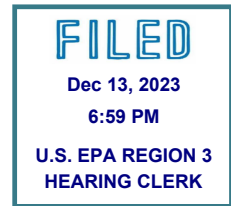


UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 3



IN THE MATTER OF:

Baghurst Drive Superfund Site, in and near
Lower Frederick and Upper Salford
Townships, Montgomery County,
Pennsylvania

Schwenksville Borough Water and Sewer
Authority (a/k/a Schwenksville Borough
Authority),

Respondent

Proceeding under Section 104(e) of the
Comprehensive Environmental Response,
Compensation, and Liability Act of 1980, as
amended, 42 U.S.C. § 9604(e)

U.S. EPA Region 3

Docket No. CERCLA-03-2024-0057AC

**Administrative Order Directing
Compliance With Request for Access**

**Administrative Order Directing Compliance With Request for Access,
as Modified Following December 4, 2023 Conference**

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I. JURISDICTION

1. This modified Administrative Order (“Order” or “modified Order”) is issued under the authority vested in the President of the United States by Section 104(e)(5) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (“CERCLA”), as amended, and Section 300.400(d)(4) of the National Oil and Hazardous Substances Pollution Contingency Plan (“NCP”), 40 C.F.R. § 300.400(d)(4). This authority was delegated to the Administrator of the United States Environmental Protection Agency (“EPA”) by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 23, 1987); it was further delegated to the Regional Administrator of EPA Region 3 on January 18, 2017, by EPA Delegation No. 14-6, and then delegated to, among other officials, the Chief of the Eastern Response Section within the Preparedness and Response Branch of the Superfund & Emergency Management Division by EPA Region 3 Delegation 14-6, Paragraph 2.a (April 15, 2019).

2. This Order applies to and is binding on Respondent and its successors, heirs, and assigns.

II. DEFINITIONS

3. Terms not otherwise defined in this Order have the meanings assigned in CERCLA or in regulations promulgated under CERCLA at 40 C.F.R. Part 300 (i.e., the NCP). Whenever the terms set forth below are used in this Order, the following definitions shall apply:

“CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675.

“Day” or “day” means a calendar day. In computing any period under this Order, where the last day is not a working day, the period runs until the close of business of the next working day. “Working day” means any day other than a Saturday, Sunday, or federal or a Pennsylvania state holiday.

“Effective Date” means the date this Order becomes effective as provided in Paragraph 16.

“EPA” means the U.S. Environmental Protection Agency.

“On-site” means the areal extent of contamination and all suitable areas in very close proximity to the contamination necessary for implementation of the response action.

“Paragraph” means a portion of this Order identified by an Arabic numeral or an upper- or lower-case letter.

“Property” means a water system owned and operated by the Respondent in and near Lower Frederick Township, Montgomery County, Pennsylvania (PA), in areas adjacent to the Baghurst Drive Superfund Site, which is described below. The Property includes, among other things, piping, pipelines, service lines, water mains, valves, booster stations, tanks,

and other components to which EPA has connected a waterline extension as part of a response action under CERCLA.

“Respondent” means the Schwenksville Borough Water and Sewer Authority (a/k/a Schwenksville Borough Authority or “the SBA”), an authority that was incorporated under the Pennsylvania Municipal Authorities Act, 53 Pa. C.S.A. §§ 5601-5623.

“Site” means the Baghurst Drive Superfund Site, which is adjacent to the Property and includes: (i) a farm property and an adjacent residential property in Upper Salford Township, PA, which comprise the source area of releases of hazardous substances to groundwater at the Site; (ii) a nearby residential neighborhood of 28 homes (“the Baghurst Drive residential community”) in which groundwater wells have been contaminated by releases of hazardous substances known as volatile organic compounds (“VOCs”); and (iii) the areal extent of the contaminated groundwater plume.

III. FINDINGS OF FACT

4. Based on investigations by the Pennsylvania Department of Environmental Protection (“DEP”) from 1999 through 2013, and a remedial investigation (“RI”) conducted by EPA from 2015 through 2019, EPA believes that a farm property at the Site was used for disposal of VOCs by a former owner or unknown other persons. The RI identified the source area of the VOC releases to be on the farm property and an adjacent residential property. The RI also identified two hot-spot areas of VOC releases on other parts of the farm property.

The Baghurst Drive residential community is downgradient of the source area of VOCs at the Site. The DEP and EPA investigations of the Site followed a series of investigations in 1999 by the Montgomery County (PA) Health Department that showed multiple private wells in the Baghurst Drive residential community were contaminated by releases of 1,1,1-trichloroethane (“1,1,1-TCA”) and other VOCs. DEP supplied carbon filtration systems and bottled drinking water to the residents whose wells were impacted.

