

Town Superfund Project:

A Review and Status Report

By:

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and

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Pre-Retention | Before March 2023

Town had no legal or technical representation on Superfund matters, which had certain consequences:

➤ For the Town:

- ✓ No professional guidance on the adequacy, meaning, or implications of EPA's work
- ✓ No substantive review or comment on EPA's work
- ✓ No agreed-upon strategy for pursuing or achieving any post-Superfund outcome

➤ For EPA:

- ✓ Agency did what it wanted to do, at the pace it wanted to take
- ✓ No real accountability to the beneficiaries of its work
- ✓ No real accountability to any other third-party (i.e., ADEQ, PRPs, etc.)

Pre-Retention | Before March 2023

No EPA accountability resulted in:

- Inefficiencies, delays, and restarts in EPA's investigations (i.e., 14+ years of studies)
- Deficiencies in the direction, conduct, and conclusions in EPA's work (e.g., EPA's 2010 RI, multiple rounds of residential soil samplings and removals, changing cleanup standards)
- Necessity of redoing key elements of EPA's work (e.g., the 2010 RI, current residential soil project, supplementary groundwater investigation)

Pre-Retention | Before March 2023

For Town and its residents, EPA's inefficiencies, deficiencies, and inconsistent direction led to:

- Frustration, distrust and anger regarding EPA's competence and commitment to protect the community
- Misunderstanding and fear regarding the community's risk of adverse health effects from contamination exposure
- Such frustration, distrust, anger, misunderstanding and fear continue to the present day

The Past Year | March-May 2023

Assessment & Comment

March 2023

- After 14 years of study, EPA proposes a remedial action plan (PRAP)
- EPA holds a public hearing in Town, invites written comment by mid-May

April-May 2023

- Hamula/Speyer (H/S) are teamed by Town
- In a period of 6 weeks, H/S:
 - ✓ Review, digest, and assess over 14 years of EPA work
 - ✓ Identify legal and technical deficiencies in EPA's work
 - ✓ Prepare propose detailed legal/technical comments for Town Council review
 - ✓ Obtain unanimous approval of Town Council for issuance of comments to EPA
 - ✓ Submit Town Council's comments to EPA

The Past Year | March-May 2023

Assessment & Comment

Deficiencies in EPA's PRAP included failures to:

- Characterize adequately the location and extent of contamination in and about the IKM-HS Superfund Site
- Propose comprehensive remedies for soil and groundwater contamination adequate to protect human health and environment
- Develop and propose adequate institutional controls (ICs) to accompany the engineering controls
- Acknowledge Town's land use regulating authority and essential role in the adoption of appropriate ICs
- Acknowledge and address the reuse/redevelopment potential of the IKM and HS sites

The Past Year | May-July 2023

Strategy Development

Town's written comments to EPA established the framework for an integrated legal/technical Superfund strategy for the Town

H/S therefore worked with Town Council, Town Manager, and Town Attorney to:

- Identify and agree on Town's post-Superfund goals and objectives
- Develop an action plan for realizing Town's goals and objectives

The Past Year | Aug-Sept 2023

Strategy Implementation

Town meets with ADEQ executive leadership and staff

- H/S pressed 3 key issues –
 - ✓ The necessity of robust ICs for waste-in-place remedies such as proposed by EPA
 - ✓ The Town's essential role in IC development and enforcement
 - ✓ The range of regulatory land use and redevelopment options contemplated by the Town and their appropriateness for the IKM-HS Superfund Site
- ADEQ agreed, and facilitated a joint meeting with EPA
- EPA agreed to meet, reversing a previously communicated decision not to meet

The Past Year | Oct-Dec 2023

Positive EPA Engagement

Before meeting with Town, EPA issues Record of Decision (ROD), accepting many of the Town's comments and concerns:

- EPA acknowledged that additional work was needed to develop ICs
- EPA acknowledged the Town's role in IC development and implementation, and committed to consulting with the Town on IC development during remedy design
- EPA acknowledged the importance of the Town's reuse/redevelopment interests for the IKM and HS sites and committed to working with the Town on the issue

The Past Year | Oct-Dec 2023

Positive EPA Engagement

Before meeting with Town, EPA issues Record of Decision (ROD), accepting many of the Town's comments and concerns (cont'd):

- EPA acknowledged that the final remedy required further groundwater characterization and, if necessary, remediation
- EPA acknowledged and recognized an additional “area of concern” covering the Town's residential soils
- EPA adopted a more protective (i.e., lower) soil standard for Arsenic

The Past Year | Oct-Dec 2023

Positive EPA Engagement

EPA/ADEQ/Town Meet on November 2

- H/S presented Town's reuse plans for the IKM/HS sites
- H/S outlined Town's suggested ICs
- HS urged EPA to take non-residential PRP properties in vicinity at and about the IKM and HS sites and transfer them to the Town

In response ...

