

III.L Hazardous Materials

L. Hazardous Materials**Comment III.L-1:**

This project will clean up acres of land. The scope of going green will do so much for our environment.

(Justin Tubiolo, Resident, Public Hearing, 4/29/2008, Page 112)

Response III.L-1:

Comment Noted.

Comment III.L-2:

The draft EIS states that portions of the Chicken Island site are listed as brownfields and are eligible for inclusion in the NYS Department of Environmental Conservation Brownfield Cleanup Program. However, it is unclear whether the current planned remediation of the site required by the NYS DEC Division of Remediation will be adequate given that there is a proposed change of use on the site that will lead to greater public activity on the site in the future. This should be addressed.

(Westchester County Planning Board, Westchester County, Letter, 5/29/2008)

Response III.L-2:

The River Park Center Site was accepted into the Brownfield Cleanup Program in December 2006. Under the oversight of both the New York State Departments of Environmental Conservation (NYSDEC) and Health (NYSDOH), the Site has been fully investigated and a remedial plan has been developed based on the intended ground floor commercial use of the Site, with full recognition that some residential development will occur on upper floors of the development project. The planned remediation will be fully protective of the intended mixed use of the Site. Areas of identified contamination, known as "hot spots", which were fully described in the November 2007 Remedial Investigation Report (RIR), will be physically removed and disposed of off-site in proper disposal facilities. All areas of the Site will subsequently be covered with either hardscape materials or capped with two feet of clean soil cover, which must be maintained. All buildings will include vapor mitigation systems, which mitigate against intrusion of any sub-slab vapors from entering indoor air. The planned remedial efforts are described in the November 2007 Remedial Action Work Plan (RAWP). The RIR and RAWP have been publicly available for review in the Yonkers Riverfront Branch Library and DEC Region 3 New Paltz office since December 19, 2007. All publicly accessible spaces will be safe for occupancy by the public as a result of the implementation of the State approved plan. The RAWP was approved by the NYSDEC in a letter dated June 26, 2008 and approved by the NYSDOH in a letter dated June 24, 2008, both available at the above mentioned document repositories.

Comment III.L-3:

In addition, liability for the brownfield remediation must be defined for all participants in the project, including the county if a county role is assumed. Presumably the cost of remediation

would be a project cost for the developer; this should be confirmed. What are the expectations for sites where the developer will be constructing a public facility such as public parking facilities and the new fire headquarters?

(Westchester County Planning Board, Westchester County, Letter, 5/29/2008)

Response III.L-3:

One of the key benefits of participation in the Brownfield Cleanup Program (BCP) is a State issued contractual environmental liability release to a party who completed a cleanup program and earned a Certificate of Completion (COC). The release covers liability for any residual contamination remaining on the Site that could not be remediated. This liability release runs with the land to all owners, operators, tenants and secured creditors of the developers who earned the COC pursuant to Environmental Conservation Law Section 27-1421 subdivisions 1 and 3:

1. Notwithstanding any other provision of law and except as provided in subdivision two of this section, after the department has issued a certificate of completion for a brownfield site, the applicant shall not be liable to the state upon any statutory or common law cause of action, arising out of the presence of any contamination in, on or emanating from the brownfield site that was the subject of such certificate at any time before the effective date of a brownfield site cleanup agreement entered into pursuant to this title, except that a participant shall not receive a release for natural resource damages that may be available under law. (emphasis added).

2. The liability limitation provided pursuant to this section shall run with the land, extending to the Applicant's successors or assigns through acquisition of title to the brownfield site and to a person who develops or otherwise occupies the brownfield site; provided that such persons act with due care and in good faith to adhere to the requirements of the brownfield site cleanup agreement and certificate of completion. However, such liability limitation does not extend, and cannot be transferred, to a person who is responsible for the disposal or the discharge of contaminants on such site according to applicable principles of statutory or common law liability as of the effective date of the certification of completion issued pursuant to this title, unless that person was party to the brownfield site cleanup agreement for the brownfield site pursuant to this article. (emphasis added). The Applicant intends to complete the remediation and receive the certificate of completion (COC). Once the COC is issued, all successors and assigns assume the benefits of the liability release.

The cost of remediation will be a cost expended by the developer. In order for the developer to receive the tax credit benefits permitted under the BCP, and Tax Law Section 21-23, the developer is required to bear these costs.

