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November 6, 2009

Re: Community comments on the Cabot-Koppers Feasibility Study (August 2009)

Stanley Meiburg, Region 4 Administrator
US EPA Region 4
61 Forsyth St, SW
Atlanta, GA 30303-8960
meiburg.stan@epamail.epa.gov

Dear Mr. Meiburg:

These comments are submitted on behalf of the Stephen Foster Neighborhood Protection Group (SFNPG), a community organization located in Alachua County, Gainesville, Florida. The SFNPG is a neighborhood community organization charged with representing and protecting the health and well-being of the residents living in the Stephen Foster neighborhood bordering the Cabot-Koppers Superfund and industrial site, and which is dedicated to making the Stephen Foster neighborhood a safer and healthier place to live, work, and play. The SFNPG works to improve environmental, housing, and other living conditions within the Stephen Foster Neighborhood. It is with those purposes in mind that these comments relating to the August 2009 Feasibility Study Working Copy ("FS", or "report") are submitted.

The SFNPG - and the community it represents - wants to thank the EPA for listening to and considering these comments which are meant to explain community concerns regarding the Feasibility Study and to guide the EPA in their efforts to further refine and alter the Feasibility Study with the aim of developing an adequate clean-up plan and sufficient protections for residents neighboring the site.

The FS is incomplete as it relates to the consideration, assessment, and analysis of off-site contamination and remedial alternatives required under 40 CFR 300.430

It is apparent, upon review of the FS, that the report gives little attention to the off-site effects of the contamination on neighboring residents and to the effective and efficient clean-up of off-site contamination. What attention the report does give to the off-site impacts is sporadic and disjointed and certainly does not qualify as an appropriate consideration, analysis, and assessment of contaminants or effective alternative remedial actions and methodologies as is required under regulations governing Remedial Investigations/Feasibility Studies [RI/FS] (40 CFR 300.400 et seq.).

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To date, off-site contaminant delineation has not occurred and the potential risks to current and future residents in the Stephen Foster neighborhood has not yet been determined (p. ExecSumm-6). The FS itself recognizes that the risks and alternatives regarding off-site contamination and impacts have not been - and cannot at this time be - adequately analyzed, and in doing so the study expressly recognizes its own shortcomings. Yet at the same time the report states that, "each off-site remedy is described in sufficient detail to allow evaluation and engineering design as part of the preferred alternative" (p. ExecSumm-4). Further, though the report states that potential risks to current and future residents has not yet been determined the authors somehow express confidence that, "remedies [analyzed for off-site actions] are all protective and would be effective at eliminating any unacceptable risks from direct contact" (p. ExecSumm-6). And as a final failed attempt at the "analysis" required under governing regulations the report states, "the relative effectiveness, implementability and cost of these alternatives will vary depending on the risk levels that are determined, the type or types of properties with unacceptable risks, and the preferences of the land owners. Therefore a detailed comparison of these alternatives cannot be completed at this time." This is not an analysis or a meaningful consideration of alternatives - which is required under the law - but rather a "placeholder" for future failures regarding off-site risks and contamination. This is completely unacceptable to the SFNPG and the residents of the Stephen Foster Neighborhood. The FS as it is currently written is incomplete and fails under the requirements of the 40 CFR 300.430(e)(9).¹ **Until off-site delineation and risk assessment is complete, a full comparative and individual analysis of all suitable alternatives under 40 CFR 300.430 is conducted (including excavation with associated community impacts, as well as relocation of residents), and careful comparison and detailed review of the alternatives under the requirements of 40 CFR 300.430(e)(9) et seq. have taken place and are addressed in the FS, the FS study cannot be considered complete and is unacceptable.**

In dealing with off-site contamination in the residential area, the FS proposes to implement the "kitchen sink" approach; namely an imprecise mix of institutional controls, engineering controls, and actual cleanup (contaminant excavation/removal) to be determined at a later date. It is *extremely unlikely*, however, that any Stephen Foster neighborhood residents will agree to either institutional or engineering controls on their properties. Besides the high level of unhealthy stress that residents are now experiencing, residents have also watched their property values fall in the wake of news that off-site contaminants have been found in their neighborhood. Furthermore, landlords have received notices from tenants who are not renewing leases due to potential and existing health risks, thereby causing financial hardship on top of already existing emotional and stress-related hardships. Only actual excavation and removal of present contaminants off-site, as well as on-site, is acceptable to the community. To that end, the FS also does not adequately consider and analyze the levels of disturbance to the properties and livelihoods of neighborhood residents within this context. The report mentions only that off-site soil removal could be "disruptive of residential lives and privacy", but does little further analysis or investigation. In fact, a full analysis of the impact of such activities cannot even be conducted at this time because, as the report implicitly recognizes, neither delineation of contamination nor

