Tribbett, Katherine (Kate)

From: connie@chkinglaw.com
Sent: Wednesday, December 22, 2021 2:57 PM
To: Rae, Sarah
Cc: Baum, Christina (she/her/hers); 'Dan Brown'
Subject: Brown - Response to 12/02/21 letter from EPA - Colorado Smelter Superfund Site - Object to perfection of liens and request
Attachments: Attachment 1 - 12-16-21 EPA website - Superfund Site - Colorado Smelter Pueblo, CO Cleanup Activities - Background.pdf; Attachment 2 - 12-16-21 RSams to CBrown Ltr re South Santa Fe Ave Pueblo CO Property.pdf; Attachment 3 - 10-01-94 AGT Closure Report - Pages 1-13 of 87.pdf; Attachment 4 - 10-01-94 AGT Closure Report - Pages 46-47 of 87.pdf; Attachment 5 - 09-14-21 Real Property Appraisal Report - 1103 S Santa Fe Ave, Pueblo, CO 81006 - Andersen Appraisal, LLC - Pages 1-9 of 83.pdf

Follow Up Flag: Follow up
Flag Status: Completed

Dear Sarah,

During our December 14th virtual meeting with Christina Baum, EPA, and Dan Brown, son of Cecil H. Brown, you explained that the December 2, 2021 letter from Christopher Thompson, EPA, to Alan Gilbert, regarding "Notice of Potential Liability and Intent to Perfect a Lien, Colorado Smelter Superfund Site, City of Pueblo, Pueblo County, Colorado" (the December 2nd letter) was sent via United States Postal Service (USPS) certified mail on December 8th, so the deadline for a response is December 22nd, and you would prefer receiving an email with attachments in response to the December 2nd letter.

On behalf of Cecil H. Brown, I am submitting this email with attachments in response to the December 2nd letter to object to the perfection of the liens and to request an appearance before a neutral EPA official to present the information that we believe would contradict the EPA's right to assert or perfect the liens.

We believe the EPA does not have a statutory basis to perfect the liens pursuant to Section 107(l) of CERCLA.

The September 22, 1987 EPA memorandum regarding Guidance on Federal Superfund Liens, on page 4, states "Regional offices should not file notice where it appears that the defendant satisfies the elements of the innocent landowner defense pursuant to Section 107(b)(3)."
https://www.epa.gov/enforcement/guidance-federal-superfund-liens

Cecil H. Brown is Not Liable Due to the Innocent Landowner Defense

At the time Cecil H. Brown bought the property no one was concerned about the potential for contamination at the Colorado Smelter Superfund Site.

History of the Colorado Smelter Site

The August 2012 report entitled "Pueblo Forged Together in the Bessemer Neighborhood" prepared by Historitecture, L.L.C. for the City of Pueblo, Colorado, describes the history of the Colorado Smelter:
-Page 70, "Figure 7.1. All three rail branches connected to the Colorado or Eilers Smelter, which was exceptionally productive and profitable between 1883 and 1908. In 1921, following the great Arkansas River flood, St. Mary's Catholic Church acquired the property to relocate its parish. The church used dynamite to bring down the smokestack in 1923. (City of Pueblo)"

-Page 71, second paragraph: “the company purchased ninety acres directly east of the plant across Santa Fe Avenue to be used as a slag dump. An unexplained slump in business about 1907 forced the smelter to shut down in 1908. At the beginning of March 1909, crews recycled slag from the site for use as track ballast on Denver & Rio Grande Railroad lines in Fremont County between Canon City and Florence, though no new production occurred at the site of the Colorado Smelter again.[181]
The Newton Lumber Company purchased the entire property of the former smelter, both east and west of Santa Fe Avenue. Newton Lumber sold thirteen acres on the west side of Santa Fe to St. Mary’s Catholic Church following the disastrous Flood of 1921, in order for the church to relocate from the Grove neighborhood just below the bluffs to the north. The church demolished the smokestack via dynamite in July 1923; those bricks which remained in good condition were cleaned and used to construct the St. Mary’s School. The house and grounds of the smelter general manager housed the convent for school teachers.[182]”
https://www.pueblo.us/DocumentCenter/View/3259/Bessemer-Neighborhood-Context?bidId=

The old St. Mary’s School is now a museum.

Potential for Contamination at the Colorado Smelter Site Discovered in 1989

The EPA website for the Superfund Site: Colorado Smelter, Pueblo, CO, Cleanup Activities states: “**The potential for contamination at the Colorado Smelter site was discovered during an earlier inspection of the Santa Fe Bridge Culvert site, which began a series of investigations in the early 1990s** and continues today.” (bolded emphasis added)
Attachment #1: 12-16-21 EPA website – Superfund Site – Colorado Smelter Pueblo, CO Cleanup Activities – Background.pdf

The January 31, 2013 article entitled “Guilty Knowledge – PULP’s three month investigation into pollution at the old Colorado Smelter Site” states: “Part One …
2. Study of the site – How it all started
1989: Red Discharge in the Arkansas and the Pueblo County Health Department
Scientific attention was originally directed at the region near sites of Pueblo’s old smelters in 1989 when a concerned citizen reported, to the Pueblo County Health Department, seeing a red-orange discharge into the Arkansas River coming from an eighteen inch culvert. This culvert extends from the levee on the south side of the Arkansas River, directly below the Santa Fe Avenue Bridge. **Pueblo County proceeded to collect a grab sample of the discharge on September 26, 1989.** Results of the first samples confirmed that there were in fact elevated concentrations of several metals in the flow coming from the Santa Fe Bridge culvert. This information was reported to the CDPHE.
1991: A Preliminary Assessment of Pueblo and a History of Smelting
A preliminary assessment of the geology, climate, wildlife, ecosystems, population, and history of Pueblo near the Santa Fe Bridge culvert area was compiled by the CPDHE in 1991, preceding further sampling and inspection. CDPHE discovered that six smelters had operated in the vicinity of the Santa Fe Bridge culvert between 1878 and 1921. The sites of these old smelters would become target for dangerous metals research.
1994-1995: A First Stab at Sampling and Analyzing First Field Research
In 1994, samples of soil were first collected from the sites of Pueblo’s historic smelter activity, including the Colorado Smelter, and sampled once again after the first results were released by the CDPHE, which raised alarm when each of the 33 samples collected reported levels of Arsenic exceeding the EPA’s threshold for cancer risk to humans.” (bolded emphasis added)
https://pueblopulp.com/131guilty-knowledge-pulps-three-month-investiation-into-pollution-at-the-old-colorado-smelter-site/

Cecil H. Brown Purchased the Property in 1982 and 1986

These are the dates that Cecil H. Brown purchased the property:
-On August 31, 1982 Cecil H. Brown purchased the property located at 1045-1049 South Santa Fe Avenue (4 acres).
-On August 20, 1986 Cecil H. Brown purchased the property located at 1103 South Santa Fe Avenue (8 acres).

The property was purchased by Cecil H. Brown after the 1980 Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) effective date of December 11, 1980, and before the 1986 amendments to CERCLA effective date of October 17, 1986.

