

APPROVED

[Handwritten Signature]

Secretary of Administration

Date 10/24/19

Agency of Natural Resources
Department of Environmental Conservation

Waste Management & Prevention Division
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MEMORANDUM

To: Susanne Young, Secretary, Agency of Administration

Through: Julie Moore, Secretary, Agency of Natural Resources
Emily Boedecker, Commissioner, Department of Environmental Conservation *[Handwritten initials]*

From: Chuck Schwer, Director, Waste Management & Prevention Division

Date: October 10, 2019

Subject: Expenditures from the Environmental Contingency Fund for the Elmwood Avenue site in Burlington, Vermont (Site #2017-4734)

The Agency of Natural Resources (Agency) requests to appear before the Joint Fiscal Committee of the General Assembly to discuss expenditures from the Environmental Contingency Fund (ECF) on the Elmwood Avenue site in Burlington. In this appearance the Agency requests:

Approval to spend over the \$100,000 caps for subdivision (b)(2) (investigations) and subdivision (b)(3) (removal action). The details of this request are more fully explained below.

The current balance in the ECF is \$6,792,224, however there are \$1,029,246 committed through encumbrances which leaves an available balance of \$5,762,978.

Site Background

In August 2017, soil vapor contamination was discovered at a property on Elmwood Avenue, located in the Old North End of Burlington. Subsequent soil vapor testing in the area, including a preliminary assessment/site investigation (PA/SI) by EPA in August 2018, concluded that the highest concentrations of perchloroethylene (PCE) and trichloroethylene (TCE) were present under the roadway along Elmwood Ave and most likely from an industrial discharge that was released from the City of Burlington waste water sewer line. An inspection of the sewer line by the City concluded that there was a sag and multiple breaches in the line in the area where the highest concentrations of PCE and TCE were detected, supporting the hypothesis that contamination was discharged to the sewer system and released to the environment from breaches in the line. The EPA PA/SI also concluded that 230 Elmwood Ave (a former machine shop) and/or 222 Elmwood Ave (a former drycleaner) were the most likely sources of the PCE and TCE due to the elevated levels of these contaminants detected below each of the buildings. Additionally, the sewer connections from each of these properties are located upgradient of the contamination hot spot. PCE was known to be used by the dry-cleaning operation, Gadue's Dry Cleaning (formerly Lennie's Dry Cleaning) located at 222 Elmwood for nearly 40 years. PCE and TCE are known human carcinogens and one exposure pathway to these chemicals is through the volatilization of these

chemicals from the subsurface into indoor air resulting in an inhalation risk. This risk is currently occurring at fourteen homes in this area.

Additional testing in the study area included sampling soil vapor and indoor air at nearby residential properties and a school, the Integrated Arts Academy, at the north end of Elmwood Ave. Samples identified fourteen residential buildings that had impacts to indoor air exceeding indoor air standards requiring an evaluation of mitigation strategies. Each of the impacted homes needs to have a mitigation system installed to address indoor impacts from PCE and TCE. In conjunction with this response action, the Agency plans to conduct a remedial action to determine whether excavation of PCE and TCE contamination from the street is necessary. The Agency has identified responsible parties with respect to these releases and they have declined to conduct the necessary removal and remedial activities and as a result the Agency is planning to take the lead using the Contingency Fund (10 V.S.A. § 1283) and has referred this matter to the Attorney General to initiate a cost recovery against the PRPs to recover costs expended from the Contingency Fund.

Request for Joint Fiscal Committee Approval.

The funds spent at this site have been allocated to the following categories, as indicated in 10 V.S.A. §1283, as follows:

- 10 V.S.A. § (b)(2) To investigate an actual or threatened release to the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health and welfare or to the environment. The secretary may use this fund for those investigations necessary to: (A) determine the magnitude and extent of the existing and potential public exposure and risk and environmental damage; (B) determine appropriate remedial action to prevent or minimize the impact of such release; or (C) to prescribe other environmentally sound measures to protect the long-range public health and welfare or to ensure environmental protection, or to prescribe additional investigations to determine same:

The Agency has spent \$86,645 to investigate impacts to the school and residential properties in the study area and to evaluate appropriate mitigation strategies in each of the identified impacted homes (the removal action).. Additional investigation is required to characterize the degree and extent of contamination in the environment so that we can determine whether the excavation of contaminated media (or some other removal action) is needed and develop a cost estimate to perform this work (the remedial action). The Agency requests approval to spend above the allowable \$100,000 under this subdivision to complete the necessary investigation and cost-estimation with respect to the remedial action. The Agency is requesting an increase to this cap to \$150,000.00.

