



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
SAM NUNN
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA GEORGIA 30303-8960

MAY 21 2010

ACTION MEMORANDUM

SUBJECT: Request for a Ceiling Increase and Change of Scope for a Time-Critical Removal Action at the Smokey Mountain Smelters Site, Knoxville, Knox County, Tennessee

FROM: David L. Andrews, On-Scene Coordinator
Emergency Response & Removal Branch

THRU: Shane Hitchcock, Chief
Emergency Response & Removal Branch

TO: Franklin E. Hill, Director
Superfund Division

SITE ID: A4MD

I. PURPOSE

The purpose of this Action Memorandum is to request and document a ceiling increase and change of scope for a time-critical removal action at the Smokey Mountain Smelters Site ("SMS" or "Site") located at 1508 Maryville Pike, Knoxville, Knox County, Tennessee pursuant to Section 104 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) as amended by 42 U.S.C. Section 9604. The Site continues to pose a threat to public health, welfare, and the environment which meets the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) section 300.415(b) criteria for removal actions. The removal action is based on the Administrative Record (AR) for the Site.

In November 2008, the Environmental Protection Agency (EPA) responded to the Site to install security measures to prohibit access to the Site by unauthorized personnel. In the spring of 2009, EPA conducted a Removal Site Evaluation (RSE) to investigate the nature and extent of waste materials dumped at the Site, and hazardous substances, pollutants, and contaminants being released from the Site, including installation of control measures to prevent future releases. The ceiling is necessary to remove process waste (source contamination) from this abandoned aluminum recycling facility which is impacting surface water and air. The proposed increase will bring the total extramural cost to \$1,814,600. Of this, an estimated \$1,191,000 comes from the Regional Removal Allowance.

II. SITE CONDITIONS AND BACKGROUND

CERCLIS ID: TND098071061
Type: Time-Critical

A. Site Description

The Smokey Mountain Smelters Site was originally operated by a series of fertilizer and agricultural chemical companies from the 1920s to the 1960s. Smokey Mountain Smelters, Inc. (SMS), also known as Rotary Furnace, Inc., operated at the Site from 1979 to 1994 and has been inactive since that time. During that period, the facility was a secondary aluminum smelting operation. The process involved the smelting of scrap aluminum and aluminum dross (a waste by-product of primary and secondary aluminum smelting) and casting the molten aluminum ingots. Raw materials at the facility primarily consisted of scrap aluminum and aluminum dross. Waste material from the SMS operation was primarily salt-cake, a residue from dross smelting with high salt and low metal content. Other waste materials included bag house dust and discarded aluminum dross. Much of the Site is covered in a waste pile consisting of salt-cake and aluminum dross that was dumped directly on the land surface without a liner or drainage controls.

Multiple sampling events between 1997 and 2006 have been conducted at the Site to characterize the composition and contaminant concentrations in the waste piles, the raw material piles, the on-site lagoon, leachate to the unnamed tributary, and downstream impacts to the unnamed tributary and Flenniken Branch. Dross and salt-cake are exothermically water-reactive materials that release heat and ammonia gas, and leach aluminum, ammonia, chlorides, and other contaminants. Aluminum dross is a RCRA characteristic waste.

In 1997, the Tennessee Department of Superfund (TDS) collected surface water and waste samples at SMS. Elevated levels of ammonia, arsenic, lead, and aluminum were found in surface waters at the Site. Elevated levels of aluminum, polycyclic aromatic hydrocarbons (PAHs), heptachlor, heptachlor epoxide and ammonia were found in the on-site waste pile. Headspace air samples over the waste pile measured elevated concentrations of ammonia. TDS collected additional samples from the Site in 2001, 2003, and 2004 to monitor ongoing surface water conditions. Analysis of these later samples showed that contaminant concentrations in surface waters leaving the Site had increased for arsenic, lead, and aluminum. Levels of chlorides were found in surface waters leaving the Site that were significantly above background levels. Elevated concentrations of ammonia, chlorides, and pH were found along the entire length of the unnamed tributary to the Flenniken Branch downstream of the Site.

