

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION VIII

2014 MAY 22 AM 9:21

EPA REGION VIII
RECORDS CLERK

IN THE MATTER OF:)
Lockwood Solvent Site, OU2)
Keller Transport, Inc.,)
Respondent.)
_____)
Docket No: CERCLA-08-2014-0004
Proceeding under section 104(e) of the
Comprehensive Environmental Response,
Compensation, and Liability Act, as
Amended, 42 U.S.C. § 9604(e).

ADMINISTRATIVE ORDER FOR ACCESS

I. JURISDICTION

This Administrative Order for Access (Order) is issued to Keller Transport, Inc., a Montana corporation (Respondent), by the United States Environmental Protection Agency, Region 8 (EPA) pursuant to the authority vested in the President of the United States by section 104(e) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), 42 U.S.C. § 9604(e), and delegated to the Administrator of the EPA on January 23, 1987, by Executive Order No. 12580, 52 Fed. Reg. 923 (1987). This authority has been further delegated jointly to supervisors in the Legal Enforcement Program and the Technical Enforcement Program of the Office of Enforcement, Compliance and Environmental Justice of EPA Region 8.

II. STATEMENT OF PURPOSE

This Order requires Respondent to grant the EPA, the State of Montana, Department of Environmental Quality (MDEQ), their authorized representatives, and Soco West, Inc. (Soco) and its authorized representatives entry and access to the property described in Section III.A.1

below (Property), located in Billings, Yellowstone County, Montana, for the purpose of taking a response action at Operable Unit 2 (OU2) of the Lockwood Solvents Groundwater Plume National Priorities List Site (Site). This Order further requires Respondent to refrain from interfering with access to the Property by the EPA, MDEQ, Soco and their representatives for the purposes set forth herein.

III. FINDINGS OF FACT

A. Site Description and Background

1. The Property is located within OU2 of the Site, in Billings, Yellowstone County, Montana at street address 1323 Taylor Place, Billings, MT 59101. A legal description of the Property is attached as Exhibit A.

2. Respondent, Keller Transport, Inc., is the owner of the Property as shown by Yellowstone County property records.

3. Groundwater at OU2, including much of the groundwater beneath the Property, is contaminated with tetrachloroethene, trichloroethene, cis-1,2-dichloroethene, vinyl chloride, and other volatile organic compounds which are considered hazardous substances under CERCLA, section 101(14), 42 U.S.C. § 9601(14), and/or pollutants or contaminants under section 101(33), 42 U.S.C. § 9601(33), except where otherwise specifically noted. The primary source of this contamination is property now owned by Soco, which is adjacent to and immediately north of the Property. The contamination originated from operations by a chemical company that formerly owned the Soco property.

4. The EPA entered into a Consent Decree (CD) for remedial design/remedial action with Soco for OU2, on October 3, 2011, Civil Action CV 11-88-BLG-RFC. Pursuant to the CD,

Soco will perform a CERCLA remedial design/remedial action at OU2. The remedial action requires access to a small area of the Property owned by Respondent. The duration of the remedial design/remedial action is expected to take at least five years, and access is required until the EPA certifies completion of the remedial action pursuant to Section XIV of the CD.

B. Release or Threat of Release of a Hazardous Substance or Pollutant or Contaminant

1. Pursuant to section 105 of CERCLA, 42 U.S.C. § 9605, the EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on December 1, 2000.

2. In response to the release or substantial threat of release of hazardous substances at or from the Site, in 2002 MDEQ commenced a remedial investigation and feasibility study (RI/FS) for the Site pursuant to 40 C.F.R. § 300.430. MDEQ obtained access from Respondent to collect soil and groundwater samples including installation of monitoring well MW110 which was performed on June 19, 2002.

