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**Transcript of February 24, 2022, Hearing Regarding 1000 South Santa Fe Avenue**

**CERCLA-08-2022-0003**

Received by  
EPA Region VIII  
Hearing Clerk

Attendees:

Stephanie Talbert – Neutral Official  
Katherin Hall – Regional Judicial Officer  
Kate Tribbett – Regional Hearing Clerk  
Dan Brown – Respondent  
Connie King – Respondent Attorney  
Brandice Eslinger – Respondent Consultant  
Sarah Rae – EPA Attorney  
Sabrina Forrest – EPA  
Christina Baum – EPA  
Andrea Madigan – EPA  
Chris Thompson – EPA

1  
2 00:00:32.420 --> 00:00:37.340  
3 Talbert, Stephanie  
4 So we can go ahead and get started Sarah are you expecting anyone else to join.  
5 00:00:38.790 --> 00:00:39.000  
6 Rae, Sarah  
7 No. I'm looking at our list right now and everyone from the EPA site is here. So when we're ready. I can  
8 do the EPA introductions.  
9 00:00:46.270 --> 00:00:50.300  
10 Talbert, Stephanie  
11 OK sounds good, and you're not waiting for anyone else.  
12 00:00:51.870 --> 00:00:53.010  
13 Connie King  
14 Correct we're all here.  
15 00:00:53.850 --> 00:01:01.910  
16 Talbert, Stephanie  
17 Great OK, so we're here today to discuss whether EPA has a reasonable basis to perfect a lien on 1045  
18 through 1049 and 1103 Santa Fe Avenue in Pueblo, Colorado. OK, I will be recording this proceeding and  
19 we will generate a transcript this time and review it for any errors and I will give the parties time to  
20 review as well. Please let me know, though, if you have any objection to that process.  
21 00:01:32.100 --> 00:01:33.460  
22 Connie King  
23 We don't have any objection.

1 00:01:34.310 --> 00:01:39.400  
2 Talbert, Stephanie  
3 Great thank you. OK go ahead and get started on introductions, then Sarah.

4 00:01:42.180 --> 00:01:53.350  
5 Rae, Sarah  
6 Sure, I'm so I'm Sarah Rae. I'm the site attorney for the Colorado Smelter site. I also have Andrea  
7 Madigan with me, who's my immediate supervisor. She is the CERCLA section chief. I also have Christina  
8 Baum and Sabrina Forrest, who are both remedial project managers for the Colorado Smelter Superfund  
9 site. And we also have Andrew Evans, who's a law clerk in our Office of Regional Counsel this semester.

10 00:02:07.970 --> 00:02:08.630  
11 Talbert, Stephanie  
12 Thank you. Connie?

13 00:02:12.480 --> 00:02:16.120  
14 Connie King  
15 I'm Connie King. I'm representing Cecil Brown. We also have Dan Brown, who's the son of Cecil Brown.  
16 Dan, will Cecil be joining us?

17 00:02:30.320 --> 00:02:42.210  
18 Dan Brown  
19 Sorry I don't know. He was down in Pueblo today and he wasn't sure when he was going to be able to  
20 get back. So he just said go ahead without him. But he may show up some part time during the  
21 proceeding.

22 00:02:43.760 --> 00:02:55.130  
23 Connie King  
24 OK and then we also have Brandice Eslinger. Brandice is Cecil Brown's consulting engineer, All-Phase  
25 Environmental.

26 00:02:56.950 --> 00:02:57.980  
27 Brandice Eslinger  
28 Hi thank you Connie.

29 00:03:00.060 --> 00:03:00.850  
30 Talbert, Stephanie  
31 Thank you. And my name is Stephanie Talbert. I sometimes serve as the backup regional judicial officer  
32 for Katherin Hall, who is Regional Judicial Officer. And I am going to be the neutral for this proceeding  
33 today and Katherin is also on the line as well as Kate Tribbett, who is the hearing officer. I mean hearing  
34 clerk. So with that, we can go ahead and get started. I did want to ask, though before we dive into the  
35 issues regarding the basis for the lien, whether you have discussed settlement. I think when we last  
36 spoke you were in the process of talking settlement. But I gather that was not successful?

37 00:03:54.450 --> 00:03:59.900  
38 Connie King  
39 That's correct, we had a discussion, but we didn't reach an agreement.

1 00:03:54.590 --> 00:03:54.930

2 Rae, Sarah

3 Correct.

4 00:04:00.750 --> 00:04:01.300

5 Talbert, Stephanie

6 OK. Alright, well, I will get started by reading an opening statement about this proceeding and then go  
7 over some questions I have for each of you, and also give you each a chance to present any material that  
8 you would like to present. So, first of all, this proceeding is informal. It's not bound by any rules of  
9 evidence or provisions of the Administrative Procedure Act. Neither EPA nor the property owner waives  
10 any claims or defenses by the conduct of the meeting or the outcome. The sole issue at the meeting is  
11 whether EPA has or had, did you perfect the lien, Sarah?

12 00:04:52.460 --> 00:05:02.200

13 Rae, Sarah

14 So, we have mailed it, as of yesterday, down to the recorder's office. I think it's going to take a few days  
15 to get to their office and they're going to record it so, not yet, but it is in the process.

16 00:05:02.600 --> 00:05:10.500

17 Talbert, Stephanie

18 OK, so the sole issue at the meeting is whether EPA has or had in the case of a post-filing meeting, a  
19 reasonable basis to believe that the statutory elements for perfecting a lien were satisfied. The meeting  
20 will not be concerned with issues not relating to the proposed perfection of the lien including, but not  
21 limited to, EPA's selection of a remedy or contents of remedy selection documents, such as records of  
22 decision or action memoranda. The neutral official, me, will make a recommended decision based on  
23 the lien filing record and any new information presented at the meeting, whether EPA has or had a  
24 reasonable basis to reflect the lien. And finally, the recommended decision is not admissible as evidence  
25 in any future proceeding.

26 So those are kind of the ground rules for today or background information about what this meeting is  
27 about. I have EPA's February 3rd, 2022 response to Mr. Brown's objection to the notice of lien filing. I  
28 also have the submission from Connie, on behalf of her clients, dated February 17, 2022, and  
29 attachment 6 through 12. Is that everything I should have from both of you?

30 00:06:36.730 --> 00:06:37.170

31 Rae, Sarah

32 Yes.

33 00:06:37.490 --> 00:06:37.990

34 Connie King

35 Yes.

36 00:06:38.590 --> 00:06:39.680

37 Talbert, Stephanie

38 OK, thank you. Would either of you like to make a statement before I dive into questions I have for each  
39 side?

1 00:06:50.420 --> 00:06:52.660  
2 Rae, Sarah  
3 No opening statement for me, Stephanie. This is Sarah.

4 00:06:55.520 --> 00:06:59.330  
5 Connie King  
6 I don't have an opening statement but happy to respond your questions.

7 00:06:59.640 --> 00:07:00.810  
8 Talbert, Stephanie  
9 Yeah, thank you. I'll first start with questions for EPA. It appears from your paper that you are not  
10 disputing elements of innocent landowner defense other than that the owners made all appropriate  
11 inquiries. And that they did not know or have reason to know about the contamination prior to  
12 purchase. Is that correct?

13 00:07:28.410 --> 00:07:28.950  
14 Rae, Sarah  
15 Correct.

16 00:07:33.340 --> 00:07:36.530  
17 Talbert, Stephanie  
18 OK and then on page 5 of your submission you say it is undisputed that the companies did not satisfy the  
19 all appropriate inquiries rule prior to acquiring the properties. Do you have any case law to support the  
20 position that the issue is whether the companies complied with the AI requirements before acquisition  
21 in 2011 and 2012? Rather than Mr. Brown 's acquisition of the properties in the early 80s, 1982 and  
22 1986?

23 00:08:12.680 --> 00:08:42.610  
24 Rae, Sarah  
25 I wasn't able to find any case law specific to this point, where there's a transfer from an individual  
26 property owner to an LLC or other corporate form that was created subsequently. I think in my response  
27 will be cited to is just more generally the Colorado state law under which LLCs are created and the  
28 protection liability protections flexibilities that are provided to LLCs under Colorado state law, but no  
29 specific case law talking about Superfund innocent landowner defense where we have this exact  
30 situation.

31 00:08:49.420 --> 00:08:54.980  
32 Talbert, Stephanie  
33 OK and do those provisions talk about protection from environmental liability?

34 00:08:56.710 --> 00:09:06.900  
35 Rae, Sarah  
36 Not that I'm aware of when I was reviewing them. It just talks about the general formation of an LLC and  
37 the type of like tax protections, and just the corporate form in general.

38 00:09:10.520 --> 00:09:18.200  
39 Talbert, Stephanie  
40 I'm wondering if you have a response to exhibits 7 and 8, mainly exhibit 7 that Connie submitted on

1 behalf of her clients. Does it matter that for the purposes of the innocent landowner defense whether or  
2 not the transfer was for consideration?

3 00:09:37.020 --> 00:10:08.150

4 Rae, Sarah

5 So the attachments, and I don't have 7 in front of me, sorry I could pull it up. I think there are multiple  
6 attachments that Connie submitted on behalf of her client to support the argument that we should just  
7 ignore the transfer that happened in 2011 and 2012 and look back to the 1980s, when the parcels were  
8 originally acquired. I think one, there's a misunderstanding of CERCLA. I think some of the statements  
9 and the attachments are saying that environmental review or environmental assessment was not  
10 triggered. Superfund doesn't require environmental assessments or review. It's really the unique  
11 circumstance where an individual may be a potentially responsible party under CERCLA, and then is  
12 seeking to avail themselves of the innocent landowner defense, where the burden then falls on the  
13 property owner to prove that they did perform all appropriate inquiry. And, also, I think the response to  
14 the statements that we should look back to the 1984 acquisition of the properties and ignore the LLC's  
15 existence as the current owners of the property. It's just contrary to law and facts. The current owner is  
16 the LLC and that's who we're looking to as the current owner of the property for potential liability under  
17 CERCLA. We're not looking at the personal assets of Cecil Brown in his individual capacity. LLCs under  
18 state law do provide that limited liability protection for their members and it just seems contrary to  
19 state law and the facts to ignore the fact that these LLCs exist and provide these benefits to the  
20 members of the LLC. That's taxed benefits liability protection. It's inappropriate to look back to 1980s  
21 when Cecil and his wife acquired the property in their individual capacity because they're no longer the  
22 current owners were not looking at them and their individual capacities as the liable party.

23 00:11:39.630 --> 00:11:47.880

24 Talbert, Stephanie

25 OK, before I move on to another topic, Connie do you want to respond to those points about the  
26 relevant time period that I should be looking at in terms of all appropriate inquiries?