¹ See, for instance, the requirements under 40 CFR 300.430(e)(7)(i)-(iii) and 300.430(e)(9) et seq.

risk assessment have occurred to date and so a proper analysis of off-site remedial impacts cannot yet occur. By stating that the “implementation details for [off-site remedies] will be finalized during remedial design” (p. 5-14) and giving no further analysis or consideration of alternatives to off-site contamination within the FS, the FS is paying insufficient attention to off-site impacts and remediation at the RI/FS stage.

Under 40 CFR 300.430(a)(2), developing and conducting an RI/FS should include the following activities: "project scoping, data collection, risk assessment, treatability studies, and analysis of alternatives." Each of these processes is meant to ensure that the FS, and the final selected remedies, is based upon adequate and appropriate data.² In this case, however, the alternatives proposed in this FS are not based on sufficient data, and no analysis takes place. Delineation of off-site contamination and risk assessment has not yet occurred and proper analysis under 40 CFR 300 et seq. cannot occur until additional off-site information is acquired. Until such time, the FS fails to include many - if not most - of the general activities mentioned under 40 CFR 300.430 (a)(2) regarding off-site contamination to any useful degree. The primary objective of the FS is to "ensure that appropriate remedial alternatives are developed and evaluated" (300.430(e)(1)). Because the FS is to be "fully integrated" with the RI and in many ways is dependent upon the information sought within and gained from the RI process (data collection, risk assessment, etc.), this FS should not be adopted or considered complete until a proper data collection plan is made part of the RI/FS, risk assessment has occurred, and proper analysis of all appropriate protective alternatives, including relocation, has taken place.³ In essence, this FS seeks to establish final remediation goals and selections without understanding off-site impacts and contamination effects some 25 years after designating Superfund status. More data and further analysis of additional alternatives is needed before the FS can be considered both complete and acceptable.

Relocation must be a considered alternative in the FS

The NCP (40 CFR section 300.430) establishes a remedy selection process to ensure that remedies meet the principal requirements of CERCLA section 121. In accordance with the NCP, (40 CFR section 300.430(a)), the national goal of the remedy selection process is to "select remedies that are protective of human health and the environment, that maintain protection over time, and that minimize untreated waste." The NCP defines a process where nine criteria (40 CFR section 300.430(e)(9)(iii)(A)-(I)) are to be used to analyze remedial alternatives to ensure that selected remedies meet the program's goals . Because permanent relocation is considered a remedial action, it is selected for use at a Superfund site only when it has been evaluated through this process and determined to be the best overall remedy for the site. **Yet the alternatives in this FS do not consider relocation as part of any off-site remedial action, thereby precluding the future consideration of relocation as a viable remedial option.** By leaving out

² For example, see 40 CFR 300.430(b)(5) requiring the EPA to "identify the type, quality, and quantity of the data that will be collected during the RI/FS to support decisions regarding remedial response activities."

³ 40 CFR 300.430 (e)(2) states that "the number and type of alternatives to be analyzed shall be determined at each site, taking into account the scope characteristics, and complexity of the site problem." The FS itself admits that the scope characteristics and complexity of the site problem either are not know or are not fully understood at this time.

