# Superfund Task Force Listening Session Recommendation 22: Exploring Environmental Liability Transfer Approaches at CERCLA Sites

Office of Site Remediation Enforcement
Office of Enforcement and Compliance Assurance
June 5, 2018

# Housekeeping

- Entire broadcast offered live via Adobe Connect
  - Listen and watch as the presenters advance through materials live
- Audio is available online by default
  - Please check your local volume settings to adjust audio
  - Use Q&A to privately report technical difficulties
- Live public remarks will be delivered by telephone
  - All lines will be globally muted
  - Press #6 to unmute ONLY when your name is called to remark
- Use the Q&A pod to privately submit remarks, questions and report technical problems



# Disclaimer

Case examples contained in this presentation are for illustration purposes only and do not imply any particular endorsement of these entities, only that EPA determined that these were appropriate tools to use based on the facts specific to each site.

# **Agenda**

- Introduction
- Presentation on Recommendation 22
- Live remarks by session participants
- Resources
- Closing remarks

# **Superfund Task Force Report**

- Create: May 2017, Task Force comprised of senior representatives from Superfund program and enforcement offices, EPA's General Counsel, Regions, and other offices.
- **Charge:** propose recommendations to streamline and strengthen the Superfund program.
- Report: July 2017, 5 goals with 42 recommendations



# **Superfund Task Force Recommendations**

## **Five Goals:**

- 1. Expediting cleanup and remediation process
- 2. Reinvigorating responsible party cleanup and reuse
- 3. Encouraging private investment
- 4. Promoting redevelopment and community revitalization
- 5. Engaging partners and stakeholders

### **Download the report** at

https://www.epa.gov/superfund/superfund-task-force-recommendations



# **Superfund Task Force Listening Sessions**

- Eight sessions May 21, 2018 June 18, 2018
  - Second session
- Input from stakeholders and the public
- Increase transparency and improve communications

Register for more sessions at

http://www.epa.gov/superfund/superfund-task-force

## **Presenters**

- Greg Wall
  - OSRE's Regional Support Division
- Erik Hanselman
  - OSRE's Policy and Program Evaluation Division
- Charlie Howland
  - Region 3 Office of Regional Counsel

# **Task Force Report, Goal 3**

- Facilitate use of alternative and non-traditional approaches for financing site cleanups
- Encourage private investment and promote more third-party participation in sites
- Expedite redevelopment and reuse of sites consistent with CERCLA authority



# Task Force Report, Rec. 22

- Explore Environmental Liability Transfer (ELT) approaches and other risk management tools at PRP cleanups
- Identify response actions and site conditions that could benefit from ELT approaches
- Consider developing a pilot program for using ELT approaches at Superfund sites

# What is an ELT?

- In exchange for payment and/or title to property, a third party contractually assumes obligations for environmental conditions at the property
- The third party indemnifies the current owner (and other PRPs) for the assumed obligations
- Contractual indemnification may be supported by environmental insurance

# **CERCLA Statutory Authority**

- Section 107(a), 42 U.S.C. § 9607(a)
  - PRPs include current owners and operators and past owners and operators of a facility at the time of disposal of a hazardous substance
  - Liability is strict, retroactive, joint and several



# **CERCLA Statutory Authority (cont.)**

- Section 107(e), 42 U.S.C. § 9607(e)
- (1) No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from the owner or operator of any vessel or facility or from any person who may be liable for a release or threat of release under this section, to any other person the liability imposed under this section. Nothing in this subsection shall bar any agreement to insure, hold harmless, or indemnify a party to such agreement for any liability under this section.

# Potential ELT Benefits to the Public

- May spur or expedite cleanup and redevelopment of contaminated sites
- Cleanup obligations transferred to a motivated and specialized third party
- Encourages private party cleanups
- Helps conserve Superfund resources



# **Potential ELT Benefits to PRPs**

- Contractually transfers cleanup response obligations to a specialized third party for fixed cost
- May allow PRP to reduce environmental reserves on balance sheets
- Allows PRP to focus on core business activities
- May facilitate merger and acquisition transactions
- May be used to address non-dischargeable environmental obligations arising out of bankruptcy

# **Additional ELT Considerations**

- Some sites are not of interest to ELT companies
- A contractual agreement to transfer obligations to a third party is only as good as the indemnity received and the financial viability of the ELT company assuming the obligations



# ELT Case Study #1: Bethlehem Steel Sparrow's Point Steel Mill

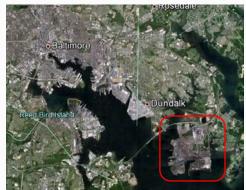
### Background - Bethlehem Steel mill

- 1887 2012: integrated steel mill (sintering, coking, various mill operations) on 3,100 acres, world's largest in the 1950s
- 1997: EPA, MDE & BSC enter RCRA Corrective Action consent decree, required investigation, corrective measures proposals, & interim measures
- Extensive soil & GW contamination (metals, benzene, naphthalene found in 203 SWMUs, 28 Areas of Concern, 5 special study areas)

### Recent events

- 2003 BSC bankruptcy, several successive new owner/operators
- 2011 Fed. Ct.: current owner not responsible for pre-2005 offshore contamination under 1997 CD.
- 2012 RG Steel bankruptcy







Sparrows Point in its heyday in 1954 when it employed 30,000 workers. Photo by: Bethlehem Steel Corp.

### BALTIMORE BUSINESS JOURNAL

Arugula at Sparrows Point? Large organic farm to open at Tradepoint Atlantic

loy 8, 2018, 9:00am EDT Updated: May 8, 2018, 10:00am EDT

Gotham Greens organic produce will soon be sprouting leafy arugula, basil and bok choy on property at Sparrows Point once ruled by a fiery blast furnace.

