

# *Cleanup Enforcement in Action:* Industrial Redevelopment Supports Economic Strides for Community in Southeast Texas

## The Value of Cleanup Enforcement

At the Conroe Creosoting Superfund site (Site), the U.S. Environmental Protection Agency (EPA) and the Texas Commission on Environmental Quality (TCEQ) used enforcement and reuse tools to address Superfund liability concerns, complete cleanup actions and allow for beneficial commercial and industrial redevelopment. This case study highlights how EPA's Superfund program worked in successful partnership with TCEQ to collaborate with site purchasers, local governments, and stakeholders to support the project and benefit the community.

Extensive communication among Conroe Logistics Center, LLC (CLC), EPA Region 6's Superfund program (serving Arkansas, Louisiana, New Mexico, Oklahoma, Texas, and 66 tribal nations), and TCEQ resulted in a Bona Fide Prospective Purchaser (BFPP) Agreement. This settlement enabled the purchaser and developer to move forward with their property purchase, complete cleanup actions and begin construction of an industrial distribution center. Prior to the BFPP Agreement, EPA's Site team, including site and reuse attorneys, the Region 6 reuse coordinator, and the Site's remedial project manager (RPM), supported Prospective Purchaser Inquiry (PPI) meetings, issued a Ready for Reuse (RfR) Determination, and kept lines of communication open to support future site protectiveness and beneficial reuse. Throughout, EPA remained committed to addressing the liability concerns of prospective purchasers and developers over the long term.

Today, the Site's final remedy is in place and its reuse provides significant local economic benefits. Primed for redevelopment, complete with infrastructure improvements and rail spurs, it now hosts a Home Depot distribution center. The 612,000-square foot industrial facility provides local job opportunities and tax revenue for the community of Conroe in Montgomery County, Texas.

## Cleanup Enforcement Benefits the Community

Environmental and public health factors affect people most significantly where they live. EPA works to provide strong, effective enforcement support to all communities. As the Agency implements environmental and public health improvements across the country, EPA is looking for new ways to assist communities in environmentally overburdened, underserved, and economically disadvantaged areas where the needs are greatest.

### Enforcement Actions Support Reuse and Economic Revitalization

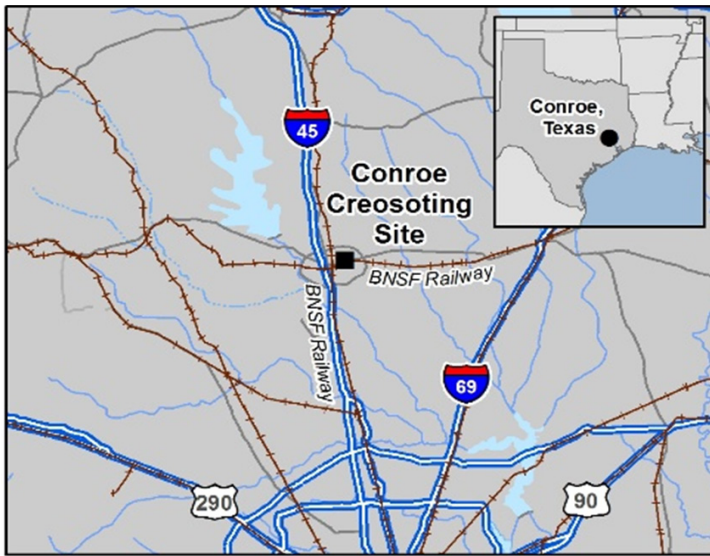
EPA's use of enforcement actions and redevelopment tools, such as BFPP agreements, comfort/status letters and Ready for Reuse Determinations, attract redevelopment to a contaminated property by clarifying appropriate property use opportunities and restrictions and/or by alleviating Superfund liability concerns.



“My hat goes off to the EPA remediation team on this property...We could not have redeveloped this site without that significant effort on the part of EPA.”

– Neal Holdridge, Trammell Crow Company

Image used with permission of Conroe Logistics Center, LLC.



0 10 20 40 Miles

Sources: Esri, DeLorme, AND, Tele Atlas, First American, UNEP-WCMC and USGS.

The site's location in Conroe, Texas.

