



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY NEW YORK, NY 10007-1866

ACTION MEMORANDUM

DATE:

SUBJECT: Enforcement Action Memorandum for Oberwil Property Portion of Pierson's Creek Superfund Site OU1, Newark, Essex County, New Jersey

FROM: Pamela Tames, Remedial Project Manager
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THRU: Michael Sivak, Chief
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TO: Pat Evangelista, Director
Superfund and Emergency Management Division

Site ID No.: 02MV

I. PURPOSE

The purpose of this Action Memorandum is to request and document approval of a time-critical removal action as described herein for property located at 366-394 Wilson Avenue, Newark, New Jersey (Block 5038, Lot 97) (the "Oberwil Property" or the "Site"). The Site is located within Operable Unit 1 (OU1) of the Pierson's Creek Superfund site. The planned removal action addresses the mercury, lead and polychlorinated biphenyl (PCB)-contaminated soil piles at the Site that pose a threat to the public health and the environment. EPA anticipates that this removal action will be performed by potentially responsible parties pursuant to either an administrative settlement agreement and order on consent, or a unilateral administrative order.

Conditions at the Site meet the criteria for a removal action under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA) 42 U.S.C. §§ 9601-9675, and Section 300.415(b)(2) of the National Contingency Plan (NCP).

There are no nationally significant or precedent-setting issues associated with this removal action and the Site is on the National Priorities List (NPL).

II. SITE CONDITIONS AND BACKGROUND

The Superfund Enterprise Management System (SEMS) ID Number for the Pierson's Creek Superfund site is NJD002144517. The removal action is considered time critical.

A. Site Description

1. Removal Site Evaluation (RSE)

The Oberwil Property is located adjacent to an unnamed tributary at the eastern border of the Troy Chemical Corporation, Inc. (Troy Chemical) facility, also known as Operable Unit Two (OU2) of the Pierson's Creek Superfund site. This tributary, part of OU1 of the Pierson's Creek Superfund site, is connected to Pierson's Creek, which empties into Port Newark (see Figure 1). The Oberwil Property is a former scrap yard and smelter with two abandoned buildings that remain on the property. In 2019, Salomone Brothers Inc. (Salomone) performed excavation work on the Oberwil Property, without regulatory oversight and in anticipation of purchasing the property, excavating soils and sediment that contained hazardous substances including mercury from the unnamed tributary of Pierson's Creek. The excavated soils and sediment were placed in three piles, totaling approximately 1,200 cubic yards, most of which were excavated from the unnamed tributary and currently remain on the Oberwil Property (Photo 1). Sampling of the piles conducted by EPA in November 2020 revealed PCB and heavy metals contamination in the soil/sediment. Levels of PCBs exceed the Toxic Substances Control Act (TSCA) regulatory threshold of 50 parts per million (ppm), with concentrations as high as 67 ppm, and levels of lead and mercury are as high as 3,840 ppm and 489 ppm, respectively. Salomone made several attempts to cover the piles with tarps to reduce exposure to the elements and migration of material from the piles, most recently on May 23, 2022; however, the tarps have not been effective in securing the soil.

The Site is not secure, and people can freely walk or drive onto the property and access the contaminated soil in the piles. The piles may be an attractive nuisance for young people who might find themselves on the property.

In addition, the Oberwil Property is in a flood zone, and the property often floods, including at least five times in 2021. During these flood events there is the potential for the contaminated soil/sediment in the piles to migrate and contaminate other areas on the property or the surrounding properties.

Based on the available information, a CERCLA time critical removal action is warranted at the Site.

2. Physical location

The Site is located in an industrial area in Newark, New Jersey. The approximately 2.4-acre Oberwil Property is a land-locked parcel with a right-of-way through the Troy

Chemical property for access (Block 5038, Lot 97) and that contains a large 2-story industrial building and a smaller former smelter building (see Figure 2).

The Site is bounded to the west by the Troy Chemical facility but is separated from that property by the unnamed tributary to Pierson's Creek which is part of OU1 of the Pierson's Creek Superfund site. To the south lies the former Red Star facility now occupied by Continental Hardware. There is a rail line to the east and another land-locked parcel to the north currently occupied by Welch, Holme and Clark, a vegetable oil purveyor.