The Applicant is also paying for the remediation of the entire River Park Center Site, including those portions of the Site that will be occupied by any public facilities, such as the parking lots. The Fire Department headquarters will not be located on the River Park Center Site. It will be moved from its present location across the street to the new Cacace complex. This site was investigated and no contamination was found to be present requiring remediation. The NYSDEC issued a letter to SFC indicating that the new location is not a brownfield site. It is also important to note that one of the key reasons for this determination is that fact that bedrock is close to the surface of the ground on that site. Therefore, it is not anticipated that remediation will be

required in the planned location for the Fire Department headquarters. For further discussion relative to the environmental conditions at Palisades Point, see Response LA-7.

Comment III.L-4:

The developers are going to clean up former industrial contaminated sites which costs millions of dollars to do.

(Om Dhiman, Building Manager, Public Hearing, 5/13/2008, Page 23)

Response III.L-4:

The Remedial Investigation Report (RIR) includes a preliminary remediation engineer's cost estimate. The cost estimate indicates that the estimated cost will be approximately \$10 million to implement the Remedial Action Work Plan (RAWP) approved by the NYSDEC for the River Park Center site.

Comment III.L-5:

Fourth, it will clean up areas of contaminated land which no one mentioned tonight. This would be cost effective to the city and will do such for our environment.

(Justin Tubiolo, Resident, Public Hearing, 5/13/2008, Page 84)

Response III.L-5:

Comment noted.

Comment III.L-6:

Environmental clean up. The project will be proposed-- the project proposed here tonight is more than 13 acres of contaminated land and needs to be cleaned up and will be cleaned up at no cost to the City of Yonkers. The City of Yonkers is relieved of the responsibility for the clean-up of these properties if it sold to SFC.

(Michael Carriere, Rep. of District Council 9, Painters and Allied Trades, Public Hearing, 5/13/2008, Page 192)

Response III.L-6:

Comment noted.

Comment III.L-7:

Please present detailed information on the content of the landfill that created lots H&I. Are any of the components of the landfill toxic? corrosive? deteriorating due to rust or other natural chemical or biochemical activity so as to render the landfill unstable to the point that construction of a building of this scope can be safely supported?

(Joan Jennings, E-mail, 5/30/2008)

Response III.L-7:

The Parcels H&I sites have been remediated by the City of Yonkers with the assistance of a State grant provided under the 1996 Bond Act Environmental Restoration Program. Contaminated “hot spots” or areas where elevated levels of contaminants were found, were excavated and removed from these parcels under New York State Department of Environmental Conservation oversight. Therefore, as indicated above, the clean up phase has already been completed and no areas of toxic materials are present. The principal contaminants identified during the investigation of these parcels were pesticides.

The soils remaining under Parcels H&I do consist of historic fill materials, as do most of the soils along the Hudson River in the City. While such materials do pose more construction obstacles, since such materials are not naturally occurring, and could result in subsidence, these obstacles can be overcome.

Generally, structures built over subsurface fill material can be supported in one of three ways, or in combinations of three ways. The fill materials can be bypassed with deep foundation elements such as piles or drilled shafts; the fill materials can be removed and replaced and the structure can be founded on the compacted fill or competent soil or bedrock below the fill, or the fill materials can be improved in place.

With respect to the corrosive nature of the fill material, most soil in the Northeastern United States contains some corrosive properties. Therefore, it can be expected that the site soils and groundwater contain some corrosive and reactive properties. It is advisable that reinforced steel be placed in concrete to limit contact with the site soils or groundwater, and steel reinforcing bars and foundation concrete have corrosion protection.

Comment III.L-8:

Riverkeeper fully supports Struever Fidelco Cappelli, LLC’s (“SFC”) commitment to removing contaminated soil and groundwater pursuant to a DEC-regulated “Brownfields Cleanup Program.” It is of the utmost importance that such actions are implemented and carried out in a manner that ensures that no contaminants are leached into the Saw Mill River or any other bodies of ground or surface water. Such toxins pose a serious risk to both human and aquatic health and must be contained and thoroughly remediated.