A residential apartment community within 75 feet of the Site houses approximately 560 residents. During a 2008 Site visit, the EPA On-Scene Coordinator (OSC) observed that access controls were not adequate to keep trespassers out of the property. Holes had been cut in the Site fence, and a path leads from the Site to the nearby apartment complex. A time-critical removal action was initiated to provide

stronger security measures in order to keep trespassers away from the water-reactive dross material and collect additional data to determine if further waste removal or treatment action is necessary (Figure 1).



Figure No. 1 – Aerial of Site and Surrounding Features.

1. Removal Site Evaluation

The total SMS Site is approximately 13 acres in size and includes one large industrial process building, a small lagoon, a large outside salt-cake waste pile, and three mid-sized indoor dross waste piles. The process building is approximately 100 feet wide by 300 feet long and 50 feet high; it houses some equipment and two 900 cubic-yard (each) piles of aluminum dross. Portions of the north and east walls of the building have collapsed. The spring-fed lagoon measures approximately 25 feet wide by 100 feet long and is located to the southeast of the process building. The salt-cake waste pile is approximately 50,500 cubic yards in size and covers an area of about 4 acres on the south side of the process building. Surface runoff from the Site generally flows to the southwest. Leachate and surface runoff discharges to an unnamed tributary stream, reaching Flenniken Branch and eventually the Tennessee River.

TDS collected samples from the Site in 2001, 2003, and 2004 to monitor ongoing surface water conditions. Analysis of those samples showed that contaminant concentrations in surface waters leaving the Site had significantly increased for arsenic (56 $\mu\text{g/L}$), lead (170 $\mu\text{g/L}$), and aluminum (270,000 $\mu\text{g/L}$). Levels of chlorides (11,700,000 $\mu\text{g/L}$) were found in surface waters leaving the Site that were significantly above background levels (5,000 $\mu\text{g/L}$). Elevated concentrations of ammonia and chlorides, and pH values up to 9.4, were found along the entire length of the unnamed tributary to the Flenniken Branch downstream of the Site. The stockpiles contained within the main building structure have been estimated at approximately 1,500 to 2,000 cubic yards.

During an August 1, 2008 Site visit, the EPA OSC observed that access controls are not adequate to keep trespassers out of the property. Holes had been cut in the Site fence and a path leads from the Site to the nearby apartment complex. This worn path leading to the lagoon and rubber inner tubes (i.e., swim floats) observed in the lagoon indicate that trespassers have been swimming in the contaminated surface waters.

During a March 16, 2010 inspection of storm damage, significant portions of the process building which contained stock-piled dross had blown away exposing additional dross to weather conditions. The dross and salt-cake wastes disposed on the Site are fully exposed to rainfall. Analytical and qualitative data indicate that ammonia is continuously being produced and released to soil, air, and surface water. An ammonia and cyanide reactivity test conducted during the 2006 Removal Site Evaluation measured ammonia gas being produced from the waste material at concentrations up to 200,000 parts per billion (ppb), which is 6.5 times the Immediately Dangerous to Life or Health (IDLH) concentrations (Figure 2).



Figure No. 2 – Building collapse February 2010

2. Physical Location

The Smokey Mountain Smelters Site is located at 1508 Maryville Pike (State Route 33) near the Knoxville city limits in Knox County, Tennessee. The geographic coordinates for the Site are 35.9191830 North-Latitude and -83.926481 West-Longitude. It lies within one mile of two other Superfund sites: Witherspoon Recycling and Witherspoon Landfill. The total SMS Site is approximately 13 acres in size and includes one large industrial process building, several smaller outlying buildings, and a large waste pile.

3. Site Characteristics

The process building is approximately 100 feet wide by 300 feet long and 50 feet high. It houses two rotary furnaces, one casting furnace, and two 900 cubic-yard (each) piles of aluminum dross. Two bag houses are located outside at the southwest corner of the building. Portions of the north and east walls of the building have collapsed. A small transformer area is located on the north side of

the building along with a set of truck scales and a burned out office or house structure. A spring-fed lagoon measuring approximately 25 feet wide by 100 feet long is located to the southeast of the process building. The depth of this lagoon is unknown. A maintenance building measuring 30 feet wide by 80 feet long is located between the lagoon and the process building. On the western side of the property, several dozen damaged and rusted drums have been disposed. The salt-cake waste pile is approximately 50,500 cubic yards in size and covers an area of about 4 acres.

