



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

SUBJECT: Request for Funding, 12-Month and \$2 Million Exemptions for a Removal Action at the Erie Coke Site, Erie, Pennsylvania

FROM: Christopher Guzzetti, On-Scene Coordinator Francis Burns
Western Response Section(3SD32) Digitally signed by Francis Burns
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TO: Paul Leonard, Director
Superfund and Emergency Management Division (3SD00)

I. PURPOSE

The purpose of this Action Memorandum is to request and document approval of a time-critical Removal Action for the Erie Coke Site (Site) (EPA site ID No. F313), located at 925 E. Bay Drive, Erie, Pennsylvania. The Site consists largely of an abandoned coke manufacturing facility (Facility) located along Lake Erie. Removal Site Evaluation activities were performed on July 28, 2020 in accordance with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 C.F.R. Part 300. The Removal Site Evaluation documented a threat to public health or welfare or the environment due to large quantities of hazardous substances, pollutants, and contaminants still remaining at the Site in tanks, piping, drums, totes and other containers. Based upon information obtained from the Removal Site Evaluation and a review of that information by the On-Scene Coordinator (OSC), a Removal Action is necessary to mitigate threats posed by the release and/or substantial threat of release of hazardous substances from the Site and to protect public health, welfare, and/or the environment.

To mitigate the threat, Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. §§ 9601, et seq., funding in the amount of \$5,928,474 is requested of which \$5,054,776 is from the Regional Allowance. Due to information obtained during the Removal Site Evaluation and the volume of hazardous substances, pollutants, and contaminants still remaining on-Site, an extension to the 12-Month Statutory Limit and exemption from the \$2 Million Statutory Limit is being requested.

II. SITE DESCRIPTION AND BACKGROUND

A. Site Description

1. Removal Site Evaluation

An industrial manufacturing facility operated at the Site since approximately 1833. From 1925 to 1987, various owners operated a foundry coke production facility (Facility) at the Site that processed coal into coke for use in the steel industry. In 1987, the current owner acquired the Site and began operating the Facility, which contained 58 coke ovens, under the name Erie Coke Corporation (Erie Coke).

The Facility has had a long history of violations under Pennsylvania environmental laws, including the Air Pollution Control Act, the Solid Waste Management Act, and the Clean Streams Law, as well as Federal environmental laws and regulations. These violations resulted in, among other things, repeated neighborhood complaints over air quality; the issuance by the Pennsylvania Department of Environmental Protection (PADEP) to Facility owners of numerous Notices of Violations, penalty assessments, and permit denials, and the negotiation and entry of Consent Decrees and Administrative Orders requiring Facility owners to address Facility conditions. In December 2019, Erie Coke ceased operations and closed the Facility. Subsequently, PADEP directed Erie Coke to address all regulatory issues associated with closure, including removal of all waste and wastewaters from the Site; however, only one million dollars was set aside to perform these tasks, which primarily focused on wastewater disposal and generating a materials list that was shared with EPA. On May 19, 2020, the PADEP requested assistance from EPA to conduct a Removal Site Evaluation and determine if the Site meets the threshold criteria for an EPA Removal Action. On July 28, 2020, three OSCs inspected the Facility and found that the Site contains, in part, office buildings, laboratory, coke ovens, by-products process areas, bulk tank storage areas, a boiler house, other supporting structures, and a large coal yard.

According to the materials list provided to EPA and observations made by the OSC during the Removal Site Evaluation, there are approximately 25 tanks (capacities ranging from 500 to 400,000 gallons), 5,000 feet of piping, 100 drums, 50 totes and several other containers throughout the Site.

Some of the tanks are known to contain coal tar, which typically contains semi-volatile organic compounds (SVOCs), Polycyclic Aromatic Hydrocarbons (PAHs) and other hazardous substances. A former Erie Coke employee (who was available during the Removal Site Evaluation) indicated that wastewater tanks contain mercury-contaminated water. Other tanks are labeled “weak ammonia liquor,” which is ammonium hydroxide and deionized water but may also contain benzene, ethyl benzene, xylene, and toluene.

According to the materials list, there are approximately 5,000 feet of process piping throughout the Site, and roughly 3,800 feet is wrapped in asbestos. Some of the process piping is likely to be full of the coal tar type material from the by-products operations. Iron sulfide is expected to

be present in other process lines and vessels that contained the coke oven gases. Iron sulfide is a pyrophoric material which poses a significant threat of fire. Due to the pyrophoric properties of iron sulfide, it meets the Resource Conservation and Recovery Act (RCRA) characteristic of ignitability as set forth at 30 C.F.R. § 261.21, and is therefore a designated CERCLA hazardous substance. These process lines and vessels may also contain flammable and combustible organic compounds from the coke manufacturing process. As the weather gets colder, there is potential for these pipes to freeze and burst causing releases to the environment. Some of the process piping, inclusive of asbestos wrapped piping, will be subject to response operations in order to address Site threats.

