

# **Response to Statement of Reason for Appeal**

**Prepared 10/21/15**

Landmark Environmental, LLC (Landmark) was hired by CPM Development, LLC (CPM) to provide environmental services related to the redevelopment of property located at 113 26th Street East in the City of Minneapolis (City), Hennepin County, Minnesota (Property). Landmark was asked to review the Statement of Reason for Appeal regarding a FAR Variance (hereafter referred to as the “Statement”). Our review was limited to the comments in the Statement regarding environmental issues and did not include the items identified as “Additional Consideration” included in the Statement.

## **I. Background and Current Status**

### **Phase I ESA Report**

Landmark prepared a Phase I Environmental Site Assessment (ESA) on behalf of CPM and Corson Corner’s LLC (Corson Corners) in June 2015. Following is a summary of the findings and conclusions from the Phase I ESA Report:

*Landmark performed the Phase I ESA in conformance with the U.S. Environmental Protection Agency (EPA) All Appropriate Inquiries (AAI) Final Rule, the American Society for Testing and Materials (ASTM) Practice E 1527-05 (the Practice). In addition to historic dry-cleaning solvent releases, a fuel oil underground storage tank (UST) previously located in the west-central portion of the Property was found to have leaked (MPCA Leak No. 6806). Fire insurance maps also suggest that USTs located in the southeastern portion of the Property were originally used for gasoline storage prior to being converted for use as dry-cleaning solvent storage.*

*After dry cleaning operations ceased in 1986, the previous Property building was vacant until 1994 when it was condemned by the City and subsequently demolished. A residential home owned by the dry cleaning facility was also previously located on the southern portion of the Property and was demolished in conjunction with the dry cleaning facility. USTs and some contaminated soil were removed and disposed of at the time. The non-native backfill material and footings, foundations, basement walls and floors were excavated from the Property in 2005 and 2006. Approximately 2,200 tons of soil and 3,200 tons of concrete were disposed of in off-site landfills during this soil excavation process. A Soil Vapor Extraction (SVE) System was installed and continues to be in operation at the Property to address the contaminated soil at depth that was not removed in 2005/2006.*

*MPCA staff recommended removing (delisting) the Soil Operable Unit from the Superfund list in a memorandum dated March 5, 2007. A copy of the MPCA memorandum, which includes figures showing the locations of the SVE System and the groundwater monitoring network, is included in **Attachment 1**. The Groundwater Operable Unit was not removed from the Superfund list.*

*A regulatory records review for the Property was obtained from Environmental Data Resources, Inc. (EDR) on June 8, 2015). The Property was identified in regulatory lists searched by EDR as the following:*

- *EDR US Historical Automobile Stations (Hist Auto Stat)*
- *Minnesota (MN) UST, Program Interest ID: 201453*
- *MN Financial Assurance, Program ID: 201453*
- *MN Site Remediation Section (SRS), Facility, ID: VP2052*
- *MN Volunteer Investigation Cleanup (VIC), Facility ID: VP2052*
- *EDR US Historical Cleaners (Hist Cleaners)*
- *Resource Conservation and Recovery Act (RCRA) Non Generator (NonGen/NLR) of Hazardous Waste, EPA ID MND982638405*
- *EPA Facility Index System (FINDS), Registry ID: 110008829517*
- *MN SRS, Facility ID: VP2051*
- *MN VIC, Facility ID: VP2051*
- *FINDS, Registry ID: 110003798748*
- *MN Permanent List of Priorities (PLP)*
- *MN Site Remediation System Database (SHWS), Facility ID: SR 1293*
- *MN SRS, Facility ID: SR1293*
- *MN LS, MPCA ID VP2360*
- *RCRA NonGen/NLR, EPA ID MND070735691*
- *FINDS, Registry ID: 110003773541*
- *MN Recovered Government Archive Hazardous Waste State Facility (RGA HWS), Facility ID: SR1293*
- *US BROWNFIELDS, ACRES Property ID: 14843*
- *FINDS, Registry ID: 110020702827*
- *Comprehensive Environmental Response, Compensation, and Liability Information System - No Further Remedial Action Planned (CERC-NFRAP), Site ID: 0506135, EPA ID: MND981094485*
- *RCRA NonGen/NLR, EPA ID MND981094485*
- *RCRA NonGen/NLR, EPA ID MNS000106054*
- *MN SRS, Facility ID: VP2050*
- *MN VIC, Facility ID: VP2050*