There are heavy residential and moderate commercial developments near the Site with a population density of 1,355 people per square-mile to the west and 3,866 people per square-mile to the east, based on 2000 U.S. Census data. A residential apartment community within 75 feet of the Site houses approximately 560 residents.

Surface runoff from the Site generally flows to the southwest. Leachate and surface runoff discharges to an unnamed tributary stream, which converges with another unnamed tributary and continues another 1.25 miles to Flenniken Branch. Flenniken Branch flows 0.9 miles into the Knob Creek embayment of the Fort Loudon Reservoir and then to the Tennessee River. The surface water path passes through neighborhoods, homes, through yards, and through King Park, a public recreational park.

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

Arsenic, lead, PAHs, and ammonia are hazardous substances or pollutants as defined by Sections 101(14) and 101(33) of CERCLA. Aluminum dross is a RCRA characteristic waste. All these substances have been found at the Site at concentrations that exceed Removal Action Levels (RAL) or other human health or environmentally based criteria.

i. Releases to Surface Soils at the Site

The waste pile effectively comprises a majority of the land surface at the Site. Arsenic has been found in surface soil up to 59.6 mg/kg, which exceeds the RAL of 39 mg/kg. Polycyclic Aromatic Hydrocarbons (PAH) have been detected in surface soils at a concentration of 87.94 mg/kg Benzo(a)Pyrene Toxicity Equivalent (Bap-Eq). The RAL for PAHs is 1.5mg/kg BaP-Eq. BaP-Eq is a statistical normalization of a series of eight (8) PAHs and their combined carcinogenic health risk as compared to Benzo(a)Pyrene. Ammonia was found in surface soils at a concentration of 5,290 mg/kg.

ii. Releases to Surface Water at the Site

Surface waters at the Site consist of a spring-fed lagoon that receives runoff and leachate from the waste pile, and slowly discharges to

an intermittent stream that receives additional runoff and leachate from the waste pile and discharges off-Site. Arsenic and lead have both been found in surface waters (56 µg/L and 170 µg/L, respectively) at concentrations exceeding Maximum Contaminant Levels (MCL) (10 µg/L and 15 µg/L, respectively). Ammonia has been found in surface waters at concentrations up to 192,000 µg/L, exceeding the Tennessee Total Maximum Daily Loads (TMDL) for ammonia (8,400 µg/L) for non-samlanoid waters. Aluminum and chlorides were found in surface waters (2,160,000 µg/L and 11,700,000 µg/L, respectively) that were significantly above background levels (ND and 5,000 µg/L, respectively).

iii. Release or Threatened Release to Air at the Site

Aluminum dross and salt-cake are waste materials left over from the smelting of aluminum ore. Material Safety Data Sheets (MSDS) for aluminum dross commonly cite reactivity with water to form toxic gases (including ammonia) and heat as a principal hazard associated with such material. Aluminum dross is a RCRA characteristic waste.

5. NPL Status

Site was proposed to the NPL in February 2010, and it is anticipated that it will be listed by fall 2010.

6. Maps, Pictures, and Other Graphic Representations

Provided upon request.

B. Other Actions to Date

1. Previous Actions

In 1983, the Tennessee Department of Environment and Conservation (TDEC) Division of Solid Waste Management issued a notice to SMS with the conclusion that the Site was “unsuitable for use as an industrial landfill”; however, landfill stockpiling on-site continued to occur for several years afterward. In addition, the Knox County Department for Air Pollution Control (KCDAPC) documented numerous citizen complaints regarding excessive air emissions from the Site and cited SMS for several air quality violations in the 1980s.

To characterize the composition and contaminants in the waste piles, the raw material piles, the on-Site lagoon, leachate to the unnamed tributary, and downstream impacts of the unnamed tributary and the Flenniken Branch, multiple sampling events have been conducted by EPA at the Site. The results of these investigations as well as the results of investigations conducted by TDS and the

Tennessee Department of Environment and Conservation (TDEC) are summarized in previous sections of this Action Memorandum.