(Andrew Rafter, Legal Intern, Riverkeeper, Letter, 5/30/2008)

Response III.L-8:

The proposed remedy will be implemented in accordance with all NYSDEC requirements. Construction plans depict diverting the Saw Mill River flow during the river channel remediation and re-alignment, and soil erosion control measures will be used during all excavations, so that construction can proceed safely, and contamination can be removed with minimal impact to the river, and human and aquatic health.

In addition, all liquids to be removed from the Site, including dewatering fluids, will be handled, transported and disposed in accordance with applicable local, State, and Federal regulations.

Liquids discharged into the sewer system will be addressed through approval by the associated utilities authority.

Dewatered fluids will not be recharged back to the land surface or subsurface of the Site. Dewatering fluids will be managed off-Site. Discharge of water generated during remedial construction to surface waters, if needed, will be through a SPDES permit.

The RAWP also outlines a soil management plan to be implemented during the remedy and development stages of the project. This includes soil erosion control measures, which will be detailed in a NYSDEC approved Stormwater Pollution Prevention Plan (SWPPP).

Comment III.L-9:

In light of the fact that the project sites are proposed for recreational and residential uses site remediation must be carried out to the fullest extent practicable. As such, substances posing risks to human health must be remediated, at a minimum, to the standards required by applicable guidelines. The process described in the DEIS whereby contaminated soils are capped to prevent contact with surface water and topsoil is less preferable than remediation to bring the soil into compliance with applicable laws. We recognize that in certain cases such remediation will be impossible and capping is the only feasible means of preventing the release of contaminants. But, as a general matter, the preferable course of action is total remediation of contaminated soils on site.

(Andrew Rafter, Legal Intern, Riverkeeper, Letter, 5/30/2008)

Response III.L-9:

The remedy has been designed to eliminate contamination to the maximum extent practicable. All hot spots of contamination will be eliminated through excavation and proper off-site disposal. As required under the BCP law, the RAWP includes an analysis of the cost and methodologies that would be required to achieve a Track 1 or unrestricted cleanup level. Unfortunately, due to the fill nature and depth of the subsurface material, Track 1 remediation was simply not feasible on this Site. The entire land mass would have to be eliminated down to bedrock.

The Applicant has reviewed all possible clean-up levels in order to select the final remedy. The ground floor of the planned River Park Center development will be commercial. While there will be some landscaped areas, the public will be walking on hardscape surfaces or on a minimum of two feet of capping soil meeting the restricted residential soil clean-up objectives (SCO's), thereby eliminating the public's exposure to any remaining contaminated soils. Upper floor residential apartments in the on-site planned residential building will be protected through not only the subsurface remediation, but also as a result of sub-slab depressurization systems that will be incorporated into all on-site buildings.

The cleanup plan includes:

- Removal and off-site disposal of all major source areas of soil and groundwater contamination, any grossly contaminated soil existing in areas to be excavated during redevelopment, as well as any underground storage tanks and content;
- Installation of a site capping system that incorporates a sub-slab venting system to prevent potential migration of volatilized contaminants entering the future buildings and a minimum of two feet of soil meeting restricted residential SCO's in landscape areas;
- Removal of contaminated sediment in the Saw Mill River, and subsequent relocation and restoration, to prevent migration of contaminants to the surface water.
- Restricting the use of groundwater at the site, controlling storm water, and instituting a program to monitor the natural attenuation of contaminants.

The Citizen's Participation Plan will continue to be implemented during all remedial alternatives per the BCP law and regulations. After evaluating all factors, the selected remedy should result in the widest level of acceptance throughout the community because it would allow for the remedial action and the redevelopment of the Site to proceed expeditiously and without significant community impact, yet result in a remedy protection of human health and the environment.

Comment III.L-10:

(31) III.L, p.5-10

The DEIS discusses the existing hazardous materials conditions at River Park Center and references the BCP.

Clarify how potentially impacted members of the public will be identified and informed of potential risks.

Clarify specifically measures to be taken to prevent or mitigate dust infiltration of the C.H. Martin building and other surrounding businesses and offices.

(Debra S. Cohen, Esq., Attorney, C.H. Martin, Letter, 5/30/2008)

Response III.L-10:

A detailed response to this comment follows.