3. MDEQ completed the RI Report in June 2003 and the FS Report in October 2004. The decision by the EPA on the remedial action to be implemented at the Site is embodied in a final Record of Decision (ROD), signed by both the EPA and MDEQ on August 16, 2005. MDEQ began semi-annual sampling of groundwater monitoring wells, including MW110, in 2003 and continued this sampling through October 3, 2011. Responsibility for this sampling was transferred to Soco on October 3, 2011, when it entered into the CD with the EPA and MDEQ. The statement of work (SOW) attached to the CD required that Soco submit a remedial design/remedial action work plan to EPA and MDEQ for approval and then implement it. Remedial design/remedial action included sampling of all wells including MW110.

4. On August 17, 2012, the EPA and MDEQ approved the Remedial Design Assessment Work Plan (RDA Work Plan) submitted by Soco as the first step in implementing the selected remedy as set forth in the ROD and CD. The purpose of the RDA is to outline how additional data will be collected for the following purposes: delineate the nature and extent of contaminated soil and groundwater; gather additional engineering data for use in remedial design; install additional groundwater monitoring wells to collect baseline water quality data, and for later use as performance monitoring wells to gauge the effectiveness of remedial action. In general, the RDA will be conducted between the former tank farm area on Soco property and the area north of Coulson Ditch, as depicted in Exhibit B. Because of the geographic size of the study area, the RDA requires access to properties that are close to the source areas including the Property. Depending upon results of the samples, Soco may also be required to enter the Property to collect additional samples and install and maintain additional wells or other equipment to remediate contaminated soils and groundwater. The EPA expects remedial action activities to continue until it certifies completion of the remedial action pursuant to Section XIV of the CD.

5. As required at Paragraph 3.4.2 of the SOW, Soco must perform vapor intrusion assessment work as determined necessary by the EPA and MDEQ and as provided for in *Vapor Intrusion Assessment Workplan, Operable Unit 2, Lockwood Solvents Groundwater Plume Site*, November 2, 2012.

C. Attempts by the EPA and Soco to gain access for Soco to perform the remedial design and remedial action

1. From December 8, 2011, to August 21, 2013, Soco, its contractor, and the EPA tried repeatedly to get Respondent to provide access to the Property so that Soco and its contractor could perform the work outlined in the section above.

2. Soco or its contractor sent several letters to Respondent. These letters requested access and forwarded draft access agreements.

3. Soco or its contractor emailed Respondent a number of times. These emails were to set up meetings, negotiate, or pass along draft access agreements.

4. Soco or its contractor spoke with Respondent over the phone numerous times. These calls were to discuss the work to be done and the terms of a possible access agreement.

5. Soco or its contractor met with Respondent a number of times. These meetings were to discuss the work to be done, to pass along draft access agreements or written information about the work to be done, or to discuss the work or the need for access.

6. Soco or its contractor conferred with the EPA several times over the phone about its attempts to get access.

7. Soco's contractor hired a Billings, Montana, real estate brokerage company to do an analysis to determine what a reasonable monthly fee for access to Respondent's property would be. The company determined that a fee of \$265 per month was reasonable. Soco's contractor offered this amount to Respondent and offered to do \$28,000 worth of work on Respondent's property as well in exchange for access.

8. Respondent refused the offer of work and asked for payments of \$3000 per month for access, far in excess of what the real estate broker had determined was reasonable.

9. Because Respondent refused to allow Soco or its contractor on its Property, the EPA had to have its contractor enter the Property a number of times beginning approximately May 12, 2012, to collect various types of samples as required under the SOW and the RDA. These included groundwater samples and samples of air inside Respondent's offices. The EPA's contractor is still entering the Property to perform the work and will continue to do so until Soco and its contractor are granted access. The EPA reported these results, in particular the indoor air sampling results, to Respondent on several different occasions.

10. Because Soco and its contractor failed to get access to Respondent's property despite repeated efforts for over a year and a half, the EPA asked for and on July 25, 2013 received from Soco a report of its efforts to gain access.

11. From July 30 through August 22, 2013, the EPA actively attempted to broker an access agreement between Soco and Respondent.

