



## MEMORANDUM

**To:** Albert “Kell” Kelly  
**From:** HHQ Ventures, LLC  
**Re:** Summary of Troy’s Principal Issues with EPA Region 2’s Proposed Administrative Order on Consent for the Remedial Investigation of the Troy Plant Site  
**Date:** August 16, 2017

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On August 7, Troy received a certified letter dated July 28, 2017 from EPA Region 2 that included a proposed Administrative Order on Consent (“AOC”) and Statement of Work (“SOW”). The SOW largely reflects the results of discussions between Region 2 and Troy. It acknowledges the extensive work that has been done by Troy and its technical consultants over the last 25 years in characterizing the Troy Chemical Corporation Plant Site and evaluating remedial options. Troy is optimistic its technical consultants can work with the EPA project manager to resolve remaining issues and agree on a SOW acceptable to both Troy and EPA.

Unfortunately, the AOC still largely relies on EPA boilerplate, rather than reflecting the more stream-lined process outlined in the SOW. The AOC is not consistent with the SOW in that it can be read to require a standard Remedial Investigation and Feasibility Study (“RI/FS”), rather than the streamlined approach that is embodied in the SOW. In addition, Region 2 has omitted revisions suggested by Troy to arrive at a fair, efficient and effective Agreement. Troy’s principal concerns with the AOC are as follows:

- **Consistency with the Statement of Work:** The AOC contains standard language used by Region 2 regarding work to be performed. The Region 2 attorney assigned to the project states that her hands are bound by forms mandated by EPA Headquarters. This includes language requiring investigation of contamination “at or from” the property and requires adherence to a “standard RI/FS guidance” as well as the SOW. In this respect, the AOC incorporates documents that impose requirements inconsistent with the SOW. The EPA should make clear that the principal document governing work to be performed is the SOW and that the SOW controls.
- **Work under the AOC should be limited to OU 2:** EPA Region 2 personnel, including current Acting Deputy Administrator (Mr. Mugdan), and Troy have discussed Troy’s interest in remediating the Troy plant site with the objective of having it delisted from the National Priority List (“NPL”). For this reason, the EPA has designated the Troy plant as OU 2 and the SOW calls for work limited to that area. The AOC calls for investigation of contamination “from the Property”. This would be off-site work not included in the SOW. Such work should be addressed as part of OU 1 and should be excluded from the AOC for OU 2.

- **Additional Work:** The AOC includes standard language authorizing EPA to order additional work at any point. EPA rejected Troy's suggestion to authorize additional work, "based on new environmental data that was not known . . . when the work plan was approved." Under the circumstances of this site, the limitation is appropriate. It is important to Troy to know that EPA will stand by the SOW unless new data require it be changed. During a meeting between Troy and EPA on September 20, 2016, Walter Mugdan, then the Director of the Region 2 Superfund office, agreed that Troy should have some assurance as to what it is obligating itself to do and agreed to pursue an approach tailored to the Troy plant site and the extensive work previously done.
- **EPA Oversight of Offsite Waste Shipments:** Under the proposed AOC, Region 2 will oversee all offsite waste shipment. This is a problem for Troy. It regularly generates waste, including hazardous waste, from its operations. That waste is handled in accordance with all applicable regulations. EPA oversight of waste from operations of our manufacturing plant is inappropriate and unnecessary. Troy suggested limiting EPA oversight of off-site waste shipment to wastes *generated by the remediation work*, but EPA rejected that suggestion and provided no explanation for its decision.
- **Findings of Fact:** The proposed AOC only discusses historic contamination that originated on the Troy plant site. EPA is aware that the principal contaminated area is a drainage ditch which was formerly part of the City of Newark industrial and storm water system. Waste from upgradient industrial facilities as well as from activities from former entities are present in the ditch (this site has a hundred-year history of industrial and municipal use that precedes the current Troy Chemical use which began on June 30, 1980) at what is now the Troy plant site. EPA has refused suggested language explaining this factual background. If EPA will not revise the facts, the AOC should include text acknowledging that Troy does not accept EPA's Findings of Facts. This issue is important to Troy to avoid public misperception of the nature of the contamination at Troy's plant site.
- **Stipulated Penalties:** EPA rejected Troy's suggestion that stipulated penalties based on an alleged violation of the AOC should not begin to accrue until EPA has notified Troy of the violation. Thus, under EPA's proposed language, the stipulated penalties will begin to accrue regardless of whether EPA has notified Troy and given it opportunity to remedy the issue. This means that EPA can identify what it believes is non-compliance, wait for an indeterminate time, and then serve Troy a bill for penalties that have accrued over the that period and which subsequently further accrue. Troy views requiring notice of an alleged non-compliance as *a simple matter of due process* that should not be controversial.
- **EPA review times:** Region 2 rejected the suggestion that EPA agree to use best efforts to complete its review of Respondent's submissions within thirty (30) days of submission. Region 2 should be willing to commit to nonbinding targets for review of deliverables, as this will help keep the project moving forward expeditiously.
- **Protection of Confidential Information:** Region 2 rejected Troy's suggestions concerning EPA's responsibility to protect confidential business information. As this is an operating chemical plant with controlled access and many confidential trade secret processes, assurance of confidentiality is important.

- **Limitation of Oversight Costs:** Administrator Pruitt’s Superfund Task Force’s July 25 Report and Recommendations (“Task Force Report”) includes a recommendation that cooperating parties doing quality work should be subject to reduced oversight costs, including overhead. Troy requests Region 2 include such a provision in this AOC.
- **The Troy Newark Plant represents an opportunity to implement recommendations from the Superfund Task Force Report and demonstrate that they are effective.** Troy is ready, willing and able to perform the work needed to finalize a remedy for its Newark manufacturing plant and to implement that remedy promptly. Troy respectfully requests EPA Headquarters work with it to develop a new approach to Agreements between cooperating parties and EPA. A revised approach could further the objectives of the Superfund Task Force Report. Specifically, a revised Order framework could incorporate and advance:
  - Recommendation 1: Establish project timelines. (Troy has asked Region 2 to commit to a review schedule that includes target periods for EPA review, but it has refused);
  - Recommendation 5: Clarify priorities for RI/FS Resources. (In the SOW, EPA acknowledges that RI/FS field work is substantially complete for OU 2 based upon Troy’s prior work);
  - Recommendation 16: Provide financial incentives in the form of reduced oversight to PRPs who perform timely work (requested above); and
  - Recommendation 21: Integration of site redevelopment into cleanup (the approach embodied in the SOW is intended to ensure that its existing operating facility will continue to operate).

The remediation of Troy’s site can serve as a model to demonstrate the ability to speed remedy selection and implementation and achieve the principal objectives of the Task Force Report.