The agtech startup said Tuesday it is building a 100,000-square-foot hydroponic greenhouse at Tradepoint Atlantic and will open up early next year.

The operation will allow the company to expand to the mid-Atlantic from Chicago and New York. At least 60 new jobs are expected from horticulturalists to produce baggers for the so-called "high-end salad" grover.



The organic produce grower Gotham Greens will build a IDQ000 square front hydroponic greenhouse at Sportpus Point to grow lettuce and other vegetables. At left, a Dotham Grooms operation man fast Chicago.

# ELT Case Study #1: Bethlehem Steel Sparrow's Point Steel Mill

### Recent owners/ELT activities

### 2012-14

- SPLLC (ELT, Hilco Global) acquires facility for redevelopment in bankruptcy sale
- SPLLC agrees to sign & perform under 1997 RCRA CD
- \$500k from bankruptcy sale put in trust for EPA to complete offshore investigation

### 2014 - present

- Prospective purchaser Tradepoint Atlantic (TPA, dba Sparrows Point Terminal) enters into separate agreements w/ EPA, MDE, providing for
  - Cleanup of facility under EPA RCRA Corrective Action procedures and MDE authorities, including \$48M+ financial assurance
  - \$3M to address offshore investigation & cleanup
  - Reimbursement of certain oversight costs
  - CERCLA & RCRA covenants not to sue
- TPA purchases real estate from ELT
- SPLLC remains obligated under 1997 CD, & is hired by TPA to complete onsite remediation per EPA & MDE agreements
- Cleanup and development underway





# **ELT Case Study #2: Mattiace**

### **Site Background**

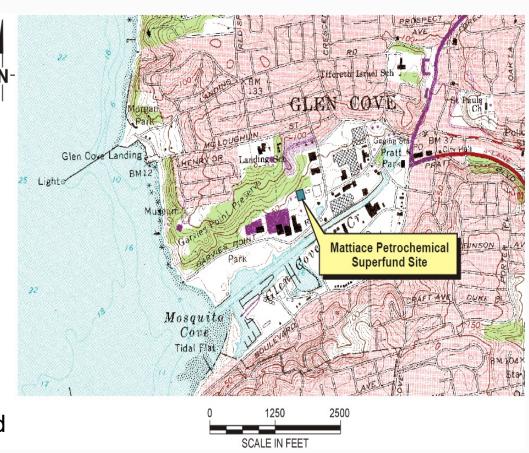
- 1.9 acres located in Nassau County, New York
- Mattiace Petrochemical Company began operating in the mid 1960s

### **Contamination**

 Soil, groundwater, and sediment contamination of mainly VOCS, including PCE, TCE, and xylenes

### **EPA Cleanup Actions**

- Removals in 1989 and 1990
- EPA issues a ROD in 1990 and 1991 for soil and groundwater



# **ELT Case Study #2: Mattiace**

- In 2003, pursuant to a CD with EPA and numerous PRPs, TRC Environmental, as an ELT party, assumed implementation of the remedial action of the site
  - TRC will finance and perform work
  - TRC is jointly and severally obligated under the CD to perform work
  - TRC required to provide financial assurance
  - EPA will "look first" to TRC to pursue any actions for noncompliance with the CD



# What we would like to hear from you

# Focus remarks on the following questions and topics:

- What specific types of ELT transactions and tools are private parties using to allocate financial risk associated with cleaning up sites?
- What kind of sites are particularly amenable to the ELT and related approaches?
- What factors make an ELT approach more, or less, useful at a site?
- Based on your experience, should EPA encourage the use and development of ELT transactions and tools to facilitate Superfund cleanups, and if so, how?

Written remarks can be emailed to <u>osre-sftf-listeningsession@epa.gov</u> until June 12, 2018.

# **Next Steps**

- Analyze feedback from what we hear today and in written remarks
- Continue to conduct stakeholder outreach on ELTs
- Consider developing a pilot program on using ELTs at Superfund sites



# How to share remarks

- Live during online broadcast
  - Pre-registered
     participants may share
     remarks by phone
  - Attendees may also type remarks into the Q&A window in the lower left

- After today's online broadcast
  - Interested parties may submit remarks in writing at any time to OSRE-SFTF-listeningsession@epa.gov with the following subject: LS22. Deadline for written remarks is June 12, 2018

# **Public Remarks**

- Constance Westfall, Clark Hill Strasburger
- Yolanda Garza, State of California, Dept of Toxic Substances Control
- Tunde Akinmoladun, Academic Health Resource
- John Hesemann, Burns
   & McDonnell
- Brian Israel, Arnold & Porter

Press #6 to unmute when your name is called to share remarks.

Interested parties may submit written remarks by June 12, 2018 to OSRE-SFTF-listeningsession@epa.gov with the following subject: LS 22

# **Reference Materials**

- Superfund Task Force website
- Superfund enforcement website
- Top 10 Questions to Ask When Buying a Superfund
   Site (May 2008)
- <u>The Revitalization Handbook Revitalizing</u>
   <u>Contaminated Lands: Addressing Liability Concerns</u>
   (2014 edition)

# For More Information

 Visit the Superfund Task Force website at <a href="https://www.epa.gov/superfund/superfund-task-force">https://www.epa.gov/superfund/superfund-task-force</a>, and the Information page for the OSRE-sponsored listening session series at <a href="https://www.epa.gov/enforcement/listening-sessions-superfund-task-force-recommendations">https://www.epa.gov/enforcement/listening-sessions-superfund-task-force-recommendations</a>

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