Many of the other containers are labeled corrosive, flammable and caustic and there are several transformers scattered throughout the Facility which may contain polychlorinated biphenyls (PCBs).

2. Physical Location/Site Characteristics

The Erie Coke Site is located along Lake Erie at the foot of East Avenue in the City of Erie, Erie County, PA. Erie Coke owns several parcels of land totaling approximately 183 acres, of which the operational Site area is approximately 68 acres. The Site is bordered to the north by Lake Erie and Lampe Marina, to the east by East Avenue Boat Launch, to the south by a residential area and the Barber National Institute, and to the west by the City of Erie wastewater treatment plant and downtown Erie, which is located within a designated Environmental Justice Area.

3. Release or threatened release into the environment of a hazardous substance, or pollutant, or contaminant

As listed above, there are several tanks, totes, drums, and piping that, according to available labels and information provided on the materials lists, contain hazardous substances, pollutants and contaminants, including K-listed hazardous wastes, PCBs, mercury, sulfuric acid, solvents, corrosive liquids such as “weak ammonia liquor” and asbestos. The hazardous substances are contained in tanks, totes, drums and piping that either completely lack secondary containment; lack sufficient secondary containment, or are stored in containers that are compromised, degraded, open or are currently leaking. Since the Site is located along Lake Erie, weather will play a significant role in the degradation of storage containers identified above and the absence of an on-Site stormwater control system may contribute to a catastrophic release to the environment. Piping that contains pyrophoric material poses a significant threat of fire. All of these conditions increase the threat of a release that would be harmful to the health and welfare of the nearby residents, workers in the surrounding businesses and Lake Erie itself.

4. National Priorities List

The Site is not on the National Priorities List (NPL).

B. Other Actions to Date

1. Previous actions

PADEP directed Erie Coke to address all regulatory issues associated with closure of the Facility, including removal of all waste and wastewaters from the Site; however, only one million dollars were set aside to perform these tasks, which primarily focused on wastewater disposal and generating a materials list that was shared with EPA. Several thousand gallons of wastewater in open top tanks still remain on-Site.

2. Current actions

A private company is currently on-Site removing several tons of raw materials (coal) that it supplied to Erie Coke prior to the Facility closure. The agreement to remove these materials was made between the private company and Erie Coke with approval from PADEP. This private company has also expressed interest in purchasing some or all of the property owned by Erie Coke, and has had environmental and demolition contractors provide estimates on mitigating hazardous substances and demolishing the structures. These estimates were \$4,751,396.48 (mitigating hazardous substances) and \$4,500,000 (asbestos removal and demolishing structures) for a total of \$9,251,396.48, so the private company decided that it would not be in its best interest to purchase the property.

C. State and Local Authorities' Roles

On May 19, 2020, PADEP requested EPA assistance in responding to conditions at the Site. The OSC will continue to coordinate with PADEP and local authorities.

III. THREATS TO PUBLIC HEALTH OR WELFARE OR THE ENVIRONMENT, AND STATUTORY AND REGULATORY AUTHORITIES

Section 300.415 of the NCP, 40 C.F.R. § 300.415, lists the factors to be considered in determining the appropriateness of a Removal Action. Paragraphs (b)(2)(i), (iii), (v), (vi) and (vii) of Section 300.415 directly apply to the conditions at the Site.

300.415 (b) (2) (i) “Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants”

The hazardous substances present at the Site include K-listed hazardous wastes, PCBs, mercury, sulfuric acid, solvents, corrosive liquids such as “weak ammonia liquor” and asbestos, among other mixtures of hazardous substances. Extensive residential areas are located within several

hundred feet south and southwest of the Site and the Site is easily accessible to potential trespassers.

Release of hazardous substances to the environment would cause harm to adjacent communities and to Lake Erie. PCBs and mercury are particularly damaging to the aquatic ecosystems and may cause harm to humans through the food chain. Contact with corrosive liquids will cause immediate harm and may cause the destruction of skin tissue among other injuries. Friable asbestos is of concern because chronic inhalation exposure to asbestos fibers suspended in air can result in lung diseases such as asbestosis, mesothelioma and lung cancer.

