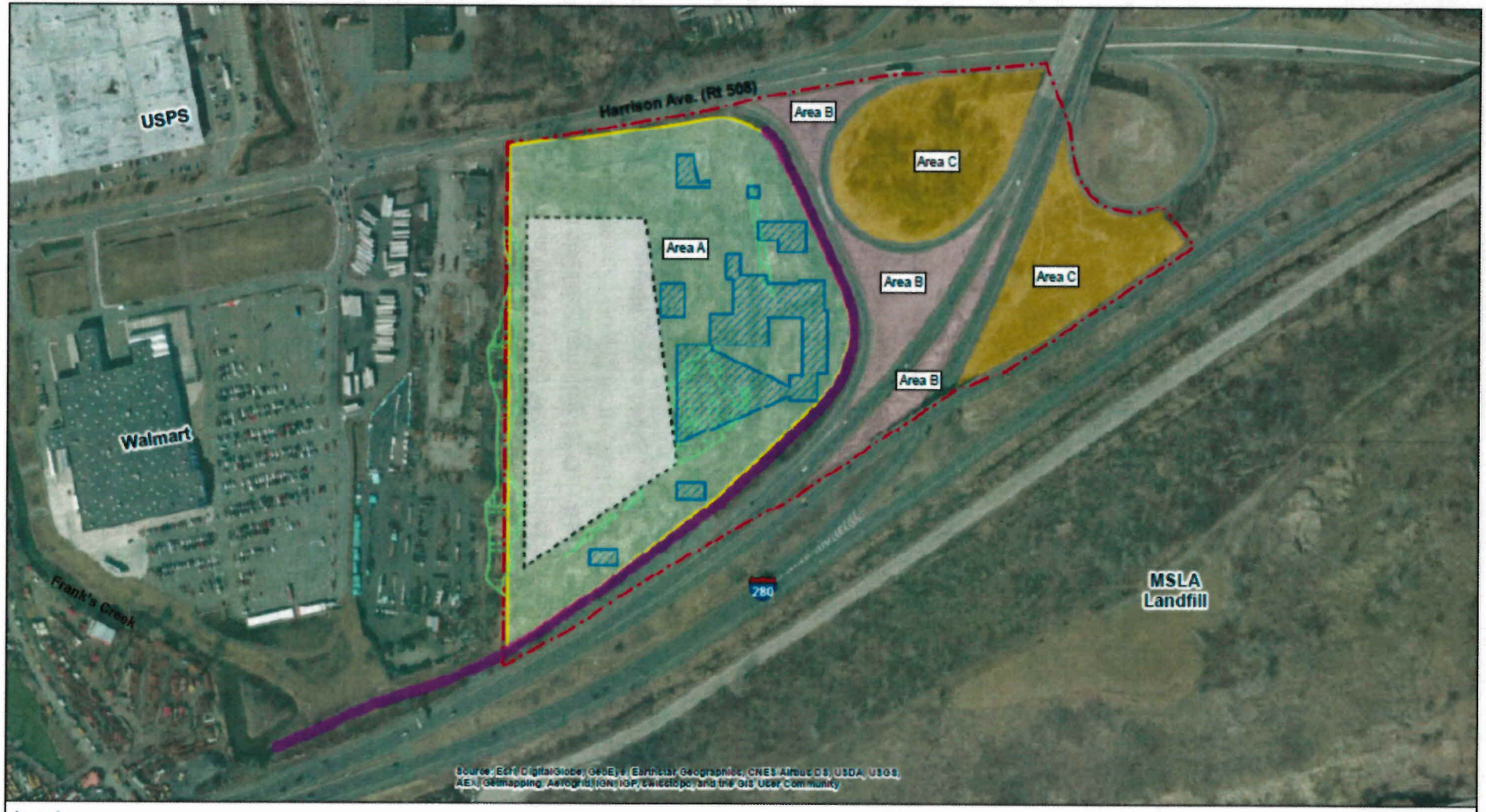
The Diamond Head Oil Refinery Site, located in Kearny, New Jersey, is the former location of a waste oil reprocessing facility. The Site is comprised of a fenced-in, 15-acre unoccupied parcel that includes wetland areas, a drainage ditch, a vegetated landfill area along the western border, and the remnants of the former Diamond Head Oil Refinery on the eastern portion of the Site (See Figure 1). During facility operations, approximately 1946 to 1979, two aboveground storage tanks and subsurface pits were used to store oily wastes. These wastes were intermittently discharged directly to adjacent properties to the east, and the wetland area to the south of the Site, creating an "oil lake." Facility operations contaminated soil, sediment, surface water, and ground water with Light Non-Aqueous Phase Liquids (LNAPL), volatile and semi-volatile organic compounds, PCBs, dioxin/furans, pesticides, and heavy metals. Initial clean-up activities were performed in the late 70's by the New Jersey Department of Transportation during construction of Interstate 280, and included the removal of oil-contaminated water and oily sludge from the vicinity of the "oil lake." The property sat idle for a number of years until the New Jersey Department of Environmental Protection (NJDEP) suggested EPA evaluate the Site for inclusion on the National Priorities List (NPL) in 1999. The Site was added to the NPL in 2002.

In 2002, EPA began the Operable Unit 1 (OU1) Remedial Investigation (RI) to determine the nature and extent of the LNAPL contamination at the Site. Sampling for OU1 began in 2003 with the Phase 1 Remedial Investigation, followed by a Phase 2 Focused Remedial Investigation/Feasibility Study in 2008. In addition to LNAPL, the OU1 RI found soil, sediment, groundwater, and surface water contamination attributable to the Site.

A Record of Decision (ROD) was signed in September 2009 for the OU1 LNAPL Source Area, which called for the excavation of LNAPL source areas, construction of an on-site biocell for treatment of low-level threat LNAPL, and off-site disposal of the principal threat LNAPL from within the excavated material. In 2014/2015, EPA completed a pre-design investigation (PDI) of the LNAPL source material at the Site. The PDI refined the extent of LNAPL source material from the 2009 ROD, identified the OU1 remedial target area (RTA), and helped to further refine the preliminary remediation goals to permit field verification of their attainment. Following extensive bench scale testing, it was determined that the biocell technology chosen in the OU1 ROD would not be an effective treatment for the low-level threat LNAPL.

Whereas OU1 focused on LNAPL source areas, Operable Unit 2 (OU2) is focused on contaminated soils and sediment. Sampling of soil, sediment, surface and groundwater for OU2 began in 2009 with the Remedial Investigation, followed by two Supplemental Investigations in 2011 and 2015. In addition, a human health risk assessment and an ecological risk assessment were conducted to determine if levels of OU2 contaminants exceeded EPA's acceptable risk range. The results of the OU2 RI revealed multiple contaminants of concern (COCs) in the surface and subsurface soils, surface water, and sediments, including chromium, dioxin/furans, PCBs, lead, aldrin, thallium, and benzo[a]pyrene.

Figure 1



Legend

- Drainage Ditch
- Remedial Target Area for OU2 - Soils
  - Area A
  - Area B
  - Area C
- Current Property Boundary
- Site Boundary
- Landfill
- Delineated Wetlands
- Remedial Target Area for OU1 Principal Threat LNAPL Waste

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Extent of OU2 Remedial Target Area
Diamond Head Oil Superfund Site
Kearny, NJ

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