12. The EPA conferred with Soco's counsel and its contractor over the phone July 31 and August 1, 2013, discussing and eventually agreeing to the terms of an access agreement to present to Respondent. The agreement provided for access for all parties performing or overseeing design or cleanup in exchange for monthly payments of \$300 and cash payments of \$2500 at the end of 2014 and another at the end of 5 years to be made by Soco, provided Respondent had cooperated in full with efforts to perform the work under the RDA. The EPA presented this agreement to Respondent in an email it sent on August 2, 2013.

13. On August 7, 2013, Respondent proposed that it receive an initial payment of \$5000 up front plus payments of \$500 per month in exchange for access.

14. On August 9, the EPA proposed terms back to Respondent providing for monthly payments of \$300, the agreement to terminate at the end of 2014 or the abandonment of investigative wells, whichever came later. There was to be a one-time payment of \$2500 at the successful completion the agreement. The access agreement would not cover remedial action. Respondent was to respond by August 14, 2013.

15. On August 20, 2013, Respondent responded to the EPA's August 9, 2014, email with further demands

16. On August 21, 2013, the EPA and Soco agreed that there would be no further negotiations for access. Even with the EPA intervening in the effort to gain access, Soco and Respondent were not able to agree on terms. This was because Respondent wanted payments in exchange for access that were far in excess of the figure that had been determined a fair price, \$265 per month.

17. On August 22, 2013, the EPA informed Soco, its contractor, and Respondent that negotiations would not be pursued further.

IV. DETERMINATIONS AND CONCLUSIONS OF LAW

1. The Site is a "facility" within the meaning of section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

2. Respondent is a "person" within the meaning of section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

3. Each of the chemicals listed in Section II.B. of this Order is a “hazardous substance,” or “pollutant” or “contaminant” within the meaning of section 101(14) and (33) of CERCLA, 42 U.S.C. §§ 9601(14) and (33) and 40 C.F.R. § 300.5.

4. The pouring, emptying, dumping and/or disposing of hazardous substances, pollutants or contaminants at or from the Site constitutes an actual “release” or a threat of such a release into the “environment” within the meaning of sections 101(8) and 101(22) of CERCLA, 42 U.S.C. §§ 9601(8) and (22), and thus a reasonable basis to believe that there may be a release or threat of release, within the meaning of section 104(e)(1) of CERCLA, 42 U.S.C. § 104(e)(1).

5. Access to the Site is required for the purpose of “taking any response action” within the meaning of section 104(e)(1) of CERCLA, 42 U.S.C. § 9604(e)(1).

6. Respondent’s failure to provide for access to conduct the remedial design and remedial action denies access to fully effectuate the necessary response actions at the Site and has already delayed completion of these activities by one year, and may delay completion of those activities further, thus potentially causing more contamination to the environment and increasing the financial burden to the EPA and Soco in carrying out those response activities.

IV. ORDER

A. The Respondent shall provide the EPA and its officers, employees, agents, contractors, and other representatives, full and unrestricted access to the Property at all reasonable times. Respondent shall provide access to allow the EPA, MDEQ, the agencies’ representatives, and Soco and its representatives to conduct any and all necessary response activities including, but not limited to:

1. Construction, operation and maintenance of an air sparging and/or soil vapor extraction system;
2. Sampling any solids or liquids stored or disposed of at the Site;
3. Drilling geoprobe holes for subsurface sampling of soils and groundwater;
4. Installation, sampling and maintenance of groundwater monitoring wells located at the Site;
5. Taking soil, ground water, surface water and air samples; and
6. Conducting such further response activities as the EPA, in consultation with MDEQ, deems necessary.

B. Respondent shall not interfere with the EPA's exercise of its access authorities.

C. Respondent shall notify the EPA in writing within seven (7) days of the effective date of this Order of Respondent's intent to comply with this Order. Failure by Respondent to provide such notification within this time period shall be a violation of this Order by Respondent. Such notice shall be sent to Andy Lensink at the address set forth in Section VI of this Order.

D. Nothing herein limits or otherwise affects any right of entry held by the United States pursuant to applicable laws, regulations, or permits.

