

ELT WHITE PAPER:

How Interagency Cooperation Played a Critical Role during the Historic Environmental Transformation of Sparrows Point

ABSTRACT

Despite a laundry list of environmental challenges, the 3,100-acre Sparrows Point cleanup project was still considered a prime opportunity for brownfield redevelopment. Challenges included: RCRA obligations, state cleanup obligations, over 100 areas of environmental concern from 125 years of steelmaking operations, an existing federal consent decree, and two major regulatory agencies. In large part, the successful transformation of Sparrows Point can be attributed to interagency cooperation and a shared vision that would allow a third-party to purchase, remediate, and redevelop the site.



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Recognized across the country as a top tier expert in brownfield redevelopment and remediation, Ms. Kokas has over 30 years of experience with the NJDEP and was recently awarded the "Lifetime Achievement Award in Brownfields 2017" by the Brownfield Coalition of the Northeast.

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THE HISTORIC TRANSFORMATION OF SPARROWS POINT

The challenge was Sparrows Point, a former steel manufacturing plant located on 3100 acres of waterfront in Baltimore County, Maryland with hazardous waste operations that drew EPA and the state's attention as far back as 1987. In 1997, USEPA and the state of Maryland took legal action against Bethlehem Steel Corporation (BSC), the owner at the time, which resulted in BSC entering into a 1997 Consent Decree to evaluate and address environmental releases at the site. Both EPA and Maryland Department of Environment (MDE) oversaw the remedial activities.

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Site ownership changed hands several times between 2001 to 2012, and operations related to steelmaking ended in May 2012.

In September, 2012, Environmental Liability Transfer, Inc. (ELT) – through Sparrows Point LLC – acquired ownership of the site through a bankruptcy court-ordered auction. ELT subsequently assumed BSC’s obligations under the 1997 Consent Decree. ELT’s willingness to assume and retain environmental liabilities following a sale/transfer proved to be the catalyst that induced interest from potential investors – a buyer soon followed in the form of Sparrows Point Terminal (SPT), a newly-formed entity focused on acquiring Sparrows Point for the purpose of vertical development.

Today the transformation of Sparrows Point is well underway, construction is ongoing and the former steel making site has been rebranded as “TradePoint Atlantic” – a world-class international trade hub expected to generate \$2.9 billion in regional economic activity. The redevelopment of Sparrows Point represents one of the most successful brownfield reclamation projects in U.S. history, but without interagency cooperation between USEPA and MDE, this transaction and subsequent development may not have happened.

Before this transformation could take place, there were significant challenges that needed to be addressed – administrative, environmental, and legal. Below is an overview of how these issues were addressed through interagency cooperation.

ADDRESSING LIABILITY WITH MULTIPLE REGULATORY PROGRAMS

In September 2012, ELT assumed the responsibility for the environmental liabilities at the site under the 1997 Consent Decree. There would be two other agreements that would make the administrative oversight more complex. SPT wanted to resolve its RCRA liability and to ensure its Bona Fide Perspective Purchaser’s liability protection under CERCLA. It believed the best way to resolve any RCRA or CERCLA liability was to voluntarily enter into a settlement agreement with EPA (EPA Settlement Agreement) that would out-





line its obligations. Additionally, SPT also wanted to formalize its obligation to MDE under RCRA, the Voluntary Cleanup Program and its “inculpable person” determination from the state. This would be accomplished by SPT entering into an Administrative Order on Consent (ACO) with MDE.

Recognizing that remedial work would be required under three separate documents (1997 Consent Decree, an EPA Settlement Agreement, and MDE ACO), EPA and MDE provided a great deal of flexibility with respect to allowing work under a specific cleanup document to satisfy the requirements under another cleanup document or regulatory program.

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For example, the EPA acknowledged that work performed pursuant to the MDE ACO and the EPA Settlement Agreement may be used to meet the requirements of the 1997 Consent Decree. Additionally, MDE agreed that certain areas where interim measures had already been performed under the 1997 Consent Decree, would not require further remediation. Having these specific docu-

ments was important, but understanding how to comply with each of them in an efficient manner was key.