In November 2008, the EPA OSC and Emergency and Rapid Response Services (ERRS) contractor support mobilized to the Site to address access issues (trespassing) and establish measures to limit or prohibit uncontrolled access to the site. Grubbing, fence repair and signage were installed to control trespassers. On April 27, 2009, EPA remobilized to the Site to conduct an integrated sampling event that would provide: (1) data to complete the Hazard Ranking System package, and (2) data to characterize the reactivity of dross waste for the future removal action.

2. Current Actions

No current actions are taking place at the Site. However, EPA continues to monitor Site conditions and TDEC visits the Site on a scheduled basis.

On February 15, 2010, EPA OSC responded to the Site due to a notification by TDEC regarding the collapse of approximately 100 feet of the main building as a result of a recent weather event (wind/snow storm). The OSC documented that the building presented an unstable structure and did not enter the building to assess the condition of the dross piles. Significant portions of the dross piles are exposed to rainfall as a result of building damage.

C. State and Local Authorities Roles

1. State and Local Actions to Date

The State of Tennessee referred this Site to EPA's Emergency Response and Removal Branch (ERRB) in June 2006, and has requested EPA's assistance with the removal of contaminants and pollutants. EPA has been coordinating with TDEC to share information about the Site and will continue to coordinate efforts during the time-critical removal action.

2. Potential for Continued State and Local Response

At present, TDEC has no plans to take further action at the Site due to available of funding resources for a time-critical response. No local agency has been requested to respond to the Site.

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

A. Threats to Public Health or Welfare

EPA Region 4 ERRB has determined that the Site meets the requirements for initiating a removal action found in Section 300.415(b)(2) of the NCP.

§ 300.415(b)(2)(i) – “*Actual or potential exposure to nearby human populations from hazardous substances or pollutants or contaminants*”: Although efforts have been made to secure the Site, it is not secured to preclude public access. The facility is located within 75 feet of a residential apartment community. Visual observations made during previous investigations, including holes cut into fencing, worn foot paths across the property, and inner tubes (i.e. swim floats) in the on-site pond/lagoon, provide ample evidence that trespassers frequent the Site. As previously indicated, aluminum dross and salt-cake are materials that react with water to produce heat and toxic gases such as ammonia. The dross piles (estimated between 1,500 and 2,000 cubic yards) at the Site are completely exposed to the elements within the main dilapidated building and are totally unsecured to preclude public access. Analytical and qualitative data gathered at the Site indicate that ammonia is continuously being produced at SMS and is being released to soil, air, and surface water. Anyone entering the Site or residing within close proximity to the Site may be potentially exposed to hazardous concentrations of ammonia through inhalation (for airborne releases) or through ingestion or direct contact (for soil, waste, and surface water). Those coming into contact with leachate either on-site or migrating from the Site may be exposed to hazardous concentrations of arsenic and lead. Wastes at the Site are exposed to the elements, resulting in releases of harmful gases and leachate to surface waters.

§ 300.415(b)(2)(ii)- “*Actual or potential contamination of drinking water supplies or sensitive ecosystems*”: The pond located on the property and all surface water runoff from the site flows to the East Branch of Flenniken Branch for about 1.25 miles through forested wetland areas before it converges with Flenniken Branch. Flow continues south until Flenniken Branch discharges into the Loudoun reservoirs of the Tennessee River. As previously indicated, aluminum dross and salt-cake are materials that react with water to produce heat and toxic gases such as ammonia. Wastes at the Site are exposed to the elements, resulting in releases and leachate to surface waters.

§ 300.415(b)(2)(iv) – “*High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface that may migrate*”: The dross piles at the Site are completely exposed to the elements. Ammonia is a combustible and corrosive gas as well as a severe inhalation hazard. Analytical and qualitative data gathered at the Site by the State and EPA suggests that ammonia is continuously being produced at SMS and is being released to soil and surface water. Wastes at the Site are exposed to the elements, resulting in releases of harmful leachate to surface waters. As previously discussed, all surface waters from the Site flow to the east tributary of Flenniken Branch and to the Loudoun reservoir of the Tennessee River.