27 00:11:57.530 --> 00:12:00.430

28 Connie King

29 Yes, we asked the attorney Steve Gaines to provide an explanation of why during estate planning for  
30 Cecil Brown, he transferred the properties to the LLCs and so that's why we have the letter we  
31 submitted from Steve Gaines. And I think it's clear that the attorneys that practice estate law practice in  
32 one specific area that usually has absolutely nothing to do with environmental law, just as those of us  
33 that practice environmental law rarely become familiar with the estate law in our environmental law  
34 practice. And I did searches trying to find anything I could regarding any guidance EPA might have  
35 provided in the past to estate law attorneys and I couldn't find any. Sarah commented that she couldn't  
36 find case law regarding this sort of situation. I couldn't find any EPA websites, webpages, any items or  
37 any documents that would show that EPA 's reached out to attorneys practicing estate law to give them  
38 guidance on this type of matter. And I think the situation here is important because when Cecil  
39 purchased the property in the 1980s, the all appropriate inquiries requirements did not really exist. It's  
40 just what was the common practice at that time and since he had been working at the site since the  
41 early 60s, he knew the information that anyone working on a site for that length of time would know,  
42 what's on the site? What's near the site? Basically, what a lot of people in the Pueblo area know. They  
43 see slag piles all over the place in the Pueblo area. It's not unusual. It's there, it's been there a long time.

1 And people are aware of it. But they weren't aware that it was causing a contamination concern on this  
2 particular commercial property. And the reason I submitted the aerial photograph from in the early  
3 1980s was to show how this property looks in an aerial photograph compared to the properties around  
4 it. It looks clean, well maintained. I think that's important to realize what we're talking about here.

5 00:15:45.760 --> 00:15:58.940

6 Talbert, Stephanie

7 Connie, can you tell me, or maybe Sarah could, where the large slag pile is in relation to the property on  
8 attachment 9, that aerial photograph?

9 00:16:00.640 --> 00:16:08.740

10 Rae, Sarah

11 Sure let me pull up the aerial I was going refer you to. I think attachment to EPA 's response shows the  
12 Brown parcel is adjacent to the slag pile, which is owned by John Starr. And you can see that both of  
13 these are just adjacent to one another. So, pretty close to the slag pile from where the industrial offices  
14 are on Cecil Brown's parcels. But let me pull up the aerial photo.

15 00:16:32.160 --> 00:16:34.550

16 Dan Brown

17 Stephanie can I interject just one point?

18 00:16:34.870 --> 00:16:35.380

19 Talbert, Stephanie

20 Sure.

21 00:16:36.030 --> 00:16:48.650

22 Dan Brown

23 So I mentioned that ownership didn't change. My father has been since 1982, the owner. The name  
24 changed with the LLC. Ownership has never changed.

25 00:16:54.390 --> 00:16:59.020

26 Rae, Sarah

27 So Stephanie if I could just respond. I think consistent with the argument I made previously, that  
28 contradicts EPA's argument. Just we don't accept that statement that an LLC is the listed owner of the  
29 property. There was a deed transferred and limited liability companies and companies in general can be  
30 owners of property. And in this instance, that LLCs, as I referring to them as the companies are the  
31 owners for the for the purposes of CERCLA liability. And that's who we're looking at when it comes to  
32 cost recovery.

33 00:17:33.080 --> 00:17:41.030

34 Connie King

35 I would like to make the comment that one thing I've noticed is that EPA has consistently communicated  
36 with Cecil Brown in its correspondence and these meetings because you can't communicate with an LLC.  
37 Obviously, Cecil Brown is the owner.

38 00:18:00.300 --> 00:18:01.470

39 Talbert, Stephanie

40 So, let's see here back to attachment 9.

1 00:18:07.440 --> 00:18:10.010  
2 Madigan, Andrea  
3 Could I add something real quick, Stephanie?

4 00:18:10.950 --> 00:18:13.160  
5 Talbert, Stephanie  
6 Sure, oh yes, go ahead Andrea.

7 00:18:12.690 --> 00:18:14.720  
8 Madigan, Andrea  
9 Yeah, it's not just CERCLA. It's property law and the limited liability companies hold legal title under  
10 Colorado property law, they're the entities that are going to be responsible for property taxes, for all of  
11 the responsibilities that is attached to property ownership. These LLCs don't just create themselves.  
12 There's a process where they have to be formed. They're separate entities that have a legal standing  
13 and are separate legal entities. So to just say they don't exist or that the members, the people behind  
14 these corporations, that they're the same, that's just not legally correct. There's no basis in law to  
15 support that statement that these LLCs aren't the owners of the property.

16 00:19:15.470 --> 00:19:26.290  
17 Talbert, Stephanie  
18 Thank you Andrea and are those citations to Colorado law here on page 5, is that the correct reference  
19 Sarah?

20 00:19:27.830 --> 00:19:28.350  
21 Rae, Sarah  
22 Yep.

23 00:19:27.920 --> 00:19:29.520  
24 Talbert, Stephanie  
25 Or Andrew? OK.

26 00:19:29.170 --> 00:19:29.930  
27 Rae, Sarah  
28 Yes, correct.

29 00:19:31.090 --> 00:19:31.570  
30 Talbert, Stephanie  
31 Thank you.

32 00:19:31.140 --> 00:19:38.620  
33 Rae, Sarah  
34 Then Stephanie did you want me to share my screen? I pulled up attachment 9. So I can kind of show  
35 and we see how easy this will be with the document.

36 00:19:34.440 --> 00:19:35.780  
37 Talbert, Stephanie  
38 Sure, sure.

1 00:19:42.640 --> 00:19:47.580  
2 Rae, Sarah  
3 Here we go and just let me know if you can see the attachment 9.

4 00:19:48.870 --> 00:19:50.010  
5 Talbert, Stephanie  
6 Yes, I can see it.

7 00:19:49.590 --> 00:19:49.990  
8 Connie King  
9 Yes.

10 00:19:50.230 --> 00:20:01.060  
11 Rae, Sarah  
12 Right so I believe, and correct me if I'm wrong, Dan or Connie, the green area is the parcels that are  
13 owned by the companies. There's 2 parcels that you can see here. This is one of the parcels that's owned  
14 by their neighbor, John Starr, and this is the extent that we know of. Currently have this slag pile extends  
15 pretty much where the trees start at the bottom and extends pretty far north that goes beyond Cecil  
16 Brown's, the company's parcels.

17 00:20:20.240 --> 00:20:22.080  
18 Brandice Eslinger  
19 Can I interject something real quick?

20 00:20:22.970 --> 00:20:42.420  
21 Brandice Eslinger  
22 I provided that the client, this is Brandice, with all these. I do want to say, Sarah, that that is not a legal  
23 boundary, that is not a survey boundary. That's an approximation based on the parcels from the  
24 assessor. And what happens when you order these through the 3rd party, which we use AERIS for our  
25 database reports.

26 00:20:23.210 --> 00:20:23.450  
27 Talbert, Stephanie  
28 Sure.

29 00:20:43.200 --> 00:20:51.420  
30 Brandice Eslinger  
31 They kind of try and put it on there for you so, full disclosure, that is not a legal survey. OK.

32 00:20:52.260 --> 00:20:54.890  
33 Rae, Sarah  
34 So is that the green line that you're referring to, Brandice?

35 00:20:54.880 --> 00:20:56.060  
36 Brandice Eslinger  
37 Yes, yeah.

1 00:20:55.660 --> 00:20:58.180  
2 Rae, Sarah  
3 OK, that's helpful. Thank you for making that point.

4 00:20:59.000 --> 00:20:59.320  
5 Brandice Eslinger  
6 Yeah.

7 00:21:02.020 --> 00:21:02.530  
8 Talbert, Stephanie  
9 So.

10 00:21:02.030 --> 00:21:03.740  
11 Rae, Sarah  
12 And for my, I'm sorry go ahead.

13 00:21:03.950 --> 00:21:07.180  
14 Talbert, Stephanie  
15 Well, I was just going to ask if this picture was taken in 1983, is that correct? So, at that time, the slag  
16 pile was not present?

17 00:21:20.300 --> 00:21:23.260  
18 Rae, Sarah  
19 No it was present Stephanie.

20 00:21:20.320 --> 00:21:20.810  
21 Talbert, Stephanie  
22 Is that?

23 00:21:20.440 --> 00:21:20.830  
24 Connie King  
25 Uh.

26 00:21:22.540 --> 00:21:27.430  
27 Connie King  
28 It's been there for over 100 years, so it was present in 1983.

29 00:21:27.150 --> 00:21:30.700  
30 Talbert, Stephanie  
31 OK so the trees, though, cover it.

32 00:21:32.240 --> 00:21:35.470  
33 Talbert, Stephanie  
34 I'm not sure what I'm looking at in this picture obviously.

35 00:21:36.240 --> 00:22:04.940  
36 Brandice Eslinger  
37 Actually, it's to the north. And so what happens when you're, it's hard to see it from here, but there's a  
38 slope to the property. So when you are standing on the northern boundary and Cecil has since put in a

1 fence now, so it's even more discernible. But when you're standing on the northern and let's say the  
2 northwest boundary, the slag pile actually drops off and it goes down hill, if you will. I can't think of a  
3 better term than that, but it goes downhill. So if you're looking at the map, it's hard to tell because it's  
4 not 3 dimensional. We're looking at it 2 dimensional but, and it's kind of along the green line, to be  
5 honest. You could actually, if you edit the PDF, you could click on that. Remove it if you wanted to, but it  
6 tails downward if you will.

7 00:22:30.260 --> 00:22:31.600

8 Talbert, Stephanie

9 OK thanks.

10 00:22:30.650 --> 00:22:53.850

11 Rae, Sarah

12 Stephanie, if it's helpful, I can. Do you want me to pull up appendix A which shows the like who owns  
13 the property? And also would turn it over to possibly to Christina Baum? Both her and Sabrina have  
14 actually been down to the site. I have not been down to Pueblo, and they can explain the extent of this  
15 slag and what you can see from the John Starr parcels and the Cecil Brown parcels.

16 00:22:54.310 --> 00:23:06.750

17 Talbert, Stephanie

18 Sure, that would be helpful and basically what I'm getting at is how obvious would it have been to Cecil  
19 Brown when he purchased the property back in the early 1980s.

20 00:23:09.260 --> 00:23:22.220

21 Rae, Sarah

22 Should Christina or Sabrina, either of you, I think I pulled up attachment A. That is the map that shows  
23 the extent of the slag pile and then who owns each of the parcels. So if either of you has anything you  
24 want to add about this map, please feel free.

25 00:23:24.510 --> 00:23:33.470

26 Baum, Christina (she/her/hers)

27 Yeah, I also have another map that I can show that provides a historic overlay of where the smelter was  
28 located in comparison to the properties.