The 1980 CERCLA effective date is December 11, 1980

In CERCLA, Public Law 96-510, effective December 11, 1980, Section 107(b)(3) states:
"(b)There shall be no liability under subsection (a) of this section for a person otherwise liable who can establish by a preponderance of the evidence that the release or threat of release of a hazardous substance and the damages resulting therefrom were caused solely by - … (3) an act or omission of a third party other than an employee or agent of the defendant, or than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the defendant (except where the sole contractual arrangement arises from a published tariff and acceptance for carriage by a common carrier by rail), if the defendant establishes by a preponderance of the evidence that (a) he exercised due care with respect to the hazardous substance concerned, taking into consideration the characteristics of such hazardous substance, in light of all relevant facts and circumstances, and (b) he took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions;"
https://www.govinfo.gov/content/pkg/STATUTE-94/pdf/STATUTE-94-Pg2767.pdf#page=1

The 1986 amendments to CERCLA effective date is October 17, 1986

In the 1986 amendments to CERCLA, effective October 17, 1986, Section 101(f) states:
"Section 101 of CERCLA is amended by … adding the following new paragraphs at the end thereof: … (35)(A) The term 'contractual relationship", for the purpose of section 107(b)(3), includes, but is not limited to, land contracts, deeds or other instruments transferring title or possession, unless the real property on which the facility concerned is located was acquired by the defendant after the disposal or placement of the hazardous substance on, in, or at the facility, and one or more of the circumstances described in clause (i), (ii), or (iii) is also established by the defendant by a preponderance of the evidence:
(i) At the time the defendant acquired the facility the defendant did not know and had no reason to know that any hazardous substance which is the subject of the release or threatened release was disposed of on, in, or at the facility. … (iii) The defendant acquired the facility by inheritance or bequest. In addition to establishing the foregoing, the defendant must establish that he has satisfied the requirements of section 107(b)(3) (a) and (b).
(B) To establish that the defendant had no reason to know, as provided in clause (i) of subparagraph (A) of this paragraph, the defendant must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. For purposes of the preceding sentence the court shall take into account any specialized knowledge or experience on the part of the defendant, the relationship of the purchase price to the value of the property if uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property, and the ability to detect such contamination by appropriate inspection."
https://www.govinfo.gov/content/pkg/STATUTE-100/pdf/STATUTE-100-Pg1613.pdf

All Appropriate Inquiries before 1986 amendments to CERCLA effective date October 17, 1986

A landowner who purchased contaminated property long ago would not be held to as stringent an environmental assessment standard as would a current purchaser. *United States v. Serafini*, 706 F. Supp. 346 (M.D. Pa. 1988) (court denied the government summary judgment because it failed to show that defendant's actions were "inconsistent with good commercial customary practices" although the defendant purchasers had made no inquiry into past or current uses of the landfill and waste disposal site when they bought it in 1969.)
https://law.justia.com/cases/federal/district-courts/FSupp/706/346/1588633/

Historically, commercial property owners, tenants and developers were not concerned about potential contamination near slag piles in Pueblo. For example, during the 1970s the Minnequa Industrial Park, located between Interstate Highway 25 and the slag pile originating from the steel production of Colorado Fuel and Iron Corp (CF&I), was developed by a subsidiary organization of CF&I, and according to the design engineer for

development of the property, there was no active search for or concern over the presence of hazardous substances.
Attachment #2: 12-16-21 RSams to CBrown Ltr re South Santa Fe Ave Pueblo CO Property.pdf

There were no standards for "all appropriate inquiries" available in 1982 and 1986. The first American Society for Testing and Materials (ASTM) Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process (ASTM E1527-93) was published in 1993.
https://www.bbjgroup.com/blog/the-astm-e1527-phase-i-environmental-site-assessment-esa-standard-a-look-back-part-one

EPA's All Appropriate Inquiries Final Rule, which establishes specific requirements for the "all appropriate inquiries" that are necessary to establish the landowner defenses under CERCLA, became effective on November 1, 2006. "Commonly known and reasonably ascertainable information must be pursued to the extent necessary to achieve the objectives and performance factors of the final rule. Because there has been some case law under the innocent purchaser defense interpreting the meaning of this criterion, the EPA did caution that courts will have the ultimate say on what conditions will be construed as being commonly known or reasonably ascertainable."
https://www.environmental-law.net/wp-content/uploads/2011/08/The-New-EPA-AAI-RulePREL-Jan07.pdf

Cecil H. Brown Undertook All Appropriate Inquiries

Prior to purchasing the property on August 31, 1982 and on August 20, 1986, Cecil H. Brown undertook all appropriate inquiries into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. The tenants at the time did not express any concerns. The potential for contamination at the Colorado Smelter Site had not yet been discovered. (As previously described, the potential for contamination was discovered in 1989.) CDPHE had not yet conducted a preliminary assessment of the area. (As previously described, CDPHE conducted a preliminary assessment of the area in 1991.) CDPHE had not yet collected and analyzed soil samples from the sites of Pueblo's historic smelter activity. (As previously described, in 1994, samples of soil were first collected from the sites of Pueblo's historic smelter activity, including the Colorado Smelter.)

On August 31, 1982 and on August 20, 1986, when Cecil H. Brown purchased the property, he did not know and had no reason to know that any hazardous substance was disposed of on, in, or at the property.

Cecil H. Brown Transferred Property to LLCs in 2011 and 2012

Page 3 of the December 2nd letter states: "properties were conveyed accordingly:
Parcel number 1501400002: from Cecil H. Brown to 1000 South Santa Fe LLC by deed dated November 1, 2011, which deed was recorded in the Pueblo County Clerk's Office." [This is the 4 acre parcel that Cecil H. Brown purchased on August 31, 1982.]
"Parcel number 1501400003: from Cecil H. Brown to 1100 South Santa Fe LLC by deed dated February 21, 2012, which deed was recorded in the Pueblo County Clerk's Office." [This is the 8 acre parcel that Cecil H. Brown purchased on August 20, 1986.]

Dan Brown is the son of Cecil H. Brown. This is Dan Brown's explanation of the LLC's:
"The LLC's are a technical transfer. It was not a sale. My father and mother owned the property jointly. When she passed, we had to settle her estate. Thus, the LLC's were created and both interests – my fathers and mother's – were transferred into the LLC's with my dad as the sole owner and manager. My dad's personal tax return includes both LLC's."

1994 TCLP Testing Results Would Not Warrant Remediation of the Property

Page 5 of the December 2nd letter, Information to Assist You, item 5.a. refers to the Toxicity Characteristic Leaching Procedure (TCLP) testing.
It is our understanding that EPA has not yet conducted TCLP testing on soil samples from the property.

