

Brathovde Public Comments on DOE Agreed Order # DE 16052 for Reserve Silica Property

Comments submitted November 21, 2018 by Michael and Donna Brathovde

We wish to thank DOE for the opportunity to submit public comments on the draft Agreed Order for this important Remedial Action, and for your careful and thoughtful consideration of this input in your deliberations. Note that we are also submitting comments on DOE's Preliminary Data Gaps document dated January 30, 2018; and on Aspect Consulting's technical memorandum on "Site" definition, dated September 4, 2018; as well as a couple of other related documents that provide additional background on this property that may prove useful in this MTCA cleanup process.

We have two overriding concerns regarding the draft Agreed Order (AO). First, the AO (as well as the Public Participation Plan) focuses almost wholly on pH, arsenic and lead associated with the CKD and CKD leachate. While we agree this is the major concern, we strongly believe that historic uses of this property imply a high potential for other Contaminants of Concern (COC) to have been "*deposited, stored, disposed of, or placed, or otherwise come to be located*" on this property. We believe the AO should explicitly note the need to test for these other likely COC's.

Our second, related overriding concern is that the AO suggests that the "Preliminary Site" for investigation is limited to Lot 6 (CKD Landfill), Lot 5 (Inert Waste Landfill), the Plant Site lot, and the Baja-owned parcel. This definition appears to have been taken directly from the technical memorandum submitted by Aspect Consulting, dated Sept 4, 2018; and is primarily driven by the CKD and CKD-leachate issue. We believe that for purposes of the Remedial Investigation (RI), the MTCA "Site" should remain the entire property. At minimum, the "Preliminary Site" should include the four parcels proposed by Aspect (Lots 5, 6, Plant Site and Baja parcels), as well as the north part of Lot 1, the east parts of Lots 3 and 4, and the northernmost thin strip of Lot 4. Please refer to our public comments on Aspect's technical memorandum on Site definition (separate submittal) for our rationale for proposing this broader definition of the "Preliminary Site" for the RI.

Other subordinate concerns and questions relating to the AO include:

Sec IV, #C (PLP's); pg 5 - Given that BNSF Railway was identified as a Potentially Liable Party (PLP) in this case, and yet has declined to participate in this Agreed Order, are they still considered a PLP? And would they still be held liable to assist with any agreed Cleanup Action Plan?

Sec V (Findings of Fact), #A; pg 5 – Historical documents show that extensive coal processing also occurred on parcels -9138 (Lot 6), -9065 (Lot 1), and -9046 (Baja).

Sec V (Findings of Fact), #C; pg 5 – Besides pH, arsenic and lead, the US EPA's analysis of CKD dust solids and leachate chemistry also identified CKD as potentially contributing concentrations of thallium, antimony, chromium, total-2,3,7,8-substituted dioxins, and total hexachlorodibenzodioxin (GeoEngineers, Preliminary Environmental Conditions Letter Report to Reserve Silica, Jun 22, 2015). Other studies have shown that when materials such as tires and medical wastes were used as a supplemental fuel source in the cement kilns generating the CKD, as we know occurred at times at the Ideal/Holnam plant that generated the CKD deposited at Ravensdale, extremely carcinogenic dioxins and furans can also be present in the CKD. Given the extremely high toxicity of some of these contaminants, and the high chance that some of these may well be associated with the CKD dumped at Ravensdale, the RI should explicitly test for these contaminants. This is particularly a risk should Reserve succeed in their long standing efforts to convince the County to upzone portions of this property to allow them to construct a housing development on these lands.

Sec V (Findings of Fact), #L; pg 8 – Implementation of this treatment system is very encouraging. Have the testing results indicated success at controlling pH and arsenic? Is the system also expected to control lead or any other COC's known to be associated with CKD? Are monitoring wells MW-5A and MW-6A now indicating no contamination exceeding MTCA standards?

Sec V (Findings of Fact), #O; pg 9 – While Reserve’s independent RI assessed some of the property outside of the “*areas known or suspected to be affected by releases from the LDA and DSP*”, this testing was extremely limited, and did NOT include many areas suspected of containing COC’s (e.g., north part of Lot 1; east parts of Lots 3 & 4; majority of lower haul road or any of the other property roads; west portion of Plant Site). These should all be tested as part of the RI.

Sec VI (Ecology Determinations), #C; pg 9 – We agree the “Site” should be defined based on findings from the RI under this AO (not the independent RI commissioned by Reserve). But we again emphasize that this RI should address other likely COC’s (besides CKD-related pH, arsenic and lead), and should cover testing of the property beyond what the draft AO identifies as the “Preliminary Site”. This testing should be clearly defined in the RI Workplan.