300.415 (b) (2) (iii) “Hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage containers, that may pose a threat of release”

Numerous hazardous substances remain at the Site such as mercury, lead, ammonia liquor and PCBs. The waste materials located on-Site include listed hazardous wastes such as K087 (decanter tank tar sludge from coking operations), K141 (process residues from the recovery of coal tar), and K142 (tar storage tank residues from the production of coke from coal or from the recovery of coke by-products produced from coal). The hazardous substances are contained in tanks, totes, drums and piping that lack secondary containment, lack sufficient secondary containment, or are stored in containers that are compromised, degraded, open, or leaking. Given that the Site is located on the banks of Lake Erie, weather will play a significant role in the further degradation of such storage containers posing a potential for catastrophic release to the environment.

300.415 (b) (2) (v) “Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released”

Erie Coke ceased operations in December 2019 and closed the Facility. Normal weather conditions on Lake Erie, the lack of containment or proper secondary containment for hazardous substances, as well as issues with waste storage as mentioned above, and the absence of an on-Site stormwater control system, may contribute to a catastrophic release to the environment. Asbestos is present and has become impacted by wind and precipitation. Further weathering and degradation of asbestos may cause the asbestos to become airborne and lead to a release of hazardous substances into the community.

300.415 (b) (2) (vi) “Threat of fire or explosion”

Flammable liquids contained in bulk storage tanks pose a threat of fire and explosion should they encounter an ignition source. Additionally, potentially pyrophoric hazardous substances remain in piping at the Site following an incomplete purging of the system prior to shut down of the Facility.

300.415 (b) (2) (vii) “The availability of other appropriate federal or state response mechanisms to respond to the release”

Erie Coke and PADEP have indicated that they do not have the resources to fund response actions. On May 19, 2020, PADEP officially requested EPA assistance with the Erie Coke Site. On July 28, 2020, after the Removal Site Evaluation, EPA concluded that the site met the criteria for a removal action and PADEP agreed that EPA initiate a removal action.

IV. EXEMPTION FROM STATUTORY LIMITS

Based upon information obtained by EPA as a result of the Removal Site Evaluation, as described above, an exemption from the 12-month and \$2 million limit for a response action is requested to fully implement the proposed actions described below to mitigate the immediate threats to public health, welfare, and the environment. Pursuant to EPA Delegation 14-2 Section 2.d. (dated 4/15/19), the Regional Administrator may delegate the authority for CERCLA removal actions that meet the requirements of an emergency waiver as set forth in CERCLA § 104(c)(1)(A), 42 U.S.C. § 9604(c)(1)(A), subject to such approval by the Assistant Administrator for the Office of Land and Emergency Management, as may be required, to the Director, Superfund and Emergency Management Division.

Conditions at the Site meet the requirements of the emergency exemption as described below.

- (i) *Continued response actions are immediately required to prevent, limit, or mitigate an emergency:*

The hazardous substances on-Site that are contained in tanks, totes, drums and piping are either completely lacking secondary containment, lack sufficient secondary containment or are stored in containers that are compromised, degraded, open or leaking.

- (ii) *There is an immediate risk to public health, welfare, or the environment:*

Since the Site is located along Lake Erie, weather will play a significant role in the degradation of storage containers identified above and the absence of an on-Site stormwater control system may contribute to a catastrophic release that would be harmful to the health and welfare of the nearby residents, workers in the surrounding businesses, and Lake Erie itself.

- (iii) *Such assistance will not otherwise be provided on a timely basis*

Additional resources are not available from potentially responsible parties, PADEP, local or other federal agencies.

This request satisfies the following exemption criteria as set forth in CERCLA § 104(c)(1)(A), 42 U.S.C. § 9604(c)(1)(A), and § 300.415(b)(5)(i) of the NCP, 40 C.F.R. § 300.415(b)(5)(i).

V. ENDANGERMENT DETERMINATION

Based upon information gathered during the Removal Site Evaluation for the Site, as described above, the actual or threatened releases of hazardous substances from this Site may present an imminent and substantial endangerment to public health, welfare or the environment.

VI. PROPOSED ACTIONS AND COSTS

The proposed action is intended to mitigate the threat posed to the public health and welfare due to the threatened release of hazardous substances from the Site. EPA's actions will initially prioritize the hazardous substances remaining tanks, containers and piping posing the greatest threat to public health, welfare, and the environment. EPA's first priority will be the sampling, staging and disposal of containers that meet the criteria for RCRA hazardous waste and/or PCB waste. The next step will be to determine how extensive the historic impacts of the Facility's environmental contamination have been to the Site. Many factors of uncertainty exist for the Site. Until the accessible waste materials are safely stored, staged and disposed of off-Site, a thorough investigation of the remaining areas cannot be fully completed.