- 10 V.S.A. § (b)(3) to take appropriate removal action to prevent or minimize the immediate impact of such releases to the public health and the environment:

The Agency expects to receive an estimate shortly with respect to the costs associated with implementation of the removal action. Installation of mitigation systems is a step that the Agency needs to take immediately and is concerned with respect to continued exposure over the winter months where there isn't the ability to adequately ventilate the house. The Agency requests approval to spend above the allowable \$100,000 under this subdivision. There are 14 residences that are potentially affected by the contamination and we estimate that the removal action will cost \$150,000.

- 10 V.S.A. § (b)(4) to take appropriate remedial action;

The Agency has not currently spent any funds under this subdivision and is not asking for funds with respect to a remedial action as a part of this request. We wanted to note this because the likely cost of a remedial system for this site will require the approval of the \$100,000 cap under this subdivision. In order for the Agency to provide the Legislature with an accurate estimate of what these costs will be, we are required to perform additional investigation activities requested above.

**Cc: Richard Donahey, Director Budget & Management, Department of Finance & Management
Michael Middleman, Budget Analyst, Department of Finance & Management
Emily Byrne, ANR Director of Finance & Administration
Joanna Pallito, DEC Administration & Innovation Division
Tracy LaFrance, DEC Finance Director**

VERMONT **GENERAL ASSEMBLY****The Vermont Statutes Online****Title 10 : Conservation And Development****Chapter 047 : Water Pollution Control****Subchapter 001 : Water Pollution Control**

(Cite as: 10 V.S.A. § 1283)

§ 1283. Contingency Fund

(a) The Environmental Contingency Fund is established within the control of the Secretary. Subject to the limitations contained in subsection (b) of this section, disbursements from the Fund may be made by the Secretary to undertake actions that the Secretary considers necessary to investigate or mitigate, or both, the effects of hazardous material releases to the environment.

(b) Disbursements under this subsection may be made for emergency purposes or to respond to other than emergency situations; provided, however, that disbursements in response to an individual situation that is not an emergency situation shall not exceed \$100,000.00 for costs attributable to each of the subdivisions of this subsection, unless the Secretary has received the approval of the General Assembly, or the Joint Fiscal Committee, in case the General Assembly is not in session. Furthermore, the balance in the Fund shall not be drawn below the amount of \$100,000.00, except in emergency situations. If the balance of the Fund becomes insufficient to allow a proper response to one or more emergencies that have occurred, the Secretary shall appear before the Emergency Board, as soon as possible, and shall request that necessary funds be provided. Within these limitations, disbursements from the Fund may be made:

(1) to initiate spill control procedures, removal actions, and remedial actions to clean up spills of hazardous materials where the discharging party is unknown, cannot be contacted, is unwilling to take action, or does not take timely action that the Secretary considers necessary to mitigate the effects of the spill;

(2) to investigate an actual or threatened release to the environment of any pollutant or contaminant that may present an imminent and substantial danger to the public health and welfare or to the environment. The Secretary may use this Fund for those investigations necessary to:

(A) determine the magnitude and extent of the existing and potential

public exposure and risk and environmental damage;

(B) determine appropriate remedial action to prevent or minimize the impact of such releases; or

(C) to prescribe other environmentally sound measures to protect the long-range public health and welfare or to ensure environmental protection, or to prescribe additional investigations to determine same;

(3) to take appropriate removal action to prevent or minimize the immediate impact of such releases to the public health and the environment;

(4) to take appropriate remedial action;

(5) to reimburse private persons or municipalities for expenditures made to provide alternative water supplies or to take other emergency measures deemed necessary by the Secretary, in consultation with the Commissioner of Health, to protect the public health from hazardous material. Reimbursement under this subdivision shall be pursuant to criteria adopted by rule of the Secretary and by rule of the Commissioner establishing, among other provisions, requirements that alternative sources of reimbursement are pursued in a diligent manner;