VARIED ADMINISTRATIVE PROCEDURES

EPA and MDE have worked closely to integrate the RCRA process and the Maryland Voluntary Cleanup Program (VCP) to avoid duplication and delays in the remediation. For example, the 1997 Consent Decree required all 3100 acres to be investigated and if necessary, remediated. In response to this condition, some of the site has been “carved out” of the 1997 Consent Decree and EPA and MDE have provided flexibility in addressing these areas. The MDE ACO outlines the submittals necessary to meet the requirements of the MDE cleanup program and how MDE will work with EPA to evaluate Work Plans since these plans will serve as EPA’s Basis of Statement to advance that area into the Final Decision phase of the RCRA process. The MDE ACO also acknowledges the ability to proceed in advance of an EPA Final Decision as an option in the areas that are carved out of the 1997 Consent Decree.

In evaluating this vast site for redevelopment opportunities, SPT recognized that there were areas of the site that it wanted to prioritize for remediation. EPA and MDE accepted that approach, agreeing to parts of the site designated as a priority for review and approval. Additionally, the agencies were amenable to providing a sign off of sites on a “parcel-by parcel” or area of concern basis. This is especially important for areas of the site that after investigation is completed, no cleanup action is required by EPA or MDE.

ENVIRONMENTAL OBSTACLES

There is always tremendous concern from the remediating party for contamination that has migrated offsite. This can be the number one issue that prevents a third party from acquiring a site for redevelopment. In acquiring the site out of bankruptcy in 2012, ELT was not required to assume any liability for contamination that may have been present offsite. This provision was acknowledged by EPA and MDE in SPT’s subsequent negotiations of the EPA Settlement Agreement and MDE ACO. EPA and MDE recognized that ELT and/or SPT would take on-site measures to control existing contamination migrating from the site.

BACKSTOPS FOR THE CLEANUP

The cooperation demonstrated by EPA and MDE has facilitated an effective remediation strategy for Sparrows Point and compliance with federal or state statutes without sacrificing protection of human health and the environment. The prioritization of the site into various development parcels, as well as reme-

dial areas important to the agencies, will result in simultaneous remediation of the site. The MDE ACO requires SPT to remediate the site, even in the event of conveying the site to another party. SPT can choose to transfer the responsibility to the new owner, however, SPT is still responsible to MDE if the new owner fails to satisfactorily perform.

SPT entered into an ACO with MDE when it could have just been accepted into its Voluntary Cleanup Program. The ACO requirements included the posting of financial assurance, the potential for stipulated penalties for non-compliance and no potential to back out of the ACO obligations to remediate the site—all of which would not have been required under MDE’s Voluntary Cleanup Program.

All obligations for work on-site would be borne by ELT and/or SPT. Additionally, MDE required \$48 million in financial assurance (in the form of a trust and a letter of credit.)

CONCLUSIONS

This project would not have proceeded without the dedication, creativeness and flexibility of the regulatory agencies. In summary, these actions include:

- *Having USEPA and MDE in meetings together to discuss obstacles to remediation and redevelopment*
- *Allowing for work under one agreement to suffice for a commitment under another cleanup agreement*
- *Allowing for agency “sign off” on an area-by-area basis*
- *Consideration of removing certain areas of the site from the obligations of the 1997 Consent Decree and requiring them to be addressed under the MDE ACO*
- *Recognizing the use of onsite controls to address any potential migration of contamination*
- *Considering areas of the site as priorities*

These are actions that can be afforded at most sites and although some can seem simplistic in nature, they have a very tangible benefit that can turn a project from a “nice thought” to a reality.

ABOUT THE AUTHOR

With over 30 years of environmental regulatory experience with the New Jersey Department of Environmental Protection (NJDEP), Colleen Kokas is recognized across the country as a top tier expert in brownfield redevelopment and remediation. She was recently awarded the “Lifetime Achievement Award in Brownfields 2017” by the Brownfield Coalition of the Northeast. Today she is Executive Vice President at Environmental Liability Transfer, Inc. (ELT), where she educates the redevelopment community and government agencies on the advantages of using environmental liability transfers during sustainable redevelopment projects.



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ABOUT ELT

Environmental Liability Transfer, Inc. (ELT) is a comprehensive environmental liability assumption company providing clients complete and final environmental liability transference services since 2004. With strong financial backing and a unique blend of expertise – real estate, environmental, demolition, liquidation, legal, insurance, and sustainable redevelopment planning – ELT has successfully assumed over \$1.5 billion USD in corporate environmental liability for its clients throughout North America.

For more information about this white paper or to schedule a confidential discussion regarding your environmental liabilities, please contact us.



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