In 1994 Cecil H. Brown contracted with McGlothlin and Associates, Inc., environmental consultants, to monitor and observe the removal of four above ground fuel tanks on his property located at 1045 ½ S. Santa Fe Avenue, Pueblo, Colorado, using all appropriate processes to do that safely and testing to remediate any concerns. The October 1, 1994 Above Ground Tank (AGT) Closure Report has TCLP testing analytical results from two soil samples that would not warrant remediation (e.g., cleanup or asphalt capping) of the property.
Page 5/87 states: "Additionally two of the samples SB6-6', and SB7-5' were also analyzed for TCLP 8 metals, paint filter, and ignitability. Results of analytical testing are presented on Table 1. Laboratory data transmittal sheets and chain of custody are provided for review in the APPENDIX.
On page 13/87 is Figure 2: 1045 ½ S. Santa Fe Ave. Pueblo, CO 81006 Soil Boring Site Plan which illustrates the locations of SB6 and SB7.
On page 46/87, for Extract of Soil Sample, SB6-6', for Arsenic the Detection Limit is 0.10 mg/L (ppm), the Regulatory Level is 5.0 mg/L (ppm) and the Sample Result is N.D., and for Lead, the Detection Limit is 0.10 mg/L (ppm), the Regulatory Level is 5.0 mg/L (ppm) and the Sample Result is N.D.
On page 47/87, for Extract of Soil Sample, SB7-5', for Arsenic the Detection Limit is 0.10 mg/L (ppm), the Regulatory Level is 5.0 mg/L (ppm) and the Sample Result is N.D., and for Lead, the Detection Limit is 0.10 mg/L (ppm), the Regulatory Level is 5.0 mg/L (ppm) and the Sample Result is N.D. Analytes reported as N.D. were not present above the stated limit of detection.
Attachment #3: 10-01-94 AGT Closure Report – Pages 1-13 of 87.pdf
Attachment #4: 10-01-94 AGT Closure Report – Pages 46-47 of 87.pdf

Unpaved Portions of the Property May Not Need to be Capped

Page 2 of the December 2nd letter, Notification of Intent to Perfect Superfund Lien, states: "CERCLA gives the EPA the funds and authority to clean up contaminated sites." The EPA recently stated that unpaved portions of this property should be capped with asphalt. The EPA has not said this property needs to be cleaned up. Unpaved portions of the property may not need to be capped: on the 8-acre parcel, there may not be any concerns with arsenic and lead analytical results; and on the 4-acre parcel, some of the property may be paved as a capital improvement for the tenant.

Value of the Property is Based upon Income from Leases

The recent appraisal for the 8-acre parcel indicates the value of the property is based upon rental income from leases at the market rate that is not negatively affected by the Colorado Smelter Superfund Site. The September 14, 2021 Real Property Appraisal Report for 1103 S Santa Fe Ave, Pueblo, CO 81006 prepared by Andersen Appraisal, LLC, on page 9/83, states:
"The subject property is located on the EPA Colorado Smelter Super Fund site. Consequently, the subject site should be tested for possible contamination through the EPA protocol (additional information is available on the EPA Colorado Smelter Super Fund website). The appraisal has been prepared with the required EPA soil inspection based on the Extraordinary Assumption that the condition or deficiency does not require repair or alteration. The affect on marketability from any stigma associated with the Colorado Smelter Super Fund study area are unknown at this time.
Although the subject property is located within the EPA designated Colorado Smelter Super Fund study area, the effects on marketability of the subject are unknown. However, the property is entirely encapsulated with asphalt, concrete, and road base materials. In addition, several existing tenant occupied commercial and industrial use properties are located within the immediate area with no apparent negative affects on rental income."
Attachment #5: 09-14-21 Real Property Appraisal Report – 1103 S Santa Fe Ave, Pueblo, CO 81006 – Andersen Appraisal, LLC – Pages 1-9 of 83.pdf

Cecil H. Brown does not expect the value of the property to be affected by the Colorado Smelter Superfund Site because the value of the property is based upon rental income from leases at the market rate. Nothing indicates that the property would be more valuable if unpaved portions of the property were capped with asphalt.

Commercial Industrial Property Owners Believe They Are Not Liable

Seven years ago EPA representatives told Cecil H. Brown that he was not liable for any costs. Other EPA representatives recently stated that this may have been miscommunication because EPA has chosen not to hold residential property owners liable, but EPA intends to hold commercial industrial property owners liable. Other commercial industrial property owners still believe they are not going to be liable for any costs. The commercial industrial property owners, including Cecil H. Brown, might have made different decisions if they had known they might be liable for costs.

Please don't hesitate to contact me if you have any questions or comments. Thanks very much for your consideration.

Connie

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COLORADO SMELTER
PUEBLO, CO

Cleanup Activities

Sign up for this Superfund site's mailing list

On this page:

On related pages:

- Operable Units
- Cleanup Progress

Background

The Colorado Smelter was a silver and lead smelter that operated in the Eilers and Bessemer neighborhoods from 1883 to 1908. EPA listed the site on the National Priorities List in December 2014, due to its concern about high levels of arsenic and lead (metals) that had been identified in smelter slag and neighborhood soils.

Pueblo was once home to five ore smelters and is still home to one active steel mill. The Colorado Smelter historical footprint is bound by Santa Fe Avenue to the east, Mesa Avenue to the south, Interstate 25 to the west, and the Arkansas River to the north. The Bessemer, Eilers and Grove neighborhoods are adjacent to the former Colorado Smelter site, which now consists of building remains and an approximately 700,000-square-foot slag (waste) pile.

The potential for contamination at the Colorado Smelter site was discovered during an earlier inspection of the Santa Fe Bridge Culvert site, which began a series of investigations in the early 1990s and continues today. In 2010, CDPHE conducted a focused site inspection of properties surrounding the Colorado Smelter; this study determined the presence of elevated lead and arsenic levels. These levels pose a threat to current and future residents. Additional sampling will help determine the type and scope of cleanup activities.

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MARK A. MORTON, P.E.
KEN L. WHITE, P.L.S.

December 16, 2021

Mr. Cecil H. Brown
c/o Mr. Dan Brown
2029 North Cascade Avenue
Colorado Springs, CO 80907

Re: Land Development Engineering Work in the Neighborhood of Colorado Fuel and Iron Property, Pueblo, Colorado

Dear Mr. Brown:

At the request of Ms. Connie King, Attorney at Law, we have been asked to provide a letter of our recollections of any adverse environmental considerations or recognized hazardous material in the vicinity of properties presently known as 1045-1049 South Santa Fe Avenue and 1103 South Santa Fe Avenue, Pueblo, Colorado.

I was a Design Engineer doing civil engineering consulting work in 1970 after graduation from Colorado State University. During the time period of 1972-1974, the organization I was employed with was involved in the development of the property located at the southeast sector of Interstate Highway 25 and Colorado Highway 45, also known as Pueblo Boulevard. That site is nearly fully developed today, with various commercial businesses operating from that site.

The site where I was involved in design engineering is located approximately 2.25 miles south southwest from the sites identified above by addresses on South Santa Fe Avenue. It was platted as Minnequa Industrial Park and was originally developed by a subsidiary organization of Colorado Fuel and Iron Corp (CF&I). This site is between Interstate Highway 25 and the slag pile originating from the steel production of CF&I.

During the development of that project, I do not recall any activities involving consideration of hazardous materials at this location. To my knowledge there was no active search for or concern over the presence of hazardous substances as may be addressed by the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

We trust that this will provide some additional background for issues which may be affecting the South Santa Fe Avenue properties.

Sincerely,

Roger J. Sams

Roger J. Sams, P.E.

RJS/mer

McGlothlin and Associates, Inc.