A newspaper notification was placed in the Journal News to solicit public participation at the beginning of this brownfield project in 2006. Once SFC was accepted into the BCP, a Citizen Participation Plan (CPP) was drafted and approved by the State. The CPP is included as Appendix H of the RAWP. The CPP includes a Brownfield site contact list which contains, at a minimum:

- chief executive officer and zoning board of each county, city, town and village in which the site is located;

- residents on and/or adjacent to the site;
- the public water supplier which services the area in which the site is located;
- any person who has requested to be placed on the site contact list;
- the administrator of any school or day care facility located on and/or adjacent to the site for purposes of posting and/or dissemination at the facility;
- document repositories and their contacts.

The CPP has been implemented during the entire project to date. Adjacent property owners, including the C.H. Martin store owners, were all identified and placed on a Site Contact List. All parties on the list have received periodic Fact Sheets providing direct project updates on project activities before such activities have taken place. Either a 30 or 45 day public comment period was required before the planned activities could start to enable time for the public to comment on planned work before it began. This direct public contact will continue, and adjacent property owners, as well as any member of the public who has requested to be placed on the Site Contact List will continue to receive project updates. The Brownfield site contact list will be used periodically to distribute fact sheets that provide updates about the status of the project, including notifications of upcoming remedial activities at the site (such as fieldwork), as well as availability of project documents and announcements about public comment periods. The Brownfield site contact list will be reviewed periodically and updated as appropriate. Individuals and organizations will be added to the site contact list upon request.

The Remedial Action Work Plan (RAWP), made available to the public on December 19, 2007, and which remains publicly available for review at both the Yonkers Riverfront Branch Library and the DEC Region 3 New Paltz office, fully describes the numerous measures that will be incorporated to protect the public during the remediation of the Site. The RAWP includes a Qualitative Human Health Exposure Assessment, which analyzes the potential impacts to the public. A number of plans are incorporated into the RAWP, to mitigate against any impacts to the community posed by the remediation, and which were identified in the Qualitative Human Health Exposure Assessment. The plans include: Soil Management Plan, Quality Assurance Project Control Plan, Construction Quality Assurance Plan, Storm Water Pollution Prevention Plan, Community Air Monitoring Plan, Contractors Site Operation Plan, and Community Participation Plan. Collectively, these plans will be implemented during the remediation to prevent off-site impacts. For example, the Community Air Monitoring Plan (CAMP) must be implemented during all remediation activities to measure the dust and contaminant levels in the air. Such air monitoring will occur at the property boundary(s) closest to where the remedial activities are occurring. Specifically, the CAMP states:

D.3.1 VOC MONITORING

When deemed by SESI to be applicable, a MiniRAE photoionization detector (PID) will be used to measure VOCs in air. VOCs will be monitored at the downwind perimeter of the site, based on the prevailing wind direction as determined at the beginning of each workday. The site perimeter is defined as the existing property boundary.

Upwind concentrations of VOCs will be measured at the beginning of every workday to establish background conditions. VOC concentrations will be measured continuously at the property boundary directly downwind of the work area. Downwind data will be checked as needed to provide a measure of assurance that contaminants are not being spread off site through the air. The PID will continuously record and store VOC measurements such that a 15-minute running average can be computed for the data each time the PID is checked.

- If the ambient air concentration for total organic vapors at the downwind property boundary exceeds 5 parts per million (ppm) above background for a 15-minute average, work activity will be halted and monitoring will continue until levels decline to below 5 ppm over background. At this point, work will resume and monitoring will continue.
- If total organic vapor levels at the downwind property boundary persist at levels above 5 ppm over background but less than 25 ppm, work activities will be halted, the source of the vapors will be identified, and corrective actions will be taken to abate emissions. Work will resume after organic vapor levels fall to below 5 ppm over background at the downwind property boundary.
- If organic vapor levels exceed 25 ppm at the downwind, property boundary activities will be shut down. An appropriate course of action to abate emissions in order to resume work will be discussed with NYSDEC personnel.

D.3.2 PARTICULATE MONITORING

When deemed by SESI to be applicable, particulate (e.g. "dust") emissions will be measured continuously at the upwind and downwind property boundaries. Real time monitoring equipment (e.g. MiniRAM or equivalent), with audible alarms and capable of measuring particulate matter less than 10 micrometers in size, will be used.

