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**PUBLIC HEALTH SERVICES
ENVIRONMENTAL HEALTH DIVISION**

September 23, 2024

Chris Nichelson
Bret B. Bernard
MILAN REI X, LLC
701 South Parker St., Suite 5200
Orange, CA 92868

Sent via email: chris@milancap.com
bret@milancap.com

Subject: Stockpile Characterization and Data Validation Report for Stockpile H, dated June 19, 2024, located at Rio Santiago Disposal Site (6145 E. Santiago Canyon Road, Orange, CA (SWIS No. 30-AB-0472))

Dear Mr. Nichelson and Mr. Bernard:

The Orange County Health Care Agency, Environmental Health Division is the certified local enforcement agency (LEA) for Orange County, and authorized and obligated to enforce solid waste laws and regulations pursuant to California Public Resource Code (PRC) Sections 43209 and 45000 et seq., and Title 14 of the California Code of Regulations (14 CCR) § 18080 et seq. Pursuant to PRC Section 43200.5(b), in enforcing Part 4, 5 and 6 of Division 30 of the PRC and regulations that implement them, the LEA carries out a state function and thus its actions are independent from, and not subject to the authority of, the Orange County Board of Supervisors.

Leighton and Associates, Inc. (Leighton), a consultant for Milan REI X, LLC (Milan), submitted a report to the LEA that summarizes the lab analytical results of several soil samples collected from Stockpile H that is located at the Rio Santiago Disposal Site (6145 E. Santiago Canyon Road, Orange, CA (SWIS No. 30-AB-0472)) (Site). Leighton submitted this report on behalf of Milan pursuant to Section 5.5 of the Stipulated Notice and Order (SNO) between the LEA and Milan, effective June 16, 2022. Section 5.5 of the SNO states, as follows:

Milan shall conduct analytical investigation/testing of each of the stockpiles labeled under Subsection 5.2. The scope of the investigation/testing shall include, at a minimum, testing for the presence of the following contaminants: Total Petroleum Hydrocarbons (EPA Method 8015), polycyclic aromatic hydrocarbons (EPA Method 8310), volatile organic and semi-volatile organic compounds (EPA Method 8260/8270 full scan analysis), heavy metals (EPA Method

6010B and 7471A), pesticides (organochlorine and organophosphorus, EPA Method 8081A or 8080A and 8141A), herbicides (EPA Method 8151A), PCBs (EPA Method 8082 or 8080A), asbestos (EPA Method 600/R93-1 1 6 or CARB 435), and pH.

Leighton conducted the aforementioned Stockpile H analytical testing pursuant to an approved workplan by the LEA, dated April 2023. The workplan was approved pursuant to Section 5.5.1 of the SNO, which, among other things, requires that the workplan must include “[t]he scope of the analytical investigation/testing, including the screening levels for testing for the presence of any contaminants specified in this [Section 5.5], above.” Leighton’s approved workplan included the “May 2022 USEPA Regional Screening Levels, San Francisco Bay Area Regional Water Quality Control Board (RWQCB) Environmental Screening Levels, and supplemental data provided by the State Department of Toxic Substances Control’s (DTSC) Human Health and Ecological Risk Assessment (HERO) Notes” as the standards for screening levels for testing for the presence of any contaminants specified in Section 5.5 of the SNO.

Leighton’s Report Summary

Leighton report estimates Stockpile H to consist of approximately 26,100 cubic yards of material in volume, and it references the “Fusco Engineering, September 2022,” report as support for this estimate.

The report notes that Leighton advanced four (4) soil borings (i.e., SPH01 through SPH04), the total depths of these borings ranged from 36 to 45 feet below the stockpile surface (bss), and it collectively collected 38 soil samples from Stockpile H.

The report describes Stockpile H to generally consist of clean soil, suitable as a source for use in a “fill” operation at the Site. The report references the “Ginter & Associates, March 2022” as support for this conclusion. The report further states that the composition of Stockpile H generally consists of soils (i.e., sands, silty sands, and gravel) based on field observations encountered in the borings during drilling activities by Leighton.

The report states that the analytical test results of the soil samples from Stockpile H indicate that the soil material contained in Stockpile H is non-hazardous. The report’s conclusion in this respect is based on the waste characterization analyses performed on select soil samples from Stockpile H.

The report concludes that the majority of Stockpile H is “suitable for residential use and proposes.” Leighton proposes in the report to conduct additional targeted step-out borings to delineate areas of the Stockpile H material that do not meet “applicable regulatory residential use criteria.”