The Pierson's Creek Superfund Site includes Pierson's Creek, which begins in the vicinity of Avenue L in Newark, New Jersey and travels through above-ground channels and below-ground culverts through various properties in a general south, south-westerly direction until discharging into the Port Newark channel of Newark Bay. The Pierson's Creek Superfund site also includes various unnamed tributaries that discharge into Pierson's Creek including an unnamed tributary located on the western border of 366-394 Wilson Avenue, and includes any location where contamination from the creek or tributaries has come to be located. The Pierson's Creek Superfund site is contaminated with mercury and PCBs, among other contaminants. EPA is the lead regulatory agency for planning and implementing response actions at the Pierson's Creek Superfund site and New Jersey Department of Environmental Protection serves as a support agency.

The residential Ironbound section of Newark, a densely populated urban area which includes many residences, is located less than a mile away.

3. Site Characteristics

As noted above, the Oberwil Property is a former scrap metal yard and smelter. It has been dormant for the last several years. The property is only partly fenced and is unsecured. The 2.4-acre unpaved parcel contains an abandoned two-story warehouse and a small historic smelter building. This low-lying property regularly floods during precipitation events and remains flooded long after due to poor drainage (see Photo 2).

Beginning in October 2012, EPA conducted several investigations of Pierson's Creek that confirmed the presence of mercury and PCBs in the creek sediments through the accessible portions of the creek, including the unnamed tributary that is located along the western boundary of the Oberwil Property.

In the fall of 2019, Salomone excavated contaminated soils and sediment from and adjacent to the unnamed tributary without regulatory oversight, reportedly in an effort to drain the property of ponded water. The excavated soils and sediment were placed in three piles on unpaved areas of the Oberwil Property. Drainage piping and structures were also placed within the unnamed tributary to facilitate drainage. The piles have been temporarily covered with tarps that have not been effective over the long term in containing the piles.

4. Release or threatened release into the environment of a hazardous substance, or pollutant, or contaminant

The Site is a “facility” as defined under Section 101(9) of CERCLA, 42 U.S.C. §9601(9). The excavation and placement of the soil and sediment containing hazardous substances in piles on the Site, and movement of contaminated soil during the installation of a pipe in the tributary, constitutes a “release,” as defined in Section 101(22) of CERCLA, 42 U.S.C. Section §9601(22). Sampling and analysis conducted at the Site has identified the following CERCLA hazardous substances as defined in 40 CFR Section 302.4 (also referred to as “Table 302.4”).

<u>Hazardous Substances Identified</u>	<u>Statutory Sources for Designation as a Hazardous Substance</u>
Lead	Clean Water Act (CWA) Section 307(a), Clean Air Act Section 112
Polychlorinated Biphenyls (PCBs)	CWA 311(b)(2), CWA 307(a), CAA 112
Mercury	CWA 307(a), CAA 112

Analytical data, generated from a November 2, 2020 EPA soil sampling event, found these hazardous substances in the soil piles at concentrations well above the EPA removal management levels. Total PCB levels were as high as 67 ppm. Lead levels were as high as 3,840 ppm and mercury as high as 489 ppm.

Sediment samples collected from the tributary adjacent to the Oberwil Property on August 5, 2019, showed levels of mercury as high as 671 ppm, lead as high as 31,000 ppm, and total PCBs as high as 114 ppm. The soil/sediment piles on the Site, most of which was excavated from the tributary, contain elevated levels of lead, mercury, and PCBs. These hazardous substances are not safely contained on the property. The piles are exposed to wind and rain and the property is in a low area subject to heavy flooding. As a result, there is an ongoing threat of release of hazardous substances into the environment. Stormwater runoff from the property and the piles enters Pierson’s Creek at the southern edge of the property. The creek eventually winds its way south to Port Newark where it enters Newark Bay. Trespassers may easily come into direct contact with the contaminated soils and potentially track it off-site. Additionally, windblown soil and soil runoff from the piles threaten to contaminate previously uncontaminated areas of the Oberwil Property.

It is estimated that approximately 1,200 cubic yards of soil/sediment will need to be removed from the Site to address the release of hazardous substances.

5. NPL status

The Pierson's Creek site was placed by EPA on the NPL on September 22, 2014. EPA is the lead regulatory agency for planning and implementing response actions at the Pierson's Creek site. NJDEP serves as a support agency for the Site.