29 00:23:35.950 --> 00:23:38.050

30 Rae, Sarah

31 Yeah, I'll stop sharing and you could share, Christina.

32 00:23:38.820 --> 00:23:39.350

33 Baum, Christina (she/her/hers)

34 OK. So yeah, again this shows the different buildings that were present when the smelter was operating  
35 like all the ore bins and the roaster houses. And then this location is Dan Brown's property, so it's  
36 situated exactly on top of this historic operations. And, also, if you walk along this area on Dan Brown's  
37 property, there's a kind of steep area right here that if you're looking down you can see the slag pile  
38 that's located up this direction. Sabrina do you have anything to add on to that?

39 00:24:20.960 --> 00:24:36.040

40 Forrest, Sabrina

1 No, I think Brandice kind of covered it but to the northwest, where there are several railroad lines  
2 shown there and in that vegetation, there are other slag piles all throughout that vegetated area.

3 00:24:36.930 --> 00:24:37.350  
4 Baum, Christina (she/her/hers)  
5 Right.

6 00:24:38.750 --> 00:24:39.970  
7 Talbert, Stephanie  
8 OK, thank you.

9 00:24:40.680 --> 00:24:43.810  
10 Connie King  
11 So on this map that you're showing with the historic buildings from that the smelter and it's not obvious  
12 where the slag piles are, in that particular diagram.

13 00:25:01.010 --> 00:25:10.940  
14 Talbert, Stephanie  
15 I thought she said they were northwest kind of between the railroad tracks and the I think there was a  
16 road under the other side.

17 00:25:14.730 --> 00:25:15.070  
18 Connie King  
19 Yep.

20 00:25:15.740 --> 00:25:21.690  
21 Baum, Christina (she/her/hers)  
22 Yeah, I also have a more detailed map of the exact slag outline that I can share as well. Here it is. So the  
23 area in orange is the approximate location of the slag pile. So yeah, it's in this vegetated area, then  
24 travels along down this way, and right here and then this would be Dan Brown's parcels.

25 00:25:40.200 --> 00:25:41.580  
26 Talbert, Stephanie  
27 OK, thank you.

28 00:25:41.070 --> 00:25:41.460  
29 Connie King  
30 OK.

31 00:25:42.510 --> 00:25:42.790  
32 Baum, Christina (she/her/hers)  
33 Yeah.

34 00:25:44.830 --> 00:25:48.700  
35 Dan Brown  
36 Connie could you speak to what was known of slag in the 1980s?

37 00:25:53.170 --> 00:25:57.210  
38 Connie King

1 Yes, I found a publication that I included as an attachment in my most recent submittal where the  
2 people that authored the article researched previous publications about slag and slag piles and the  
3 earliest publication. When I read the article, the earliest publication that I could find was published in  
4 1997 regarding a facility in Mexico. And I thought it was significant that this is the peer reviewed  
5 scientific literature. So the first available peer reviewed literature that I could find was 1997 and that  
6 was not about anything in Colorado, that was about something in Mexico. But I thought that would be  
7 helpful when we're talking about what somebody would have seen in 1982 and 1986 time frame and  
8 what the perceived significance of seeing a slag pile would be in the 80s. No one had done any research  
9 at that point and nobody had published any articles that were peer reviewed.

10 00:27:47.890 --> 00:27:50.960

11 Talbert, Stephanie

12 Were there any other articles that weren't peer reviewed about the dangers of silver or lead slag?

13 00:28:02.030 --> 00:28:04.150

14 Connie King

15 The article that I attached references, I think, 150 articles. But the only two that were about lead and  
16 silver smelters, when I was looking for the earliest ones, were the 1997 article and then there was  
17 another one in 2009. And the article discusses various aspects of slag. It also talks a great deal about the  
18 reuse of slag. And that's another issue. The slag from the slag piles has been reused multiple places in  
19 Pueblo and outside of Pueblo. So, after the smelter shutdown over 100 years ago, people did not  
20 perceive slag piles to be a concern and they were reusing the material for railroad beds, driveways, all  
21 kinds of things.

22 00:29:23.910 --> 00:29:27.520

23 Talbert, Stephanie

24 And is that specific to lead and silver slag as opposed to some other kind.

25 00:29:28.710 --> 00:29:29.140

26 Connie King

27 It's every kind of Slag. So people were reusing the silver and lead smelters slag and they were also  
28 reusing other kinds of slag. The slag material was such that they could reuse it for things and they  
29 weren't aware of a contamination issue.

30 00:30:03.600 --> 00:30:04.320

31 Talbert, Stephanie

32 Hey, Sarah and I think Andrea has her hand up as well.

33 00:30:09.810 --> 00:30:13.300

34 Rae, Sarah

35 Sure, I'll let Andrea add something and then I would like to respond.

36 00:30:13.780 --> 00:30:44.210

37 Madigan, Andrea

38 Sure, I just wanted to point out that you know, Superfund CERCLA was passed in 1980 and it was really  
39 in response to a recognition of environmental contamination on commercial properties. You know, Love  
40 Canal, Times Beach, Elizabeth, New Jersey and so you know the concern of environmental problems at

1 properties by 1983 with was really taking hold. And the fact that this put these particular parcels that  
2 are owned by the limited liability companies where the location of the actual smelter facility, so not only  
3 is the proximity to the, you know, 30-foot slag piles important, it's also important that in acquiring the  
4 properties as far back as, you know, in 1983, prior after the passage of Superfund. Recognizing that  
5 you're buying property where there was a smelter, I think, is indeed relevant and, you know, in response  
6 to Superfund, It was very quickly in the real estate field, the idea of, my understanding what you're  
7 getting and a recognition of the broad liability provisions that owners can find themselves in when  
8 they're purchasing property. So that's what I wanted to add.

9 00:31:44.340 --> 00:31:45.180

10 Rae, Sarah

11 Thank you. Yeah.

12 00:31:47.670 --> 00:32:01.570

13 Connie King

14 I have a different perspective on it, because I worked as an environmental engineer starting in 1977 for  
15 industry from 1977 to 1989 and, yeah, Andrea is providing her view of CERCLA. And those of us that  
16 worked in industry had a different view because we worked from a different perspective. And I think it's  
17 important to realize that the way things are viewed now in 2022 are quite different from the way things  
18 were reviewed in the early 80s.

19 00:32:40.620 --> 00:33:06.420

20 Rae, Sarah

21 And Stephanie if I can just respond. I want to just first make the point that it, just reiterate EPA's  
22 position that when were the appropriate time period to look at when we're determining whether all  
23 appropriate inquiry where was performed is 2011 and 2012. As we said before, it's just not appropriate  
24 to ignore the fact that these LLCs were created and they're reaping the benefits of having the LLC.

25 00:32:40.930 --> 00:32:41.490

26 Talbert, Stephanie

27 Sarah.

28 00:33:07.460 --> 00:33:14.940

29 Rae, Sarah

30 But in the instance that we are looking back to the 1980s, I think we're prepared to also show, first, the  
31 companies haven't submitted any proof that they performed AI or all appropriate inquiry in 2011 and  
32 2012. So the EPA's position is that the innocent landowner defense would not apply if we are looking to  
33 the 1982 and 86, I believe, when Cecil acquired the parcels in his individual capacity. We also think the  
34 information that the companies were Mr. Brown have submitted is not sufficient to prove that all  
35 appropriate inquiry was performed back in the 80s. And there's multiple reasons. We believe that they  
36 didn't look into the previous ownership and property uses of the parcel. There was information that was  
37 reasonably attainable at the time about the operations of the smelter facility: that it was a silver and  
38 lead smelter and even if there weren't peer reviewed articles specifically talking about slag a waste  
39 product of a silver and lead smelter. There was enough information about its operations and the slag  
40 pile existed and the hazards of lead in the 1970s. It was becoming commonly known that lead exposure  
41 has human health risks associated with it. I believe in 1975 lead was being phased out of gasoline. In  
42 1978, they were phasing lead out of paint as well.

1 00:34:46.520 --> 00:34:47.580

2 Brandice Eslinger

3 May I add a comment.

4 00:34:48.420 --> 00:34:48.870

5 Talbert, Stephanie

6 Sure.

7 00:34:48.870 --> 00:34:49.410

8 Brandice Eslinger

9 This is Brandice. One thing that kind of strikes me that and I have done probably thousands of phase  
10 ones at this point, and all appropriate inquiry phase ones. That's it, you know it. It was mentioned that  
11 on the whole reason the Superfund came about was instances like Love Canal. And rightfully so I mean  
12 that was a dumping ground for tons of chemicals and toxic chemicals that later, and this is where I think  
13 it varies a little bit, and I think we haven't got to this point yet, is that this is an industrial property that is  
14 remaining an industrial property. It is not residential, so Love Canal came about because it was  
15 residential like they were expanding Niagara Falls and the Niagara neighborhood and building residential  
16 and EPA itself has different cleanup standards for residential versus industrial. So I want to point that  
17 out because I think in my opinion that Cecil having worked on the property and then acquiring the  
18 property in the 80s, probably, I'm guessing, felt comfortable enough with that usage, in that industrial  
19 usage and, quite frankly you know 2 or 3 years of the Superfund being around is not quite enough time  
20 for people at normal capacity, you know, normal citizens to understand. And I'll bring about this point  
21 when EPA came into Pueblo for the Superfund, people were scared. They still are and they don't  
22 understand the risks. They don't understand the arsenic and the lead. Some of them still don't think EPA  
23 has done a very good job with the outreach in the community outreach, but I'm sure Sabrina can tell  
24 you. We still have some fear facing people and some don't like the EPA. Others think it's OK, but yeah, I  
25 just, I can't express enough that I don't think that citizens everyday citizens that this isn't their job to  
26 necessarily understand these risks. And that's why they hire professionals to figure it out. That's my  
27 opinion.

