



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

MEMORANDUM

JUN 07 2019

DATE: 3 June 2019

SUBJECT: Request for a Time-Critical Removal Action at the S. Fruit Ave. Drum Site, Fresno, CA

FROM: Jeremy Johnstone, On-Scene Coordinator
Emergency Response Section I

TO: Enrique Manzanilla, Director
Superfund and Emergency Management Division

THRU: Lynn Keller, Chief
Emergency Response Section I

Dan Meer, Assistant Director
Emergency Response, Preparedness and Prevention Branch

I. PURPOSE

The purpose of this Action Memorandum is to obtain approval to spend up to \$1,080,000 in total response costs for a time critical removal action to mitigate threats to human health and the environment posed by the presence of abandoned drums containing hazardous substances at the S. Fruit Ave. Drum Site, located at 2761 S. Fruit Ave. in Fresno, Fresno County, California (the Site).

This Action Memorandum would, if approved, serve as approval for expenditures by EPA to take actions described herein to abate the imminent threat to human health and the environment posed by hazardous substances at the Site. The proposed removal of hazardous substances would be undertaken pursuant to Section 104(a)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 21 9604(a)(1), and Section 300.415 of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 C.F.R. § 300.415.

II. SITE CONDITIONS AND BACKGROUND

Site Status: Non-NPL
Category of Removal: Time-Critical
SEMS ID: CAN000905587
SITE ID: A9C2

A. Site Description

1. Physical Location

The Site is located at 2761 S. Fruit Ave., Fresno, Fresno County, CA. The geographic coordinates, centered at the residence front door, are: latitude 36.700930; longitude -119.817075. The Site is bounded on the west side by S. Fruit Ave. The north, east and south boundaries adjoin similarly sized residential lots. The elevation of the site is approximately 270 feet above sea level with little relief, typical of the part of California's San Joaquin Valley. Drainage from the Site would flow overland either to the west or the south, then into a canal that flows west along E. Annadale Ave., thence to Fresno Slough and thence to the San Joaquin River. The annual average rainfall for Fresno, CA is 11.5 inches. See Appendix A Figures for a Site Location map and an aerial image of the site and immediately surrounding environs.

2. Site Characteristics

According to Fresno County records the Site occupies 4.7 acres and is zoned for medium-density residential use. There is a residence at the west end of the parcel with the rest being undeveloped. Although a residential parcel, the owner has allowed a family member who owned or worked for a trucking company to use the property. In or around 2009, this individual staged approximately 600 drums and barrels on the property which have remained onsite since.

According to Fresno County staff, homeless people have been known to frequent the area and a homeless encampment was recently removed from an adjacent parcel just feet away from one of the drum piles.

3. Removal Site Evaluation

On 14 March 2019 EPA, at the request of the Fresno County Department of Public Health, Environmental Health Division (the CUPA) responded to the property. The CUPA sought EPA assistance in the removal of the abandoned drums at the Site as the owner had not complied with orders previously-issued by the CUPA to remove the drums. The owner consented to EPA's access to the Site to conduct an assessment. EPA was accompanied by representatives of the CUPA and the CA Dept. of Toxic Substances Control (DTSC).

The drums and barrels to be addressed by the proposed removal action are located in two areas of the northeast portion of the Site. During the Site assessment, a count indicated a total of approximately 600 drums and barrels. Some of the drums were uncovered and exposed to the elements. Some evidence of drum deterioration and leakage or spillage was observed. The drums and barrels were divided into 11 groupings based upon type (drum or plastic barrel), material of construction, and color. Select drums from each grouping were opened and visual inspection indicated the contents appeared to be waste oils and greases. Samples from the opened drums were collected for hazard categorization in the field. All waste samples that were tested showed flammability characteristics. A subset of the samples were sent to a laboratory for analysis in order to characterize the wastes for disposal and determine if the wastes contained hazardous substances. The laboratory's analytical results indicated, based upon the Toxicity Characteristic Leaching Procedure (TCLP; EPA SW-846 Method 1311), RCRA characteristic toxicity due to the presence of Barium and Lead (RCRA Waste Codes D005 and D008, respectively) above the regulatory levels set out at 40 CFR §261.24. Lead is also a CERCLA hazardous substance as defined at 40 CFR §302.4(b). Table 1 below presents these results in brief.