relocation within the context of cleanup in residential off-site communities, the feasibility study fails because it does not consider each appropriate - or even the **most protective** - alternative. **The FS itself briefly mentions that in order to best disrupt the exposure pathway, "removal of receptors from the area" is a viable option (p. 3-43).** Even still the study does not further discuss relocation nor does it analyze in any meaningful way the impacts decontamination and cleanup would have on residents of the impacted neighborhood. In fact, **excavation coupled with relocation would be the only option to ensure the exposure pathway is broken from past and future contamination**, as soil removal without relocation brings with it associated risks of further exposure during the excavation and removal process, and the continued operation of Koppers as both an active remedial site and active industrial site mean further contamination to off-site properties is likely.⁴ Further, governing policy explains that relocation should be considered in situations where unreasonable use restrictions may exist during or after cleanup activities, noting such activities include "restrictions on children playing in yards". Already the Florida Department of Health has recommended such restrictions on children on easements immediately adjacent to residential parcels, and further risk assessment is ongoing within the community (Health Consultation, July 17, 2009, Florida DOH). Relocation may, therefore, be the best overall remedy for off-site contamination. Relocation is an approved alternative under Federal guidelines and policies and must be considered as part of the cleanup strategy for this site due to the off-site impacts and likely impacts on neighboring residences (*see generally* 1999 Interim Policy on the Use of Permanent Relocations as Part of Superfund Remedial Actions). Relocation, along with an assessment of compensation for relocation, **must be an alternative considered in the FS** for the FS to be adequate or acceptable in any form by the community, especially in light of the fact that the extent or degree of off-site contamination has not yet been determined. Closing the door on relocation in the FS prior to understanding the full implications and impacts of residential contamination is bad policy and does not meet with community approval. Still, even if relocation is considered as part of this FS, the FS would still fail as it does not meet the already-mentioned additional requirements of 40 CFR 300.430.

Also problematic is that contained within what little is written about off-site options in Section 3.3.3. is mention that removal of off-site contaminated soils is a "one-time action". So long as Koppers remains an operating facility *and* an active clean-up site, however, the probability of further off-site contamination remains.⁵ Even if off-site soils are removed from private residences it is likely further contamination will occur resulting from inadequate existing and planned on-site cleanup strategies and continuing industrial operations at the Koppers site. It is therefore highly unlikely that off-site decontamination would be a "one-time action". The FS also fails in its analysis in this respect.

As a practical matter, the current location of residents near the site is likely inhibiting proper cleanup of the Koppers site. Any on-site remediation must necessarily take into consideration off-site impacts to neighboring residents. By relocating residents out of harms

⁴ See, for instance, Alachua County Environmental Protection Department and MACTEC comments on the AMEC Report "Fugitive Dust Impacts Predicted from Air Dispersion Modeling Koppers, Inc. Wood Treating Facility Gainesville, FL" dated August 17, 2009, noting that further toxic dust contamination is likely.

⁵ See above comments in #4, noting likelihood of continued further contamination from site operations in the future.

way, additional on-site and off-site remedies which are more effective and efficient than the currently proposed inadequate methodologies would likely become available. A more thorough and effective FS which protects off-site residents can then be drafted.

Conclusion

In conclusion, the FS fails to meet the requirements of the law under 40 CFR 300.430 et seq., does not include a “detailed analysis of alternatives”, either individually or comparatively, under 40 CFR 300.430(e)(9) concerning off-site contamination, and is incomplete. Further, by failing to include relocation as an explored alternative the FS precludes future consideration of relocation without knowledge or understanding of the full extent of contamination off-site, even though relocation may be the only alternative to ensure the exposure pathway is broken from past and future contamination. Relocation should be included within a future FS once the necessary additional information is gathered and properly evaluated against the appropriate criteria within the regulatory scheme.

Finally, the SFNPG would like to remind the Environmental Protection Agency that neighboring residents had no part in contributing to or endorsing or encouraging the hazardous pollution that now lies within yards and homes adjacent to the site. The lives of residents have been impacted to a degree that fails to be recognized by this FS or prior decisions regarding this site. The SFNPG asks that the EPA consider the impacts to residents’ lives and community very seriously and use its full authority under the law to protect the health and environment of the citizens most impacted by this ongoing tragedy.⁶

Thank you for carefully considering these comments and concerns. Please feel free to contact me with any questions or concerns you may have. Please direct all correspondence regarding these comments to the undersigned counsel.

Sincerely,



Matt O'Malley
Attorney for Stephen Foster Neighborhood
Protection Group

Cc:
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⁶ The SFNPG asks that the EPA consider these comments within the context of the failure of the remediation process to-date, and to consider the community's wishes and concerns with regards to, "site analysis and characterization, alternatives analysis, and selection of remedy" as is required under 40 CFR 300.430(c)(2)(ii)(A).

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