28 00:37:03.720 --> 00:37:05.680

29 Rae, Sarah

30 Stephanie can I respond to that point?

31 00:37:04.120 --> 00:37:04.670

32 Talbert, Stephanie

33 Thank you. Sure

34 00:37:07.440 --> 00:37:29.480

35 Rae, Sarah

36 I just want to make a point that the CERCLA again does not require everyday citizens, every time they're  
37 transferring property to do these environmental assessments. We're looking at this specific instance,  
38 where I have an individual who has potential liability under CERCLA and they're seeking to avail  
39 themselves of the innocent landowner defense to shield themselves from liability under CERCLA and the  
40 burden. The burden is on the property owner to prove that they performed all appropriate inquiry. It's  
41 just not an automatic trigger every time an individual is purchasing property that CERCLA requires this  
42 all appropriate inquiry. And I think the argument also makes if any individual is purchasing property and

1 they're seeing this slag pile, I think EPA 's position and our response is that it was obvious. It's 700,000  
2 square feet, 30 feet high. I think Mr. Brown in their response acknowledges that in 1982, there were slag  
3 piles. Although not on his, the parcels that the company owns, but adjacent to the property. The  
4 reasonable person would have contacted or environmental consultant, looked at newspaper articles. Or  
5 done a title search to determine the prior uses of the property and an environmental consultant could  
6 have explained that lead, the lead hazards since this was a lead smelter. Lead might be found in this slag  
7 and just explain that slag isn't uniform across all industrial uses. There's a nearby steel mill that would  
8 have different slag piles than the slag that you're seeing at Operable Unit 2 of this site. I know Connie  
9 mentioned that slag being used around Pueblo and driveways, that's actually slag that's crushed and  
10 sold from the steel mill at Evraz or the CF&I facility, that's south of the Colorado Smelter Superfund site.  
11 And that slag is going to be different in characteristic than the slag that we're seeing in Operable Unit 2. I  
12 think from our pictures that we submitted in our appendices, you can see that this slag is very dark and  
13 black and, some instances, and molten like in Operable Unit 2. Whereas we have some pictures of the  
14 crushed slag that we've encountered from CF&I steel mill that's almost light gray in color and more  
15 porous. So let's just to the point that slag is not the same, it really depends on the industrial use, what  
16 feedstock is going in. It really determines the composition of what this slag would be. So a reasonable  
17 person, by seeing this big slag pile, specifically dark black molten like, has the opportunity to contact an  
18 environmental consultant to inquire about this. Is it contaminated? Does this extend under my property  
19 since the pile is just adjacent to the parcels that I'm interested in purchasing?

20 00:39:54.690 --> 00:39:56.630

21 Brandice Eslinger

22 Are you talking about EAF like, Sarah, that's used from the steel mill?

23 00:40:00.420 --> 00:40:24.830

24 Rae, Sarah

25 I'm not sure what the crushed gray one, I know they have multiple, they have EAF slag and then they  
26 also have, I guess, the lighter gray slag. I'm not sure, I'm not familiar with this steel mill process. But we  
27 do, we have encountered some of the slag that the Evraz or CF&I steel mill sells and it is lighter in color,  
28 more porous than light gray color, which looks visually distinct from the slag that we're seeing in  
29 Operable Unit 2.

30 00:40:25.840 --> 00:40:36.370

31 Brandice Eslinger

32 I'd be interested to know if it's the EAF slag just because EPA just put out a document on their webpage  
33 dated 2020 that they now believe this could be hazardous and contains byproducts such as manganese.  
34 So I think the point is that it's kind of an evolving process on what is hazardous and what isn't and  
35 admittedly EPA just put out this fact sheet in 2020 just a note.

36 00:40:55.160 --> 00:41:05.780

37 Connie King

38 Thank you, Brandice. So, I think that's an excellent example of how things are evolving and what is  
39 known now was not known in the 80s. And I think another thing that I pointed out in my most recent  
40 submittal was a Pueblo Chieftain newspaper article from December 30, 2013, and one of the comments  
41 made in the newspaper article was that EPA officials have said the purpose of the Superfund program is  
42 to complete cleanup contaminated areas at either government expense or by the responsible polluter.

1 And another comment in the article was that one of the City Councilwomen, Sandy Daff, whose District  
2 4 includes Eilers, included a list of requests from the neighborhood and said one was a guarantee that  
3 business, or homeowners, will not have to pay the cost of removing contaminated soil from their  
4 property or restoring it. You know, I think it's vital to see what EPA officials were viewed or were heard  
5 saying in 2013 versus what you're telling us now. And also that the City Council was quite concerned  
6 about what EPA might be doing and wanted some reassurance before this site was listed as a Superfund  
7 site.

8 00:42:44.800 --> 00:42:48.930

9 Madigan, Andrea

10 So I would just add that you know under CERCLA current owners, under certain circumstances, have  
11 liability and the policy behind that is your taxpayers shouldn't be paying to supplement and improve  
12 property. And really dumb, you know, the whole buyer beware is out there and to just to ensure that  
13 that that, you know, they reap the benefit of taxpayers coming in and improving the property and  
14 addressing environmental contamination. There is an enforcement discretion policy for residential  
15 property owners with the idea that you know, typically, or you know, absent extraordinary  
16 circumstances, we would not pursue current owners of residential property. But for commercial  
17 property, you know, it's, you know, the theory behind the statute and the liability scheme is that that's  
18 not right. And I get that even property owners that didn't, aren't, didn't initially cause the  
19 contamination, yeah, the idea is that you know taxpayers didn't cause it either, and how do we achieve  
20 a balance. And really, Congress set up that liability scheme. The innocent landowner exception, the  
21 Brownfields Amendment came in to allow purchasers of property to avail themselves of a defense that  
22 they know what they're getting into and comply with all appropriate inquiry. What I'm puzzled by is, you  
23 know, why didn't the LLCs just do all appropriate inquiry. You know, it would have been a very easy and  
24 it's real clear what has to be done and they just didn't do it. And the fact that maybe their estate  
25 planning lawyer in 2011, when CERCLA is, you know, these rules and these approaches are well known.  
26 EPA has fantastic websites that talk about what perspective purchasers need to do to avail themselves  
27 of these liability protections. They just didn't do it. So that you know, we're just, you know, the LLC,  
28 shouldn't reap windfall and a benefit from having taxpayers clean up that property. That's just, that's  
29 the liability scheme that the CERCLA abandoned that Congress established.

30 00:45:24.280 --> 00:45:37.930

31 Connie King

32 Well, Andrea, I think it's really important to recognize EPA's not talking about this property being  
33 cleaned up. The most EPA said is maybe a part of it that is not currently paved should be paved in the  
34 future, and that's it. So this is completely different from what you've been describing. The other thing  
35 about the LLC is this was set up by an attorney practicing estate planning, not an environmental  
36 attorney, and I think it's an example of a group of people that perhaps EPA has not made any effort to  
37 advise and educate. Because I could not find any articles or any websites or webpages where EPA has  
38 gone out and tried to explain to attorneys practicing estate planning that they should have done  
39 something like this differently.

40 00:46:30.350 --> 00:46:42.710

41 Madigan, Andrea

42 I can tell you that just this past year, I participated in a Colorado Bar event to talk about CERCLA liability  
43 and it was advertised to the real estate section of the Colorado Bar. You know, it, you know, the

1 outreach that EPA does is pretty extensive and again the web pages. You know, I don't think it's EPA's  
2 responsibility to make sure the lawyers that practice estate and property law and recommend that  
3 property be transferred fully understand the consequences and what the requirements they need to do  
4 to comply with the all appropriate inquiry role. You know if that's just that's just not reasonable to  
5 expect that that that EPA is responsible for doing that, you know, it as attorneys. We all have our  
6 obligations to stay abreast of the law and to practice in areas you know if we don't know, reach out. I  
7 can tell you that for decades. It's common in any sort of transfer or commercial property to request a  
8 phase 1, Phase 2, all appropriate inquiry. That's standard practice. These days you can't get a loan to  
9 acquire commercial property, without establishing that that you have you have undertaken that task. So  
10 that's just not persuasive and I don't think it undermines EPA 's reasonable basis to believe that that the  
11 LLCs have liability and that we should be allowed to perfect the lien.

12 00:48:04.300 --> 00:48:19.010

13 Talbert, Stephanie

14 Can I ask Connie and Dan whether you dispute that or EPA's contention that there was no all  
15 appropriate inquiries done in 2011 and 2012 when the transfer occurred.

16 00:48:21.540 --> 00:48:24.530

17 Connie King

18 No, we don't dispute that.

19 00:48:26.580 --> 00:48:27.150

20 Dan Brown

21 The point.

22 00:48:26.640 --> 00:48:27.760

23 Connie King

24 Dan do you agree?

25 00:48:28.120 --> 00:48:57.710

26 Dan Brown

27 Yeah, the point was Andrea mentioned, two words. Purchase and loan. None of those things took effect.  
28 It was simply a transfer of my mom's estate to an LLC in order to facilitate the closing of estate and the  
29 lawyer mentions in the letter that was done in order that eventual sale could happen, because, as it  
30 turns out my brother, who's the personal representative of my mom 's estate has since passed away. So  
31 we would be going through more paper transfer 8 years later and doing that. So it was simply a  
32 mechanism that allowed my dad to continue ownership, continue control, and then allow for eventual  
33 sale. There was no purchase. There was no loan. There was nothing that would trigger an all appropriate  
34 inquiry.

35 00:49:10.620 --> 00:49:40.830

36 Madigan, Andrea

37 Yeah, it has legal consequences, though Mr. Brown. It really does and there's liability protection that the  
38 LLC has. I assume that the lease agreements be 8 different commercial operations that that the LLC is  
39 leasing property to. There's consequences. There's benefits. There's tax benefits. There's liability  
40 protection and it just seems incongruous that we're going to avail ourselves of the benefits of creating  
41 these limited liability companies when it helps us and then when we don't comply with, we can't

1 establish all appropriate inquiry. We want everyone to just say, oh, it doesn't really matter. They don't  
2 really exist.

3 00:49:50.650 --> 00:50:21.340

4 Dan Brown

5 You're not speaking correctly, entirely. There's no benefit and as the lawyer mentioned there's no  
6 benefit. It all comes under my dad 's Social Security number as it always has. The Social Security number  
7 to which taxes are paid has never changed, so that there is no benefit to him in that way. You also  
8 mentioned that he's getting the benefit of improved property. There's no proof of that whatsoever. All  
9 the appraisals have always been based on income and the income is going up because people want the  
10 property. We just got 3 new tenants in last 2 years. They are paying market rate. There's been no  
11 concern other than getting the comfort letter from EPA so you have not proven that there will be any  
12 improvement to the property when you're done.

13 00:50:31.780 --> 00:50:44.090

14 Madigan, Andrea

15 Well, we haven't we haven't even completed site characterization. We haven't even selected a remedy  
16 at this point, so you know those statements are just, you know, premature. And about what's going to  
17 happen and how that property is going to be addressed in the future.

18 00:50:50.550 --> 00:50:55.090

19 Dan Brown

20 But that's your own criteria, you have to prove that there's contamination that you're going to have to  
21 clean up.