- EPA found Town's reuse plans acceptable and agreed to collaborate on waste repository design to facilitate such plans
- EPA committed to work with Town on design and implementation of ICs
- EPA declined to take and transfer any non-residential PRP properties

The Past Year | Oct-Dec 2023

Positive EPA Engagement

Further, EPA sent a letter to Town on Nov 21 ...

- Thanked Town for the Nov 2 meeting
- Acknowledged the Town's "independent and separate" authority to regulate land use
- Acknowledged EPA's remedy needs appropriate ICs
- Restated EPA's commitment to work with the Town to develop and implement ICs

Regarding non-residential PRP property acquisition, Town accepted EPA's decision not to take such property and pivoted to alternative acquisition options

The Past Year | Jan-Mar 2024

EPA Pivot to Residential Soils

EPA scheduled a follow-up meeting for Jan 16

- Announced agency's decision to prioritize and accelerate commencement of the supplementary residential soil remedy
- Previously, EPA led Town to believe that 2024-25 would focus on waste repository design, with construction commencing in 2026

EPA's pivot is tacit acknowledgement that ...

- Residents remain exposed to inadequately remediated soils
- Agency's prior soil work is deficient and merits redoing

***** Enormous Victory for Town *****

The Past Year | Jan-Mar 2024

EPA Pivot to Residential Soils

EPA also ...

- Indicated that recent sampling suggested 40-acre, residentially zoned block of parcels north of the IKM site is significantly contaminated
- Asked Town to consider rezoning the 40-acre block from residential to another use to facilitate EPA's remediation

Town responded by ...

- Asking for EPA's sampling/analytical data concerning the contamination
- Indicating Town would consider EPA's request upon receipt of such data

The Past Year | Jan-Mar 2024

EPA Pivot to Residential Soils

A week later ...

- EPA calls an occupant of the 40-acre block, informing her of widespread arsenic contamination on her property, the potential health risk of such contamination, and Town is considering rezoning to non-residential use
- Occupant feels she and her family are being pushed out of her home by EPA and Town, and her concern goes viral in the community

Town Council holds special meeting on January 27 and issues public statement (drafted by H/S) that ...

- Declares formal opposition to EPA's residential soil project
- Discourages residents from giving access consent to EPA
- Declares Town will initiate its own soil sampling/analysis program

The Past Year | Jan-Mar 2024

EPA Pivot to Residential Soils

Town's Public Statement got EPA's attention ...

- EPA (Mike Montgomery) called Mayor expressing regret and requesting a meeting and sent a letter stating same (Feb 2)

- EPA, ADEQ, and Town meet (Feb 13), and EPA (Mike Montgomery) ...
 - ✓ Reiterates regret
 - ✓ Commits to better collaboration
 - ✓ Commits to improved communication and data sharing
 - ✓ Expresses respect for the Town's land use authority
 - ✓ Assures Town the agency will not compel residential property owners to vacate

- EPA (Mike Montgomery) sends another letter (Feb 16) memorializing agency commitments

The Past Year | Jan-Mar 2024

EPA Pivot to Residential Soils

EPA's Feb response to Town is enormously significant

- EPA views Town as a critical, even indispensable partner
- EPA wants/needs Town's institutional support
- EPA desires to work cooperatively with Town on remedy implementation

Town responds in writing (Mar 19) rescinding opposition to residential soil work, contingent on real and meaningful ...

- Agency collaboration and communication
- Agency respect for Town's land use authority

The Past Year | Mar 2023-Apr 2024

Summary of Milestones

- ✓ EPA's ROD accepts and affirms key elements of Town's May 2023 written comments to EPA
- ✓ EPA's pivot to the residential soil remedy advances Town's goal of expeditious, complete cleanup and minimization of public health risk
- ✓ EPA's commitments made in November 2023, confirmed in February 2024, and acted on in March-April 2024 are a direct result of Town's implemented Superfund strategy
- ✓ Essential to Town's achievements with EPA have been ...
 - Town assertion of its land use authority
 - Town holding EPA accountable for its work