26 Pineridge Court
Pueblo, CO 81001

Telephone and Facsimile:
(719) 583-0584
1-800-637-7494

ABOVE GROUND TANK (AGT) CLOSURE

INITIAL SITE CHARACTERIZATION

Ryder Truck Rental-One-Way Inc.
1045 1/2 S. Santa Fe.Ave.
Pueblo, Colorado 81006

October 1, 1994

Prepared for:
Cecil Brown
P. O. Box 7385
Colorado Springs, CO 80933
(719) 634-0796

Prepared by:
Merritt S. McGlothlin
November 28, 1994

McGlothlin Project # CB8/94118

TABLE OF CONTENTS

1.0 INTRODUCTION/BACKGROUND

McGlothlin and Associates, Inc. (MAC) was contracted to monitor and observe the removal of four (4), above ground tanks, (AGT's) at the subject property located at 1045 1/2 S. Santa Fe Ave., Pueblo, CO 81006. This report contains a summary of the assessment at the site, prior to removal of the tanks. This report also contains the results of soil testing, soil excavation and removal from the site, and documentation of tank removal.

The subject property is an office and truck service headquarters in Pueblo, CO for Ryder Truck Rental. The site also includes a new underground storage tank (UST) fueling facility installed in 1994. The AGT's that were removed were located at the north and rear of the site. A site plan is incorporated in this report as Figure 1. Two of the tanks were used for storing diesel and two tanks were utilized for gasoline storage. The fuel was not sold to the motoring public but was used to supply the trucks that were rented or leased at the facility. The tanks, their size and type of product stored are listed below:

Tank 1	12.5' d. x 15' h.	13000 gal.	Diesel
Tank 2	12.5' d. x 15' h.	13000 gal.	Gasoline
Tank 3	11' d. x 18' h.	13000 gal.	Diesel
Tank 4	8' d. x 8' h.	3000 gal.	Gasoline

Tanks 3, and 4 were installed in 1962. Tanks 1, and 2 were installed in 1973. The property is owned by Cecil Brown. Ryder Truck has operated the tanks since 1983. In early 1994 the AGT's were taken out of service and a new underground storage and fuel facility was installed. At the advent of the new facility the old fuel island area was dismantled and the island removed and concrete was poured over that area.

It is unknown if any site assessment or soil analysis was conducted in the area of the abandoned fuel island. The product lines from the AGT's to the abandoned fuel island were not removed.

2.0 SUBSURFACE EXPLORATION

Prior to any excavation or removal activities a site assessment was conducted at the site involving the drilling of a number of soil borings and field screening the soil at five foot intervals. Nine (9) soil borings were drilled at the site August 18, 1994. The approximate locations of the soil borings are shown on FIGURE 2. The soil boring logs are also included in the APPENDIX.

As noted on the soil boring logs, either a course gravel or concrete pavement was encountered at the surface of each soil boring overlying interbedded sands and clays. The clay was slightly sandy and included traces of gravel that appeared brown to dark brown in color. There was no odor detected in any of the soil borings except in soil borings 6, 7, and 8 and these borings were drilled adjacent or very near the AGT's. Ground water was not encountered and it appears to be at least 25 ft below ground surface (bgs).

Soil Samples were collected and field screened at five foot intervals in each boring by the head space method. This method consists of filling a small plastic bag half full with soil, and sealing the bag. After the soil has volatilized for approximately 20 minutes the bag is penetrated with a Photo Ionization Detector, (PID) indicating a field screen reading of hydro carbons in parts per million, (PPM). Results of PID field screenings are incorporated in the soil boring logs included in the APPENDIX.

PID field screening levels indicated almost non detectable levels of hydrocarbons except in soil boring 8, which is adjacent to the AGT's.

Selective soil samples were collected and stored in glass containers with teflon lids and immediately put on ice for transport to Aspen Analytical Laboratory, Colorado Springs, Colorado. Samples were tested for benzene, toluene, ethylbenzene, and xylenes (BTEX), total volatile hydrocarbons (TVH - gasoline) total extractable hydrocarbons (TEH - diesel) and one sample was analyzed for total petroleum hydrocarbons (TPH - oil & grease). EPA methods 8015, and 8020 were used at the laboratory. Additionally two of the samples SB6-6', and SB7-5' were also analyzed for TCLP 8 metals, paint filter, and ignitability. Results of analytical testing are presented on Table I. Laboratory data transmittal sheets and chain of custody are provide for review in the APPENDIX.

The conclusions from the laboratory results of the soil samples that were collected, indicated non detectable or very low levels of BTEX. However in soil sample SB2-10' collected from the abandoned fuel island area, and soil sample SB8-5' collected adjacent to the AGT's, high levels of hydrocarbons were in existence. Therefore it was determined that at the area of the abandoned fuel island the concrete would be removed and soil in that area would be excavated for disposal at an approved landfill. It was also determined that soil around and under the four AGT's would be over excavated and removed to the landfill.

3.0 SITE INVESTIGATION

The job of removing the concrete from over the abandoned fuel island all excavation work and supervising the loading of the tanks was undertaken by Bassi Construction Co. Merritt McGlothlin of McGlothlin and Associates monitored excavation and removal activities for potential hydrocarbon contamination. The Colorado Oil Inspection Section had been given 10 day notification by McGlothlin and Associates, Inc.

The concrete over the abandoned fuel island area was removed on the morning of September 27, 1994. The area was over excavated by approximately 7 feet wide by 24 feet long and 10 feet deep. Approximately 60 yards of soil was excavated and stockpiled for removal to the landfill. Soil samples were collected from this area and the samples were transported to Aspen Analytical in Colorado Springs for analysis. A summary of analytical data can be found in Table II. A map detailing the area of sampling can be found in Figure 3. The abandoned product lines were located and these were removed. Field screening for hydrocarbons was conducted along the product lines and no levels of contamination was found. The empty trench after the lines were removed was backfilled and compacted. The abandoned fuel island area was backfilled with clean imported soil on September 30, 1994.

The tanks were pumped dry of all remaining product (about 600 gallons of diesel) and it was filtered and placed in the inventory of the underground storage of Ryder Truck Rental. September 30, 1994 dry ice was placed in the four AGT's to make the tanks inert.

October 1, the tanks were placed on their sides and transported by truck for proper disposal to Du-Wald Steel in Denver, CO. All tank bottoms were visually examined and no holes or leaks were found. The tanks were in good shape

with some rusting on the bottoms but very little surface pitting. The soil beneath the tanks had some staining, particularly tank 4. This staining beneath and in front of the tanks could be attributed to some minor spills during deliveries over the years that the tanks were in service.

October 3, 1994 over excavation of the area that the tanks had occupied commenced and approximately 200 yards of soil was removed from this area.

The soil removed from the tank area was stockpiled with the soil from the abandoned fuel island for transport to the landfill. Laboratory analysis on the original soil samples from the abandoned fuel island (101, 102, 103, Table II) indicated levels of 87ppm to 1,200 ppm of hydrocarbons. The backfilled material was removed and additional over excavation of the areas of sample 101, and 102 was undertaken. Approximately 30 to 40 yards of additional soil was removed and stockpiled for transport to the land fill. Two additional soil samples were collected in the areas of 101, and 102, (101-01 & 101-02). The results of these retested samples can be found in Table IV.

Additionally soil samples were collected at the excavated area where the tanks had once occupied. A summary of the analytical data of these samples can be found in Table III. Also Figure 3 details where the samples were collected and the area of excavation.