Table 1 – Summary of Selected Drum Sampling Results

Contaminant	Maximum Concentration (mg/l)	Minimum Concentration (mg/l)	TCLP Regulatory Level (mg/l)	Waste Code No.
Barium	650	<0.040	100	D005
Lead	2000	<0.080	5	D008

4. Release or Threatened Release into the Environment of a Hazardous Substance, Pollutant or Contaminant

Abandoned and unsecured drums at the Site have been identified as containing hazardous substances as defined by CERCLA. Specifically, select drums were observed to contain a mixture of used oil and characteristic toxic waste as defined by 40 C.F.R. § 261.24. By definition at 40 C.F.R. §§ 300.5 & 302.4(b) such a mixture is a hazardous substance. Further, sampled drums contain lead which is a listed hazardous substance as defined at 40 C.F.R. § 302.4(a). Many of these drums were observed during the 14 March 2019 site investigation to be in a deteriorated condition and leaking or having spilled wastes onto the ground, which constitutes an actual release to the environment.

5. National Priorities List (“NPL”) Status

The Site is not currently on, or proposed for, the NPL.

6. Maps, Pictures, and other Graphic Representations

Maps and photos (Appendix A) depicting the Site are attached.

B. Other Actions to Date

1. Previous actions

On 7 September 2011 staff from the CUPA conducted a site inspection, which resulted in the CUPA's issuance of a Notice of Violation (NOV) on 19 April 2012. The NOV required that the property owners arrange for the characterization, removal and disposal of the drums. As that NOV had not then been complied with, on 6 November 2018 the CUPA sent a second NOV to the owners. As of the date of this memorandum the second NOV had not been complied with either.

2. Current actions

No current actions are ongoing.

C. State and Local Authorities' Roles

1. State and Local Actions to Date

See B.1 above. CUPA and DTSC staff were also present during EPA's 14 March 2019 site investigation.

2. Potential for Continued State/Local Response

There are no current plans for a State or local response at the Site. On 7 May 2019 the CUPA sent a letter to the EPA Regional office describing the threats posed by the unsecured wastes at the Site and requested EPA's assistance in their removal.

III. THREATS TO PUBLIC HEALTH OR WELFARE OR THE ENVIRONMENT, AND STATUTORY AND REGULATORY AUTHORITIES

Conditions at the Site represent a release, and potential threat of release, of CERCLA hazardous substances threatening to public health, welfare, or the environment based on the factors set forth in the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR § 300.415(b)(2). EPA has considered all of the and has determined that the following 40 CFR § 300.415(b)(2) factors apply at the Site:

- (i) *Actual or potential exposure to nearby populations, animals or the food chain from hazardous substances or pollutants or contaminants;*

The abandoned drums and barrels are known to contain hazardous substances. Some of these containers are leaking, which could potentially contaminate soil or water leading to off-site exposures. Nearby human and animal populations (including the owner's pet dogs) could come into contact with the wastes or could otherwise enter the local food chain. The drums are currently situated on a residential property. The wastes are uncontrolled and could easily be tampered with. Family members of the property owner or other persons known or unknown to her could come into contact with the wastes. The Site is bordered by an area known to have been used as a homeless encampment in the recent past while the drums were present.

Lead is regulated in RCRA and California as a hazardous waste. According to the Agency for Toxic Substances and Disease Registry (ATSDR), lead is a toxic heavy metal that bio-accumulates in human tissues. ~~It~~ Short-term exposure to large amounts of lead can cause harmful effects on the nervous system, gastrointestinal system, kidneys, and circulatory system. Long-term exposure to low levels, such as those that occur in the work place, can cause damage to the central nervous system, kidneys, blood, gastrointestinal tract, and gingival tissues. Children are particularly sensitive to the chronic effects of lead, with slowed cognitive development, reduced growth and other effects. Residents could be exposed to lead by tracking contaminated soil into the house or through gardening or children playing on the contaminated soil.