22 00:50:56.160 --> 00:50:57.690

23 Rae, Sarah

24 Andrea, can I chime in?

25 00:50:56.300 --> 00:50:57.720

26 Madigan, Andrea

27 Well, that's, that, that's it. Yeah.

28 00:50:58.550 --> 00:51:28.620

29 Rae, Sarah

30 So that I want to start with the statements that Connie made that we, the EPA, the agency or myself or  
31 anyone who's been talking to Dan and Connie have said that we're only going to need to cap the area.  
32 That's not accurate, that conversation those statements are taken out of context. I think when we've  
33 explained, or possibly under our settlement discussions, which I think is inappropriate to be discussing  
34 our confidential settlement discussions. I'll just explain that there's types of options that we will  
35 consider when we work through the Superfund process and capping is one of those things that we may  
36 consider as we have done in similar sites. But as Andrea said, we have not walked, gone through the  
37 Superfund process to complete our feasibility study, development of the alternatives through the  
38 remedy selection, public comment. It's really a robust comprehensive Superfund process that we need  
39 to follow to come to that decision of what the cleanup remedy will be. And then to also address Mr.  
40 Brown, Dan Brown's statement that we have to prove that there's contamination, EPA has already done  
41 that on a solid record. We followed the rulemaking process for listing the site on the national priorities

1 list in 2014, which also included a public comment period. And we use the hazard ranking system, that  
2 hazard ranking system, and complied with the NCP, the national contingency plan. There is just  
3 extensive information to support the contamination exists on the site Operable Unit 1, Operable Unit 2.  
4 What remains to be found is to work through that process to determine what will the cleanup remedy  
5 be.

6 00:52:38.590 --> 00:52:42.960

7 Connie King

8 Sarah mentioned the 2014 date when the site was actually listed as a Superfund site, and I thought it  
9 was what I tried to point out in the timeline that I included as an attachment to my most recent  
10 submittal where things that EPA did and the dates those occurred compared to things that were  
11 associated going on with the Cecil Brown's property. EPA 's letter to the governor of the state of  
12 Colorado was June 11, 2012, that was after the LLCs were formed and property was transferred to the  
13 LLCs. It took 2 and a half years until EPA finalized the listing of this site as a Superfund site. So in the  
14 letter that EPA sent to the governor of the state of Colorado in 2012, it said EPA is considering proposing  
15 the Colorado smelter site to the Superfund national priorities list. So in 2012, June of 2012, EPA was just  
16 considering proposing. They didn't actually do anything for another 2 and a half years. I think that's  
17 significant, you know, lots being said about who saw what, when. Well, let's look at what EPA was doing  
18 and how long it took them to actually list this as a Superfund site.

19 00:54:48.140 --> 00:55:18.150

20 Rae, Sarah

21 Sure and I'll quickly just note that I think dating back to 2011, we started having public meetings in  
22 Pueblo because our work before listing the site began well before 2014. As I said, there's a robust  
23 comprehensive Superfund process that we have to work through and sometimes that takes years to get  
24 all of the items that we need to propose the rulemaking and listed on the national priorities list. And I  
25 can turn it over to Sabrina. I believe she has her hand up, she was working on this site when it went  
26 through the listing process as was Andrea.

27 00:55:24.980 --> 00:55:54.070

28 Forrest, Sabrina

29 Great, thank you very much. I just wanted to add, you know, some of those time frames, and I think a  
30 little bit more history. The state of Colorado had started investigating the site in the mid 90s based on  
31 seeing a release of discolored water from the north end of the smelter area to the Arkansas River. Then  
32 it was sampled, not comprehensively, until 2010, when we in the state of Colorado after, you know,  
33 many reports recognizing that even lower levels of lead have negative impacts to people, that we  
34 needed to do more detailed characterizations. So, you know, we've tried to do that characterization. We  
35 did that characterization between 2010, did a lot of community outreach. That was, I think, those time  
36 frames between 2012 and 2014 when the site was listed, lots of community meetings and input from  
37 people city officials, any officials etc. We're not just concerned with slag that is not located on Mr.  
38 Brown's parcels, we're also concerned with those process, those historic process areas. What was  
39 emitted out of blast furnace stacks. The main stack. What could have been associated with what could  
40 be still underlying what is now ground surface. And so, as Sarah had said, you know, this is more of the  
41 remedial investigation process that needs to take place. Preliminary data that we have, and I think that  
42 that was included as part of the exhibits, does show surface soil contamination that is associated with it  
43 and consistent with a silver and lead smelter. Thank you.

1 00:57:11.900 --> 00:57:15.770  
2 Madigan, Andrea  
3 You know, I would just add to that the all appropriate inquiry rule that was applicable in in 2011, was  
4 there prior to the listing. And that rule is really important because it lets potential property owners  
5 know exactly what they need to do in order to first understand what they're requiring and what they're  
6 taking on to make a business decision as to move forward and what they need to do in order to maintain  
7 that liability protection. So, but the actual listing of the site has absolutely no relevance to the standard  
8 in the all appropriate inquiry rule that was applicable when the limited liability companies took title to  
9 the property.

10 00:58:03.600 --> 00:58:06.970  
11 Connie King  
12 Yeah, I think Dan Brown has gone through A.

13 00:58:04.160 --> 00:58:04.430  
14 Talbert, Stephanie  
15 Yes. Dan

16 00:58:06.610 --> 00:58:14.060  
17 Dan Brown  
18 Sorry I apologize. It's interesting, you talk about that business decision because since 2011, EPA told my  
19 father and all OU2 owners for 7 years, they would not be responsible for the payment of cleanup. And it  
20 wasn't until January of last year that you came to us and said, that's not true now. Business decisions  
21 would have been made very differently for 7 years, not by just my father, but all the OU2 owners, if we  
22 had known we would, could be responsible. But we were told for 7 years we would not be. And that's  
23 not just my father; that's everyone in the whole, OU2 owners, that was their understanding.

24 00:58:49.510 --> 00:58:51.940  
25 Rae, Sarah  
26 Andrea do you want to respond to that or do you want me to take that one?

27 00:58:52.330 --> 00:58:54.530  
28 Madigan, Andrea  
29 Yes, Sarah why don't I hand it back to you.

30 00:58:55.170 --> 00:59:20.070  
31 Rae, Sarah  
32 Sure, so I think we tried to address this in our response. I can't remember what page, but I think the  
33 miscommunication, I've talked with our team, and no one made direct statement saying that  
34 commercial property owners will not be required to pay for cost recovery, it's free. I think the  
35 miscommunication is at these community advisory group meetings, which we've had monthly since I  
36 believe 2012 or 2013. The discussion of that policy that Andrea mentioned for residential property  
37 owners, and we have been focusing on Operable Unit One first for the last 5 plus years because of the  
38 higher health risks with residential properties and individuals coming into contact with lead and arsenic.  
39 So OU1 is further along in the Superfund process and we've really been discussing a lot, that residential  
40 property owner policy where EPA typically doesn't seek cost recovery from residential property owners  
41 on a Superfund site. We think that we can only hypothesize that the miscommunication happened

1 where industrial or commercial property owners at the site. We're hearing about this policy or hearing  
2 these discussions about Operable Unit 1, which is the community properties and assuming it applies to  
3 them as well, or it was a site wide policy that EPA was taking that position that is just not true. Now that  
4 we're focusing on Operable Unit 2 or in the early phases of the remedial investigation. We're starting to  
5 now have these conversations and doing our enforcement investigation and I think we made we  
6 clarified when people came to us and saying we thought we weren't going to have to pay, this is free,  
7 that that was a misunderstanding of that residential policy that EPA has .

8 01:00:40.710 --> 01:00:41.200

9 Talbert, Stephanie

10 Thank you.

11 01:00:40.740 --> 01:00:47.350

12 Dan Brown

13 But we made business decisions and other OU2 owners made business decisions based off that  
14 information.

15 01:00:49.200 --> 01:01:02.210

16 Rae, Sarah

17 Then I understand that, but I am just reiterating that that was a misinterpretation of EPA statements. No  
18 one came out and said commercial industrial property owners will not have to pay anything. This is  
19 going to be on taxpayer dollars. The only, we can, only way we can understand this is that  
20 misinterpreting discussions that were about Operable Unit 1 that they would apply also to Operable  
21 Unit 2, which is mostly commercial and industrial.

22 01:01:16.890 --> 01:01:17.330

23 Connie King

24 Yes, Sarah, going back to what I said was in the Pueblo Chieftain article from 2013, where it says, EPA  
25 officials have said the purpose of the Superfund program is to clean up contaminated areas at either  
26 government expense or by the responsible polluter. And the Councilwoman wanted a guarantee that  
27 business, or homeowners will not have to pay the cost of removing contaminated soil from their  
28 property or restoring it. You know this was in the Pueblo Chieftain newspaper December 30<sup>th</sup>, 2013. If  
29 someone from EPA took issue with those statements you would think EPA would put a statement in the  
30 Pueblo Chieftain, saying this article was wrong and here's why, but that wasn't done.

31 01:02:15.550 --> 01:02:45.820

32 Rae, Sarah

33 I mean, I can't say that we saw that article and caught that. But if I was the site attorney today, seen an  
34 article or seen public information that is inaccurate, I have done things to change that language so  
35 there's no confusion. I have talked to property owners to make sure that they understand the distinct  
36 the difference between residential property owners and commercial industrial property owners. I don't  
37 really understand the weight that should be given to a city Councilwoman requesting that EPA make this  
38 statement or guarantee. We legally cannot provide that. We are not allowed to provide no action  
39 assurances. So even when the policy does apply to residential property owners, we're not providing a no  
40 action assurance; we're just pointing to that policy. It's our enforcement discretion, but it's not a  
41 guarantee that we will never seek cost recovery against residential property owners. There are some  
42 instances where the policy doesn't apply, and we do seek cost recovery, so. Even if the City

1 Councilwoman was asking for this guarantee, EPA was in no position to be able to make that guarantee.  
2 We were actually prohibited from making no action assurances.