§ 300.415(b)(2)(v) – “*Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released*”: The facility is abandoned and unsecured. The process building is structurally unstable and is collapsing. Aluminum dross piles inside the building, which are comparatively more reactive than the waste pile outside, will be continually exposed to rain and runoff as the building collapses. During rain events the waste piles are exposed to water which is causing some of the waste to react and release ammonia gas. The smell of ammonia has been regularly documented by TDEC and EPA, has been measured at 15,000 ppb (above RAL) during an investigation

in 1997. During rain events, leachate from exposed waste releases hazardous substances, including ammonia, onto the ground. Leachate from aluminum waste stockpiles exposed to water shows increased concentrations of hazardous substances.

§ 300.415(b)(2)(vi) – “*Threat of fire or explosion*”: Aluminum dross and salt-cake are known to be exothermically reactive when exposed to water. Landfills that have accepted these wastes in the past have periodically reported subterranean fires during leachate recirculation. If a large amount of water were to be introduced to an un-reacted portion of aluminum dross stored in the process building at the Site, such as during a severe weather event, the reaction could result in a fire accompanied by the release of hazardous substances to the air.

§ 300.415(b)(2)(vii) – “*The availability of other appropriate Federal or State response mechanisms to respond to the release*”: There is no other federal or state mechanism to respond to the release. The State of Tennessee has requested EPA’s assistance because it does not have the financial resources necessary to fund the removal.

IV. ENDANGERMENT DETERMINATION

Actual or threatened releases of hazardous substances and/or pollutants 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, welfare, or the environment.

V. PROPOSED ACTIONS AND ESTIMATED COSTS

A. Proposed Actions

1. Proposed Action Description

Immediate steps must be taken to secure the Site in order to reduce direct exposure pathways to nearby human populations, and to stop off-Site migration of hazardous substances, pollutants, and contaminants.

The removal action will meet the following objectives, taking any reasonable and appropriate action not explicitly described herein to achieve them:

- i. Demolish the remaining steel building structure and dispose/recycle the demo debris as appropriate.
- ii. React-off or treat dross, stockpile reacted materials on the concrete pad, and sample to profile materials for disposal.
- iii. Ship treated stockpiled dross off-site for disposal.
- iv. On the southern border of the property, excavate through the salt cake to cut a path that reflects the former flow pattern (southwestwardly) across the property. Stabilize the banks with measures to limit or divert leachate from draining from the salt cake and entering the creek.

2. Contribution to Remedial Performance

The proposed removal action is warranted to address the threats discussed in Section III that meet the NCP Section 300.415(b)(2) removal criteria. The removal action proposed in this Action Memorandum will be consistent with any potential remedial action. The Remedial Program has been consulted regarding the scope of response.

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

This proposed action is time-critical and does not require an EE/CA.

4. Applicable or Relevant and Appropriate Requirements (ARARs)

On-site removal activities conducted under CERCLA are required to attain ARARs to the extent practical considering the exigencies of the situation. Off-site removal activities need only comply with all applicable federal and state laws, unless there is an emergency.

In September 2008, EPA mailed a request to TDEC for a formal review of all applicable ARARs for the State. To the extent practicable, the proposed removal action will meet the substantive requirements of ARARs identified for the Site. All off-Site shipments of waste will meet the requirements of the CERCLA Off-Site Rule (40 CFR Part 300.400).

5. Project Schedule

Response actions at the Site will be initiated within 3 weeks of approval of this Action Memorandum. Without any unexpected delays, all actions have been estimated to be completed within 10 months of mobilization.

B. Estimated Costs

An independent government cost estimate of the removal action project ceiling was prepared using rates from the Emergency and Rapid Response Services (ERRS) contract and the Superfund Technical Assessment and Response Team (START) contract.

Extramural Costs	Current Ceiling	Proposed Increase	Revised Ceiling
Regional Allowance Costs			
ERRS Contractor	52,000	1,139,000	1,191,000

Non Regional Allowance Costs

START Contractor	51,000	50,000	101,000
ERT	150,000	50,000	200,000
CLP	60,000		60,000
Subtotal, Extramural Costs	313,000	1,239,000	1,552,000
20% Contingency	62,600	200,000	262,600
TOTAL SITE CEILING	375,600	1,439,000	1,814,600

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

Unless action is taken, the Site will continue to be unsecured, therefore allowing human access and potential exposure to ammonia gases, contaminated surface waters, and contaminated surface soils. Unless action is taken, off-site migration of contaminants will continue unabated, and further degradation of Site structures/buildings will lead to further exposure of waste materials to the elements, and thereby greater potential for release of hazardous substances.