EPA assumed responsibility for the carbon filtration systems and bottled water in December 2014 when EPA determined that conditions at the Site presented an imminent and substantial danger to the public health or welfare or to the environment. EPA made this endangerment determination in a December 12, 2014 Action Memorandum, which selected a CERCLA removal action for the Site that required (i) the engineering and construction of an extension of a public waterline to the Baghurst Drive residential community; (ii) provision of carbon filtration systems and bottled drinking water until the waterline extension is completed; and (iii) abandonment of the impacted private wells in the Baghurst Drive residential community. A change of scope of the removal action was selected in a July 14, 2021 Action Memorandum. The modifications specified that “engineering and extension of the waterline will include: building a booster station, holding tank, chlorine injection and monitoring system, and other appurtenances common to public water distribution systems.” In addition, the July 14, 2021 Action Memorandum clarified the response activities that EPA would take to abandon the impacted wells – i.e., EPA would “remove any well-related structures, systems, equipment, or other materials that are part of the existing residential well systems (e.g., treatment systems, piping, enclosures) and that may impede the installation of the waterline extension.”

5. The Property is a facility or area that is adjacent to the Site, and the Property has been physically connected to EPA's response action during on-site construction of a waterline extension to provide clean water to the Baghurst Drive residential community.

6. Respondent owns, operates, and controls the Property.

7. To address the release of hazardous substances at the Site, EPA has conducted and is planning to conduct response activities under CERCLA, as detailed in the July 14, 2021 Action Memorandum. Response activities completed to date have included the design, engineering, and construction of an extension of Respondent's public waterline to the Baghurst Drive residential community; and construction of a booster station, holding tank, chlorine injection-and-monitoring system, lateral connections for 28 homes in the Baghurst Drive residential community, and other appurtenances common to public water-distribution systems. Response activities that EPA intends to take to complete the removal action include, but are not limited to, the following Final Phase #1 activities: inspections and testing of the water main, booster station, holding tank, and related equipment. To complete the Final Phase #1 activities, EPA will need to purchase approximately 150,000 gallons of water from Respondent and to use Respondent's Property (e.g., piping, etc.) to transport this water to conduct all required tests.

8. EPA estimates that the duration of the required entry and access for the Final Phase #1 activities will be approximately 30 working days from the date on which EPA begins the required operational-and-functional tests and inspections described in Paragraph 7. Additional time may be required based on unforeseen contingencies, including contractor availability, weather, and any system adjustments necessary to address issues identified during startup and testing.

9. Despite requests from EPA, Respondent previously refused to provide access without conditions for the purposes of performing and completing (i) response activities related to the final testing (i.e., the Final Phase #1 activities), and (ii) connection of the lateral lines to the Baghurst Drive residential community (i.e., the Final Phase #2 activities). The Final Phase #2 activities will also include abandonment of the private wells of the households in the Baghurst Drive residential community. EPA's prior requests included: (i) correspondence with a proposed Consent to Enter, which were sent via email by EPA to Respondent's counsel on November 17, 2023; (ii) correspondence dated November 21, 2023, which was sent via email by EPA in response to Respondent's attempts to condition EPA's access to conduct or complete the response activities; and (iii) correspondence via email between EPA's On-Scene Coordinator and Respondent's consultant on November 28, 2023. On November 29, 2023, EPA issued an Administrative Order Directing Compliance with Request for Access to Respondent ("the original Order"). Respondent submitted a timely request for a conference under the original Order. During a December 4, 2023 conference, Respondent's counsel affirmatively stated that Respondent would provide EPA with unconditioned access to conduct the Final Phase #1 activities. Following the December 4, 2023 conference with Respondent, EPA elected to modify the original Order to require access for only the Final Phase #1 activities. A further intent of the modification is to facilitate more discussion with Respondent about the Final Phase #2 activities based on information presented by Respondent at the December 4, 2023 conference.

