



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

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1/25/2022

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Received by  
EPA Region VIII  
Hearing Clerk

December 2, 2021

Ref: ORC-C

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

John F. Starr  
Mary L. Starr  
751 South Santa Fe Avenue  
Pueblo, Colorado 81006

Re: Notice of Potential Liability and Intent to Perfect a Lien  
Colorado Smelter Superfund Site, City of Pueblo, Pueblo County, Colorado CERCLA-08-2022-0004

Dear Mr. and Ms. Starr:

This letter serves to provide notice of potential liability and intent to perfect Superfund liens related to the properties located at 751 South Santa Fe Avenue, Pueblo, Colorado (parcel numbers 1501400020, 1501100003, and 1501135001) located within the Colorado Smelter Superfund Site. The U.S. Environmental Protection Agency is charged with responding to the release or threatened release of hazardous substances, pollutants and contaminants into the environment and with enforcement responsibilities under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA," commonly referred to as Superfund), 42 U.S.C. Sections 9601-9675.

Site History

The EPA has documented the release and threatened release of hazardous substances into the environment at the Colorado Smelter Superfund Site (Site) located in south-central Pueblo, Colorado. The Site includes the historic Colorado Smelter and residential, commercial, school district, and city-owned properties within a 0.5-mile radius of the former smelter. The Site is divided into two operable units: operable unit 1 (OU1)—Community Properties and operable unit 2 (OU2)—the Former Smelter Area. A map of the current Site study area can be found at: <https://semspub.epa.gov/src/document/08/100010946>. In response to the release and threatened release of hazardous substances at the Site, the EPA has spent public funds and anticipates spending additional public funds. These actions have been and will be taken by the EPA pursuant to CERCLA.

Based on the human health risks associated with exposure to arsenic and lead, the EPA prioritized sampling and cleanup of the residential properties within OU1. As of October 31, 2021, the EPA has completed soil sampling at 1,645 homes, indoor dust sampling at 1,096 homes, soil cleanup and restoration at 686 homes, and indoor dust cleanup at 279 homes. We estimate that cleanup at residential properties in OU1 will be completed in 2023.

The EPA is currently in the early stages of data collection for OU2 (Former Smelter Area). In 2018 and 2019, the EPA conducted air monitoring, surface soil sampling, surface water, pore water, and sediment sampling. Additional sampling of subsurface soils, slag, and groundwater in OU2 is planned. Following completion of the remedial investigation and feasibility study for OU2 and a public comment period, the EPA will issue a record of decision selecting the remedy to be implemented at OU2.

### Notice of Potential Liability

Under CERCLA, the Agency's mission is to protect human health and the environment from the actual or potential risks posed by exposure to contaminated or potentially contaminated land and other media. Accordingly, the agency has an obligation to conduct a comprehensive investigation of any hazardous substances, pollutants and contaminants that may be present in the vicinity of a Superfund site and any parties that may be liable under CERCLA. Responsible parties under CERCLA Section 107(a), 42 U.S.C. §9607(a), include, among others, owners or operators at the time of disposal of any hazardous substance, as well as current owners or operators. If a person or entity falls within the categories of responsible parties defined by CERCLA Section 107(a), then they will be held strictly liable, which means that liability can be imposed without a finding of fault or culpability. Responsible parties may be held liable for monies expended by the federal government in taking response actions, including investigative, planning, removal, remedial and enforcement actions at and around sites where hazardous substances have been released. Responsible parties may also be subject to orders requiring them to take response actions themselves.

The EPA has reason to believe that Mr. Starr is the current owner parcel numbers 1501100003 and 1501135001 located within OU2 of the Site and Mr. and Ms. Starr are the current owners of parcel number 1501400020 located within OU2 of the Site. Accordingly, you may be liable with respect to the Site under Section 107(a) of CERCLA.

### Financial Concerns/Ability to Pay Settlements

The EPA is open to exploring settlement options with potentially responsible parties to resolve their CERCLA liability. The EPA is aware that the financial ability of some potentially responsible parties to contribute toward the payment of response costs at a site may be substantially limited. If you believe, and can document, that you fall within that category, please contact EPA Region 8 Enforcement Attorney Sarah Rae by phone at (303) 312-6839 or by email at [Rae.Sarah@epa.gov](mailto:Rae.Sarah@epa.gov) for information on "Ability to Pay Settlements." In response, you will receive a package of information about the potential for these settlements and a form to fill out with information about your finances, and you will be asked to submit financial records including federal income tax returns. If the EPA concludes that you have a legitimate inability to pay the full amount of the EPA's costs, the EPA may offer a schedule for payment over time or a reduction in the total amount demanded from you.