V. PARTIES BOUND

This Order shall be binding upon all employees, agents, successors and assigns of Respondent. In the event of any conveyance by Respondent, or Respondent's agents, successors or assigns, of an interest in the Site, the Respondent and Respondent's agents, successors or assigns shall convey the interest so as to ensure continued access by the EPA, MDEQ, Soco, and their officers, employees, agents, contractors, and other representatives, for the purpose of

carrying out the activities pursuant to this Order. Any such conveyance shall restrict the use of such Site interest so that the use will not interfere with activities undertaken pursuant to this Order. The Respondent, or Respondent's agents, successors and assigns shall notify the EPA in writing at least thirty (30) days prior to the conveyance of any interest in the Site, and shall notify the other parties involved in the conveyance, prior to the transfer, of the provisions of this Order.

VI. OPPORTUNITY TO CONFER

Within three (3) calendar days after the effective date of this Order, the Respondent may request a conference with the EPA to be held no later than seven (7) calendar days after the effective date of this Order, on any matter pertinent to this Order, including its applicability, the factual findings and the determinations upon which it is based, the appropriateness of any actions the Respondent is ordered to take, or any other relevant and material issues or contentions which Respondent may have regarding this Order. This conference is not an adversarial proceeding and is not part of any proceeding to enforce or challenge this Order. The Respondent may appear in person or by an attorney or other representative at the conference. The Respondent may also submit written comments or statements of position on any matter pertinent to this Order no later than the time of the conference, or one (1) calendar day before the effective date of the Order if the Respondent does not request a conference. EPA will deem the Respondent to have waived its right to the conference or to submit written comments if it fails to request the conference or submit comments within the specified time period(s). Any request for a conference or written comments or statements should be submitted to:

Andy Lensink (8ENF-L)
Sr. Enforcement Attorney
Legal Enforcement Program

U.S. Environmental Protection Agency, Region VIII
1595 Wynkoop Street
Denver, CO 80202
Telephone: (303) 312-6908
Email: lensink.andy@epa.gov
FAX: (303) 312-6953

VII. ENFORCEMENT/PENALTIES

Compliance with this Order shall be enforceable pursuant to section 104(e)(5) of CERCLA, 42 U.S.C. § 9604(e)(5). Failure to provide access as described in this Order no later than seven days after the effective date of this Order may result in the assessment of civil penalties of up to \$37,500 for each day of noncompliance, as provided in section 104(e)(5) of CERCLA, 42 U.S.C. § 9604(e)(5), and EPA's Civil Monetary Inflation Adjustment Rule, 40 C.F.R. Part 19. Nothing herein shall preclude EPA from taking such other actions as may be necessary to protect the public health or welfare or the environment and recovering the costs thereof.

VIII. ADMINISTRATIVE RECORD

The EPA has established an Administrative Record which forms the basis for the issuance of this Order. It is available at the EPA Region 8 offices in Denver, Colorado. To review the Administrative Record, please contact Andy Lensink at (303) 312-6908.

IX. OTHER LAWS

Except as specifically provided in this Order, nothing herein shall limit the power and authority of the EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid

waste on, at, or from the Site. Further, nothing herein shall prevent the EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring the Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law. The EPA reserves the right to bring an action against Respondent under section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any response costs incurred by the United States related to this Order and not reimbursed by Respondent.

X. EFFECTIVE DATE

This Order shall be effective seven (7) days after it has been received by Respondent.

IT IS SO ORDERED

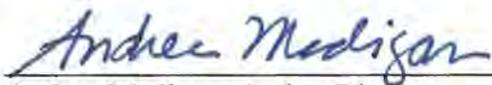
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY:



Kelsey Land, Director
Technical Enforcement Program
Office of Enforcement, Compliance and
Environmental Justice
EPA Region VIII

Date: 5/21/14



Andrea Madigan, Acting Director
Legal Enforcement Program
Office of Enforcement, Compliance and
Environmental Justice
EPA Region VIII

Date: 5/14/14

Exhibit A to Order for Access – Legal Description

S26, T01 N, R26 E, 704, PARCEL 010, TR 10 COS 704 3RD AMEND IN
E2

Exhibit B to Order for Access