Barium is a toxic heavy metal that is regulated in RCRA and California as a hazardous waste. According to the ATSDR, short term exposure can cause vomiting, abdominal cramps, diarrhea, difficulties in breathing, increased or decreased blood pressure, numbness around the face, and muscle weakness. Large amounts of barium intake can cause, high blood pressure, changes in heart rhythm or paralysis and possibly death. Residents could be exposed to lead by tracking contaminated soil into the house or through gardening or children playing on the contaminated soil.

(iii) *Hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage containers, that may pose a threat of release;*

The site contains approximately 600 abandoned drums and barrels. Waste samples collected and analyzed by EPA document the presence of hazardous substances. Many of the drums show evidence of rust and corrosion. Some drums are leaking, with some evidence of leakage observed on the ground under the drum piles. The condition of the drums and barrels pose the risk of further such leakage to the ground.

(vi) *Threat of fire or explosion;*

Drums and barrels at the Site are exposed, unmanaged and unsecured and contain waste demonstrated to be flammable. The Site is covered with tall grasses,

which dry out in the summer and fall and could carry a fire to the drum piles. A homeless encampment was formerly located on property adjacent to and in close proximity to one of the drum piles. This and other factors contribute to a significant threat of fire at the Site.

(vii) *Availability of other appropriate federal or state response mechanisms to respond to the release.*

No other local, state or federal agency is in the position or has the resources to independently implement a timely, effective response action to address the ongoing threats presented by the Site. On 7 May 2019 the County of Fresno requested assistance from the EPA to take a response action at the Site.

IV. ENDANGERMENT DETERMINATION

Actual or threatened releases of hazardous substances from this Site, if not addressed by implementing the response action selected in this Action Memorandum, may present an imminent and substantial endangerment to public health, or welfare, or the environment.

V. PROPOSED ACTIONS AND ESTIMATED COSTS

A. Proposed Actions

1. Proposed Action Description

EPA will stabilize by bulking or overpacking any drums or barrels that are leaking. Wastes will be further characterized and profiled for disposal, and then segregated and bulked for disposal based on chemical characteristics and compatibilities as well as waste streams. EPA will identify disposal facilities which are in compliance with the off-site rule (40 CFR §300.440) and that are allowed to accept the containers and transport the wastes to appropriate facilities for disposal.

The nature and extent of soil contamination caused by leaking drums and barrels on the Site remains unknown. EPA may decide to excavate, dispose and/or treat contaminants in those soils.

2. Contribution to Remedial Performance

No further action will be required if the proposed removal action completes the cleanup.

3. Engineering Evaluation / Cost Analysis

An EE/CA is not required for a TCRA.

4. Applicable or Relevant and Appropriate Requirements (ARARs)

Section 300.415(j) of the NCP provides that CERCLA removal actions shall, to the extent practicable considering the exigencies of the situation, attain ARARs under federal environmental or state environmental facility siting laws. The following ARARs have been identified for the proposed response action:

Federal ARARs:

- 42 U.S.C. 9601, et seq., CERCLA
- 42 U.S.C. 6901, et seq., RCRA including:
 - 40 C.F.R. 258, et seq., Subtitle D
 - 40 C.F.R. 260, et seq., Subtitle C
 - 40 C.F.R. 261, et seq., identification and listing of hazardous waste
- 42 U.S.C. 6941, et seq., state or regional solid waste plans
- 49 CFR Parts 171-173, U.S. Department of Transportation, Hazardous Materials Regulations

State ARARs:

In response to EPA's request to identify ARARs, the State of California, via the DTSC, has replied that, in regard to this proposed action, there are no State requirements that are more stringent than Federal ARARs. However, California's Title 22 hazardous waste regulations include additional metals and other analytes than does the RCRA TCLP regulation. It is therefore possible that some drum samples, when tested, may be considered hazardous under California regulations although not considered RCRA characteristically hazardous. This would have implications for possible in-state disposal options; thus these regulations should be considered in conducting the proposed action.

