

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VIII

2014 JUN 26 AM 9:09

EPA REGION VIII
HEADING CLERK

**IN THE MATTER OF: EATON BEET
SUPERFUND SITE**

**UNDER THE AUTHORITY OF THE
COMPREHENSIVE ENVIRONMENTAL
RESPONSE, COMPENSATION, AND
LIABILITY ACT, AS AMENDED, 42 U.S.C. §§
9601, *et seq.***

**EPA Docket No. CERCLA-08-2014-0005
Agreement for Release and Waiver of
Lien, CERCLA Section 107(r), 42
U.S.C. § 9607(r)**

Town of Eaton, Colorado

I. INTRODUCTION

This Release and Waiver of Lien Agreement (Agreement) is made and entered into by and between the United States Environmental Protection Agency (EPA) and the Town of Eaton, Colorado (Settling Purchaser) (collectively, the Parties). This Agreement is entered into pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. §§ 9601, *et seq.*

This Agreement concerns the property located at 18417 Weld County Road 74 and U.S. Highway 85, Eaton, Weld County, Colorado (Property). A legal description of the property is attached as Exhibit A. This Property was the location of the Eaton Sugar Beet Factory. The four story sugar beet processing facility was constructed beginning in 1902 and operated until 1976. The facility was not used after 1976.

The EPA began removal work at the Property on April 28, 2011 and completed this work in April of 2013 at an estimated cost of \$9,945,473.37. The response costs have not been reimbursed.

The Settling Purchaser took title to the Property in 2010. It paid off tax liens, and paid transfer and filing fees, totaling \$81,802.51. Settling Purchaser has incurred other expenses in connection with the Property, including controlling access, asbestos abatement, demolition, well closure, and reroofing to address asbestos contamination, worth approximately \$86,914.35.

There are no viable potentially responsible parties for this Site. The EPA commissioned an appraisal on the Property assuming a cleanup completed by the EPA. That appraisal estimated the value of the property at \$395,000 in December, 2011.

The Parties agree to undertake all actions required by the terms and conditions of this Agreement. The purpose of this Agreement is to settle and resolve, subject to Section VIII, Reservation of Rights, the lien against the Property under section 107(r) of CERCLA, 42 U.S.C. § 9607(r).

The release and waiver of this lien, in exchange for provision by the Settling Purchaser to the EPA of consideration satisfactory to the Administrator, is in the public interest.

II. DEFINITIONS

1. "Bona Fide Prospective Purchaser" or "BFPP" shall mean a person as described in CERCLA section 101(40), 42 U.S.C. § 9601(40).
2. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.
3. "Parties" shall mean the EPA and the Town of Eaton.
4. "Property" shall mean the parcel, encompassing approximately 41 acres, located at 18417 Weld County Road 74 and U.S. Highway 85 in Eaton, Weld County, Colorado, which is described in Exhibit A, and shown on the map included as Exhibit B to this Agreement.

5. "Settling Purchaser" shall mean the Town of Eaton.
6. "Site" shall mean the Eaton Beet Factory Superfund Site.
7. "United States" shall mean the United States of America, including its departments, agencies, and instrumentalities.

III. STATEMENT OF FACTS

8. The Property was the location of the Eaton Sugar Beet Factory.
9. The Kilby Manufacturing Company built the factory for the Eaton Sugar Company in 1902. The Eaton Sugar Company and subsequent owners processed sugar beets into sugar there when construction was completed in 1902. The factory continued to operate until the sugar beet market began declining in the late 1960s. The owners of the factory shut it down in 1976 and it was unused after that.
10. At the Property prior to the cleanup were the abandoned four story beet processing facility, an old and dilapidated boiler, a machine shop, waste lime that had been used for processing beets, storage buildings, an office building, two dilapidated houses, and other miscellaneous structures.
11. The EPA identified about 138,000 square feet of asbestos containing materials in these structures with asbestos concentrations inside exceeding 1%. Much of the asbestos materials on or in the buildings had migrated outside, caused in part by continued trespass, attempts by owners to reclaim scrap metal inside the buildings, and by animal infestation.
12. The EPA issued an Action Memorandum for cleanup of asbestos contamination at the Property on April 28, 2011, and requests for ceiling increases on March 16, 2012 and August 31, 2012.