All collected soil samples were stored in glass containers with teflon lids and immediately put on ice for transport to Aspen Analytical, Colorado Springs, CO. Samples were tested for BTEX, TVPH, and TEPH. Ground water was not encountered during any of the excavation activities. Total excavation was to a depth of approximately 8 to 9 feet. Ground water in the area is not anticipated to a depth of 20 to 25 feet below grade, based on available information.

4.0 RESULTS

Results of soil samples that were submitted for analysis of BTEX, TVPH, and TEPH at Aspen Analytical Laboratory indicated that samples taken after over excavation had occurred contained no significant traces of BTEX, TVPH, or TEPH. Results of all analytical testing are presented on Table I, II, III, and IV. Laboratory data transmittal sheets are provided for review in the APPENDIX. Approximately 300 cubic yards of soil was transported to the Broadacre Landfill east of Pueblo, CO. Copies of the soil disposal are included in the APPENDIX

No additional remedial action was taken at the site.

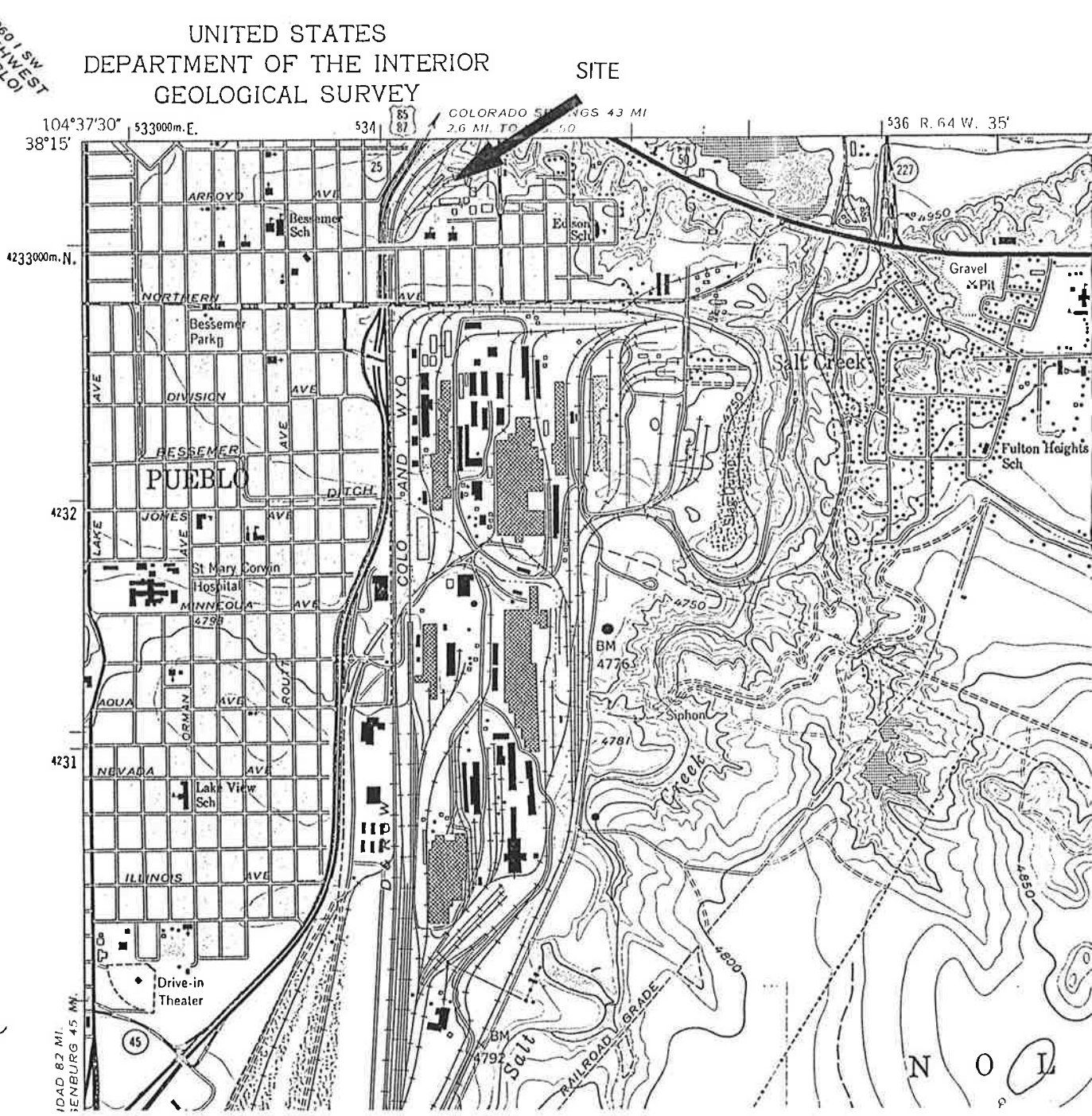
Colorado Department of Health (CDH) recommended guidelines for clean-up of petroleum contaminated soils: Remedial Action Category I (RAC I): contaminant levels require remediation at concentrations equal to or greater than 20 ppm BTEX compounds and 100 ppm TVPH, or TEPH compounds. Therefore no additional remedial action was taken at the site.

5.0 CONCLUSIONS AND RECOMMENDATIONS

The displaced excavations were back filled with clean imported soil. No other evidence of significant petroleum contamination was found or observed at the site. No soil discoloration or free product was encountered. The tanks were in good condition. Therefore, it appears that excavation of the offending soil and removal of the tanks caused no threat to public health or the environment. State and Federal Regulations direct that copies of AGT closure reports be maintained for a minimum of three years, or filed with the Colorado Department of Health, (CDH). McGlothlin and Associates recommends that this report be kept on file for ever.

LIMITATIONS

The conclusions presented in this report are based on field observations, laboratory analyses performed by an independent laboratory, and professional experience under similar conditions. It is possible that additional sampling and testing could alter the conclusions of this report. This report was prepared for the use of the client and his/her agents only.


5060 I SW
(NORTHWEST
PUEBLO)
UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY
SITE
104°37'30"
38°15'
533000m.E.
534
536
R. 64 W. 35'
4233000m.N.
4232
4231
ARROYO AVE
Bessemer Sch
Edison Sch
NORTHERN AVE
Bessemer Park
DIVISION AVE
BESSEMER
PUEBLO
DITCH
JONES AVE
LAKE AVE
St Mary Corwin Hospital
MINNEQUA AVE
4798
AQUA AVE
ROUTE
NEVADA AVE
Lake View Sch
ILLINOIS AVE
Drive-in Theater
45
IDAD 82 MI.
ENBURG 45 MI.
COLORADO SPRINGS 43 MI
2.6 MI. TO
85
87
50
227
4950
Gravel Pit
Salt Creek
4750
Fulton Heights Sch
COLORADO AND WYO
4750
BM 4776
Siphon
4781
Creek
4850
4800
BM 4792
Salt
RAILROAD GRADE
D & RGW
N O L

