



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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February 24, 2022

CERCLA-08-2022-0004

Sent via electronic mail

Ms. Stephanie Talbert
EPA Neutral Official
Office of Regional Counsel
U.S. Environmental Protection Agency Region 8
R8_Hearing_Clerk@epa.gov

RE: Colorado Smelter Superfund Site, Pueblo, Colorado
Superfund Lien – EPA Response to Starr Response

Dear Ms. Talbert:

On February 22, 2022, John Starr and the EPA participated in an appearance before yourself, the neutral EPA official, regarding EPA's intent to perfect a federal Superfund lien on Mr. Starr's property that is located within the Colorado Smelter Superfund Site. Please find attached EPA Region 8's written Response to John Starr's response dated February 7, 2022.

If you have any questions, please contact me by phone at (303)312-6839 or by email at Rae.Sarah@epa.gov.

Sincerely,

Sarah Rae
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency Region 8

cc: Christopher Thompson, EPA
Andrea Madigan, EPA
Christina Baum, EPA
Sabrina Forrest, EPA
John Starr

Colorado Smelter Superfund Site
Superfund Lien – John and Mary Starr
EPA Response

I. CERCLA Remedial Action at the Colorado Smelter Superfund Site

The parties disagree whether the property is subject to remedial action under CERCLA. The Starrs claim that sometime after they purchased the property (maybe 2010), the state did some soil testing and found no elevated levels of lead. However, this is not accurate. CDPHE conducted a preliminary assessment in 2008, which concluded that emissions from the Colorado Smelter smokestacks resulted in widespread contamination of soils with heavy metals (including lead, cadmium, arsenic, zinc). This report is already included in the Lien Filing Record. Since listing the site on the National Priorities List in 2014, EPA has sampled surface soil, surface water, sediment, and pore water in OU2, including the Starrs' parcels. Elevated levels of heavy metals, including lead and arsenic, have been identified within all media sampled. With regard to lead, in 2015 EPA used x-ray fluorescence spectrometry to sample areas of the OU2 slag pile, which revealed lead levels ranging from 1,290ppm to 13,300ppm, which exceeds EPA's preliminary lead screening level for OU2 of 800ppm. EPA previously provided John Starr a map of EPA's OU2 soil sampling that shows elevated levels of heavy metals. This map is included as Appendix E to this Response.

II. All Appropriate Inquiry

a. EPA believes that the information the Starrs have provided is not sufficient to prove that AAI was performed in 1984.

i. Obviousness of the presence or likely presence of contamination at the property

EPA believes that a reasonable person would have seen the slag pile upon visiting the property and would have inquired about the origin of the slag and whether the slag was contaminated. As explained in EPA's Response dated February 3, 2022, the slag pile is approximately 700,000 square feet and is as high as 30 feet in some places and is made up of dark brown/black, molten-like material.

ii. Information was reasonably ascertainable prior to the Starr's acquisition of the parcel in 1984

As explained in EPA's Response dated February 3, 2022, Newspaper articles dating back to 1900 that talk about the Colorado Smelter's operations and the slag pile were reasonably ascertainable in 1984. The Starrs also could have conducted a title search, which would have revealed the previous ownership history of the property, including information that the property was previously owned by a smelter company. At the February 22, 2022 appearance, Mr. Starr stated that he has hired a title insurance company when purchasing the parcels. EPA believes that Mr. Starr likely would have had access to a title search via the title insurance company. Additionally, the Starrs could have contacted an environmental consultant to inquire about the smelter slag and whether slag from a lead and silver smelter was likely contaminated.

iii. In the 1970s information about the health impacts from lead exposure were commonly known

In the 1970s there were national discussions about the human health risks associated with lead exposure. For example, lead was being phased out of gasoline starting in 1975 and lead was banned in paint in 1978.