13. Removal work began with Site security measures that were put into place April 29, 2011. On-site cleanup work began November 15, 2011 and continued through April of 2013. The total cost of removal is estimated at \$9,945,473.37.

14. The EPA commissioned an appraisal on the Property. The appraisal valued the Property as though it had been fully addressed by the EPA. That appraisal estimated the value of the Property at \$395,000 in December, 2011.

15. The Settling Purchaser received title to the Property in 2010, having paid a total of \$81,802.51 in tax liens and transfer and filing fees.

16. The Settling Purchaser paid for site security and did asbestos abatement and site preparation on the Property at a total cost of \$86,914.35.

17. Pursuant to a report entitled Trip Report, Eaton Sugar Beet Factory Site, June, 2013, URS Operating Services, Inc. (Trip Report), that set forth and documented final clearance information at the Property, and which is on file with the EPA, Region 8, the asbestos has been removed from buildings and soils at the Property such that it can no longer be detected.

IV. PAYMENT

18. In consideration of and in exchange for the EPA's release and waiver of any lien it has or may have under section 107(r) of CERCLA, 42 U.S.C. § 9607(r), with respect to the Property, Settling Purchaser agrees, within 30 days of the effective date of this Agreement, to pay to the EPA the sum of \$226,283.14. Payments must be received by 11:00 AM Eastern Time for same day credit and should be made payable to EPA - Hazardous Substances Superfund and forwarded to one of the addresses below. Payment, in the form of a cashier's check or certified funds, should be mailed to:

Regular Mail:

U. S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P. O. Box 979076
St. Louis, MO 63197-9000

Federal Express, Airborne, etc.

U. S. Bank
1005 Convention Plaza
SL-MO-C2GL
St. Louis, MO 63101
314-418-1028

Wire transfers:

Federal Reserve Bank of New York
ABA = 021030004
Account Number: 68010727

ACH Transactions:

PNC Bank/Remittance Express
ABA: 051036706
Account Number: 310006
CTX Format, Transaction Code 22, checking

On line payments:

WWW.PAY.GOV
Enter sfo 1.1 in the search field
Open form and complete required fields

19. Amounts due and owing pursuant to the terms of this Agreement, but not paid in accordance with the terms of this Agreement, shall accrue interest at the rate established pursuant to section 107(a) of CERCLA, 42 U.S.C. § 9607(a), compounded on an annual basis.

V. RELEASE AND WAIVER OF CERCLA SECTION 107(r) LIEN

20. Subject to the Reservation of Rights in Section VIII of this Agreement, upon payment of the amount specified in Section IV, Payment, the EPA agrees to release and waive any lien it may have on the Property now and in the future under section 107(r) of CERCLA, 42 U.S.C. § 9607(r), for costs incurred or to be incurred by the EPA in responding to the release or threat of release of hazardous substances that were disposed of at the Site before Settling Purchaser acquired ownership of the Property.

VI. ACCESS AND NOTICE

21. If, despite the Trip Report referenced above, it becomes necessary to further abate and remove asbestos, Settling Purchaser agrees to provide the EPA, its authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight, an irrevocable right of access at all reasonable times to the Property and to any other property to which access is required for the implementation of response actions at the Site, to the extent access to such other property is controlled by Settling Purchaser, for the purposes of performing and overseeing response actions at the Property under federal law. The EPA agrees to provide reasonable notice to Settling Purchaser of the timing of response actions to be undertaken at the Property. Notwithstanding any provision of this Agreement, the EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, and the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6901("RCRA"), et seq.

22. For so long as the Settling Purchaser is an owner or operator of the Site, Settling Purchaser shall use best efforts ensure that assignees, successors in interest, and any lessees,

sublessees and other parties with rights to use the Property shall provide access and cooperation to the EPA, its authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight, consistent with the terms of this Agreement.

23. Upon sale or other conveyance of the Property or any part thereof, Settling Purchaser shall use best efforts to ensure that each grantee, transferee or other holder of an interest in the Property or any part thereof shall provide access and cooperation to the EPA, its authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight, consistent with the terms of this Agreement.

24. The Settling Purchaser shall provide a copy of this Agreement to any current lessee, sublessee, and other party with rights to use the Property as of the effective date of this Agreement.