A. Proposed Actions

1. Description of Proposed Actions

- a. Provide security to limit access to the Site and prevent trespassers from contacting hazardous substances, pollutants and contaminants; such actions may include security guards, locks, chains, and other related measures;
- b. Characterize the contents of drums, totes, tanks, piping and other containers previously identified by the materials list and Site survey, including K-listed hazardous wastes, PCBs, mercury, sulfuric acid, solvents, corrosive liquids such as "weak ammonia liquor";
- c. In work areas, tanks, and piping subject to response actions, sample to determine presence/location of asbestos or Asbestos Containing Materials (ACM);
- d. In work areas, tanks, and piping subject to response actions, remove and prepare for off-site disposal friable asbestos and ACM;
- e. Remove and prepare for off-site disposal hazardous substances found in drums, totes, tanks, piping and other containers at the Site; and
- f. Dispose off-site, in accordance with CERCLA § 121(d)(3) and 40 C.F.R. § 300.440, asbestos, PCBs, ACM, and other hazardous substances removed pursuant to (d) and (e) above.

2. Contribution to remedial performance

The actions proposed will contribute to any future remedial actions that may need to be necessary at the Site.

3. Compliance with ARARs

The proposed Removal Action will comply with Federal and State applicable or relevant and appropriate environmental regulations (ARARs) to the extent practicable considering the exigencies of the situation. The OSC formally requested State ARARs from PADEP in an email dated August 12, 2020. On August 14, 2020, PADEP identified the applicable, relevant and appropriate regulations for this action, which are included in the Administrative Record. The OSC and PADEP will continue to identify and evaluate ARARs as Site work proceeds. All work will be completed in coordination with the State and local authorities.

B. Project Schedule

Implementation of the proposed scope of work is expected to take more than 12 months to complete.

C. Estimated Costs

As sampling and Site assessment proceeds, a more thorough evaluation of the amount of hazardous substances and threats and pollutants and contaminants presented can be accomplished. The proposed distribution of funding is as follows:

Extramural Costs	Ceiling
Regional Allowance Costs (This cost category includes estimates for ERRS contractors, subcontractors, letter contracts, orders for services, notices to proceed, alternative technology contracts, and inter-agency agreements with other Federal Agencies)	\$5,054,776
Other Extramural Costs Not Funded from the Regional Allowance (START Contractor, Total CLP)	\$727,698
Contingency	\$146,000
TOTAL REMOVAL PROJECT CEILING	\$5,928,474

VII. EXPECTED CHANGE IN SITUATION SHOULD ACTION BE DELAYED OR NOT TAKEN

If a removal action is not taken or is significantly delayed, the threatened release of hazardous substances into the environment (including the surrounding community) will continue and an actual release may occur. The Facility will continue to fall into further disrepair as the property owner is unable to mitigate or secure the Facility property further.

VIII. OUTSTANDING POLICY ISSUES

There are no outstanding policy issues related to the proposed Removal Actions at this Site.

IX. ENFORCEMENT

See the attached Confidential Enforcement Addendum.

The total EPA costs for this Removal Action based upon full-cost accounting practices that will be eligible for cost recovery are estimated to be \$10,284,650.¹

Direct Extramural Costs	\$5,928,474
Direct Intramural Costs	<u>\$ 160,000</u>
Total Direct Costs	\$6,088,474
Indirect Cost (68.92% x Direct Costs)	\$ 4,196,176
Total Costs (Direct and Indirect)	\$10,284,650

X. RECOMMENDATION

This decision document represents the proposed Removal Action for the Erie Coke Site, developed in accordance with CERCLA, as amended, and is not inconsistent with the NCP. Because conditions at the Site meet the criteria in Section 300.415(b) of the NCP for a removal action, I recommend your approval of the proposed Removal Action.

¹Direct Costs include direct extramural costs and direct intramural costs. Indirect costs are calculated based on an estimated indirect cost rate expressed as a percentage of site-specific direct costs, consistent with the full cost accounting methodology effective October 2, 2000. These estimates do not include pre-judgment interest, do not take into account other enforcement costs, including Department of Justice costs, and may be adjusted during the course of a removal action. The estimates are for illustrative purposes only and their use is not intended to create any rights for responsible parties. Neither the lack of a total cost estimate nor deviation of actual total costs from this estimate will affect the United States' right to cost recovery.

By signing this Action Memorandum, you are also hereby establishing the documents listed in Attachment C as the Administrative Record supporting the selection of the time-critical Removal Action identified in this document pursuant to Section 113 (k) of CERCLA, 42 U.S.C § 9613 (k), and EPA Delegation 14-22.

APPROVED: PAUL LEONARD Digitally signed by PAUL LEONARD
Date: 2020.09.10 12:59:07 -04'00' DATE: _____

Paul Leonard, Director
Superfund and Emergency Management Division

Attachments:

- A. Confidential Enforcement Addendum
- B. Administrative Record Index