VII. OUTSTANDING POLICY ISSUES

No outstanding policy issues have been identified at this time.

VIII. ENFORCEMENT

There are no identified viable Potentially Responsible Parties (PRPs) at this time. See the attached Enforcement Addendum (enforcement sensitive document) for details of enforcement activities taken at this site.

The total EPA costs for this removal action based on full-cost accounting practices that will be eligible for cost recovery are estimated to be $(\$1,814,600 + \$167,656) + (41.85\% \text{ of } \$1,814,600) = \$2,741,666^1$.

¹ Direct Cost includes 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 use is not intended to create any rights for responsible parties. Neither the lack of a total cost estimate nor deviation of actual total costs from this estimate will affect the United States' right to cost recovery. $(\$1,814,600 + \$167,656) + (41.85\% \text{ of } \$1,814,600) = \$2,741,666$. $(\text{Direct extramural} + \text{Direct intramural}) + [(\text{Region-specific Indirect Cost Rate}) \times (\text{Direct Costs})] = \text{Estimated EPA Costs for a Removal Action}$

IX. RECOMMENDATION

This decision document represents the selected removal action for the Smokey Mountain Smelters Site located in Knoxville, Knox County, Tennessee, developed in accordance with CERCLA as amended, and not inconsistent with the NCP. This decision is based on the Administrative Record for the Site.

Conditions at the Site meet the NCP Section 300.415(b)(2) criteria for a removal and I recommend your approval for the proposed action to allow continued removal response. The total project ceiling, if approved, will be \$1,814,600. Of this, an estimated \$1,191,000 comes from the Regional Removal Allowance.

APPROVAL:


Franklin E. Hill, Director
Superfund Division

DATE:

5/21/10

DISAPPROVAL:

Franklin E. Hill, Director
Superfund Division

DATE: _____

Attachments:

Enforcement Addendum

Action Memorandum dated September 11, 2008

References

Attachment A

ENFORCEMENT ADDENDUM

CONFIDENTIAL - ATTORNEY WORK PRODUCT Enforcement Sensitive - Do Not Release Under FOIA

Summary of Relevant Operations

The removal at this Site addresses contamination by aluminum dross, a byproduct of the smelter operations conducted by Smokey Mountain Smelters, Inc. (SMS). Contamination related to prior operations at the Site for the manufacture of agricultural chemicals will be addressed through the remedial action that will follow listing on the National Priorities List. There is no evidence to link the contaminants at issue for the removal action to the prior agricultural chemical operations. This Enforcement Addendum concerns information related to liability for the dross contamination from the smelter operations.

From 1979 until sometime in 1994, SMS conducted secondary aluminum smelting and casting at the Site, a process through which aluminum-bearing materials are melted and impurities removed until the aluminum reaches an economically valuable purity. SMS accepted aluminum-bearing by-products from a number of companies for recycling and reprocessing, including dross resulting from primary smelting as well as scrap metal and aluminum-clad or laden equipment. These materials were processed by SMS either for a fee, in which instance the resulting aluminum was returned to the client, or to create a product saleable by SMS to other clients. Waste by-products from these processes were approved by the Division of Solid Waste Management as "special wastes" to be disposed of at a permitted off-site solid waste disposal facility. The corporation was administratively dissolved on September 15, 1995.

Upon the closure of the business, SMS left waste from the smelting process on the property, as well as an unlined waste lagoon, without properly securing the plant. Remaining wastes include but are not limited to aluminum dross, bag house dust, and salt-cake. Aluminum dross is a RCRA characteristic waste as flammable (D001) and corrosive (D002) material because it releases a combination of hydrogen and ammonia gas upon contact with air, and deteriorated site conditions pose a danger to human health and the environment.

A. PRP Search

1. Owner/operators

David A. Witherspoon, Jr., and Daniel E. Johnson of Knoxville purchased the property on Maryville Pike just outside Knoxville, Tennessee, city limits in 1979, and established operations as Smokey Mountain Smelters, a.k.a. Rotary Furnace, Inc. Smokey Mountain Smelters, Inc. was incorporated December 27, 1979. In 1984, Mr. Witherspoon signed a quit-claim deed transferring his interest in the Site property to Mr. Johnson in his individual capacity.