VII. BFPP STATUS

25. Settling Purchaser shall take all steps necessary to maintain status as a “Bona Fide Prospective Purchaser” as that term is defined in section 101(40) of CERCLA, 42 U.S.C. § 9601(40), for the Property which is the subject of this Agreement, by complying with all of the requirements for a Bona Fide Prospective Purchaser as set forth in CERCLA section 101(40), 42 U.S.C. § 9601(40), including, without limitation, the exercise of “appropriate care” by taking “reasonable steps” as set forth in CERCLA section 101(40)(D), 42 U.S.C. § 9601(40)(D), for so long as Settling Purchaser retains any ownership interest in the Property.

VIII. RESERVATION OF RIGHTS

26. This Agreement does not release and waive or compromise any right of the EPA or the United States other than the release and waiver by the EPA of its right to assert or perfect a

windfall lien pursuant to section 107(r) of CERCLA, 42 U.S.C. § 9607(r), for costs incurred or to be incurred by the EPA in responding to the release or threat of release of hazardous substances that were disposed of at the Site before Settling Purchaser acquired ownership of the Property, subject to receipt of the payment from Settling Purchaser as provided in Section IV. The United States reserves, and this Agreement is without prejudice to, all rights against Settling Purchaser with respect to all other matters, including but not limited to, the following: (a) claims based on a failure by Settling Purchaser, assignees, successors in interest or any lessees, sublessees or other parties with rights to use the Property to meet a requirement of this Agreement, including but not limited to Section IV, Payment, and Section VI, Access and Notice; (b) liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessment incurred by federal agencies other than the EPA; (c) liability under CERCLA, including sections 106 and 107, 42 U.S.C. §§ 9606 and 9607, which arises due to failure of Settling Purchaser or assignees, successors in interest or any lessees, sublessees, or other parties with rights to use the Property to comply with CERCLA section 101(40), 42 U.S.C. § 9601(40); and (d) liability under CERCLA resulting from the release or threat of release of hazardous substances that were disposed of at the Site after the Settling Purchaser acquired ownership of the Property.

27. Nothing in this Agreement is intended as a release and waiver for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, other than the release and waiver of the section 107(r) lien in Section V, which the United States may have against any person, firm, corporation or other entity not a party to this Agreement. The

United States reserves the right to compel potentially responsible parties to perform or pay for response actions at the Site.

28. Nothing in this Agreement shall in any way restrict or limit the nature or scope of response actions which may be taken or be required by the EPA in exercising its authority under federal law.

IX. PARTIES BOUND

29. This Agreement shall apply to and be binding upon the EPA, and shall apply to and be binding upon the Settling Purchaser and Settling Purchaser's successors and assigns. Each signatory of a Party to this Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party. Any change in ownership or corporate status involving the Property addressed shall in no way alter the release and waiver of the lien under this Agreement.

X. WAIVER OF CLAIM FOR REIMBURSEMENT

30. Settling Purchaser waives and shall not assert any claim for reimbursement from the United States with respect to the payment required by Section IV, Payment, of this Agreement, including but not limited to any direct or indirect claim for reimbursement of such payment from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA sections 106(b)(2), 107, 111, 112, 113, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, 9613, or any other provision of law, or from any department, agency or instrumentality of the United States under CERCLA sections 107 or 113, 42 U.S.C. §§ 9607 or 9613. Nothing in this Agreement shall be deemed to constitute preauthorization of a

claim within the meaning of section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XI. PAYMENT OF COSTS

31. If the Settling Purchaser fails to comply with the terms of this Agreement, including, but not limited to, the provisions of Section IV, Payment, it shall be liable for all litigation and other enforcement costs incurred by the United States to enforce this Agreement or otherwise obtain compliance.

XII. DISCLAIMER

32. This Agreement in no way constitutes a finding by the EPA as to the risks to human health and the environment which may be posed by contamination at the Property nor constitutes any representation by the EPA that the Property is fit for any particular purpose.

XIII. EFFECTIVE DATE

33. The effective date of this Agreement shall be the date upon which the EPA issues written notice to the Settling Purchaser that the EPA has fully executed the Agreement.

XIV. ATTORNEY GENERAL APPROVAL

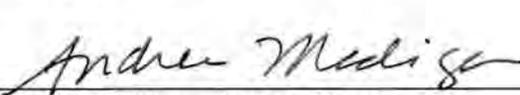
34. The Attorney General of the United States or his designee has issued prior written approval of the settlement embodied in this Agreement.