### Notification of Intent to Perfect Superfund Lien

CERCLA gives the EPA the funds and authority to clean up contaminated sites. Pursuant to CERCLA Section 107(l), 42 U.S.C. §9607(l), a superfund lien arises on a property where the United States has expended public funds to clean up contamination at the property. A superfund lien allows the United States to recover response costs from parties liable under CERCLA Section 107(a) and replenish the Superfund Trust Fund. The lien continues until the liability for the EPA's response costs has been satisfied or has become unenforceable through the operation of the statute of limitations provided in CERCLA Section 113(g), 42 U.S.C. §9613(g).

As stated above, the EPA has expended public funds, and anticipates spending additional funds, in taking response activities pursuant to CERCLA at the Site, including the real property located at 751 South Santa Fe Avenue, Pueblo, Colorado (parcel numbers 1501400020, 1501100003, and 1501135001). The EPA understands that these properties were conveyed accordingly:

Parcel number 1501400020: from Santa Fe Avenue LLP to John F. Starr and Mary L. Starr by deed dated October 26, 2016, which deed was recorded in the Pueblo County Clerk's Office.

Parcel number 1501100003: from Austin L. Spitzer and Myrtle A. Spitzer to John Starr by deed dated December 4, 1984, which deed was recorded in the Pueblo County Clerk's Office.

Parcel number 1501135001: from The Pueblo Conservancy to John Starr III<sup>1</sup> by deed dated February 26, 2007, which deed was recorded in the Pueblo County Clerk's Office.

As also stated above, the EPA has reason to believe that John F. Starr and Mary L. Starr are liable under CERCLA Section 107(a) to reimburse the United States for funds that the EPA expends in addressing hazardous substances at the Site.

The EPA has assembled a Lien Filing Record consisting of records or documents relating to and supporting the filing of the liens. A copy of the index to the Lien Filing Record is enclosed with this letter and you may receive a copy of the documents in the Lien Filing Record by requesting them from EPA Enforcement Attorney Sarah Rae by phone at (303) 312-6839 or by email at [Rae.Sarah@epa.gov](mailto:Rae.Sarah@epa.gov). The EPA has reviewed the information in the Lien Filing Record and believes that the statutory elements for the liens exist. Accordingly, the EPA intends to perfect these liens as provided in CERCLA Section 107(l)(3), 42 U.S.C. §9607(l)(3) by filing a Notice of Federal Lien in the Pueblo County Clerk's Office.

You may, within 14 days from the date of this letter, object to the perfection of the liens if you believe that the EPA is in error concerning matters of fact or law relied upon by the EPA for the establishment of the lien. An objection should be in writing and should describe your basis for contending that the EPA does not have a statutory basis to perfect the liens pursuant to Section 107(l) of CERCLA. You may request an appearance before a neutral EPA official to present the information which you believe would contradict the EPA's right to assert or perfect the CERCLA liens. The written objection and/or request for a conference should be sent by you or by your representative, together with any supporting documentation, to EPA Enforcement Attorney Sarah Rae via email or mail at:

Sarah Rae  
Office of Regional Counsel  
US EPA – Region 8  
1595 Wynkoop Street  
Denver, CO 80202  
[Rae.Sarah@epa.gov](mailto:Rae.Sarah@epa.gov)

EPA staff will review any written submission by or on behalf of you. If, after the review, EPA staff agrees that the Agency does not have a reasonable basis to assert the liens, the EPA will forbear from

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<sup>1</sup> EPA has reason to believe that John F. Starr and John Starr III are the the same individual. Please contact Sarah Rae, EPA Enforcement Attorney if this information is not accurate.

perfecting the liens and will notify you of this determination. However, if after this review, EPA staff still believes that the EPA has liens pursuant to CERCLA Section 107(l), then EPA staff will refer the written submission to a neutral EPA official selected for the purpose of reviewing both i) your written submission and ii) the EPA's Lien Filing Record.

