

HEARING OFFICER'S REPORT

TO: The Honorable Shawn M. Garvin
Cabinet Secretary, Department of Natural Resources and Environmental Control

FROM: Lisa A. Vest
Regulatory Specialist, Office of the Secretary
Department of Natural Resources and Environmental Control

RE: **Proposed Plan of Remedial Action for the Barbara Hicks Park Site OU-1 (DE-1804), located at 427 Goodman Street, Wilmington, Delaware**
(Hearing Docket No. 2023-R-WH-0008)

DATE: January 22, 2024

I. BACKGROUND AND PROCEDURAL HISTORY:

A virtual public hearing was held on Wednesday, April 5, 2023, at 6:00 p.m. via the State of Delaware Zoom for Government Virtual Meeting Platform by the Department of Natural Resources and Environmental Control (“DNREC” or “Department”) to receive comment on the Proposed Plan of Remedial Action for the Barbara Hicks Site (DE-1804), located at 427 Goodman Street, Wilmington, Delaware (“Proposed Plan”). This Proposed Plan is issued pursuant to the statutory authority granted to the Department in 7 *Del. C.* Chapter 91, the *Delaware Hazardous Substance Cleanup Act* (“HSCA”), through which DNREC has the authority to take enforcement actions against responsible parties to ensure cleanup at sites with a release, or imminent threat of release, of hazardous substances. Specifically, 7 *Del. C.* §9107(e)(1), *Remedies*, directs that the Department shall “...before conducting a remedial action, propose a plan of remedial action based on any investigation or study conducted by or for the Secretary, the potentially responsible party, or others.”

The Proposed Plan summarizes the clean-up (remedial) actions that the Department is proposing to address contamination found at the Barbara Hicks Site (“Site”), as referenced above. The Site, formally identified by the Department as “Barbara Hicks Park Site OU-1,” is located at the intersection of Bradford and B Streets, specifically, 427 Goodman Street, in the area of Southbridge in Wilmington, Delaware.

The Site currently consists of a playground, basketball court and open green space, along with some playground equipment for park visitors. The Site is approximately 1.36 acres in size, comprised of eight (8) tax parcels. From 1940 through the 1970s, the Site was undeveloped, existing at that time as an open area vegetated with trees. Evidence of filling on the Site appeared as early as 1940 and consisted for approximately two (2) decades. In the 1970s and 1980s, the Site was developed into the current public community park and recreational space, surrounded by residential and commercial buildings.

In the Spring of 2022, during a fence installation on the southeastern side of the Site, a report was made to both the Department and the City of Wilmington (hereinafter referred to as “City”) by a DNREC employee who noticed questionable contaminated soils and broken glass at the park. The City, through their consultant, Brightfields, subsequently conducted a limited Phase II investigation of the Site, at which time actual samples of soil were collected to identify whether or not there are any contaminants present at that location. That analysis, provided to the Department’s experts in the Division of Waste and Hazardous Substances – Remedial Section (“DWHS-RS”) in June of 2022, revealed that the Phase II samples exceeded DNREC reporting limits, and thus the City was required to do further investigation. Accordingly, the City entered into the DNREC Voluntary Cleanup Program (“VCP”) by completing a Voluntary Cleanup Program Agreement (“Agreement”) in August of 2022. As part of this Agreement, the City was instructed by the Department to conduct a remedial investigation of Site soils (both deep and shallow). It should be noted that the DNREC VCP is available to all parties who own property and may be liable for the contamination of property, but who wish to settle their liabilities with the Department under HSCA.

As part of the Department’s VCP, a Remedial Investigation (“RI”) was conducted on the Site. The purpose of the RI was to document the existing environmental conditions of the soil at the Site, to identify contaminants that may pose a threat to human health or the environment, to present a statement of relative risk, and to evaluate the need for remedial actions to reduce or eliminate such risk. The actual RI fieldwork was conducted and completed by the Department in September of 2022.