IV. CONCLUSIONS OF LAW AND DETERMINATIONS

10. Based on the foregoing Findings of Fact, and the administrative record supporting issuance of this Order, EPA has determined that:

a. Hazardous substances as defined by Section 101(14) CERCLA, 42 U.S.C. § 9601(14), may be or have been disposed of at, transported to, or released at or from the Site, or a release of hazardous substances is or may be threatened at the Site.

b. The Property is adjacent to the Site.

c. The Property is, or is adjacent to, a Facility or other place or property where entry is needed to determine the need for response, to identify the appropriate response, or to effectuate a response action within the meaning of Section 104(e)(3) of CERCLA, 42 U.S.C. § 9604(e)(3).

d. EPA has a reasonable basis to believe that there may be or has been a release or threat of release of a hazardous substance at the Site.

e. Respondent owns or controls the Property.

f. Respondent is a “person” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

g. Entry to the Property by EPA and its officers, employees, agents, contractors, and other authorized representatives is needed for the purposes of determining the need for response, choosing or taking a response action, or enforcing the provisions of CERCLA at the Property and the Site.

h. Respondent’s attempts to impose conditions on EPA’s access to the Property constitute a denial of access within the meaning of Section 104(e)(5)(A) of CERCLA, 42 U.S.C. § 9604(e)(5)(A), and 40 C.F.R. § 300.400(d)(4)(i).

V. ORDER

11. Based upon the foregoing Findings of Fact, Conclusions of Law and Determinations, and the administrative record supporting the issuance of this Order, EPA hereby orders Respondent to provide EPA and its officers, employees, agents, contractors, and other authorized representatives, full and unrestricted access at all reasonable times to the Property for the purpose of conducting response activities, including, but not limited to, all Final Phase #1 response activities.

12. Respondent shall not prevent, limit, or otherwise interfere with EPA’s access to the Property as described in Paragraph 11 or any Final Phase #1 activity described in Paragraph 11 by EPA, its officers, employees, agents, contractors, and other authorized representatives. Any interference with any Final Phase #1 activity described in Paragraph 11 shall be deemed a violation of this Order.

13. If Respondent conveys the Property, or agents, heirs, successors and assigns, convey an interest in the Property, Respondent or Respondent's agents, heirs, successors and assigns shall convey the interest in a manner which ensures continued access to the Property by EPA and its authorized representatives for the purpose of carrying out the activities pursuant to this Order. Any such conveyance must restrict the use of the Property so that the transferee's use will not interfere with EPA's access as described in Paragraph 11. Respondent, or Respondent's agents, heirs, successors and assigns must notify EPA under Paragraph 24 at least 30 days before the conveyance of any interest in the Property, and must, prior to the transfer, notify the other parties involved in the conveyance about this Order.

VI. OPPORTUNITY TO CONFER

14. In accordance with the terms of the original Order, Respondent timely requested a conference with EPA to discuss the Order, including its applicability, the factual findings and the determinations upon which it was based, the appropriateness of any actions Respondent is ordered to take, or any other relevant and material issues or contentions which Respondent may have regarding the Order. EPA and Respondent conferred about the original Order on December 4, 2023. Respondent elected not to submit written comments or a statement of position.

15. Any request for an additional conference or written comments or statements should be submitted via email to:

Robert S. Hasson
Office of Regional Counsel
United States Environmental Protection Agency, Region 3
hasson.robert@epa.gov
1600 John F. Kennedy Boulevard
Philadelphia, PA 19148
(215) 814-2672

VII. EFFECTIVE DATE

16. This modified Order shall be effective two (2) working days after it is received by Respondent.

VIII. NOTICE OF INTENT TO COMPLY

17. Respondent shall notify EPA, using the form provided at the end of this Order and in accordance with Paragraph 24, on or before the Effective Date, whether or not it intends to fully and unconditionally comply with the Order. Respondent's failure to notify EPA of its intent to fully and unconditionally comply with this Order by the time the Order becomes effective shall be (i) construed as a denial of EPA's request for access, and (ii) as of the effective date under Paragraph 16 of this Order, treated as a violation of the Order.

IX. ENFORCEMENT

18. Any non-compliance with this Order is enforceable under Section 104(e)(5) of CERCLA, 42 U.S.C. § 9604(e)(5). Section 104(e)(5)(B) of CERCLA provides that a court may

assess civil penalties for each day of noncompliance against any person who unreasonably fails to comply with an access order issued under Section 104(e)(5)(A) of CERCLA. As of the date of issuance of this Order, the statutory maximum amount is \$67,544 per violation per day. This maximum amount may increase in the future, as EPA amends its civil penalty amounts through rulemaking pursuant to the 1990 Federal Civil Penalties Inflation Adjustment Act (Public Law 101-410, codified at 28 U.S.C. § 2461), as amended by the 2015 Federal Civil Penalties Inflation Adjustment Act Improvement Act (Section 701 of Public Law 114-74)). The maximum amount to be applied to this violation will be set as the most recent maximum amount set forth in 40 C.F.R. § 19.4 as of the date that the U.S. District Court assesses any such penalty.