EPA has divided the Pierson's Creek site into two operable units. OU1 consists of various unnamed tributaries that discharge into Pierson's Creek including the unnamed tributary located between the Oberwil property and the Troy Chemical facility and the open water section of Pierson's Creek located directly to the south of that facility, including portions of the creek that flow through a series of culverts lying beneath a Conrail freight line, long term parking for Newark Airport and the New Jersey Turnpike before finally discharging to Port Newark. EPA is currently conducting a fund-lead Remedial Investigation/Feasibility Study (RIFS) at OU1. OU2 consists of the Troy Chemical property and Troy Chemical is currently conducting an RI/FS under an Administrative Settlement Agreement and Order on Consent (ASAOC) with EPA.

6. Maps, pictures, and other graphic representations

Figure 1 – Site Location Map

Figure 2 – Satellite Site Map

Photos 1A, 1B, and 1C – Soil Piles

Photo 2 – Flooding at the Oberwil property

Photo 3 – Torn tarps on soil pile

B. Other Actions to Date

1. Previous actions

Beginning in October 2012, EPA conducted several investigations of Pierson's Creek that confirmed the presence of mercury and PCBs in the creek sediments throughout the accessible portions of the creek, including the unnamed tributary adjacent to the Oberwil Property. Sampling of the unnamed tributary sediments and adjacent soils by EPA in August 2019 indicated that the area is highly contaminated with mercury and PCBs.

EPA sampled the soil/sediment piles for waste characterization in November 2020. The samples exhibited elevated levels of lead, mercury, and PCBs. Many samples had lead levels above the Toxicity Characteristic Leaching Procedure (TCLP) screening criterion of 5 mg/L but were below the TCLP screening criterion of 0.2 mg/L for mercury.

2. Current actions

At the request of EPA, Salomone has been regularly monitoring the piles and trying to keep them covered with tarps, which needed to be replaced several times due to weathering and flood events and are ineffective for long-term protection of the piles. The re-covering of the piles by Salomone has been overseen by an EPA On-Scene Coordinator.

C. State and Local Authorities' Roles

1. State and local actions, to date

On July 7, 2020, NJDEP issued a Notice of Violation to Oberwil for noncompliance with N.J.A.C. 7:7A-2.2(b) (Regulated activities in freshwater wetlands and State open waters) and N.J.A.C. 7:13-2.1(a) (Flood Hazard Area Control Act Rules). NJDEP cited Oberwil for performing unauthorized regulated activities without the required permit authorization. The regulated activities included the discharge of dredge or fill material into State open waters, specifically, NJDEP cited Oberwil for filling and piping approximately 870 square feet of a tributary of Pierson's Creek on the west side of the property without a NJDEP Land Use permit, and for the unauthorized piping of a tributary of Pierson's Creek and the staging of soil stockpiles within a flood hazard area associated with Pierson's Creek and Newark Bay without a required permit. The cited activities collectively impacted 244.9 cubic yards of flood hazard area volume.

2. Potential for continued State/local response

There are no actions planned or being taken by the State or local government agencies to mitigate the mercury, lead, and PCBs present in the soil/sediment piles.

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

A. Threats to the Public Health or Welfare

Conditions at the Site meet the requirements of 40 C.F.R. Section 300.415(b) of the NCP for EPA to determine that a CERCLA removal action is appropriate. Factors from Section 300.415(b)(2) that support conducting a removal action at the Site include:

Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants (§300.415(b)(2)(i)).

There is a potential exposure to nearby human populations, animals, or the food chain from hazardous substances, or pollutants, or contaminants. The Site is located in a densely populated industrial area. The soil and sediment in the piles can be entrained in the wind or mobilized by flooding onto adjacent populated properties.

There is also a threat to public health from entry onto the property. Unprotected persons entering the property could be exposed to unacceptable levels of mercury, lead, and PCBs in the soil/sediment piles. Inhalation is the primary route of exposure to mercury for humans. Mercury in the piles could off-gas into the air and cause an exposure through the inhalation route. Mercury has been shown to be genotoxic in humans and animals. Long-term exposure to either inorganic or organic mercury can permanently damage the brain, kidney, and the developing fetus in humans. In fish and shellfish, toxic effects include a variety of reproductive, growth, and metabolic dysfunctions, as well as increased mortality in larval and juvenile stages. Also, a release or threat of release of mercury may present an imminent and substantial endangerment to nearby workers on adjoining properties and constitutes an environmental harm.

PCBs and lead have been demonstrated to cause a variety of adverse health effects. They have been shown to cause cancer in animals and humans as well as a number of serious non-cancer health effects in animals and humans, including effects on the immune system, reproductive system, nervous system, endocrine system, and other health effects.