SITE MAP

1045 1/2
So. Santa Fe
Pueblo, CO

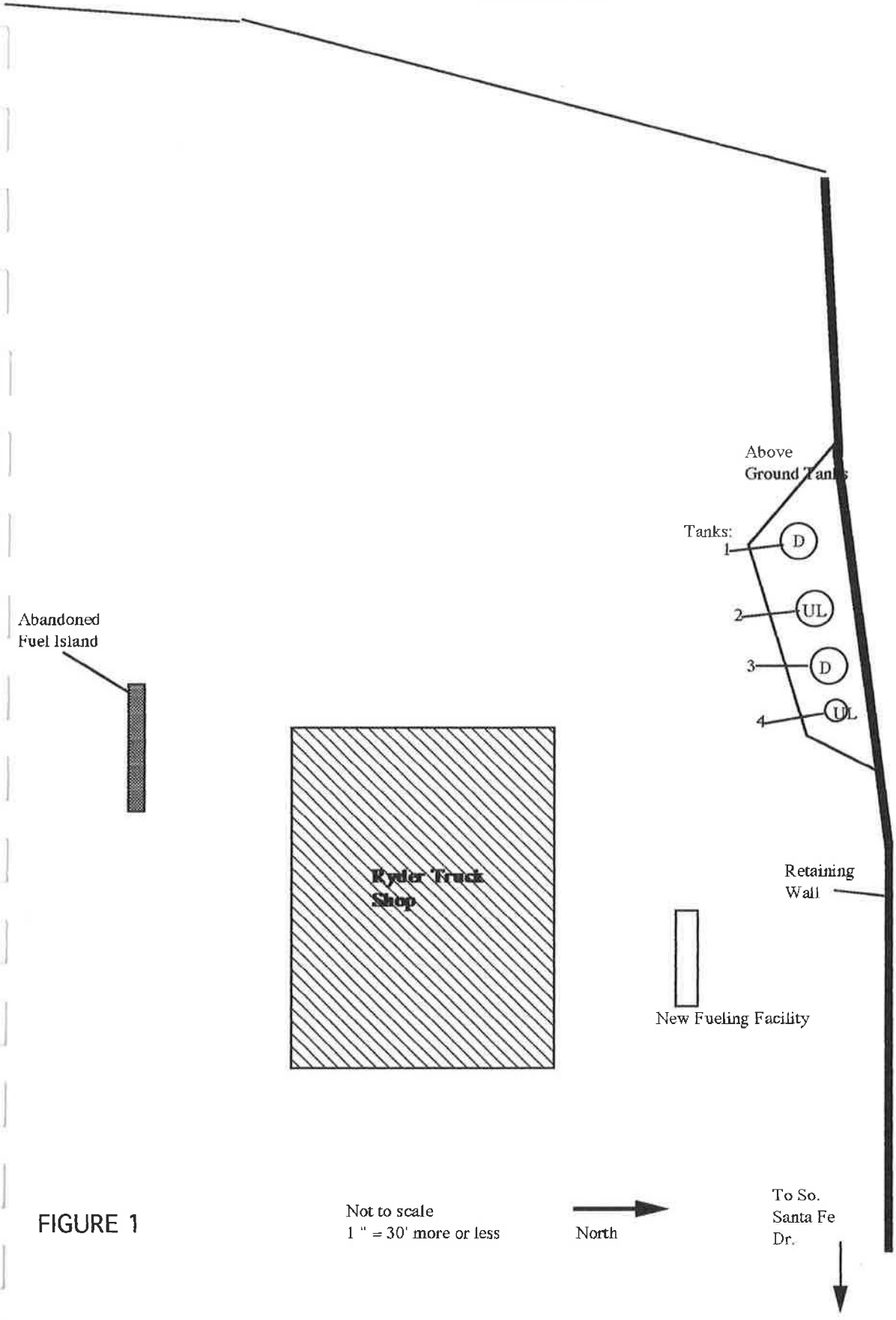


FIGURE 1

1045 1/2 S. SANTA FE AVE.
PUEBLO, CO 81006

SOIL BORING SITE PLAN

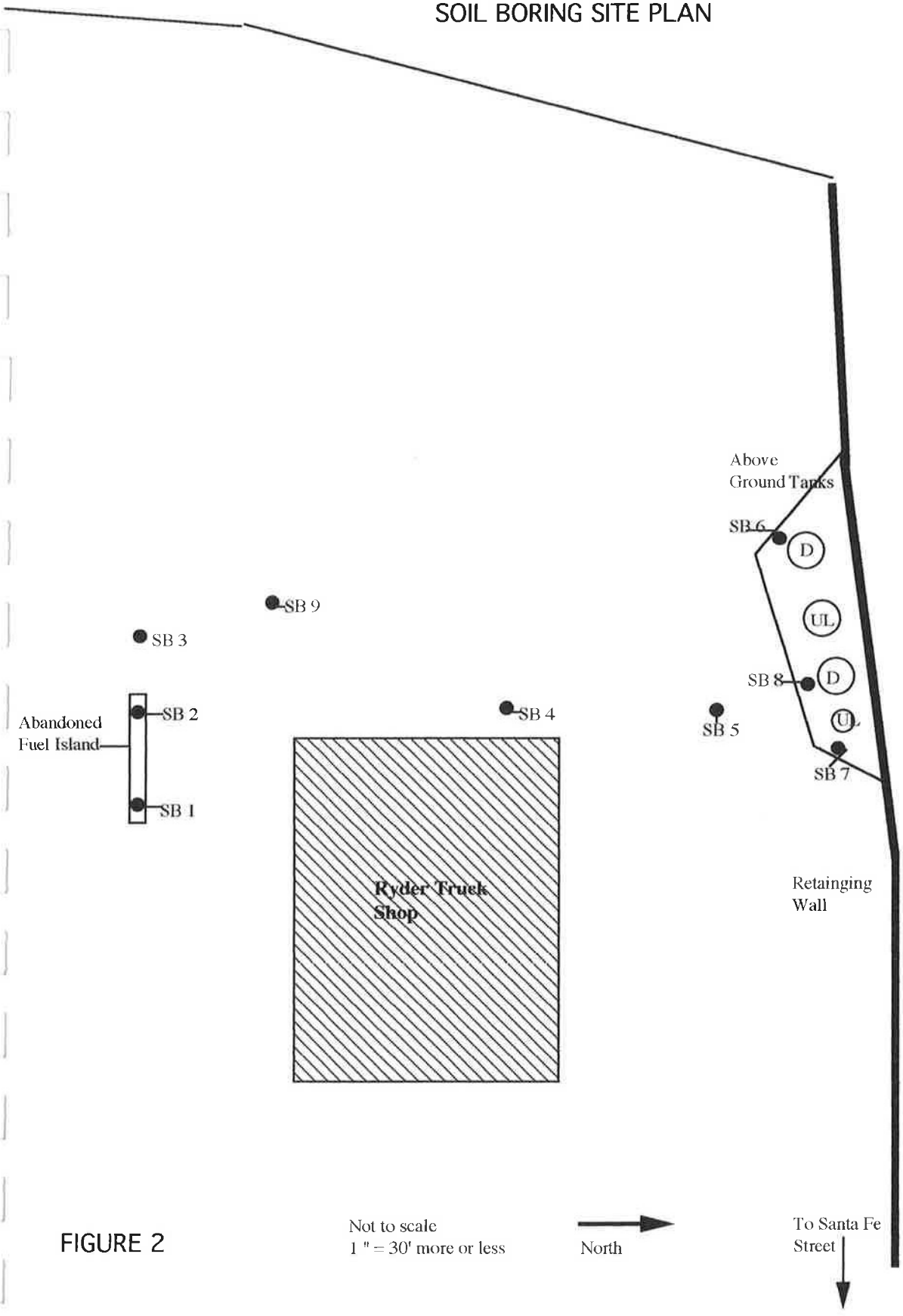


FIGURE 2

Aspen Analytical

1110 Elkton Drive, Suite A • Colorado Springs, CO 80907
(719) 593-9595 • FAX (719) 593-9911

McGlothlin & Associates, Inc	Client Project ID:	CB8/94118	Sampled:	Aug 18, 1994
26 Pineridge Court	Sample Descript:	Extract of Soil Sample, SB6-6'	Received:	Aug 19, 1994
Pueblo, CO 81001			Analyzed:	Aug 25, 1994
Attention: Merritt McGlothlin	Lab Number:	408-0251	Reported:	Aug 26, 1994