Sec VII (Work To Be Performed), Intro, pg 10 & #A pg 11– Note that the “Site” has not yet been identified. But Exhibit A, “Preliminary Site Diagram” tends to imply that the RI, FS and DCAP will be limited to Lots 5, 6, Plant Site, and Baja parcels. We suggest that this section of the AO re-emphasize that the “Site” will be determined based on the RI, and that Exhibit A be revised to indicate the entire property, including the Baja parcel, be included in the “Preliminary Site” for RI study.

Sec VII (Work To Be Performed), #B; pg 11 – Will quarterly reports and associated AO submittals (including RI Workplan) be entered on the Environmental Information Management System (EIM), and available for public monitoring?

Exhibit A (Preliminary Site Diagram) – As indicated above, this definition of “Preliminary Site”, proposed by Reserve/Aspect, tends to imply that the RI, FS and DCAP associated with this AO will be limited to the areas outlined in red. Such a limitation could preclude or diminish the importance of RI testing of other portions of this property where there is a high probability that toxic contaminants have been “*deposited, stored, disposed of, or placed, or otherwise come to be located.*” We recommend that the entire property, including the Baja parcel, be included within the “Preliminary Site” definition for this AO. See our public comments on Aspect’s technical memorandum on Site definition (separate submittal) for our rationale for proposing this broader definition of the “Preliminary Site”. Ultimately, the “Site” for FS and DCAP purposes will then be established based on the results and conclusions from the RI study.

Exhibit B; (Task 1, RI Work Plan) – It appears the RI Workplan is where many of the issues/questions mentioned above will be addressed. And this Work Plan will dictate the scope and content of the RI and the Feasibility Study (FS). This Workplan also addresses many of the underpinnings of this issue (site history; past investigations; conceptual site model; geology and groundwater characteristics; past, current and future land use; nature and extent of contamination; ecological receptors; etc). Many of these topics have been seriously misrepresented in past communications from Reserve. As such, this Workplan is crucial to the success of this Remedial Action and this AO. As such, it is very important that the public be provided an opportunity to comment on the RI Workplan - before it is finalized.

Exhibit B; (Task 2, RI); para 1 – “*The RI must provide sufficient data and information to define the nature and extent of contamination.*” We fully agree – and note that this must include likely contaminants besides those already being tested for in CKD leachate, and areas outside the “Preliminary Site” boundaries currently specified in this draft AO.

Exhibit B; (Task 2, RI); para 6 – It is stated, “*The RI Report will not be considered Final until after a public review and comment period.*” But the Schedule of Deliverables in Exhibit B (page 9/9) indicates “*Public comment periods for the Draft RI and Draft FS Reports can be combined.*” However, DOE has indicated that this schedule implies the Draft FS Report is not expected until early 2021 – more than two years into the project! If public input is truly going to be considered in this process, it is important that the public have an opportunity to: (a) comment on the RI Workplan – before the RI Field Work has progressed substantially; (b) comment on the RI – before the Agency Review Draft FS is submitted; and (c) comment on the Public Review Draft FS Report – before the Agency Review Draft Cleanup Action Plan is submitted. Waiting for two years to solicit additional public review and comment does not “*promote meaningful community involvement,*” nor “*encourage the public to learn about and get involved in decision-making opportunities*” in this effort – key goals of the Public Participation Plan.

Exhibit B; (Task 6, Public Participation); para 1 – *“The PLP’s shall support Ecology in presenting the Public Review Draft RI Report and the Public Review Draft FS Reports and SEPA evaluations **at one public meeting** or hearing.”* [bold emphasis added]. As mentioned above, waiting to solicit public comment until the Public Review Draft FS Report is finalized – two years into the project, fails to meet DOE goals for Public Participation in this effort; and risks either (a) wasting a lot of effort that has to be re-done once public input deemed to be material to this issue has been received; or (b) ignoring public input because too much time and effort has already been expended in conflict with public input of a material nature. The public should be provided a review/comment opportunity at each stage in the process - as soon as DOE input has been incorporated into: (1) the draft RI Workplan; (2) the draft RI; (3) the draft FS; (4) any SEPA checklist or environmental impact statement; (5) any substantive Interim Action Plans; and (6) the Responsiveness Summary report. Note that formal public meetings are not likely necessary at each stage, but a notification and a formal public comment period should be provided.

Exhibit B; (Task 7, Preliminary Draft Cleanup Action Plan); last para – AO calls for a Public Review DCAP, but Schedule of Deliverables does not show a public review/comment period for DCAP. Final adoption of the CAP should reflect public review/comment.

[Note: in addition to the above comments on the draft Agreed Order, we are also submitting comments on DOE’s Preliminary Data Gaps document dated Jan 30, 2018, and on Aspect Consulting’s memorandum relating to Site definition, dated Sep 4, 2018.]