The property was owned jointly by Witherspoon and Johnson during about 5 years of operations of SMS. However, EPA does not have any evidence that waste dross was deposited on the Site during this time period. On the contrary, because dross was a feedstock for the recycling operation and of value in everyday operations, it is highly unlikely that there was any accumulation or disposal on Site at that time.

The property was owned by Mr. Johnson at the time of cessation of SMS operations in 1994, at which time the property was abandoned with wastes in place. In 1998, Mr. Johnson died. The last title search by EPA was 2005, and as of that date the owner of record was still Mr. Johnson. As of that date, back taxes were also owed for the years 1995-2004, totaling \$51,748.72.

It is believed that Mr. Johnson died without a will and that the estate has not yet been administered. EPA has evidence that the heirs at law -- wife Diane Johnson and adult children Brandon Johnson and Dana Johnson -- have no interest in obtaining legal title to this property due to its condition. Even if the heirs did assert ownership over the property, they would have a defense to liability, having received title through inheritance with no evidence of involvement in the operations that resulted in contamination, and no evidence that any disposal occurred on or from the Site after the death of Mr. Johnson.

2. Generators and Arrangers

SMS was a generator and arranger under CERCLA. SMS was a PRP. There is no evidence of a release at the Site after SMS ceased operations. SMS was administratively dissolved in 1995, with no successor in interest.

Bills of lading and other documents in EPA's possession indicate that materials were either sold by companies to SMS for reprocessing (after which SMS sold the recovered aluminum to other companies), or delivered by client companies to SMS for reprocessing for a fee, after which the resulting materials were redelivered to the originating companies. EPA does not have any information indicating that companies sent spent aluminum-containing materials to SMS for disposal.

SMS accepted aluminum-bearing by-products from numerous companies for reprocessing. It appears that these companies would have a defense to liability under the Superfund Recycling Equity Act (SREA), Section 127 of CERCLA. SREA exempts certain persons who "arranged for recycling of recyclable materials" from liability under Section 107(a)(3) and 107(a)(4). SREA places the burden of proof on private parties to establish that they are eligible to rely upon the recycling exemption from CERCLA liability; however, EPA still has the burden of proof regarding the delivery of materials for disposal. EPA does not have such evidence. Responses to CERCLA Section 104(e) Information Request letters from companies that sent materials to SMS indicate that materials were sent for processing or were sold to SMS for the value of the aluminum that could be recovered by reprocessing.

B. Notification of Potentially Responsible Parties (PRPs)

There is no person still in existence for which EPA has any evidence to support an allegation of liability for costs related to the removal action.

- Smokey Mountain Smelters, Inc. is a PRP, but has been dissolved and its assets, if any, distributed.
- The individual owner of the property at the time of disposal is deceased.
- Under CERCLA Section 101(35)(A)(iii), heirs have a defense to liability as long as their actions did not contribute to the release of the contamination during their ownership. There is no evidence of operations or a release after cessation of smelter operations in 1994.
- There are no records of insurance coverage; in any event, the passage of time would preclude filing of a claim.
- A fire at the offices of SMS sometime near the time of its cessation of business has made getting records especially difficult. All records obtained provide evidence that companies that did send materials to the site did so for recycling, and took back reprocessed materials, or sold spent materials to SMS for recovery. That information is supported as well by responses to information requests.

To date, EPA has not identified any viable PRPs for this Site. EPA therefore has not issued general notice letters.

Based upon all of the information above, it is appropriate for the removal action to be conducted fund-lead.

C. Decision Whether to Issue an Order

There are no viable parties to which EPA is authorized to issue an order.

To date, EPA has not received written authorization to access the Site to conduct removal activities. EPA has statutory authorization to enter the Site to execute Superfund activities required to protect human health and the environment. The State of Tennessee has police powers to enter the property, and can delegate that authority to EPA if necessary. It is possible that the State could obtain title through escheat if the heirs are deemed to have abandoned the property for more than 5 years. There is no evidence that the estate of Mr. Johnson has been submitted to probate or judicial review to date.

Attachment B

**Request for a Removal Action at the Smokey Mountain Smelters Site
Knoxville, Knox County, Tennessee
September 11, 2008**