TCLP METALS

Analyte	EPA HW No.	Detection Limit mg/L (ppm)	Regulatory Level mg/L (ppm)	Sample Results mg/L (ppm)
Arsenic	D004	0.10	5.0	N.D.
Barium	**D005**	**0.10**	**100**	**0.39**
Cadmium	D006	0.010	1.0	N.D.
Chromium	D007	0.10	5.0	N.D.
Lead	D008	0.10	5.0	N.D.
Mercury	**D009**	**0.00010**	**0.2**	**0.00020**
Selenium	D010	0.10	1.0	N.D.
Silver	D011	0.010	5.0	N.D.

Analytes reported as N.D. were not present above the stated limit of detection.

ASPEN ANALYTICAL

Jennifer N. East

Jennifer N. East
Laboratory Director

Aspen Analytical

1110 Elkton Drive, Suite A • Colorado Springs, CO 80907
(719) 593-9595 • FAX (719) 593-9911

McGlothlin & Associates, Inc	Client Project ID:	CB8/94118	Sampled:	Aug 18, 1994
26 Pineridge Court	Sample Descript:	Extract of Soil Sample, SB7-5'	Received:	Aug 19, 1994
Pueblo, CO 81001			Analyzed:	Aug 25, 1994
Attention: Merritt McGlothlin	Lab Number:	408-0252	Reported:	Aug 26, 1994

TCLP METALS

Analyte	EPA HW No.	Detection Limit mg/L (ppm)	Regulatory Level mg/L (ppm)	Sample Results mg/L (ppm)
Arsenic	D004	0.10	5.0	N.D.
Barium	**D005**	**0.10**	**100**	**0.65**
Cadmium	D006	0.010	1.0	N.D.
Chromium	D007	0.10	5.0	N.D.
Lead	D008	0.10	5.0	N.D.
Mercury	D009	0.00010	0.2	N.D.
Selenium	D010	0.10	1.0	N.D.
Silver	D011	0.010	5.0	N.D.

Analytes reported as N.D. were not present above the stated limit of detection.

ASPEN ANALYTICAL

Jennifer N. East
Laboratory Director

INVOICE

FROM:

Andersen Appraisal, LLC
420 S McCulloch Blvd Ste G
Pueblo West, CO 81007-6099
andappraisals@aol.com
Telephone Number: (719) 568-4113 **Fax Number:**

TO:

Oliver Carlon
PB&T Bank
301 West 5th Street
Pueblo, CO 81003

Telephone Number: (719) 545-1834 **Fax Number:** (719) 585-2319
Alternate Number: **E-Mail:** appraisal@pbandt.bank

INVOICE NUMBER
21-5328
DATE
09/23/2021
Effective Date: 09/14/2021
REFERENCE
Internal Order #: 21-5328
Lender Case #:
Client File #:
Main File # on form: 21-5328
Other File # on form:
Federal Tax ID: 45-2478846
Employer ID:

DESCRIPTION

Lender: PB&T Bank **Client:** PB&T Bank
Purchaser/Borrower: 1100 South Santa Fe LLC
Property Address: 1103 S Santa Fe Ave
City: Pueblo
County: Pueblo **State:** CO **Zip:** 81006
Legal Description: Lengthy - refer to attached description

FEES	AMOUNT
Narrative Appraisal Report	2,800.00
SUBTOTAL	2,800.00

PAYMENTS			AMOUNT
Check #:	**Date:**	**Description:**	
Check #:	**Date:**	**Description:**	
Check #:	**Date:**	**Description:**	
		SUBTOTAL	
Paid in Full. Thank You!		**TOTAL DUE**	$ 2,800.00

Real Property Appraisal Report

LOCATED AT:

1103 S Santa Fe Ave
Lengthy - refer to attached description
Pueblo, CO 81006

FOR:

PB&T Bank
301 West 5th Street
Pueblo, CO 81003

AS OF:

09/14/2021

BY:

John M. Andersen
Certified General Appraiser
#CG40019884
Andersen Appraisals
420 S McCulloch Blvd, Ste G
Pueblo West, CO 81007

Andersen Appraisals
State Certified Real Estate Appraisal
420 S McCulloch Blvd, Ste G
Pueblo West, Colorado 81007

September 23, 2021

PB&T Bank
301 West 5th Street
Pueblo, CO 81003

Re: Property: 1103 S Santa Fe Ave
Pueblo, CO 81006
Borrower: 1100 South Santa Fe LLC
File No.: 21-5328

In accordance with your request, I have appraised the above referenced property. The intended use of this Narrative Appraisal Report is for assistance in the decision process pertaining to a mortgage refinance on the subject property of this appraisal report for the benefit of the Bank. The intended user is the lender/client, PB&T Bank, and any participants, successors, assigns and/or other transferees. No additional intended users are identified by the appraiser.

The effective date of value is September 14, 2021 (date of inspection).

This report is based on a physical analysis of the site and improvements, a locational analysis of the neighborhood and city, and an economic analysis of the market for properties such as the subject. The appraisal was developed and the report was prepared in accordance with the current edition of: Title XI of the Financial Institutions Reform, Recovery & Enforcement Act of 1989 (FIRREA) (12 U.S.C. 3331 et seq.); The regulations adopted by the Office of the Comptroller of the Currency pursuant to Title XI, including, without limitation, the Uniform Standards of Professional Appraisal Practice (USPAP) adopted by the Appraisal Foundation, and the client's guidelines as set forth in the attached engagement letter.

"As Is" Opinion of Market Value: $2,600,000 - $41.88 Per Sq.Ft.

The value conclusions are contingent upon the certification and limiting conditions attached.

John M. Andersen
Certified General Appraiser
State of Colorado #CG40019884

Borrower	1100 South Santa Fe LLC			File No.	21-5328
Property Address	1103 S Santa Fe Ave				
City	Pueblo	County	Pueblo	State CO	Zip Code 81006
Lender/Client	PB&T Bank				

TABLE OF CONTENTS

File No. 21-5328

SUMMARY OF SALIENT FACTS AND CONCLUSIONS

1.	Location	1103 S Santa Fe Ave Pueblo, Colorado 81006
2.	Land Area	326,003 SF - 7.48 Acres
3.	Zoning	I-2 (Light Industrial District)
4.	Improvements	62,079 SF Office Warehouse Facility
5.	Highest and Best Use	
	As If Vacant	Holding or Selling (future development)
	As Improved	Office Warehouse Facility
6.	Values Indications	

Site Value (As Vacant)	Not Developed
Cost Approach	Not Developed
Sales Comparison	$2,600,000 $41.88 SF
Income Approach	$2,650,000 $42.69 SF
Cellular Tower Lease Value	$300,000 (included in opinion of market value)

OPINION OF MARKET VALUE	***$2,600,000***
Opinion of Price Per Square Foot	***$41.88 SF***

7.	Valuation Date (Date of Inspection)	September 14, 2021
8.	Date of Report (Signature Date)	September 23, 2021
9.	Property Rights Appraised	Fee Simple
10.	Extraordinary Assumption	Colorado Smelter Super Fund Site

File No. 21-5328

INTENDED USE / INTENDED USER

The intended use of the appraisal report is for assistance in the decision process pertaining to a mortgage refinance of the subject property of this Narrative Appraisal Report. The intended user is the lender/client, PB&T Bank, and any participants, successors, assigns, and/or transferees. No additional intended users are identified by the appraiser. The lender/client can rely on the findings contained within this appraisal report.