19. Nothing in this modified Order or the original Order precludes EPA from taking any additional enforcement actions or other actions it may deem necessary for any purpose, including the prevention or abatement of a threat to the public health or welfare or the environment arising from conditions at the Property or the Site, and recovery of the costs thereof.

X. RESERVATIONS OF RIGHTS BY EPA

20. Nothing in this modified Order or the original Order constitutes a waiver, bar, release, or satisfaction of or a defense to any cause of action which EPA has now or may have in the future against Respondent, or against any person or entity who is not a Respondent to this Order.

21. Nothing in this modified Order or the original Order limits or otherwise affects the right of EPA to issue any other orders to, or take any other administrative or civil action against, Respondent or any other person under CERCLA relating to the Property or Site or any other site.

22. Nothing in this modified Order or the original Order limits or otherwise affects any right of entry held by the United States under applicable laws, regulations, or permits.

23. Nothing in this modified Order or the original Order constitutes a decision on preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

XI. NOTICES AND SUBMISSIONS

24. All notices and requests specified in this Order (collectively, “Notices”) must be in writing and must be sent to EPA via email as specified below.

Robert S. Hasson
Office of Regional Counsel
United States Environmental Protection Agency
1600 John F. Kennedy Boulevard
(215) 814-2672
hasson.robert@epa.gov

XII. ADMINISTRATIVE RECORD

25. EPA has established an administrative record that contains the documents that form the basis for the issuance of this Order. An electronic copy of the administrative record will be available for online review no later than five (5) working days after receipt of this Order at <https://cumulis.epa.gov/supercpad/SiteProfiles/index.cfm?fuseaction=second.docdata&id=0306939#AR>. Members of the public who do not have access to the Internet may request to review the administrative record in the Public Information Center of EPA's Regional Office in Philadelphia, Pennsylvania, by contacting Robert Hasson at the address or telephone number provided in Section XI. An index of the administrative record is attached to the Order.

XIII. TERMINATION

26. This Order is in effect, and Respondent shall provide access to the Property, from the effective date until EPA notifies Respondent that the Final Phase #1 activities for which access is needed have been completed and access to the Property is no longer needed.

It is so ORDERED.

BY: _____
MELISSA LINDEN
Chief, Eastern Response Section
Preparedness and Response Branch
Superfund & Emergency Management Division
Region 3
U.S. Environmental Protection Agency

United States Environmental Protection Agency, Region 3

EPA Docket No. CERCLA-03-2024-0057AC

In the Matter of Baghurst Drive Superfund Site, in and near Lower Frederick and Upper Salford, Montgomery County, Pennsylvania

Notice of Intent to Grant Access

I hereby notify the United States Environmental Protection Agency, in accordance with Paragraph 17 of EPA’s Administrative Order Directing Compliance With Request For Access, as Modified Following December 4, 2023 Conference, EPA Docket No. CERCLA-03-2024-0057AC (“Order”), that the Schwenksville Borough Water and Sewer Authority will fully and unconditionally comply with the Order with regard to the Property identified in Paragraph 3 of this Order.

Respondent

Date

Index of Administrative Record for Order

1. The administrative records established for the Baghurst Drive Superfund Site's removal and remedial action are incorporated herein by reference.¹
2. July 14, 2021 Action Memorandum
3. October 24, 2023 correspondence from Colby S. Grim, Esq., to On-Scene Coordinator Myles Bartos, EPA
4. October 30, 2023 correspondence from Assistant Regional Counsel Robert S. Hasson, EPA, to Colby S. Grim, Esq.
5. November 10, 2023 correspondence from Colby S. Grim, Esq., to Robert S. Hasson, EPA
6. November 17, 2023 correspondence with proposed Consent to Enter from Robert S. Hasson, EPA, to Colby S. Grim, Esq.
7. November 20, 2023 email correspondence from Colby S. Grim, Esq., to Robert S. Hasson, EPA
8. November 21, 2023 email correspondence from Colby S. Grim, Esq., to Robert S. Hasson, EPA
9. November 21, 2023 email correspondence from Robert S. Hasson, EPA, to Colby S. Grim, Esq.
10. November 22, 2023 email correspondence from Colby S. Grim, Esq., to Robert S. Hasson, EPA
11. November 28, 2023 email correspondence between Myles Bartos, EPA, and Frederick E. Ebert, P.E., Ebert Engineering, Inc., Consultant to Schwenksville Borough Authority

¹ Available at
<https://cumulis.epa.gov/supercpad/SiteProfiles/index.cfm?fuseaction=second.docdata&id=0306939#AR>