## Site Overview

Over 91,000 people live in Conroe.<sup>1</sup> The city is in southeastern Texas, about 40 miles north of Houston. The Site covers 147 acres in an area well-suited for industrial development due to nearby transportation options. It provides direct access to the Burlington Northern Santa Fe Corp. (BNSF) Railway and nearby access to the Union Pacific Railway.

Historically, the Site housed industrial operations; wood-treating operations began in 1946. The facility treated lumber, railroad crossties, poles, and fence posts using pentachlorophenol (PCP), creosote, and copper chromated arsenate (CCA). TCEQ documented regulatory violations at the facility in the 1980s and early 1990s. In 1997, the Montgomery County Tax Assessor ordered the facility's shutdown due to tax delinquency, ending wood-treating operations. Over the years, facility operations and waste management practices contaminated soil, sediment and groundwater with phenols, polycyclic aromatic hydrocarbons, and PCP.

<sup>1</sup> According to 2019 U.S. Census Bureau estimates (*Annual Estimates of the Resident Population for Incorporated Places in Texas: April 1, 2010, to July 1, 2019*, accessed July 2021).

## 1998 – 2003

### Site Characterization and Early Cleanup

To protect public health, EPA led a time-critical removal action in 2002. It removed contaminated soil, and sediment and placed the material in a Resource Conservation and Recovery Act (RCRA) containment vault on site. In 2003, EPA added the Site to the Superfund program's National Priorities List (NPL), which is a published list of hazardous waste sites in the country that are eligible for federal funding to pay for extensive, long-term cleanup actions under the Superfund remedial program. As part of the cleanup, EPA required monitoring of the natural attenuation of groundwater contamination and maintenance of the RCRA vault. The cleanup remedy also required institutional controls to prevent future installation of water supply wells and to prohibit residential use.

Cleanup progressed quickly; groundwater monitoring well installations were completed and monitoring began in 2003. Later that year, EPA determined that all necessary cleanup construction was complete. TCEQ assumed responsibility for all ongoing operation and maintenance activities at the Site in 2017.

## 2004 – 2018

### Laying the Foundations: Future Use Preparations

After fielding several PPI calls, EPA issued an RfR Determination for the Site in 2008. This environmental status report stated that, except for the RCRA vault

### The Prospective Purchaser Inquiry (PPI) Process

The goal of EPA's PPI process is to provide comprehensive information to prospective purchasers of Superfund sites so that they can make timely business decisions on whether to buy site property. The site team can share information about the cleanup status, the compatibility of the proposed reuse with the site's cleanup including any property restrictions, available liability protections, and any EPA liens. The prospective purchaser can share reuse plans and timelines and ask questions. After a PPI call, EPA may summarize the information in a comfort letter and suggest additional reuse tools.

## Institutional Controls

These non-engineered instruments such as administrative and legal controls help minimize the potential for exposure to contamination and/or protect the integrity of the remedy.

Examples include zoning restrictions, local ordinances, and restrictive covenants. Institutional controls can document restrictions on property use, including types of land development, excavation depths, and groundwater use



The former wood-treating facility on the Site.

area, the Site could support commercial and industrial land uses and remain protective of human health and the environment. It also clarified that ongoing operation and maintenance activities were required and that all institutional controls would need to be issued and filed prior to property acquisition. The RfR Determination also stated that the federal lien on the property (from costs incurred by EPA during cleanup) would be resolved and removed before the property sold.

In 2010, Conroe Creosoting Company and EPA executed an Environmental Protection Easement and Declaration of Restrictive Covenants for the Site property. The document was filed with Montgomery County and recorded on the property in early 2011.

With the restrictive covenants filed and the RfR Determination information available, Conroe Creosoting Company sold the property (except the RCRA vault area) to East Davis Development LLC (East Davis) in 2011. After the transfer, the development company prepared 140 acres for an industrial park, making road, utility, and other improvements. East Davis marketed parcels ranging

in size from 5 to 50 acres for commercial and industrial businesses. Despite the Site's proximity to rail lines and the flexible size of available lots, none of the parcels sold. The area remained vacant for several years.