The RI fieldwork performed by the DWHS-RS in this matter involved the installation of eight (8) soil borings that were advanced to depths ranging from the ground surface to approximately four (4) to eight (8) feet below ground surface. Soil samples were collected from the following demarcation points: surface (zero to six [6] inches below ground surface); shallow (zero to two [2] feet below ground surface); and deep soils (any point greater than two [2] feet below ground surface). All of the samples collected were screened at the DNREC-RS Screening Laboratory at Lukens Drive for volatile organic compounds (“VOCs”), semi-volatile organic compounds (“SVOCs”), pesticides, polychlorinated biphenyls (“PCBs”), and metals.

The Department’s Screening Laboratory results indicated that the following SVOCs were found to exceed HSCA screening levels and needed to be sent for confirmatory analysis: benz[a]anthracene, benzo[a]pyrene, benzo[b]fluoranthene, dibenz[a, h]anthracene, indeo[1,2,3-cd]pyrene, and naphthalene. Additionally, a quantity of metals was also selected for further analysis, those being antimony, arsenic, barium, cadmium, copper, lead, manganese, nickel, thallium, and cyanide. It should be noted that all of these metals and SVOCs are typically found in urban environments that have had filling or a lot of industrial uses, and thus the finding of such contaminants in this area was expected. Based on the results of the confirmatory analysis (the existence of compounds exceeding HSCA screening levels identified as contaminants of potential concern), and the actual use of the Site, the Department proceeded to conduct a human health risk assessment.

Carcinogenic and non-carcinogenic risk was evaluated for exposure to contaminants of potential concern on-site. Both the shallow soil (where residents, outdoor workers, excavation works, indoor workers, composite workers, recreators and trespassers are commonly present) and the combined soil underwent the Department’s human health risk assessment. As a result of this assessment, the DWHS-RS determined that both the carcinogenic and non-carcinogenic risks would be unacceptable for a resident living on the property. Although there are no residents living on the Site, there are members of the public that use the property recreationally, and the assessment revealed an unacceptable carcinogenic risk for a recreator as well.

Additionally, an ecological risk assessment of the Site was also conducted, based upon the compounds that were detected. The Department's DWHS-RS determined that, while contaminants of potential ecological concern are present on the Site, ecological risks are not a concern at this time.

Following the Department's RI and the report generated by the City's consultant, DNREC prepared the aforementioned Proposed Plan to address the contamination found at the Site and published the Legal Notice regarding the same, soliciting public comment for Proposed Plan, on February 15, 2023. Shortly after publication of the Proposed Plan, the Department received a request for an extension of the public comment period. Notice for the extension of the public comment period was issued by the Department on March 5, 2023. Subsequently, on March 8, 2023, the Department received a request for a public hearing on this matter, and the same was held on April 5, 2023.

Under the Proposed Plan, the Hicks Site will be subject to the following key remedial actions:

- Submittal and approval of a Remedial Action Work Plan ("RAWP").
- The requirement to prevent human exposure to soil with constituents that exceed a 1×10^{-5} negative cancer risk is accomplished with the placement of a one-foot soil, stone, or impervious cap/cover over impacted areas to restrict access to underlying soil, or excavation of soil with elevated concentrations of polycyclic aromatic hydrocarbons ("PAHs") or metals and disposal off-site.
- A proposed Environmental Covenant ("EC"), consistent with Delaware's Uniform Environmental Covenants Act (7 *Del.C.*, Ch. 79, Subchapter 2), must be submitted to DNREC for approval. The approved EC must be recorded with the New Castle County Recorder of Deeds within ninety (90) days of issuance of the final plan of remedial action.

- Development of and compliance with a Contaminated Materials Management Plan (“CMMP”).
- Preparation and implementation of a site-specific Long-Term Stewardship (“LTS”) Plan if the cap/cover option is selected.
- Submittal of a Remedial Action Completion Report (“RACR”).
- A request for a Certificate of Completion of Remedy (“COCR”) to DNREC within sixty (60) days of the approval of the RACR.