3 01:03:23.800 --> 01:03:24.800

4 Brandice Eslinger

5 Can I say something?

6 01:03:25.700 --> 01:03:26.220

7 Talbert, Stephanie

8 Go ahead.

9 01:03:28.270 --> 01:03:50.500

10 Brandice Eslinger

11 I think that maybe the misinterpretation, Sarah, is that it wasn't said exactly like you just set it up. I think  
12 you really need to take that to the public meetings and say it exactly the way you just said it so there is  
13 no misinterpretation because I want to go back to, I apologize, I'm taking this call at home. So I met  
14 with, and this is one of my biggest regrets, I'm gonna tell you right now, because I didn't get the name of  
15 the person. Hold on one second. I met with Mr. Brown and his real estate agent, and at the time I don't  
16 know if this is this current one, I'm guessing no, and I met with Mr. Brown, his real estate agent, and the  
17 EPA driller, Travis Austin with Pacific Western Technologies, which I'm assuming is an EPA or was an EPA  
18 subcontractor or contractor. And then on my notes I have EPA Region 8 representative. That's my  
19 biggest regret is I never got their name or their card. We met on March 27<sup>th</sup>, 2019, at the property  
20 because at that time, Mr. Brown had a potential buyer. That potential buyer actually has since passed  
21 away tragically. But in any case, he actually asked me to go out to the property so at this time, Mr.  
22 Brown is not my client. He asked me to go out and see what you know what's going on with OU2. I met  
23 everyone on site and what was told to me, and I can read it to you because I took this down verbatim.  
24 We walked the property, visually inspected the areas for the proposed testing and drilling, talked about  
25 where wells would go. Mr. Brown was kind of concerned about if they would impede his business  
26 practices, because as you probably know, Sarah and everyone else on the call, most citizens in everyday  
27 business, people don't really understand how we install wells and that we can actually work around  
28 businesses and do our thing with sometimes minimal disruption. So, in any case, we were going through  
29 this and this is what was told to us is that the contamination would be evaluated, if found, and  
30 subsequently categorize, and it is related to this Superfund project or not specifically because Mr. Brown  
31 has underground storage tanks on his property because his tenant, Ryder Trucking, has underground  
32 storage tanks. If not the various other appropriate regulatory agencies would be notified and potentially  
33 other responsible parties may be identified that are not supported or associated with the Superfund  
34 project. Therein lies a potential cradle to grave issue. Ultimately, there are many unknowns with regards  
35 to the findings of the sampling. If contamination is found that is not related to the Superfund project as  
36 determined by the EPA, then other potential responsible parties may be identified to cover the costs of  
37 cleanup for that specific contamination. What he was concerned about is that actually, ironically, EPA  
38 would find other contamination and he would be responsible for that clean up. He actually wasn't  
39 worried about lead and arsenic because at that time, the EPA rep, who I do not have their name, told us  
40 that if it was related to the Superfund, it would be, and I quote "covered under that act." I just want to  
41 bring that about because I think it's important that, again, this misconception and this  
42 miscommunication. It's relevant as recent as 2019. Yeah, I just think there needs to be a really good,  
43 solid understanding with commercial property owners in Pueblo. That this is a concern that they could

1 be held liable for cleanup. The paper is a big deal in Pueblo. The Pueblo Chieftain has been around since  
2 the late 1800s and is some people's Bible. And so, when something is published in that paper, I can tell  
3 you first hand, people read it and they rely on it. It is the only paper in Pueblo and it is, particularly to  
4 the older generation, their only way to get information so I just, I want to point that out, because I don't  
5 think we should dismiss that it is not important.

6 01:08:03.540 --> 01:08:22.010

7 Rae, Sarah

8 And I didn't intend to dismiss the validity or the importance of that newspaper. I just, I don't have  
9 personal knowledge that someone on my team was aware that that article specifically was published or  
10 who they were saying was the comment or if that quote was accurate. There's just so many unknowns  
11 about that article and to even say that it was EPA's responsibility to know every article that comes out  
12 about the site and to then issue a statement in that same newspaper, fixing that it just seems  
13 unreasonable so I was just saying that I'm not aware that any of us knew that that article came out so  
14 that we could have corrected that. It, in my experience, in the last year and a half being on this site, if I  
15 see any information or hear from a property owner, I correct their understanding right away because I  
16 understand they would be very upset if they've had this misunderstanding for 7 years or longer. Andrea  
17 do you want to add anything?

18 01:08:57.470 --> 01:08:59.160

19 Madigan, Andrea

20 Yeah, I would just add that, you know, purchasers of commercial property, you know they bear some  
21 responsibility for perhaps getting professional advice. I know that Brandice they keep you in business,  
22 right? They come to you to do these environmental assessments because they're buying commercial  
23 property, and they want to understand what they're getting and I also acknowledged that Superfund  
24 liability can be complicated. There can be, there are different off ramps. There's enforcement discretion  
25 policies. There's settlement policies. Which, you know, we continue to remain open to the LLCs and the  
26 and the Brown family to fashion a settlement that would be based on fair share as opposed to joint and  
27 several liability, which is what we've tried to do. To say you know how can we allocate costs very early in  
28 the process to facilitate redevelopment. We've been very fast, issue comfort letters to potential lessees  
29 to support the reuse and to support the business operations at the facility. But you know when you own  
30 commercial property, it comes with some responsibility and not kind of relying on you know what's in  
31 the newspaper or hearsay about who said what about you know what the consequences of owning that  
32 property are.

33 01:10:19.900 --> 01:10:20.880

34 Brandice Eslinger

35 Ironically, though, so you all did expect Mr. Brown to be reading a newspaper article about the smelter.  
36 So I mean, you can't say it one way and not the other. Like the one EPA sent in their initial  
37 correspondence.

38 01:10:31.610 --> 01:10:33.060

39 Madigan, Andrea

40 Yeah. Can I just did.

1 01:10:34.290 --> 01:10:36.780  
2 Brandice Eslinger  
3 Well, you can say it, but it's not very relevant.

4 01:10:34.360 --> 01:10:36.520  
5 Connie King  
6 Well, but you can't and...

7 01:10:34.430 --> 01:10:34.900  
8 Rae, Sarah  
9 I think.

10 01:10:36.000 --> 01:10:36.430  
11 Talbert, Stephanie  
12 Sorry.

13 01:10:37.090 --> 01:10:43.150  
14 Connie King  
15 When you have to go to a library to read something from over 100 years ago, you know that's stretching  
16 it.

17 01:10:46.610 --> 01:10:58.950  
18 Madigan, Andrea  
19 Well, that's the responsibility of the property owner. It's not the responsibility of EPA to make sure that  
20 they undertake their due diligence that's my point. I didn't mean to be facetious. It's late in the day, it's  
21 been a long day.

22 01:10:59.810 --> 01:11:07.860  
23 Connie King  
24 And Andrea you also started your comments saying purchasers of commercial property, and as Dan  
25 Brown has said several times, this was not a purchase.

26 01:11:11.470 --> 01:11:41.810  
27 Madigan, Andrea  
28 Well, the all appropriate inquiry rule talks about a transfer. The acquisition and whether the acquisition  
29 was for payment, was to restructure, the personal liability to shield the assets of the individual by  
30 creating this LLC it was a, it was a transfer. I don't think that it's disputed that the property is currently  
31 titled in these LLCs under Colorado law, under the real estate records in Pueblo, that the LLCs or the  
32 entities that are responsible for property taxes that would be responsible to the to the lessees, would be  
33 responsible for any other concerns that would be a reason for, you know, maintaining that property and  
34 in a way that was safe and whatnot.

35 01:12:01.480 --> 01:12:11.100  
36 Rae, Sarah  
37 Yep, I'll just go with what Andrea is saying, Stephanie, and just point out the word, and I did look at this  
38 that's used in CERCLA and discussing all appropriate inquiry is acquire not purchase.

1 01:12:02.000 --> 01:12:02.380  
2 Brandice Eslinger  
3 I have.

4 01:12:12.650 --> 01:12:14.980  
5 Talbert, Stephanie  
6 And is that in Section 101 under 35 (B)?

7 01:12:18.590 --> 01:12:22.660  
8 Rae, Sarah  
9 I believe so and I'll pull it up right now, just to make sure I'm providing the correct site.

10 01:12:23.190 --> 01:12:27.020  
11 Talbert, Stephanie  
12 OK, thank you. I was just looking for it, so if that would be helpful.

13 01:12:28.170 --> 01:12:57.080  
14 Dan Brown  
15 I think Connie 's point, though the ownership of the property has never changed. The name that is on  
16 the deed is one thing, but my father has been the consistent owner since 1982. They didn't call an LLC.  
17 They called Cecil Brown. I think that's really important that that ownership never changed. It was simply  
18 a means to fold in my mom's estate into my dad 's control and that was the only purpose for it. There  
19 was no shielding of anything.

20 01:12:57.830 --> 01:13:17.480  
21 Rae, Sarah  
22 Then I'll just quickly respond. The reason we contact the Cecil Brown is because he's the registered  
23 agent listed on the state website for the companies and that's the appropriate person to contact when  
24 you have a company because, as Connie said, you can't call a company. We would need to speak to the  
25 registered agent. So when I refer to Cecil Brown, he's the registered agent of the companies.

26 01:13:17.170 --> 01:13:20.320  
27 Dan Brown  
28 And 100% owner of the LLCs.

29 01:13:19.330 --> 01:13:19.810  
30 Rae, Sarah  
31 Correct. Understood.

32 01:13:21.430 --> 01:13:24.730  
33 Dan Brown  
34 That's my point, he's been the owner, the ownership never changed.

35 01:13:21.600 --> 01:13:21.880  
36 Connie King  
37 Yeah.

1 01:13:22.660 --> 01:13:23.820  
2 Talbert, Stephanie  
3 Can I ask you some questions about  
4 01:13:25.360 --> 01:13:28.750  
5 Connie King  
6 And it's part of his tax return as an individual. There's no separate tax return.  
7 01:13:29.730 --> 01:13:34.720  
8 Madigan, Andrea  
9 Well, that's what an LLC does, though the LLC allows it, it, it has the tax status of a partnership so that  
10 the individual owners of the LLC get taxed individually and, as opposed to a corporation where the  
11 corporation has its own tax advantage. So there's tax advantages to structuring an LLC as opposed to a  
12 corporation. But the liability protections are still there, and we we've never inquired about Mr. Cecil  
13 Brown's personal assets. You know, we are respecting the corporation, the LLC shield that really only the  
14 LLC would have liability and that's one of the big benefits of creating an LLC.  
15 01:14:10.380 --> 01:14:11.790  
16 Dan Brown  
17 Andrea, I'm going to, Andrea, I'm going to correct you. Last January, in our first call, I specifically asked  
18 you if can they can, EPA, only go after the property and you said no. I said they could go after my  
19 father's home or anything else and you said, we probably would not. But yes, we could.  
20 01:14:31.370 --> 01:14:54.980  
21 Madigan, Andrea  
22 I, you know, what you're attributing, you're attributing stuff to me that I don't you know, you know, the  
23 status of the limited liability company, where we're looking to the Corporation. Are there instances  
24 where you could pierce the corporate veil or you could under Best Foods find a corporate entity as an  
25 operator? Yes, I don't see any facts to support that, but  
26 01:14:31.610 --> 01:14:34.390  
27 Dan Brown  
28 So you, can ignore the LLC, if you wanted.  
29 01:14:56.120 --> 01:15:20.660  
30 Madigan, Andrea  
31 As I said, CERCLA Liability is complicated and you get in trouble when you make broad pronouncements.  
32 And perhaps I need to make sure I remind myself, you can't make broad pronouncements, but, you  
33 know, people ask you questions. You want to give him a broad picture of what's going on. No notice  
34 letters ever went to Mr. Cecil Brown individually. We've been respecting the status of the current status  
35 of the ownership of the property and the limited liability companies. Any settlement would be with the  
36 LLC. I recognize that at the request of your former counsel, you wanted, Mr, Cecil Brown to be included.  
37 We said fine, you know, in a settlement context. Even though we don't think it would necessarily be  
38 needed but to accommodate that request, we can do that.  
39 01:15:49.630 --> 01:15:58.000  
40 Talbert, Stephanie

1 But I asked him questions about, to the extent that the purchase, in 1982 and 1986 is relevant, about  
2 the facts at that time period. Do you have any information with either party about the purchase price in  
3 relation to the fair market value whether it was less than equal to or greater than fair market value?