If you or your representative requests a conference as provided above, the EPA will contact the requester to schedule it. You may attend a conference by phone or virtual meeting platform, such as Microsoft Teams. At the conference, the EPA will be represented by enforcement staff, including a representative from the Office of Regional Counsel, and you may be represented by counsel or other representative. The conference will be an informal hearing in which you may provide the EPA with information and/or documentation supporting why you dispute the EPA's conclusions with respect to the liens. The conference is not an evidentiary hearing and would not constitute a proceeding for a legally binding determination of liability for the response costs incurred by the EPA in connection with the Site. No official stenographic record will be made, and the conference will not be conducted using rules of evidence or formal administrative procedures. The sole issue to be addressed at the conference would be whether the EPA has a reasonable basis to perfect the liens under Section 107(l) of CERCLA with regard to the Property.

After reviewing the written submissions and after conducting a conference (if one is requested), the neutral EPA official will issue a recommended decision based upon the Lien Filing Record and the other information received. The recommended decision will state whether the EPA has a reasonable basis to perfect the liens and the decision will be forwarded for action to the EPA official delegated to execute liens. You will be provided with a copy of the recommended decision and will be notified of the EPA's action.

Neither you nor the EPA shall be deemed to have waived any rights nor shall either be prohibited from asserting any claim or defense in any subsequent legal or administrative proceeding by reason of participation in the lien processes described in this letter, whether on account of the submission of any objection to the liens, the request for or participation in a conference, the submission of documents or information, or the issuance of a recommended decision by EPA staff or a neutral EPA official.

#### Information to Assist You

Based on early sampling data, the EPA has identified elevated levels of lead, arsenic and other smelter-related heavy metals in the OU1 residential soils. These metals have also been found at elevated levels in the OU2 soils. To ensure protection of human health and safety, the EPA encourages property owners to contact us to discuss best management practices prior to conducting any activities or constructing any structures that would disturb the soil. Additionally, property owners are encouraged to consult health and safety experts of their own; however, to minimize potential health risk from elevated metals in soils, the following may be considered:

1. Do not assume the soils have low concentration of metals.
2. Do not eat or drink in any Colorado Smelter OU2 area work zone, specifically bare soil or slag-covered areas.

3. Consider using appropriate Personal Protective Equipment (PPE), such as face masks for dust and Tyvek suits to limit contaminated soil transfer into vehicles and living spaces.
4. Bring supplies for gross decon of work boots (e.g., dry brushes, handheld pressure washer, and supplies to wash hands).
5. Consider roping off the work zone and keeping soils damp to limit dust generation.
  - a. Excavated soils that will not be replaced back into an excavation should be placed on plywood, then contained for Toxicity Characteristic Leaching Procedure (TCLP) testing and proper disposal; again, you should not assume the soils have low concentration of metals.
  - b. Consider removing soils the same day they are excavated and keeping them damp throughout; this should limit mobilization of metals-contaminated soil due to potential high winds.
  - c. Consider potentially tarping the soils, but be mindful that tarps, or anything left overnight, may be taken for use in nearby unhooded camps.

For additional Site information, we direct your attention to the Site webpage at: <https://www.epa.gov/superfund/colorado-smelter>, as well as the local information repository in the Rawlings Library (100 East Abriendo Avenue, Pueblo, Colorado) where the EPA has placed copies of documents in the ongoing Administrative Record for this Site that are available to you and the public for inspection.

Please give these matters your immediate attention and consider consulting with an attorney. The EPA is extending to you an opportunity to meet with the Agency to discuss any legal, technical, or environmental questions you may have. Considering the COVID-19 pandemic, the EPA proposes meeting by phone or virtual meeting platform, such as Microsoft Teams. To schedule the meeting please call or have your attorney contact EPA Region 8 Enforcement Attorney Sarah Rae by phone at (303) 312-6839 or by email at [Rae.Sarah@epa.gov](mailto:Rae.Sarah@epa.gov).

Sincerely,

Christopher Thompson  
Associate Regional Counsel for Enforcement  
EPA Region 8, Office of Regional Counsel

Enclosure

1. Index of Colorado Smelter Lien Filing Record

cc: Betsy Smidinger, EPA, Division Director, Superfund Emergency Management  
Karissa Roskind, EPA, Attorney, Office of Site Remediation