## 2019– 2020

### Making Reuse Happen: Stakeholder Discussions, Innovative EPA Agreements

In 2019, commercial developer Trammell Crow Company (Trammell) approached EPA for a PPI meeting. The company was interested in purchasing approximately 131 acres for redevelopment as an industrial distribution center but was hesitant to do so before obtaining site-specific liability protection for existing contamination at the Site. While the developer likely could fulfill requirements and qualify as a BFPP, Trammell asked for an EPA agreement as an additional layer of Superfund liability protection.

Through a creative approach, EPA offered a specific type of agreement that provided Trammell with the liability protection it was seeking in exchange for Trammell helping with additional cleanup. Although cleanup construction had been completed over a decade earlier, the Site's 2018 five-year review identified several recommendations for effectively maintaining the long-term protectiveness of the cleanup, including evaluating the dioxin soil cleanup, properly abandoning a former supply well and conducting a vapor intrusion assessment. EPA staff then started work on a BFPP Agreement that focused on these recommendations. Bringing site stakeholders, including TCEQ, together for discussions was a key part of this effort.

CLC, an affiliate of Trammell, agreed in the BFPP Agreement to address the recommendations, provide

## RfR Determinations

These environmental status reports provide a technical determination from EPA that a site is "ready for reuse" so long as any use limitations established by EPA are met.

An RfR Determination summarizes key information about a site that supports the finding that all or a part of the area can support specified types of uses while remaining protective of human health and the environment. RfR Determinations clarify appropriate future uses at sites and can also reaffirm institutional controls.

“We had been involved at the Site a long time both on the cleanup and reuse side of things. When this developer came to the table with a compelling plan that would bring tax benefits and jobs to the community, we wanted to do what we could to facilitate the reuse.”

– Casey Lockett Snyder, EPA Region 6

site improvements to facilitate on-site vehicular activity, and accommodate state accessibility for operation and maintenance activities. “The developer specifically desired liability protection from an EPA agreement and because EPA strongly supports the revitalization of these sites, we were able to foster reuse and save taxpayer money,” said EPA site attorney, Leonard Schilling.

## Breaking Ground, Creating New Opportunities: Redevelopment Success

In July 2020, the BFPP Agreement was signed. CLC purchased the Site, completed the cleanup actions required by the Agreement, and continues to maintain its status as a BFPP. Construction began in August 2020, and just under a year later, a \$51 million Home Depot distribution center began operating, bringing job opportunities, and tax revenue to the community. CLC added rail spurs to maximize the Site’s accessibility. With the increase in traffic to the area, the city was able to prioritize funding for a long-anticipated road extension project. The redevelopment sparked the city-led connection of FM 1314 (Porter Road) with Airport Road via a through-road across the Site.

## Enforcement Makes a Difference

EPA’s enforcement program has helped make a difference in thousands of communities affected by hazardous waste contamination. At sites such as the Conroe Creosoting Superfund site, the enforcement program helps ensure cleanup actions are implemented and facilitates revitalization using enforcement and reuse tools such as EPA agreements. Significant and sustained cooperation and communication among EPA, TCEQ, local governments, property owners, and developers enabled timely cleanup, effective operation and maintenance activities, and liability protections for the property transfer process that laid the foundation for redevelopment and beneficial reuse.



An entrance sign at the Home Depot distribution center.

### EPA Agreements

In certain circumstances, EPA can enter into written agreements with a prospective purchaser of a Superfund site property that enable the purchaser to buy without becoming responsible for the cleanup.

### Bona Fide Prospective Purchaser (BFPP) Status

The Superfund statute provides a self-implementing liability protection called BFPP that enables purchasers to buy Superfund site property without becoming responsible for the cleanup. See EPA’s [Revitalization Handbook](#) for more information.

### For More Information, Please Contact:

Elisabeth Freed  
Office of Site Remediation Enforcement  
U.S. Environmental Protection Agency  
[freed.elisabeth@epa.gov](mailto:freed.elisabeth@epa.gov) | (202) 564-5117

Victor A. Zertuche  
Office of Site Remediation Enforcement  
U.S. Environmental Protection Agency  
[zertuche.victor@epa.gov](mailto:zertuche.victor@epa.gov) | (202) 564-4212