- If the downwind particulate level is 100 micrograms per cubic meter (ug/m³) greater than background (upwind) for a 15-minute period, then dust suppression techniques will be employed. Work will continue with dust suppression provided that downwind particulate levels do not exceed 150 ug/m³ above upwind levels and provided that no visible dust is migrating from the work area.
- If, after dust suppression techniques, downwind particulate levels are greater than 150 ug/m³ above upwind levels, work will be stopped and a re-evaluation of activities will be initiated. Work will resume, provided that dust suppression measures and other controls are successful in reducing downwind particulate concentrations to within 150 ug/m³ of the upwind level and in preventing visible dust migration.

Another example of a site control that will be put in place includes a truck wash at the entrance and exit to the Site so that contaminated soils will not be tracked into the surrounding area. NYSDEC and NYSDOH will also be monitoring all remediation activities. Collectively, implementation of the controls identified in the plans, and oversight by the State, should ensure the public will be protected during Site remediation activities.

The construction of the Project will be overseen by the City departments who will be responsible for the monitoring of heightened concentrations of total organic vapors. Any levels exceeding acceptable levels will cause construction to stop so such concentrations can be mitigated.

Comment III.L-11:

Clarify the remediation activities that will prevent off-site migration of on-site contamination to buildings adjacent to the River Park Center site, including the C.H. Martin building.

(Debra S. Cohen, Esq., Attorney, C.H. Martin, Letter, 5/30/2008)

Response III.L-11:

As noted above, there are seven plans within the RAWP specifically designed to prevent off-site impact to off-site properties. Control measures are required in the RAWP to prevent such impacts, and are described in detail in the plans contained within the RAWP, which are available for public review. These controls are standard controls, acceptable in the construction and remediation industries, to mitigate against off-site dust and other nuisances that can be caused by remedial projects such as this involving extensive excavation and movement of subsurface materials. These control measures are required to be implemented by the developers during the Site remediation efforts.

Comment III.L-12:

1. Brownfields: Palisades Point has already been remediated. Was it done under the aegis of SFC and will Brownfield credits accumulate to the developer?

(Board of Directors, Yonkers Committee for Smart Development, Letter, 5/30/2008)

Response III.L-12:

Palisades Point was remediated under the NYSDEC Environmental Restoration Program through the 1986 New York State Board Act. It is not part of the Brownfields Clean Up Program and no tax credits will accrue to the developers.

Comment III.L-13:

What is final disposition of consent agreement w/NYSDEC to remediate the "Iona" site?

(Joseph Moran, P.E. Acting City Eng, Department of Engineering, City of Yonkers, Memo, 5/13/2008)

Response III.L-13:

The "Iona" site referenced above is at the corner of North Broadway and Odell Avenue and is the land area the City petitioned to be dedicated as parkland to mitigate the alienation of the so-called parkland at Chicken Island. The City is waiting for Iona to add it to Iona's Voluntary Cleanup Agreement with the NYSDEC in order that the City can implement a remediation plan already approved by the NYSDEC. This remediation plan was designed to accommodate parkland use.

Comment III.L-14:

Because ASR's sugar refinery is located immediately adjacent the Palisades Point site, ASR is concerned about the potential exposure of its employees to the release of any residual contaminants on the Palisades Point site. The DEIS does not document its conclusion regarding why NYSDEC has not issued a COC. Accordingly, the Supplemental DEIS should state the basis for the DEIS' conclusions that: (i) all remedial work at the Palisades Point site was in fact completed to the satisfaction of NYSDEC; (ii) the placement of the fill soils on the Palisades Point site area is the only reason no COC has been issued by NYSDEC; (iii) the fill material stored on the Palisades Point site does not contain contaminants and/or will not pose a safety or environmental threat when transported to the ATI site; and (iv) a COC for Palisades Point will be issued following the Applicant's relocation of the fill soils to the ATI site.

(Daniel Riesel, Esq., Sive, Paget & Riesel, P.C., American Sugar Refining, Inc., Letter, 5/30/2008)

Response III.L-14:

Comment noted. Subsurface soils at Palisades Point have been fully remediated. The fill soils on the surface of the site, which originated from the adjacent site, have been tested and have been approved for beneficial reuse by in the remedial excavations on the ATI site on Alexander Street. Once the fill soils have been beneficially reused, NYSDEC has assured the City of Yonkers that a COC will be issued. See Appendix J of this FEIS. See also Response III.L-12.