High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface, that may migrate (§300.415(b)(2)(iv))

Elevated levels of lead, mercury, and PCBs have been identified in the soil/sediment piles on the Site. These hazardous substances have the potential to migrate if disturbed by human activity, animals, or other Site activities without proper soil management controls or removal. Migration could also take place due to weathering.

Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released (§300.415(b)(2)(v))

With elevated concentrations of lead, mercury, and PCBs in the soil/sediment piles there is the potential for the contamination to migrate as a result of windblown dust or soil entrained in surface water run-off. Soil/sediment contamination may migrate into the storm sewers and or directly into Pierson's Creek.

Availability of other appropriate federal or State response mechanisms to respond to the release (§300.415(b)(2)(vii))

There are no State/local response agencies available to mitigate the threats to public health or the environment on the Site.

B. Threats to the Environment

There is a significant threat of mercury, lead, and PCBs being released to the environment from the piles due to transport by rain runoff and wind into surrounding waterways.

IV. **ENDANGERMENT DETERMINATION**

Actual or threatened releases of hazardous substances from the 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**

A. **Proposed Actions**

1. **Proposed action description**

The following is the scope of work proposed for this action to mitigate the threats posed by the presence of hazardous substances in the soil/sediment piles at the Site:

- a) Maintaining secure covering on the soil/sediment piles until disposal.
- b) Sampling the material in the piles to profile the waste streams and determine appropriate disposal facilities.
- c) Proper air monitoring and sampling per an approved Community Air Monitoring Plan (CAMP).
- d) Removal of the contaminated soil/sediment piles using appropriate techniques without creating unacceptable releases into the environment.
- e) Proper segregation of material into documented (sampled) waste streams to be followed-up by appropriate transportation, treatment (as necessary) and disposal.
- f) Post-removal soil sampling to ensure the soil below and near the piles has not been impacted by the hazardous substances in the piles. This sampling will be documented in a sampling and analysis plan. If hazardous substances have leached in the soil below and/or near the piles then additional removal of soil may be necessary.

2. **Contribution to remedial performance**

The removal action at the Site is consistent with the requirement of Section 104(a)(2) of CERCLA, which states, “[a]ny removal action undertaken...should...to the extent...practicable, contribute to the efficient performance of any long-term remedial action with respect to the release or the threatened release concerned.” The Pierson’s Creek Superfund site, of which the Oberwil Property is a part, is currently on the NPL but a remedial action for the Pierson’s Creek site has not yet been selected. The investigations and actions implemented, to date, as well as the removal action described in this Action Memorandum, would be consistent with any remedial action, should one be selected.

3. **Engineering Evaluation/Cost Analysis (EE/CA)**

Due to the time-critical nature of this removal action, an EE/CA was not prepared.

4. Applicable or Relevant and Appropriate Requirements (ARARs)

ARARs within the scope of this project, including Resource Conservation and Recovery Act (RCRA) and TSCA regulations pertaining to handling, storage, and disposal of certain waste materials, and Department of Transportation regulations pertaining to the transportation of hazardous waste, found at 49 C.F.R. Part 171, will be met to the extent practicable. The Mercury Export Ban Act (MEBA) must also be complied with for the disposal of mercury.

5. Project schedule

Work on removing the mercury, lead, and PCB contaminated soil piles is expected to begin in 2022, but the start date and schedule will be based on negotiations with the responsible parties.

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

If action(s) to remediate the mercury, lead, and PCB-contaminated soil piles are delayed, the threat of a significant release of hazardous substances into the environment will continue.

VII. OUTSTANDING POLICY ISSUES

None.

VIII. ENFORCEMENT

EPA notified Salomone Brothers, Inc. and Oberwil Corporation that they are potentially responsible parties (PRPs) for the Site by general notice letters dated April 20, 2020. An Administrative Settlement Agreement and Order on Consent (ASAOC) to implement the work authorized in this Action Memorandum is being negotiated with the PRPs. Oberwil Corporation sold the property to 7 Avenue L Newark, LLC on January 27, 2022. The new owner of the property will be providing access to perform the removal action.

IX. RECOMMENDATION

This decision document represents the selected removal action for the Oberwil Property at the Pierson's Creek Superfund site in Newark, Essex County, New Jersey, developed in accordance

with CERCLA, as amended, and not inconsistent with the NCP. This decision is based on the administrative record for the Site.