- *MN SRS, Facility ID: VP15620, VP15621*
- *MN VIC, Facility ID: VP15620, VP15621*
- *MN LIENS, Facility ID: VP15620, VP15621*
- *FINDS, Registry ID: 110063510268*
- *FINDS, Registry ID: 110008656150*
- *FINDS, Registry ID: 110003798249*
- *RCRA NonGen/NLR, EPA ID MND981091960*
- *MN RGA HWS*

*Based on the EDR report, the Property is located in an area of heavily impacted sites that have the potential to impact the soil groundwater and soil vapor at the Property. A number of reports related to the adjacent and upgradient sites, which were provided by the MPCA, are on file with Landmark.*

*Recognized environmental conditions (RECs) indicate the presence or likely presence of any hazardous substances or petroleum products on the Property under conditions that indicate an existing release, a past release, or a material threat of a release of any hazardous substance or petroleum products into structures on the Property or into ground, groundwater, or surface water of the Property. Historical recognized conditions (HRECs) are defined as past releases that have been addressed to a degree allowing for unrestricted use of the Property. Controlled recognized conditions (CRECs) are defined as past releases that have been addressed but allow contamination to remain in place subject to the implementation of required controls.*

*Based upon the records review, Property reconnaissance, previous investigations and interviews, the following known or suspect environmental conditions were identified for the Property:*

*Finding: Historic Property uses involving a drycleaner and a gasoline station.*

*Finding: Documented soil, soil vapor and groundwater impacts to the Property related to releases that originated on the Property and from adjacent and nearby listed regulatory and historical sites.*

*Finding: The Property is a former Superfund Site with an active remediation system (the SVE System) in place.*

*These findings represent RECs with respect to the current and planned future use of the Property.*

## Supplemental Phase II Environmental Investigation

Based on the findings and conclusions of the Phase I ESA Report and taking into account the planned future use of the Property, Landmark was hired by CPM to conduct a Supplemental Phase II Environmental Investigation (Supplemental Investigation) concurrent with a geotechnical investigation. A copy of a figure showing the Supplemental Investigation locations and a copy of the field screening results and the geotechnical boring logs are included in **Attachment 2**. Following is a summary of the results and recommendations from the Supplemental Investigation Report dated September 2015:

*Although a minimal amount of debris was identified in two sampling locations, based on the results of the Investigation, the soil above a depth of approximately 10 feet at the Property meets MPCA Residential Soil Reference Values (RSRV) and unregulated excess fill criteria. During redevelopment, soil that is excavated to accommodate the proposed apartment building can be transported off-site to another commercial/industrial property for reuse in accordance with the MPCA's Best Management Practices for the Off-Site Reuse of Unregulated Fill, dated February 2012. No excavation is expected to be conducted at a depth below 12 feet below ground surface (bgs) where contaminated soil is still present.*

*The Supplemental Investigation identified the presence of 28 volatile organic compounds (VOCs) in the soil vapor sample collected and analyzed as part of the Investigation. The results of the Investigation indicate that the VOC concentrations from the soil vapor sample are below MPCA action levels of 10 times the residential intrusion screening values (10X R-ISVs), with the exception of 1,3-Butadiene and tetrachloroethylene (PCE). As described in the Phase I Report, the MPCA will require that the SVE System continue to be operated following redevelopment. However, based on the results of the Supplemental Investigation and because the redevelopment plans call for a ventilated first floor parking garage, except for the ongoing operation of a SVE System, no additional response actions related to soil vapor with respect to the proposed redevelopment are necessary.*