4 01:16:15.330 --> 01:16:44.720

5 Dan Brown

6 I don't have any facts on that. There was no negotiation. The Pritchards named the price. My father paid  
7 the price, Meadow Gold Dairy actually on the first 4 acres, had an option that they exercised for my  
8 father on the property. But there was, it was market rate. Again, in the context of that time, I want to  
9 remind you, I think Connie pointed out, my father had been a tenant on the property since 1963. He'd  
10 seen the school going on. He, as far as he knew, he bought a lumber yard. Had been a lumberyard for 55  
11 years. He was buying a lumberyard. Everyone knew the smelter was north of the property. He wasn't  
12 even aware until the EPA showed the overlay that there were smelter buildings on his property. He just  
13 assumed the lumberyard bought the property in 1925 and leveled it in order to create, after the flood,  
14 they moved from downtown Pueblo, moved it up to there. He was buying a lumberyard, and so, he  
15 didn't. The only things in the deed mentioned was the railroad easements for, in regards to smelter.  
16 There was no mention of the smelter other than railroad easements for the smelter.

17 01:17:24.020 --> 01:17:32.680

18 Brandice Eslinger

19 Dan and Stephanie, I actually know what he bought it for because I had the assessor information. I don't  
20 know if that's fair market value, but I can tell you the amount.

21 01:17:34.500 --> 01:17:35.140

22 Talbert, Stephanie

23 Thank you.a

24 01:17:36.630 --> 01:17:37.990

25 Brandice Eslinger

26 Do you want that amount, Stephanie?

27 01:17:37.860 --> 01:17:38.640

28 Talbert, Stephanie

29 Yes, please.

30 01:17:39.810 --> 01:17:59.270

31 Brandice Eslinger

32 So for parcel 1501400002, which is listed as 1045 to 1049 South Santa Fe Avenue. The purchase price as  
33 recorded on 8311982 was \$114,100. When I get to the other one as you as you probably know the  
34 property consists of 2 separate parcels. And parcel 1501400003 also lists 1103 through 1107 South  
35 Santa Fe was purchased 8201986 for \$305,000?

36 01:18:30.470 --> 01:18:37.020

37 Madigan, Andrea

38 So the current offer is what, over \$2,000,000 for the both parcels, is that correct?

1 01:18:38.400 --> 01:18:41.450  
2 Dan Brown  
3 40 years later, it's so yes, it is.

4 01:18:43.780 --> 01:18:45.600  
5 Talbert, Stephanie  
6 How much how much was that, Andrea?

7 01:18:46.560 --> 01:18:50.340  
8 Madigan, Andrea  
9 I'm asking Mr. Brown. I'm not sure of the exact number was it 2 or \$3,000,000?

10 01:18:50.560 --> 01:18:52.730  
11 Dan Brown  
12 The current offer is \$3.3 million.

13 01:18:53.960 --> 01:18:58.220  
14 Dan Brown  
15 But that's 40 some years later, there, you have to take appreciation into that.

16 01:18:58.160 --> 01:19:03.580  
17 Madigan, Andrea  
18 No, no, I get that I just wanted to get the facts out there that the property has significant value and, you  
19 know, we're thinking is that some portion of the sales portion should come to reimburse the  
20 government for its costs.

21 01:19:13.460 --> 01:19:18.410  
22 Dan Brown  
23 And we have offered that we just think it's unreasonable to take 25% of the value of the property.

24 01:19:19.130 --> 01:19:49.500  
25 Brandice Eslinger  
26 I have a question about that and the numbers part is not my game. But I actually, I'm more curious and  
27 also just for my own information. So the residential RSLs have been established, but are the commercial  
28 or industrial RSL still being established because obviously, you know, arsenic. There's a significant  
29 difference in what the EPA normal everyday standard is and what the current RSL was determined based  
30 on. Connie, I can't remember what you called it I was just looking at it this morning but almost like a risk  
31 based screening level. A site specific one. How and I think this will come into play with the cleanup that  
32 Stephanie was talking about earlier. You know how was that determined? Because if you're trying to  
33 clean up to a level of 61 ppm versus 500 ppm. I think, you know, how is that? How does that get done  
34 fairly, I guess, so that the property owners that commercial or industrial property owners are cleaning  
35 up to a residential standard. Admittedly maybe there's a, you know, a land use on the deed or some sort  
36 of restriction that way. So it can't get reused as residential. I obviously we've all seen that happen before  
37 but I guess I'm curious how that's going to happen and if and when it's going to happen.

38 01:20:44.170 --> 01:20:46.270  
39 Madigan, Andrea  
40 Well, that's part of the cleanup process, right.

1 01:20:44.440 --> 01:20:44.780  
2 Rae, Sarah  
3 Sure.

4 01:21:00.880 --> 01:21:01.390  
5 Forrest, Sabrina  
6 Yeah.

7 01:21:01.440 --> 01:21:02.510  
8 Rae, Sarah  
9 Normal screening levels.

10 01:21:01.980 --> 01:21:22.420  
11 Forrest, Sabrina  
12 Sure, I can add a bit to that and, Christina, you can jump in if you'd like as well. We're, I mean, we're still  
13 in early days in remedial investigation, so until we get to meet some sort of decision document, have  
14 done some risk evaluation, we don't really have a site specific cleanup level identified.

15 01:21:25.510 --> 01:21:53.090  
16 Madigan, Andrea  
17 I would just add that land use is a factor in determining you know what level with the risk assessment.  
18 What you look at and what you clean up to. And you're absolutely right that we would look to some sort  
19 of land use restrictions in the event that it was cleaned up to, you know, commercial industrial as  
20 opposed to residential to ensure that if the property use would to change and the protectiveness of the  
21 remedy would be revisited, you know under those circumstances.

22 01:21:59.260 --> 01:22:03.390  
23 Talbert, Stephanie  
24 I have a couple more questions about the 1980 time period. Is there any information about Cecil  
25 Brown's real estate experience? Did he have other real estate prior to purchasing the parcels?

26 01:22:15.590 --> 01:22:19.860  
27 Dan Brown  
28 No, he did not, and did not make use of a realtor, he because he had the Meadow Gold Dairy operating  
29 with their option, he just he dealt directly with the Pritchards. I'm not sure that they had a realtor,  
30 either, in the process. I know there was an estate attorney that handled the second sale, the 8 acre sale.  
31 So he, it was his first commercial property, other than buying a home. No, he had not ever bought real  
32 estate before commercial real estate before.

33 01:22:44.610 --> 01:22:51.230  
34 Talbert, Stephanie  
35 Did he have any familiarity with environmental issues, either in Pueblo or elsewhere?

36 01:22:52.710 --> 01:23:22.860  
37 Dan Brown  
38 He had never dealt with it before, later on in that property, he recognized that when they were moving  
39 the above ground fuel tanks to underground that there, he needed to go make sure that there was an  
40 environmentally approved agency handling that and he did do that in the mid-90s. I think it was 1994.

1 Brandice has that information. So when he recognized that there was a concern with the fuel tanks, he  
2 did do all the appropriate things to make sure he was in compliance.

3 01:23:27.330 --> 01:23:31.310  
4 Talbert, Stephanie  
5 And he, you said before, he did have knowledge of the smelter and its location prior to purchasing?

6 01:23:34.480 --> 01:23:48.920  
7 Dan Brown  
8 He was north, he was knew it was north of the property. But again in the context, the school building  
9 was built with bricks from the smelter so that there was not a sense of there was a danger. Just because  
10 the smelter was north of the property 100 years before that.

11 01:23:53.860 --> 01:23:59.570  
12 Talbert, Stephanie  
13 And did he do any kind of inspection prior to purchasing in the 80s?

14 01:23:59.970 --> 01:24:04.190  
15 Dan Brown  
16 I think Brandice noted that there was no such thing as a phase one at that time.

17 01:24:08.270 --> 01:24:13.870  
18 Madigan, Andrea  
19 Is it? Is it right, though that he knew about the railroad easement for the smelter at the time of the  
20 acquisition?

21 01:24:08.320 --> 01:24:08.840  
22 Talbert, Stephanie  
23 So no.

24 01:24:14.710 --> 01:24:29.110  
25 Dan Brown  
26 There are actually still railroad tracks on there. There's still railroad ties on there. But if, the deed just  
27 mentions that it's an easement for the smelter. It doesn't mention that it smelter property, that it, but  
28 simply that it's an easement for the smelter railroad.

29 01:24:15.180 --> 01:24:15.830  
30 Madigan, Andrea  
31 Right that's in.

32 01:24:38.740 --> 01:24:42.700  
33 Connie King  
34 Yeah, I think one thing that's very significant is the slag piles are not located on Cecil Brown's property.

35 01:24:52.620 --> 01:25:08.550  
36 Rae, Sarah  
37 And just to respond to that, Stephanie, EPA's position is that although visually they couldn't see if there  
38 is slag on the Cecil Brown's parcels, that a reasonable person would have contacted environmental  
39 consultant or reached out to CDPHE or EPA. They come to determine whether it's, like, could possibly be

1 under the asphalt or under the parcels. There was just more information that was available that Mr.  
2 Brown could have availed himself of, if we're talking about the 80s, then, and also in 2011 and 2012.  
3 Even more information was available if the companies were performing All at that time.

4 01:25:30.980 --> 01:25:50.250  
5 Dan Brown  
6 In the 80s why would he be concerned about slag that was in most residential driveways, and it was  
7 being used for the railroad beds and that was there was no concern? We sent a letter from another  
8 developer. So it's not just my dad. A developer in the Pueblo at that time that said no one had any  
9 concern about contamination of slag piles.

10 01:25:52.530 --> 01:26:17.440  
11 Connie King  
12 That's right and you know, I think Sarah you've got to realize you weren't, from looking at you, you were  
13 not working in the 1980s, and you have no clue what you're talking about. I was working in the 80s and  
14 nobody would have gone to the state or EPA and ask any kinds of questions like you're suggesting they  
15 should have in the 1980s.

16 01:25:52.710 --> 01:25:53.310  
17 Rae, Sarah  
18 I think there's...

19 01:26:16.500 --> 01:26:38.270  
20 Madigan, Andrea  
21 You know those kinds of broad statements just don't have any credibility because that's, you know,  
22 that's opinion. You know, there's there are parties that have been interested in the environmental arena  
23 for a long time and that's the whole point of making the inquiry, finding out what you're buying buyer  
24 beware, particularly with commercial properties, so.

25 01:26:40.560 --> 01:26:50.030  
26 Talbert, Stephanie  
27 Well, I think I have all the questions that I had listed. I've covered them all. Katherin, do you have any  
28 additional questions?

29 01:26:51.960 --> 01:26:53.410  
30 Hall, Katherin  
31 I don't, thank you Stephanie.