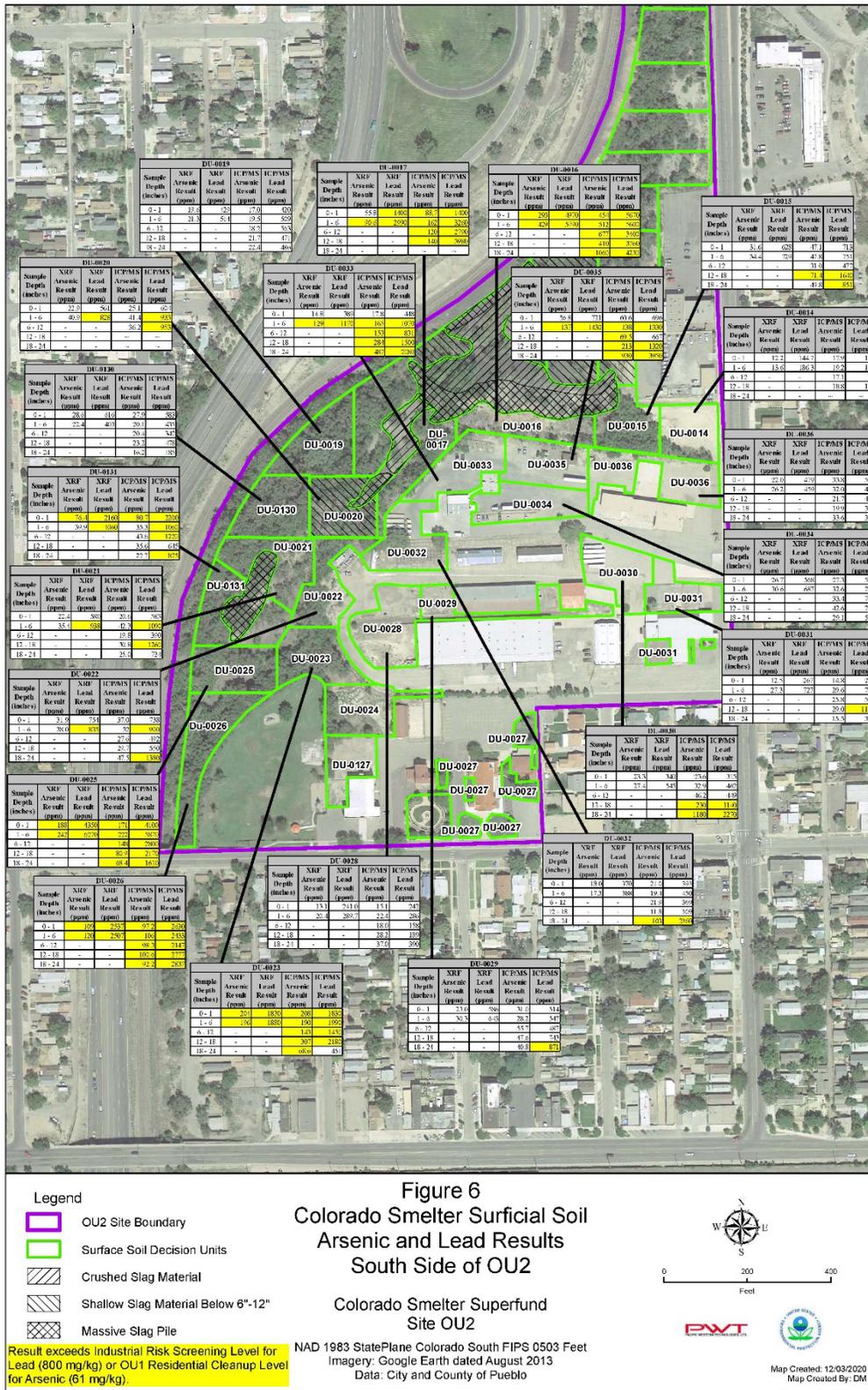
iv. Mr. Starr had specialized knowledge about slag

In his Response, Mr. Starr stated that he previously worked at the nearby CF&I steel mill, and that crushed slag can be purchased at the steel mill for use in driveways and parking lots. At the February 22, 2022 appearance, Mr. Starr further explained that he assumed the OU2 slag pile was the same as slag CF&I slag. However, EPA believes that based on Mr. Starr's experience working at the steel mill, Mr. Starr would have known that slag is a waste product and that not all slag is the same. Slag composition is dependent on what feedstock is used – said more simply, what comes out depends on what goes in. The Colorado Smelter was a silver and lead smelter, whereas the CF&I facility is a steel mill. The slag generated by these facilities would have different compositions based on the different feedstocks used at a lead and silver smelter versus a steel mill. The EPA also believes that Mr Starr would have been able to see the visible differences between the two slag materials. As explained above, the OU2 slag pile is dark brown/black, and molten like, whereas the crushed slag from the steel mill is much lighter in color (light grey) and has a more porous texture. Photos of the crushed slag that is sold at the CF&I steel mill are attached to this Response as Appendix F. Lastly, the EPA believes that Mr. Starr, as an employee of the steel mill, had easy access to CF&I personnel and could have inquired about the OU2 slag pile.

b. EPA believes that the information that the Starrs have provided is not sufficient to prove compliance with the AAI Rule for the parcels acquired in 2007 and 2016.

Had the Starrs reviewed the historical information about the property and any reasonably ascertainable information about the property, as required by the AAI Rule, they would have discovered that the property was contaminated. For example, in 2007 and 2016, the Starrs could have reached out to an environmental consultant, EPA, or the Colorado Department of Public Health and Environment (CDPHE) to inquire about the slag pile prior to acquiring the parcels.

Appendix E: Map of OU2 Soil Sampling Locations and Results



**Appendix F: Photos of Crushed Slag
Sold by the CF&I Steel Mill**



CERTIFICATE OF SERVICE

The undersigned certifies that the attached **RESPONSE** in the matter of **751 South Santa Fe Avenue, City of Pueblo, Colorado; DOCKET NO.: CERCLA-08-2022-0004** was filed with the Regional Hearing Clerk on February 24, 2022.

Further, the undersigned certifies that a true and correct copy of the documents were sent via certified receipt email on February 24, 2022, to:

Respondents

John and Mary Starr
Email: jfstarr@icloud.com

February 24, 2022

Sarah Rae
Senior Assistant Regional Counsel
EPA R8, ORC