PURPOSE OF THE APPRAISAL

The purpose of this appraisal assignment is to provide an opinion of the market value applicable to the subject property located at 1103 S Santa Fe Ave, Pueblo, Colorado 81006, as of September 14, 2021 (date of inspection). Oliver Carlon with PB&T Bank requested this appraisal report for an opinion of market value on the aforementioned office warehouse facility which is the subject of the foregoing analysis.

OWNER OF RECORD

According to information available from the Pueblo County Assessor's website, the owner of the subject property is 1100 South Santa Fe LLC with a mailing address of 2029 N Cascade Ave, Colorado Springs, Colorado 80907-6726.

OCCUPANCY STATUS

The subject property is partially tenant occupied with short term leases in place and/or month to month terms. The front (east) building has been vacant for several years (formerly occupied by Northern Colorado Paper Co). The west building office sector, quonset building, and metal storage building are occupied by a photovoltaic (solar) company. The west warehouse building is to be occupied by Ferguson Plumbing Supply with a long term lease in the coming months. The subject property is not considered to be encumbered by any long term arms length lease agreements.

PROPERTY RIGHTS APPRAISED

The property rights appraised are based on the fee simple estate since the subject property is not encumbered by any long term arms length lease agreements. I have not considered any fractional interest or lease hold interest.

Fee Simple Estate: Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat.

("The Dictionary of Real Estate Appraisal, Fourth Edition, Page 113")

File No. 21-5328

DEFINITION OF MARKET VALUE

Market Value is defined as, the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in the definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1) Buyer and seller are typically motivated.
2) Both parties are well informed or well advised, and acting in what they consider to be their own best interests.
3) A reasonable time is allowed for exposure in the open market.
4) Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto.
5) The price represents a normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

("The Rules & Regulations - Federal Register, Vol. S5, No. 165, Page 34696")

File No. 21-5328

SCOPE OF THE APPRAISAL REPORT

The Scope of Work is defined in the *Uniform Standards of Professional Appraisal Practice, 2010 - 2011 Edition,* published by The Appraisal Foundation, as "the type and extent of research and analyses in an assignment". The Scope of Work Rule expands the simple definition into rule format as shown below:

For each appraisal, appraisal review and appraisal consulting assignment an appraiser must:

1. *Identify the problem to be solved;*
2. *Determine and perform the scope of work necessary to develop credible assignment results;*
3. *Disclose the scope of work in the report.*
4. *Comment: Scope of work includes, but is not limited to:*
    - *The extent to which the property is identified;*
    - *The extent to which the property is inspected;*
    - *The type and extent of data researched;*
    - *The type and extent of analyses applied to arrive at opinions or conclusions.*

The scope of work decision is based on key assignment elements including the intended use of the appraisal report, the intended users of the appraisal report, and the type and definition of value as previously provided. The intended use and users provide an objective basis for deciding how much information and analysis to include in the development and reporting processes. The definition of value provides the basis for determining what kind of information and analysis is to include in the processes. These three key elements are used to identify the relevant property characteristics, the effective date of the value, and general assignment conditions, including the extent of the reporting process. These three items (intended use, intended users and type & definitions of value) have been discussed in the preceding sections of this Narrative Appraisal Report.

The scope of this appraisal includes a complete prior exterior and interior inspection of the subject property on February 08, 2019. I have re-inspected the subject on September 14, 2021 which is the effective date of this new assignment appraisal report. I have reviewed assessor data and measured the subject improvements to determine the overall Gross Building Area (GBA), functional utility, condition and quality of construction ratings. An interview with the owner was also completed pertaining to the occupancy, utilities, HVAC, improvements and/or remodeling to the property, any lease agreements, etc. A representative sample of the mechanical components were tested for functional use.

I have inquired about any listing or pending sale of the subject property. According to the Pueblo Association of Realtors MLS, the subject has not been listed for sale in the past year. I have collected competitive listings and comparable sales data as applicable to the subject through the Pueblo Association of Realtors Multiple Listing Services, Realtors, peer appraisers, lenders, LoopNet, Costar, internet marketing, market participants (buyers and sellers), and assessor/clerk.

I have inquired about any lease history and operating income / expense associated with the subject facility. The subject property has been partially tenant occupied for several years with some history of income and expense data from leasing of the property. Thus, a review and analysis of the estimated income and expense data of the subject property and similar comparable properties available in the market area have been completed. I have collected sales, listing and rental data from the MLS, Realtors, property managers, appraisal files, and other sources of available data information.

After the appropriate data are collected, the data are verified, analyzed, and reconciled. The sources of information are considered to be reliable sources of information, and I have not knowingly omitted any pertinent information from this appraisal report. From the reconciled market data, I have developed the Sales Comparison Approach to value for the existing improvements. I have developed the Income Approach from the applicable market data for the estimated operating income and expense data as applicable to the subject property. I have analyzed a three year sales, transfer and/or listing history of the subject and comparable properties utilized in this report.

The approaches to value are discussed in detail in the appraisal process section of this appraisal report. Further discussion pertaining to the scope of the Cost Approach is provided within the Cost Approach section. The Cost Approach has not been developed in this report due to the actual age of the improvements and large applicable depreciation adjustments rendering the approach not credible. The omission of any approach to value is also discussed in the reconciliation section of the appraisal report. The readers attention is directed to the assumptions, and limiting conditions of this appraisal report. Finally, the data analyzed and reconciled is described into a narrative discussion to provide support and justification for the final opinion of market value as applicable to the subject property of this appraisal report.

HYPOTHETICAL CONDITIONS / EXTRAORDINARY ASSUMPTIONS

No Hypothetical Conditions are applicable in the analysis of this appraisal report.

The subject property is located on the EPA Colorado Smelter Super Fund site. Consequently, the subject site should be tested for possible contamination through the EPA protocol (additional information is available on the EPA Colorado Smelter Super Fund website). The appraisal has been prepared with the required EPA soil inspection based on the Extraordinary Assumption that the condition or deficiency does not require repair or alteration. The affect on marketability from any stigma associated with the Colorado Smelter Super Fund study area are unknown at this time.

Although the subject property is located within the EPA designated Colorado Smelter Super Fund study area, the effects on marketability of the subject are unknown. However, the property is entirely encapsulated with asphalt, concrete, and road base materials. In addition, several existing tenant occupied commercial and industrial use properties are located within the immediate area with no apparent negative affects on rental income.