32 01:26:53.880 --> 01:26:54.410  
33 Talbert, Stephanie  
34 OK.

35 01:26:55.240 --> 01:27:03.930  
36 Talbert, Stephanie  
37 Great, would anyone like to make any closing statements before we talk about additional briefs?

38 01:27:04.790 --> 01:27:10.270  
39 Rae, Sarah

1 Connie, did you do you want to go first if you have a closing statement? I have just a few points to make  
2 before wrapping up.

3 01:27:12.230 --> 01:27:33.380

4 Connie King

5 I think my closing statement is just to emphasize the importance of the timeline that I provided as  
6 attachment 12. I think it illustrates what was happening when and why certain things were done. And  
7 what the reality was in certain parts of the time frame and I think those things are very important in  
8 what we've been discussing. And I think it's significant what people were hearing EPA officials say. And  
9 certainly, things can be misinterpreted, but when something shows up in a newspaper I think, if there's  
10 a concern that it's stating a misrepresentation the entity like EPA may, should try to correct it. And you  
11 know when I was working as an environmental engineer, I worked on some significant projects. One of  
12 which was in the newspaper almost every day for 2 years. I read 2 newspapers: The Rocky Mountain  
13 News and the Denver Post during that time frame. I wasn't responsible for catching every article. But I  
14 felt like it was important because I was one of the environmental engineers working on the project and  
15 we had an entire department on the project that was focused on communication. But if I saw something  
16 I'd made sure that people in the company knew about it. And if we needed to take action, we did it. And  
17 so I'm a little surprised EPA hasn't been paying attention to a newspaper like the Pueblo Chieftain in this  
18 entire process. I would think that somebody would have had that assignment.

19 01:29:42.480 --> 01:30:14.470

20 Rae, Sarah

21 During a, Stephanie, I'll just respond. Pull up CERCLA Section 101(35)(B), it's a little "i" and a big "I",  
22 where you'll see "acquired" is used and not "purchased." And then I think I'll just reiterate EPA's position  
23 that I know we've spent a lot of time talking about what was not known or known or what was not done  
24 in the 1980s, when Cecil Brown acquired those parcels in his individual capacity. But EPA 's position is  
25 that it's not Cecil Brown in his individual capacity. It's the companies the LLC's that are the current  
26 owners and that is who we are looking to for liability and the appropriate standard would be whether AI  
27 was performed in 2011 and 2012. And we don't have any information from the companies that that was  
28 done and therefore they're not able to avail themselves of the innocent landowner defense.

29 01:30:40.890 --> 01:30:54.800

30 Dan Brown

31 Just a quick distinction again acquired, I, what does acquired mean? The property was transferred. My  
32 dad never changed, or they never changed ownership of the property was never acquired by someone  
33 else. It was transferred in title only.

34 01:30:56.050 --> 01:31:26.330

35 Rae, Sarah

36 So I think just the legal distinction, Dan, and I was reiterate this again. I know we probably said this many  
37 times. I know you feel that the ownership hasn't changed, but it legally has. Cecil Brown as an individual  
38 owner just as I am listed as an individual on owning my home is different when an LLC then is listed on  
39 the deed as the owner of that company is the owner of the companies are the owners of the property.  
40 Cecil Brown is the registered agent and I understand 100% the only member of the LLCs, but legally  
41 there is a distinction. Ownership did change in 2011 and 2012 when the LLCs were created and the deed  
42 transferred the property interest to the LLCs.

1 01:31:34.640 --> 01:31:42.440  
2 Dan Brown  
3 Responsibility never changed; it was always my father since 1982 responsibility for the properties has  
4 never changed.

5 01:31:48.160 --> 01:31:50.480  
6 Talbert, Stephanie  
7 OK, thank you everyone. I think in our prior status conference, we talked about the potential for filing  
8 additional post-meeting briefs. Would you like to set dates for that or are you content to rest on the  
9 information presented today?

10 01:32:10.170 --> 01:32:20.390  
11 Rae, Sarah  
12 I'd like to respond. So I haven't responded in writing and I think I may have made a couple of arguments  
13 or responses in the first instance here on the appearance. So just put that in writing and have it on the  
14 record. Today is Thursday, so would Wednesday of next week, be OK to have that submitted?

15 01:32:28.670 --> 01:32:28.860  
16 Talbert, Stephanie  
17 Sure. On the second.

18 01:32:30.770 --> 01:32:31.270  
19 Rae, Sarah  
20 Yes.

21 01:32:32.250 --> 01:32:34.400  
22 Talbert, Stephanie  
23 OK, that sounds good.

24 01:32:38.940 --> 01:32:40.190  
25 Connie King  
26 Let me ask Dan and Brandice. So my view is I don't think we presented any new information during our  
27 discussion today do you?

28 01:32:53.240 --> 01:33:08.290  
29 Dan Brown  
30 No, not that, any, everything has been included in the brief you've submitted previously. It's, it really  
31 comes down to how you interpret the LLCs and whether my father, somehow ownership changed. I  
32 think that comes down to the biggest single point.

33 01:33:09.330 --> 01:33:09.640  
34 Connie King  
35 Yeah. Brandice?

36 01:33:10.800 --> 01:33:11.440  
37 Brandice Eslinger  
38 I agree with, yeah, I don't think we've presented anything differently. The only thing I did, they have the,  
39 I apologize. I don't know this off the top of my head too. They have and I'm not sure it's even relevant

1 but just the memo I did back in March of 2019. Do you want to, do you want me to get that to you  
2 Connie and you could submit that just so everyone has it?

3 01:33:35.610 --> 01:33:42.060  
4 Connie King  
5 OK, they don't have that memo so I could certainly submit that.

6 01:33:43.590 --> 01:33:44.030  
7 Brandice Eslinger  
8 OK.

9 01:33:44.310 --> 01:33:45.740  
10 Connie King  
11 It's additional evidence.

12 01:33:46.970 --> 01:33:59.320  
13 Talbert, Stephanie  
14 OK, why don't we set the date for that a week later does that work for you, Connie? So the 9th and if  
15 you want to respond to anything else, it could re include it on that date as well.

16 01:34:03.880 --> 01:34:05.240  
17 Connie King  
18 OK March 9th.

19 01:34:05.670 --> 01:34:06.290  
20 Talbert, Stephanie  
21 Yes.

22 01:34:08.580 --> 01:34:27.610  
23 Rae, Sarah  
24 And Stephanie I want to acknowledge, I know the Browns have an offer, I think, that would expire on  
25 March 10, so if I can get my response done quicker than the second, I'll just submit it as soon as I have  
26 management approval and it's ready to go. I just want to recognize that we do know that you're hoping  
27 to get an answer quickly so that you can know how to proceed with that sale or not.

28 01:34:08.790 --> 01:34:09.200  
29 Connie King  
30 OK.

31 01:34:27.770 --> 01:34:51.060  
32 Dan Brown  
33 Where we're at this point, so we're moving forward. We had our attorney, real estate attorney write up  
34 an addendum to the closing documents that notes that the lien is in effect. And that we're responsible  
35 for the lien. Even with the transfer of the property where we're responsible for the liens so the hope  
36 and desire is that we can move forward with closing and even if you and us are still in discussion.

37 01:34:51.950 --> 01:34:52.340  
38 Rae, Sarah  
39 OK.

1 01:34:53.350 --> 01:34:57.600  
2 Brandice Eslinger  
3 And my documents ready to go so I can send it to you in 5 minutes, Connie.

4 01:34:58.770 --> 01:34:59.350  
5 Connie King  
6 OK. Then, Stephanie, what do you want the deadline to be for the submittal because this sounds like  
7 something we could handle very quickly?

8 01:35:11.620 --> 01:35:19.850  
9 Talbert, Stephanie  
10 As early as you want, but Connie if you want to take some time to look at what Sarah files you can have  
11 until the 9th.

12 01:35:21.060 --> 01:35:21.580  
13 Connie King  
14 OK.

15 01:35:21.110 --> 01:35:31.130  
16 Madigan, Andrea  
17 Yeah, it's unlikely will have a decision by the 10<sup>th</sup> for the closing but it's good news that it's not going to  
18 get in the way of the sale, so that that's good news.

19 01:35:38.150 --> 01:35:51.800  
20 Madigan, Andrea  
21 Hey Mr. Brown, has that current owner asked for a comfort letter, the potential purchaser? Or they've  
22 done all appropriate inquiry. They're just they're just they're just relying on the self-implementing  
23 provisions of the statute.

24 01:35:44.470 --> 01:35:45.190  
25 Dan Brown  
26 He's been...No, I've sent him all that documentation. I think he's been in constant communication with  
27 your team.

28 01:35:58.910 --> 01:36:00.020  
29 Madigan, Andrea  
30 OK, OK.

31 01:35:59.690 --> 01:36:07.770  
32 Rae, Sarah  
33 Yep, he reached out to Christina. I'm not sure if he's responded, Christina, but we proposed times to hop  
34 on a call unless I'm confusing perspective purchasers.

35 01:36:08.180 --> 01:36:08.560  
36 Madigan, Andrea  
37 Yeah.

1 01:36:08.610 --> 01:36:11.730  
2 Baum, Christina (she/her/hers)  
3 That's correct I haven't heard back from him since Friday.

4 01:36:12.170 --> 01:36:31.130  
5 Madigan, Andrea  
6 He's probably going to want to comfort letter prior to closing so we want to make sure we can  
7 accommodate that and understand the timetable. So anything, you know, you can do to hurry along.  
8 When something comes at the last minute, we have multiple levels of review. So just FYI, we want to  
9 support the redevelopment and the efforts to transfer the property.

10 01:36:31.840 --> 01:36:47.740  
11 Dan Brown  
12 Thank you. Thank you for that. The last he told me was several weeks ago that he was going to ask for  
13 the comfort letter. I told him I wouldn't, didn't know if that was necessary. If it was just self-  
14 implementing for the BPPF, but I know he's engaged Brandice to do a phase one.

15 01:36:48.090 --> 01:37:10.380  
16 Madigan, Andrea  
17 OK, you know comfort letters or they're not necessary, but purchasers often want them and if, you  
18 know, given that it's an NPL site, you know, we stand ready to try to support the transfer. And so it is  
19 self-implementing. It just depends, belt suspenders, super glue. You know, we try to accommodate what  
20 the perspective purchaser wants.

21 01:37:14.240 --> 01:37:16.590  
22 Talbert, Stephanie  
23 OK, well if there's nothing else, we can depart but thank you all for your time today. This has been really  
24 helpful. I appreciate it.

25 01:37:23.220 --> 01:37:23.840  
26 Brandice Eslinger  
27 Thank you.

28 01:37:25.040 --> 01:37:27.080  
29 Rae, Sarah  
30 Thank you everyone have a great night.

31 01:37:25.370 --> 01:37:25.970  
32 Connie King  
33 Thank you.