5. Project schedule

The removal action is anticipated to be conducted in two phases. In the first phase, which is anticipated to begin in July 2019, further waste characterization, disposal profiling and drum staging will occur. Once disposal profiling has been completed and disposal options identified, the second phase removal activities will commence at the Site with the bulking, overpacking, transport and disposal of the wastes. It is anticipated that all removal activities should be concluded within three weeks of the commencement of the second phase of onsite activities.

B. Estimated Costs

Extramural Costs:

ERRS Contractor Costs	\$720,000
START Contractor Costs	\$170,000
USCG PST Costs	\$10,000
Extramural Contingency (20% of Subtotal)	\$180,000
Total Removal Action Project Ceiling	\$1,080,000

*The EPA direct and indirect costs, although cost recoverable, do not count toward the Removal Ceiling for this removal action. Liable parties may be held financially responsible for costs incurred by the EPA as set forth in Section 107 of CERCLA.

VI. EXPECTED CHANGE IN THE SITUATION SHOULD ACTION BE DELAYED OR NOT TAKEN

A delay in action or no action at this Site would perpetuate the actual and potential threats to public health and the environment.

VII. OUTSTANDING POLICY ISSUES

None.

VIII. ENFORCEMENT

An investigation of potentially responsible parties is ongoing, and a separate Enforcement Addendum has been prepared providing a confidential summary of current and potential future enforcement actions. In addition to the extramural costs estimated for the proposed action, a cost recovery enforcement action also may recover the following intramural costs:

Intramural Costs¹

U.S. EPA Direct Costs	\$ 50,000
U.S. EPA Indirect Costs (50.65% of Spending \$1,080,000+ \$50,000)	<u>\$ 572,345</u>

¹ Direct costs include direct extramural costs and direct intramural costs. Indirect costs are calculated based on an estimated indirect cost rate expressed as a percentage of site-specific direct costs, consistent with the full cost accounting methodology effective October 2, 2000. These estimates do not include pre-judgment interest, do not take into account other enforcement costs, including Department of Justice costs, and may be adjusted during the course of a removal action. The estimates are for illustrative purposes only and their use is not intended to create any rights for responsible parties. Neither the lack of a total cost estimate nor deviation of actual costs from this estimate will affect the United States' right to cost recovery.

TOTAL Intramural Costs

\$ 622,345

The total EPA extramural and intramural costs for this removal action, based on full-cost accounting practices that will be eligible for cost recovery, are estimated to be \$1,702,345. Of this, an estimated spending of \$1,080,000 comes from the Regional removal allowance.

IX. RECOMMENDATION

This decision document represents the selected removal action for the S. Fruit Ave Drum Site in Fresno, Fresno County, California as developed in accordance with CERCLA, as amended, and it is not inconsistent with the NCP. This decision is based on the administrative record for the Site.

Because conditions at the Site meet the NCP section 300.415(b) criteria for a time-critical removal action, I recommend that you concur on the determination that there has been a release and that there continues to be a substantial threat of a release and approve the proposed removal action. The total removal action project ceiling, if approved, will be \$1,080,000 in direct costs from the Regional removal allowance. If you approve of this action, please indicate your decision by signing below.

Approve:



Enrique Manzanilla, Director
Superfund Division

6/7/19

Date

Disapprove:

Enrique Manzanilla, Director
Superfund Division

Date

cc: Stephanie Wenning, OEM, HQ

Enforcement Confidential Addendum

Attachments

A – Figures, Photos

B – Index to the Administrative Record

bcc: Site File
M. Saron, ORC-3
J. Johnstone, SFD-9-2
S. Calanog, SFD-9-2
L. Keller, SFD-9-2
M. Matthews, SFD-9-4
B. Lee, SFD-9-4
K. Castro, SFD-2