Site conditions continue to meet the NCP Section 300.415(b)(2) criteria for a removal action, and I recommend your approval of this removal Action Memorandum. Please indicate your approval of the Pierson's Creek Superfund site/Oberwil Property removal action, as per current Delegation of Authority, by signing below.

Approved: _____ Date: _____

Pat Evangelista, Director
Superfund and Emergency Management Division

Disapproved: _____ Date: _____

Pat Evangelista, Director
Superfund and Emergency Management Division

cc: (upon approval)
Pat Evangelista, SEMD-AD
J. Prince, SEMD-AD
J. Rotola, SEMD-RAB
M. Gregor, SEMD-RAB
D. Rosoff, SEMD-RAB
B. Grealish, SEMD-RAB
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M. Fiore, OIG
B. Schlieger, 5104A
F. Mumford, NJDEP
C. Zielinski, NJDEP
A. Raddant, USDOJ
L. Rosman, NOAA

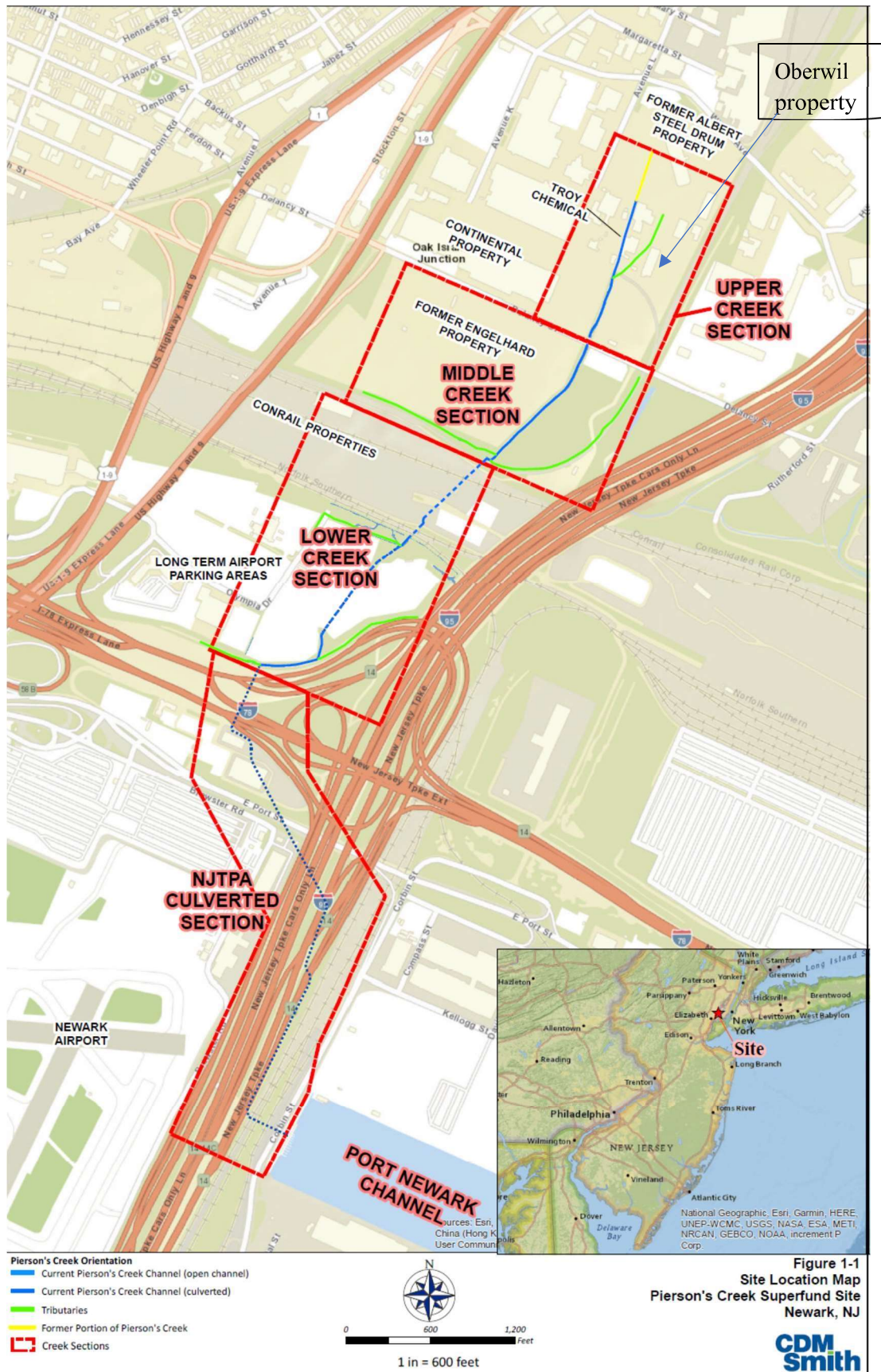


Figure 2- Oberwil Property satellite photo

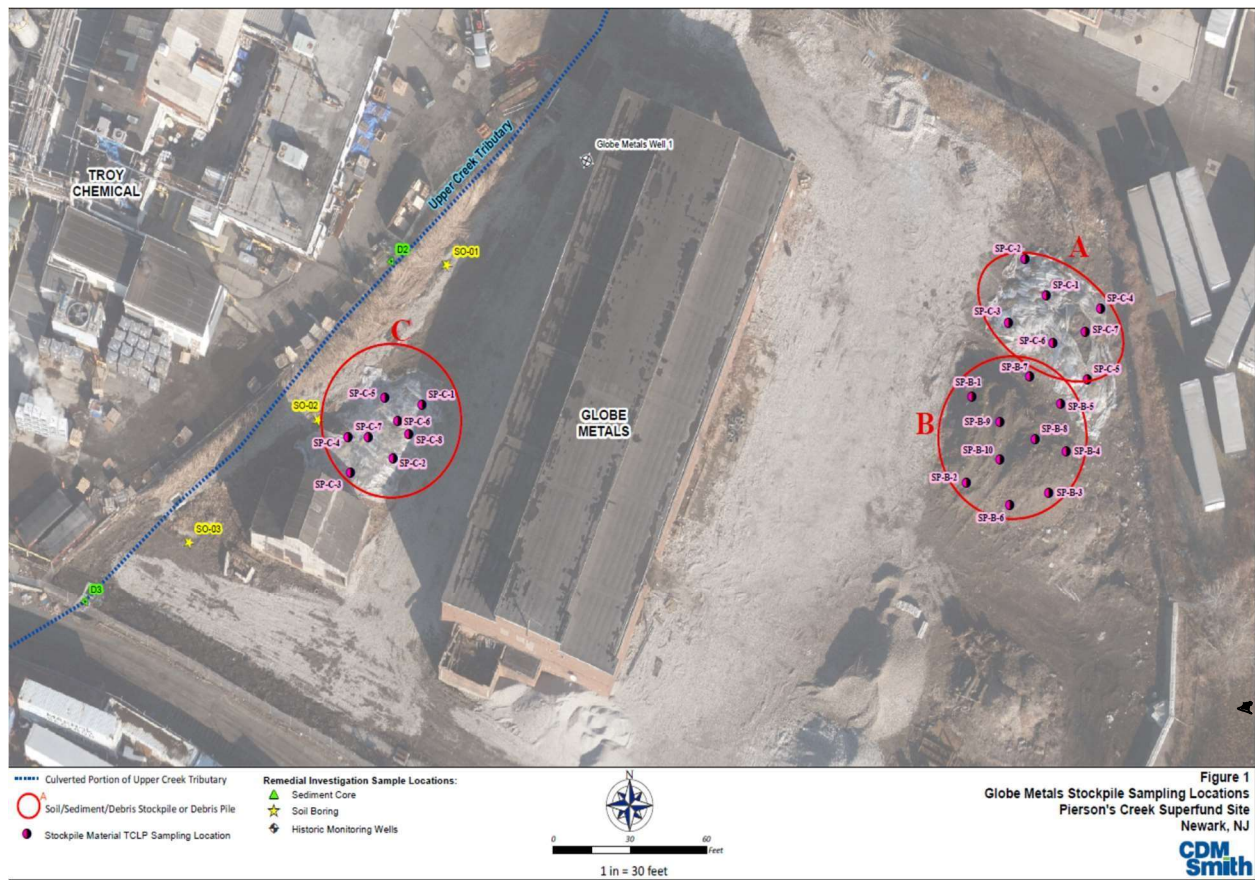


Photo 1A
Soil Pile "A"



Photo 1B
Soil Pile "B"



Photo 1C Soil
Pile "C"



Photo 2A. Flooding at Oberwil and Troy Chemical properties in September 2021. Oberwil warehouse on left; Troy Chemical building on right.



Photo 3. Torn tarps on an Oberwil soil/sediment pile in November 2021.