



MARYLAND DEPARTMENT OF THE ENVIRONMENT

1800 Washington Boulevard • Baltimore MD 21230

410-537-3000 • 1-800-633-6101 • www.mde.maryland.gov

Martin O'Malley
Governor

Robert M. Summers, Ph.D.
Secretary

Anthony G. Brown
Lieutenant Governor

October 4, 2013

Russell Becker, Vice President, Remediation
Sparrows Point, LLC
1650 Des Peres Road, Suite 303
St. Louis, Missouri 63131

RE: Consent Decree, Civil Action JFM-97-558
Section XXXIII -- Removal of Land from the Facility or Site

Dear Mr. Becker:

Sparrows Point LLC (Sparrows Point or the Company) has conveyed its interest in removing certain parcels of land from the definition of Facility or Site under the Consent Decree (CD), Civil Action JFM-97-558, in accordance with Section XXXIII of the CD, *Removal of Land from the Facility or Site*. This letter provides guidance as to how EPA and MDE intend to exercise their respective authorities in evaluating a request for such removal submitted by Sparrows Point.

EPA

Based on information submitted by Sparrows Point in support of a request to remove a parcel of land from the definition of Facility or Site pursuant to Section XXXIII of the CD, including information submitted in accord with MDE's procedures set forth below, EPA will determine, in its unreviewable discretion, whether any further investigation is required at such parcel under the CD.

As previously stated, any parcel of land that is removed from the definition of Facility or Site under the CD will still be subject to EPA's remedy decision process. Once EPA has determined that it has sufficient information to select a remedy, which may include no further action, for the Facility, or for a portion thereof, EPA will propose a remedy for the Facility, or a portion thereof, in a Statement of Basis (SB). EPA will publish the SB to solicit public comment on its proposed remedy. EPA will respond to all relevant comments received during the comment period. If EPA determines that new information warrants a modification to the proposed remedy, EPA will modify the proposed remedy or select other alternatives based on such new information and/or public comments. EPA will announce its final remedy and explain the rationale for any changes, if applicable, in a document entitled the Final

Russell Becker, Vice President, Remediation
Page 2

Decision and Response to Comments (FDRTC). All work required under EPA's final remedy selected in the FDRTC shall be implemented in accordance with RCRA or any other legal authority, as appropriate.

MDE

MDE will consider all requests to remove a parcel from the CD pursuant to Section XXXIII of the CD in accordance with the procedures set forth in the accompanying enclosure entitled "**Process to Remove a Parcel from the Sparrows Point Consent Decree**".

Should you have any questions or wish to discuss this further, please contact me at (410) 537-3212 or barbara.brown1@maryland.gov, or Andrew Fan at 215-814-3426 or Fan.Andrew@epa.gov.

Sincerely,



Barbara Brown, MDE Project Coordinator
Land Management Administration

Cc: Andrew Fan, EPA Region III
Luis Pizarro, EPA Region III
Charles Howland, EPA Region III
Jeffery Sands, US DoJ
Horacio Tablada, MDE
Matthew Zimmerman, MDE

Process to Remove a Parcel from the Sparrows Point Consent Decree September 2013

This document is provided for guidance only. It does not create legal rights, does not establish duties or obligations upon the Department, and does not constitute law, regulation or a final decision of the Department.

Request to Remove

To initiate a request for removal of a parcel, Sparrows Point must submit – at a minimum – the following information to the MDE Project Coordinator designated in the CD in two hard copies and an electronic version:

1. A specific description of the size and location of the parcel to be considered for removal;
2. The name of the prospective purchaser and the intended use of the site; and
3. As evidence supporting removal, a summary of the site history and current conditions. The summary should include all applicable elements of ASTM E 1527-05 -- *Standard Practice for Environmental Site Assessments* (Phase I).

Upon receipt of a removal request, a notice will be posted on MDE's website indicating the size, location, and intended primary use (e.g., warehousing, truck terminal, manufacturing, etc.) of the parcel under consideration. MDE may invite public comment at any time during the review process.

Scenario 1 – Tentative Determination to Approve Removal

If it is determined by MDE -- after complete review of the initial submission to remove a parcel and consideration of any comments received -- that there is sufficient basis upon which to grant the request for removal, a tentative determination to approve the request will be issued by MDE to Sparrows Point, LLC. Sparrows Point, LLC shall then publish notice of a public informational meeting that includes a convenient meeting location near the site and scheduled starting time in *The Baltimore Sun* and *The Dundalk Eagle* at least once a week for two consecutive weeks 30 days in advance of the meeting. Representatives from Sparrows Point, LLC and the prospective purchaser must attend the meeting to present their future plans for the parcel and to respond to questions.

MDE will accept written comments for five days following the public meeting, and then will evaluate any new information received prior to making a final decision on the request to remove the parcel.

Scenario 2 -- More Evaluation/Remediation Required

If, following evaluation of the initial submission requesting removal of a parcel, it is determined by MDE that more data is required in order to more fully evaluate site conditions, MDE will provide comments to Sparrows Point that will guide any further investigation. Additional data may include soil and groundwater sampling, or any other evidence upon which a decision for removal or the need for remediation may be based. Once MDE deems that there is sufficient data upon which to base a final decision on removal and/or remediation, MDE will issue a tentative determination to grant or deny the request to remove the parcel, with or without possible further action required, as follows:

1. **Removal with Minimal or No Further Restrictions** – The data submitted presents no ongoing environmental or public health concerns requiring further remedial action, but removal of the parcel may be conditioned on restricted use, such as a covenant to restrict the use of groundwater beneath the parcel in any aquifer, for any purpose, or any other provision deemed necessary to address potential risks to human health and the environment; or
2. **Removal Upon Entering Separate Consent Agreement** – Remedial work such as, but not limited to, contaminated soil removal or groundwater treatment may be required, but the site may not have to remain under the CD if the work can be carried out under a separate consent agreement entered into by the Sparrows Point, LLC and MDE. Upon completion of any required work, Sparrows Point LLC would receive a “No Further Action” determination and the property would no longer be considered under active enforcement.

In either case described under Scenario 2, upon a tentative determination to remove the parcel or enter into a consent agreement for further remedial work, Sparrows Point, LLC shall publish notice and hold a public informational meeting as described under Scenario 1.

Scenario 3 – Removal Denied

Following evaluation of all data requested and submitted, MDE may deny the removal request. In such event, the parcel will remain under the authority of the CD.

Reimbursement of MDE Expenses

Sparrows Point, LLC will be responsible to pay all MDE direct, indirect, fringe and other costs related to processing a request for removal of a parcel. If Sparrows Point, LLC chooses to question any invoiced charges, it must do so in writing to MDE within 30 days of receiving the invoice, otherwise all charges will be deemed qualified. If timely payment of qualified invoiced costs is not made, all work related to removal requests will cease until full payment due is received by MDE.