*Landmark recommends that a Brownfields Program MPCA enrolment application form be submitted to the MPCA VIC Program. In addition, Landmark recommends that a Construction Contingency Plan (CCP), specific to the redevelopment plans, be prepared and submitted to the MPCA for review and approval. The CCP will be followed in the event that some unexpected environmental condition is encountered during redevelopment.*

Based on the conclusions of the Supplemental Investigation Report, Bay West, Inc. (Bay West), working on behalf of Ed Bell and Corson Corner's, submitted an enrollment application to the MPCA along with a copy of Landmark's Phase I ESA Report on October 14, 2015. A copy of

the enrollment application and a copy of the cover letter written by Bay West is included in **Attachment 3**. Based on more recent discussions with CPM, Landmark is currently preparing a CCP and as well as a Voluntary Response Action Plan (VRAP) for the Property. The CCP and VRAP will be submitted to the MPCA VIC Program for review and approval. Detailed engineering drawings related to how the SVE System and groundwater monitoring well network will be re-installed will also be submitted to the MPCA for review and approval.

## **2. Response to Statement of Reason for Appeal of FAR Variance**

Landmark generally agrees with the information described in the attached Statement with respect to the history of the Property and the information provided by Steve Schoff of the MPCA and John Evans of Hennepin County with respect to the soil conditions at the Property. Although the results of the Investigation documented that the soil located in the top 10 to 12 feet is not contaminated at concentrations above applicable residential risk-based criteria (RSRVs) established by the MPCA, the soil vapor at the Property continue to be impacted at concentrations that exceed the MPCA risk based criteria – even with the ongoing operation of the SVE System. In addition, the most recent sampling results of the emissions from the SVE System (February 19, 2015) indicate that PCE and other VOCs are still being removed by the SVE System. As previously stated the MPCA will require that the SVE System be re-installed and continue to be operated following redevelopment. The excavation of an underground parking garage, however, would require the removal and re-installation of the entire SVE System and the groundwater monitoring well network currently in place at the Property. This would significantly increase the cost of the project. The construction of the proposed building will require the removal of only a portion of the current SVE System and groundwater monitoring well network. According to a memorandum prepared by Steve Schoff and of the MPCA dated March 5, 2007, “only slab at grade construction will be allowed for residential units constructed at the Site” (See **Attachment 1**).

Based on the most recent emissions readings, the SVE System continues to remove PCE from the clay soils located below 10 to 12 feet at the Property and the groundwater continues to be impacted with elevated concentrations of PCE. The at-depth soils and the groundwater will continue to act as sources of vapor migration without the continued operation of the SVE System. It is not feasible or practical to physically remove the remaining contaminated soil and the impacted groundwater. The SVE System will need to be operated for a number of years. As a result, it is Landmark’s opinion that the potential impacts to indoor air (and the risks to human health for future occupants of the proposed building) will increase if the building is constructed with an underground parking garage as compared to a building with a first floor parking garage. It is assumed that an underground parking garage would require excavation to a depth of 12 to 15 feet bgs and likely deeper in some locations for footings and to accommodate the installation of an elevator.

As mentioned in the Statement, in order to be protected from Superfund liability, a developer and any prospective purchaser needs to enter the MPCA VIC Program. Corson's Corner entered the MPCA VIC Program in 2005 and received a No Association Determination from the MPCA along with Hennepin County Taxpayer Services and Cherokee State Bank. A copy of the No Association Determination is included in **Attachment 4**. In addition to completing the Phase I ESA Report and the Supplemental Phase II Investigation, Landmark has prepared a "proposed actions letter" requesting that the MPCA VIC Program issue a No Association Determination to CPM. It is Landmark's understanding that Bay West will also be preparing a letter to the MPCA VIC Program requesting that they issue a "retroactive" No Association Determination to Corson's Corner. The MPCA project manager assigned to reviewing the reports and issuing the No Association Determination is Tim Lockrem.

In conclusion, it is Landmark's opinion that the proposed redevelopment plan that includes the construction of the first floor parking garage is the most cost effective and most protective redevelopment plan, taking into account the existing environmental conditions at the Property and the short-term and long term environmental risks to CPM and future occupants.