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY:

 Date: 6/25/14
Kelcey Land, Director *Acting*
Technical Enforcement Program
Office of Enforcement, Compliance and
Environmental Justice
EPA Region VIII

 Date: 6/23/14
Andrea Madigan, Acting Director
Legal Enforcement Program
Office of Enforcement, Compliance and
Environmental Justice
EPA Region VIII

IT IS SO AGREED:

TOWN OF EATON, COLORADO

BY:  Date: 5-15-2014
Scott E. Moser, Mayor
Town of Eaton, Colorado

ATTEST:

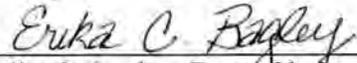
 Date: 5-15-2014
Erika C. Bagley, Town Clerk
Town of Eaton, Colorado

Exhibit A to Agreement for Release and Waiver of Lien

Legal Description:

ETN PT 82 31-7-65 (SUGAR MILL ANNEX #2) BEG SE COR SEC N88D20'W 1665' TO TRUE POB **N24DW** 510' N29D45'W 400' N03D45"W 200' N22D45'E 130' N12D31'W 942.28' TO S LN 4TH ST EST TH S89D58'W 1100.78' TO A PT 45' BEYOND NW COR BLK1 EAST SIDE ADD TH SODOS'E 294.67' N49D38'W 40.79' N53D10'W 523.52' TO A PT 12' FROM E LN UPRR S16D26'E 2143.21' TO S LN SW4 S88D34'E 493.51' S88D20'E 1023.85' TO BEG EXC BEG S4 COR SEC W84.18' TO TRUE POB N16D26'W 344.56' N73D33'E 22.5' N16D26'W 172.4' S73D33'W 126.3' S16D26'E 483.5' S88D34'E 109.05' TO BEG ALSO EXC BEG SW COR SEC S88D34'E 2112.02' N16D26'W 643.21' TO TRUE POB N16D26'W 1500' S53D10'E 24.67' S53D10'E 498.85' S49D38'E 40.79' NODOS'W 294.67' TO S LN 4TH ST EAST SIDE ADD N89D58'E 45' TO NW COR BLK1 EAST SIDE ADD SODOS'E 333' S49D38'E 142.04' S30D10'E 87' S16D26'E 373.43' S73D33'W 284.01' S16D35'E 420' S73D33'W 185.37' TO BEG ALSO EXC BEG S4 COR SEC S88D20'E 100' TO TRUE POB N01D40'E 544.85' S88D20'E 580.62' S29D45'E 133.44' S24D0'E 478.15' N88D20'W 857.28' TO TRUE POB ALSO EXC BEG SW COR S88D34'E 2112.02' TO POB N16D26'W 583.21' N73D33'E 285.70' S16D26'E 675.31' N88D34'W 300.28' TO POB EXC L15-20 BLK1 & L15 - 21 BLK2 NORTH SIDE ADD ROW & L1-8 & L17-21 BLK6 DESC BEG W LN SEC 31 50' S OF W4 COR SEC S88D01E CTR LN CURVE TO R (R=5729.6') 299.2' S83D02E 1256.3' CURVE TO L (R=2864.9') 336.7' N88D24E 1233.8' TO INTSEC E/W LN SEC 31 & BEG POINT OF CTR LN 1190.4' E OF BEG OF SAID 1ST DESC LN THENCE CURVE TO R (R=573.7') 698.7' S15D10E 1245.5' TO CTR OF SIDE TRACK UPR & BEG POINT 45.3' E OF NW COR BLK1 EAST SIDE ADD N LN L34 THENCE N15D10W 44.2' THENCE CURVE TO R (R=410.3') 738.6' OF MAIN LN OF RAILROAD (3D)

and

ETN PT S2 31-7-65 (SUGAR MILL ANNEX #2) BEG SW COR S88D34'E 2112.02' TO POB N16D26'W 583.21' N73D33'E 285.70' S16D26'E 675.31' N88D34'W 300.28' TO POB

Exhibit B to Agreement for Release and Waiver of Lien



Figure 1
Town of Eaton Parcels
Eaton Sugar Beet Factory
Weld County, Colorado