It should be noted that the preparation and implementation requirement of a site-specific CMMP, as noted above, would need to be submitted to DNREC for approval within sixty (60) days of the issuance of the Final Plan of Remedial Action (“Final Plan”). The CMMP will provide guidance to enable construction workers to safely handle any potentially contaminated soil at the Site. Similarly, the EC, also noted above, must be submitted to DNREC for approval within sixty (60) days of issuance of the Final Plan, should the Site undergo capping action. Further, the EC, consistent with Delaware’s Uniform Environmental Covenants Act (*7 Del.C. Ch. 79, Subchapter 2*), must be recorded in the New Castle County Recorder of Deeds within ninety (90) days of issuance of the Final Plan as well.

The EC must include the following activity and/or use restrictions:

1. **Use Restriction**: Use of the property is restricted solely to those non-residential uses permitted within commercial, manufacturing, or industrial districts.
2. **Interference with Remedy Restriction**: There shall be no digging, drilling, excavating, grading, construction, earth moving, or any other land-disturbing activities on the Site without prior written approval from DNREC.
3. **Compliance with the CMMP**: All work required by the CMMP must be performed to DNREC’s satisfaction in accordance with the Plan.

With regard to the above-referenced LTS Plan, there would be the need to prepare and implement a site-specific LTS Plan if the cap/cover option is selected. If the excavation and disposal method is completed, there would be no requirement for a LTS Plan. If there is a LTS Plan, it must be submitted to DNREC for approval within sixty (60) days of the Department's approval of the Remedial Action Work Plan. The LTS Plan will detail cap monitoring requirements and schedule to be followed in order to monitor the integrity of the site-capping components once they are placed on the Site.

Lastly, with regard to the last two bullet point items listed above, the submittal of a RACR must occur within sixty (60) days of the completion of the required remedial actions, and a COCR for the OU-1 soils would be issued following completion of all the required remedial actions. For the Secretary's review, a copy of the Department's Proposed Plan is attached hereto as Appendix "A."

Department staff from the DWHS-RS and members of the public attended the public hearing on April 5, 2023. The hearing was held on the Zoom platform, enabling the virtual attendees at this event to use automated closed captioning in their choice of numerous languages (besides English) to further enhance their understanding of the Proposed Plan. The Hearing Record ("Record") remained open subsequent to the hearing through April 21, 2023, resulting in the Department receiving a total of sixteen (16) written comments from the public regarding this matter. All comments were posted on the DNREC public hearing web page dedicated to this matter upon their receipt. Proper notice of the hearing was provided as required by law.

Subsequent to the close of the public comment period, this Hearing Officer requested a Technical Response Memorandum ("TRM") from the Department's technical experts in the DWHS-RS. That TRM, dated September 27, 2023, is attached hereto as Appendix "B" and is discussed in greater detail below.

II. SUMMARY OF THE PUBLIC HEARING RECORD:

The Record consists of the following documents:

- (1) The official verbatim Transcript of Proceedings from Veritext Legal Solutions, generated from the virtual public hearing of April 5, 2023;
- (2) Nine (9) Department Exhibits, introduced by responsible Department staff at the aforementioned hearing, and marked by this Hearing Officer as DNREC Exhibits 1-9;
- (3) Copies of all comments received from the public regarding this matter, as identified on the hearing web page dedicated to this matter, under the “Public Comments” section; and
- (4) The TRM prepared by the Department’s DWHS-RS, dated September 27, 2023, expressly incorporated into this Report and attached hereto as Appendix “B.”

The Department’s person in the DWHS-RS responsible for reviewing the Proposed Plan and helping to develop the Record with the relevant documents in the Department’s files was Paul Will, Program Manager II.

As set forth previously herein, at the request of this Hearing Officer, the Department’s technical experts in the DWHS-RS prepared the aforementioned TRM to (1) specifically address the concerns associated with the Proposed Plan for the Hicks Site, as set forth in the public comments received by the Department; and (2) offer conclusions and recommendations regarding the Proposed Plan for the benefit of the Record. The TRM, dated September 27, 2023, provides a summary of the public comments received by the Department offers detailed responses to the same.

I find that the TRM, as provided by the Department’s technical experts in the DWHS-RS, addresses the areas of concern voiced by the public comments received by the Department in this permitting matter, and provides responses to those comments in a balanced manner, accurately reflecting the information contained in the Record.

