



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

1595 Wynkoop Street  
Denver, CO 80202-1129  
Phone 800-227-8917  
www.epa.gov/region8

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December 2, 2021

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CERTIFIED MAIL  
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1000 South Santa Fe LLC  
1100 South Santa Fe LLC  
c/o Alan Gilbert, Esq.  
Bryan, Cave, Leighton, Paisner  
1700 Lincoln Street, Suite 4100  
Denver, Colorado 80203-4541

Re: Notice of Potential Liability and Intent to Perfect a Lien  
Colorado Smelter Superfund Site, City of Pueblo, Pueblo County, Colorado CERCLA-08-2022-0003

Dear Mr. Gilbert:

This letter serves to provide notice of potential liability and intent to perfect a superfund lien with regard to the properties located at 1045-1049 South Santa Fe Avenue, Pueblo, Colorado and 1103 South Santa Fe Avenue, Pueblo, Colorado (parcel numbers 1501400002 and 1501400003) 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. §§ 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 §107(a), then they may 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.

By this letter, we notify 1000 South Santa Fe LLC and 1100 South Santa Fe LLC (the Companies) that the EPA has reason to believe that the Companies are the current owners of 1045-1049 South Santa Fe Avenue and 1103 Santa Fe Ave, respectively, in Pueblo, (parcel numbers 1501400002 and 1501400003), which are located within OU2 of the Site. Accordingly, the Companies 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 the Companies believe, and can document, that they 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, the Companies will receive a package of information about the potential for these settlements and a form to fill out with information about their finances, and they will be asked to submit financial records including business federal income tax returns. If the EPA concludes that the Companies 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 the Companies.

### 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 properties located at 1045-1049 South Santa Fe Avenue and 1103 Santa Fe Avenue (parcel numbers 1501400002 and 1501400003). The EPA understands that these 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.

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.

As also stated above, the EPA has reason to believe that the Companies 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 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 by filing a Notice of Federal Lien in the Pueblo County Clerk's Office as provided in CERCLA Section 107(l)(3), 42 U.S.C. §9607(l)(3).

The Companies may, within 14 days from the date of this letter, object to the perfection of the liens if they believe that the EPA is in error concerning matters of fact or law relied upon by the EPA for the establishment of the liens. An objection should be in writing and should describe the Companies' basis for contending that the EPA does not have a statutory basis to perfect the liens pursuant to Section 107(l) of CERCLA. The Companies may request an appearance before a neutral EPA official to present the information that they 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 the Companies or by its representative, together with any supporting documentation, to EPA Region 8 Enforcement Attorney Sarah Rae, via mail or email 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 the Companies. If, after the review, EPA staff agrees that the Agency does not have a reasonable basis to assert the lien, the EPA will forbear from perfecting the liens and will notify the Companies 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) the written submission of the Companies and ii) the EPA's Lien Filing Record.

If the Companies or its representative requests a conference as provided above, the EPA will contact the requester to schedule it. The Companies, by its representative, 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 the Companies may be represented by their counsel or other representative. The conference will be an informal hearing in which the Companies may provide the EPA with information and/or documentation supporting why they 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 its 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. The Companies will be provided with a copy of the recommended decision and will be notified of the EPA's action.

Neither the Companies 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 lien, 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.

#### Resources and Information for Small Businesses

As you may be aware, on January 11, 2002, President Bush signed into law the Small Business Liability Relief and Brownfields Revitalization Act. This Act contains several exemptions and defenses to CERCLA liability, which we suggest that all parties evaluate. You may obtain a copy of the law at <https://www.epa.gov/brownfields/brownfields-laws-and-regulations> and can review the EPA guidances regarding these exemptions at <https://www.epa.gov/superfund/superfund-policy-reports-and-other-documents>.

The EPA has developed a fact sheet intended to inform small businesses of their right under the Small Business Regulatory Enforcement Fairness Act (SBREFA) (Public Law No.104-121) to comment to an Ombudsman about EPA enforcement activity. This fact sheet also provides information on compliance assistance available to small businesses. The fact sheet can be found at

<https://www.epa.gov/sites/default/files/2017-06/documents/smallbusinessinfo.pdf>. The EPA is including this information without making a determination whether the Companies are a small business as defined by Section 222 of SBREFA or related provisions.

### 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