(6) to pay administrative and field supervision costs incurred by the Secretary or by a municipality at the direction of the Secretary in carrying out the provisions of this subchapter. Annual disbursements, for these costs, to the Department of Environmental Conservation under this subdivision shall not exceed 2.5 percent of annual revenues;

(7) to pay costs of management oversight provided by the State for investigation and cleanup efforts conducted by voluntary responsible parties;

(8) to pay costs of emergency response operations and equipment in the spill response program;

(9) to pay costs of required capital contributions and operation and maintenance when the remedial or response action was taken pursuant to 42 U.S.C. § 9601 et seq.;

(10) to pay the costs of oversight or conducting assessment of a natural resource damaged by the release of a hazardous material and being assessed for damages pursuant to section 6615d of this title; or

(11) to pay the costs of oversight or conducting restoration or rehabilitation to a natural resource damaged by the release of a hazardous material and being restored or rehabilitated pursuant to section 6615d of this title.

(c) The Secretary may bring an action under this section or other available State and federal laws to enforce the obligation to repay the Fund. To the extent compatible with the urgency of the situation, the Secretary shall provide an opportunity for the responsible party or parties to undertake the investigations, removal, and remedial actions under the direction of the Secretary.

(d), (e) [Repealed.]

(f) Except as provided in subsection 6618(a) of this title, revenues under the hazardous waste tax established under 32 V.S.A. chapter 237 shall be deposited in the Environmental Contingency Fund. The Secretary may reimburse the Fund with funds received from the U.S. Pollution Prevention Revolving Fund authorized by subsection (k) of section 311 of Public Law 92-500, as amended, codified in 1979 as 33 U.S.C. § 1321(k). Monies may be accepted by the Secretary under written agreements with responsible parties for release site cleanup to provide administrative, technical, and management oversight.

(g) For purposes of this section:

(1) "Emergency" means any release or threatened release of hazardous materials that causes or may cause an immediate and significant risk of harm to human life, health, or to the environment.

(2)(A) "Hazardous material" means all petroleum and toxic, corrosive, or other chemicals and related sludge included in any of the following:

(i) any substance defined in section 101(14) of the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980;

(ii) petroleum, including crude oil or any fraction thereof; or

(iii) hazardous waste, as determined under subdivision 6602(4) of this title.

(B) "Hazardous material" does not include herbicides and pesticides when applied in a manner consistent with good practice conducted in conformity with federal, State, and local laws and regulations and according to manufacturers' instructions. Nothing in this subdivision shall affect the authority granted and the limitations imposed by section 6608a of this title.

(3) "Release" means any intentional or unintentional action or omission resulting in the spilling, leaking, pumping, pouring, emitting, emptying, dumping, or disposing of hazardous materials into the surface or groundwaters, or onto the

lands in the State, or into waters outside the jurisdiction of the State when damage may result to the public health, lands, waters, or natural resources within the jurisdiction of the State.

(4) "Remedial action" means those actions consistent with a permanent remedy taken instead of or in addition to removal actions in the event of the improper release or threat of release of a hazardous material into the environment, to prevent or minimize the release of hazardous materials so that they do not migrate or cause substantial danger to present or future public health or welfare or the environment.

(5) "Removal action" means the cleanup or removal of released hazardous materials from the environment and such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the environment which may result from the improper release or threat of release of hazardous materials.

(h) Receipts from the Redevelopment of Contaminated Properties Program,' established under section 6615a of this title, shall be deposited into a separate account of the Fund, named the redevelopment of contaminated properties account. (Added 1979, No. 195 (Adj. Sess.), § 5, eff. May 6, 1980; amended 1981, No. 222 (Adj. Sess.), § 25; 1983, No. 205 (Adj. Sess.); 1985, No. 70, §§ 1, 2, eff. May 20, 1985; 1987, No. 282 (Adj. Sess.), § 17, eff. Oct. 1, 1988; 1991, No. 78, § 3; 1991, No. 225 (Adj. Sess.), § 1; 1995, No. 44, § 4, eff. April 20, 1995; 1997, No. 155 (Adj. Sess.), § 35; 2005, No. 135 (Adj. Sess.), §§ 1, 4; 2013, No. 142 (Adj. Sess.), § 88; 2015, No. 154 (Adj. Sess.), § 5, eff. June 1, 2016; 2019, No. 72, § E.711.2.)