III. RECOMMENDED FINDINGS AND CONCLUSIONS:

Currently pending before the Department is the Proposed Plan of Remedial Action for the Barbara Hicks Site OU-1 (DE-1804), located at 427 Goodman Street, Wilmington, Delaware. As referenced above, the Site is a community park and recreational space surrounded by residential and commercial buildings. The City is the current owner of record of the property where the Site is located.

The Department's TRM acknowledges the comments received from the public concerning the aforementioned Proposed Plan, and provides a thorough and balanced response to the same, accurately reflecting the Record generated in this matter. The comments received by the Department in this matter voiced concerns that the Proposed Plan fails to identify a specific remedial action, that placement of a one-foot soil, stone or impervious cap/cover over impacted areas to restrict access to the underlying soil, or excavation of soil with elevated concentrations of PAHs or metals was not acceptable, and that DNREC should require off-site disposal of the impacted soils.

In response to the comments received from the public in this matter, the TRM notes that the Proposed Plan outlines proposed remedial actions that would adequately address the contaminated soil issues within the community park's area. The Department also indicated at the time of the public hearing that, prior to the commencement of the remedial action, a RAWP would be required from the City. The RAWP will outline the procedures specific to remediating the contaminated soil at the Site. The TRM further notes that, at both the public hearing and the DNREC-attended Southbridge Civic Association ("SBCA") meetings, the Department advised the public that the placement of a one-foot soil (clean fill), stone, or impervious cap over the impacted areas will adequately contain the contaminants to ensure that the public is not coming into direct contact with the underlying soil. As a result, the community will not be exposed directly to an unacceptable short or long-term risk of the soils at the Site.

The TRM goes on to note that both types of remedies presented in the Proposed Plan (specifically, the excavation and disposal of soil, and the containment of underlying soil with a cap) adequately address the health risk posed by the contaminants presented in the Site's soil. The Proposed Plan also gives the City the option of implementing either remedy. Additionally, as noted previously, the Department would require that a CMMP be in place at the Site that will aid construction workers with handling any contaminated soil at the Site. A subsequent implemented LTS Plan would specify the cap monitoring requirements and schedule to monitor the Site's capped areas.

The public comments received in this matter also voiced concerns regarding the overall conditions present at the Site, specifically, at the community park. The TRM acknowledges these comments, noting that the same are outside the purpose of the Proposed Plan. The Department has relayed those concerns to the City, as they are the current property owner, and encourages the community to continue to engage the City to address such concerns.

DNREC places a high priority on engaging with stakeholders in Delaware communities in a transparent and public process during the development of Proposed and Final Plans of Remedial Action. The Department is particularly interested in hearing concerns from residents who live in communities potentially impacted by Environmental Justice issues. In the present matter, DNREC has heard from Environmental Justice advocates regarding concerns about this Proposed Plan and the potential impact of the Proposed Plan on nearby communities. Accordingly, the Department's Remedial Section staff in the DWHS met with members of the SBCA on several occasions, including October 18, 2022, December 20, 2022, February 21, 2023, and March 21, 2023.

At the October 18, 2022, SBCA meeting, DNREC staff provided attendees with a handout that explained the anticipated cleanup process and schedule for the Barbara Hicks Park Investigation. In fact, DNREC reached out directly to the President of the SBCA to request to be placed on the October 18, 2022, meeting agenda, and to offer support for the investigation and cleanup of the park.

Additionally, on March 8, 2023, prior to the public hearing, DNREC emailed to the list serve for the South Wilmington Planning Network (“SWPN”) a copy of the Legal Notice announcing the upcoming public hearing to be held on April 5, 2023, and also offered tips for providing effective public comments during the hearing process. Further, in addition to the SBCA meetings, DNREC also attended virtual meetings held by the SWPN on September 29, 2022, November 28, 2022, and February 28, 2023, at which time information was presented to the community by DNREC staff and discussion was held on the anticipated cleanup process for this Site.

The mission of DNREC is to engage stakeholders to ensure the wise management, conservation, and enhancement of the State’s natural resources; protect public health and the environment; provide quality outdoor recreation; improve quality of life; lead energy policy and climate preparedness; and educate the public on historic, cultural, and natural resource use, requirements, and issues. Furthermore, it is the policy of DNREC that no person shall, on the grounds of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance, as provided by Title VI of the *Civil Rights Act of 1964*, the *Rehabilitation Act of 1973*, the *Civil Rights Restoration Act of 1987*, and all other related nondiscrimination laws and requirements.

The Record generated in this matter reflects that the Department’s subject matter experts in the DWHS-RS have reviewed the Record generated in this matter in the light of potential Environmental Justice issues existing in the area surrounding the Proposed Plan, and have determined that the same is consistent with the Department’s Environmental Justice policy. The Department has provided the public with multiple avenues and ample opportunities to offer comment regarding this Proposed Plan, including pre-registration to offer live comment at the time of the public hearing, links to obtain further information on the Department’s website, sending informative emails to SBCA members, and the issuance of several Legal Notices advising the community of the ability to review the Proposed Plan and attend the public hearing.

Furthermore, the Department's TRM notes that the following statements were specifically communicated at the virtual public hearing and the numerous DNREC-attended SBCA and SWNP meetings:

The placement of a one-foot soil (clean fill), stone, or impervious cap over the impacted areas will adequately contain the contaminants and ensure that the public is not coming into direct contact with the underlying soil. This ensures the community is not being exposed directly to an unacceptable short or long-term risk of the soils at the Site.

The Department's TRM further notes that the City will be able to choose between two remedies as presented in the Proposed Plan: (1) excavation and disposal of soil; and (2) containment of underlying soil by placement of a cap over the impacted soil, as both options adequately address the health risk posed by the contaminants presented in the Site's soil. The TRM concludes by noting that the Department continuously strives to protect the public from exposure to contaminated materials by assessing and remediating hazardous substances to minimize and/or eliminate the threat to human health.

Based on the Record developed, I find and conclude that the Department has provided appropriate reasoning regarding the need for its Proposed Plan of Remedial Action for the Barbara Hicks Site, as noted above, and that the Record supports the implementation of the same. Accordingly, I recommend the Department's Proposed Plan be adopted as the Final Plan of Remedial Action for the Barbara Hicks Site, in the customary manner provided by law, and with appropriate conditions, to ensure continued improvement of environmental quality within the Site.

Further, I recommend the Secretary adopt the following findings and conclusions:

1. The Department has the statutory basis and legal authority to act with regard to its Proposed Plan of Remedial Action for the Barbara Hicks Site (DE-1804), pursuant to 7 Del. C. Ch. 91, specifically, at §9107(e)(1), *Remedies*;

2. The Department has jurisdiction under its statutory authority, pursuant to 7 Del.C. Ch. 60, to issue an Order adopting this Proposed Plan as a Final Plan of Remedial Action for the Barbara Hicks Site (DE-1804);
3. The Department provided adequate public notice of this Proposed Plan, and of all proceedings in a manner as required by the law and regulations. The Department also provided the public with an adequate opportunity to comment on the same, and considered all timely and relevant public comments in the Record, prior to making any final decision;
4. The Department has carefully considered the factors required to be weighed with regard to the implementation of the aforementioned Proposed Plan, and finds that the Record supports adoption of the same as its Final Plan of Remedial Action in this matter;
5. Furthermore, the Department has consulted with DNREC's Environmental Justice Coordinator throughout this permitting process, has reviewed the Record generated in this matter in the light of potential Environmental Justice issues existing in the area surrounding the Barbara Hicks Site, and has determined that the finalization of the Proposed Plan is consistent with the Department's Environmental Justice policy;
6. The adoption of the aforementioned Proposed Plan as the Department's Final Plan of Remedial Action for the Barbara Hicks Site will enable the Department to ensure continued improvement of environmental quality at said Site, as referenced above;
7. The Department has an adequate Record for its decision, and no further public hearing is appropriate or necessary; and

8. The Department shall serve and publish its Order on its internet site.

/s/Lisa A. Vest
LISA A. VEST
Regulatory Specialist