The LEA’s Response

The LEA has discussed Leighton’s report with the Santa Ana Regional Water Quality Control Board (Water Board) and the Department of Resources Recycling and Recovery (CalRecycle)

and conducted an independent review of the report. Based on the LEA's review of the analytical results from Stockpile H and discussion with the Water Board and CalRecycle, the LEA has concluded and hereby notifies Milan that Milan may not use Stockpile H for residential use (as stated in the subject report) in an Inert Debris Engineered Fill Operation (IDEFO) or any other fill operations conducted at the Site, Mabury residential development located immediately north of the Site, and/or the lot located across Santiago Canyon Road (APN 379-451-24) in connection with residential development/structures/improvement, etc. The LEA's conclusion is based on the following considerations.

Section 5.5.4 of the SNO states, in part, as follows:

Milan shall submit to the LEA ... a report regarding the results and findings of the investigation/testing ... The report shall be consistent with the scope of the workplan approved by the LEA, and shall include supporting documents, including the original sampling results analyzed and reported by a state certified laboratory (as opposed to Milan transferring or populating the results on its own/consultant's spreadsheet/table), to substantiate the report's findings and conclusions.

Section 5.5.6 of the SNO then goes on to state, in part, that "if upon review of the report the LEA determines that the results of the analytical investigation/testing reasonably indicate the presence of any contaminants as specified in this Subsection 5.5, above, in the stockpile or part thereof above the screening levels set forth in the workplan in instances requiring action, the LEA shall notify Milan accordingly." Based on LEA's review of Stockpile H analytical testing report, the LEA has determined that contaminants as specified in Section 5.5 of SNO present in Stockpile H are "above the screening levels set forth in the workplan in instances requiring action."

1. The LEA's review of the test results revealed that select soil samples from all four (4) borings (i.e., SPH01-25', SPH01-45', SPH02-25', SPH03-15' and SPH04-15') do not meet DTSC-recommended screening levels and USEPA regional screening levels for residential soil.
2. In accordance with the approved workplan, Leighton collected the soil samples from Stockpile H in accordance with the "DTSC's Information Advisory on Clean Imported Fill Material Guidelines, dated October 2001" (DTSC Guidelines). See <https://dtsc.ca.gov/information-advisory-clean-imported-fill-material-fact-sheet/>. This DTSC Guidelines state that "should contaminants exceeding acceptance criteria be identified in the stockpiled fill material, that material will be deemed unacceptable, and new fill material will need to be obtained, sampled, and analyzed." The LEA's review of Leighton's report revealed that the contaminants specified in Section 5.5 of the SNO exceeded "acceptance criteria identified" in Stockpile H proposed by Leighton to be used as fill material at the Site for residential use. Accordingly, the material contained in Stockpile H is "deemed unacceptable, and new fill material will need to be obtained, sampled, and analyzed" in connection with residential use.

3. In its report, Leighton proposes to conduct additional targeted step-out sampling to delineate those specific areas in Stockpile H that do not meet the applicable screening criteria for residential use. Based on the LEA's review of Figure 3 of Leighton's report, the analytical results from SPH01-25', SPH01-45', SPH02-25', SPH03-15' and SPH04-15' show that there is no correlation or consistency with depth, type, and amount of the contaminants found within Stockpile H and that contaminants that may pose risk to human health are likely present throughout the pile and cannot be effectively remediated. Therefore, the LEA does not agree that contaminant exceedances can be treated as a release. This is because the source of the contamination is unknown, there are multiple possible sources for the soil in Stockpile H, and the contamination is not localized to one specific area.
4. The supporting lab analytical data included in Leighton's report indicates that the Enthalpy Analytical minimum testing limits were set above the recommended screening levels for residential soil (for certain analytes) for the majority of the soil samples due to dilution to reduce interference with the analytical test methods. For example, the DTSC screening level for Toxaphene (a pesticide analyte analyzed by EPA Method 8081A) for residential use is 450 mg/kg, however, the laboratory that conducted the testing and analyses set the reporting limits at 490 mg/kg and 1,000 mg/kg for soil samples in SP-H-Bridge-1 and SPH-01-25', respectively. The explanation for the elevated limits in the lab report is that they are due to the necessary dilutions based on the color of sample extract and/or viscosity that were used as indicators of possible matrix interference. However, the LEA does not agree with this approach and testing methodology. Instead, the LEA's position is that appropriate procedures as set forth in EPA Method for each respective analytes must be applied during the laboratory testing of the samples obtained from Stockpile H to ensure laboratory testing is completed in accordance with the approved workplan and Section 5.5 of the SNO. Please note, Stockpile H was sampled between January 24, 2024, and February 26, 2024, and the LEA received the analytical results for Stockpile H on June 19, 2024. Therefore, the laboratory holding time to reanalyze the soil samples within the recommended screen limits has expired.
5. Leighton's report also indicates that arsenic was detected in soil at a concentration of 42 mg/kg at SPH01-45'. This shows that arsenic detected exceeded the DTSC background concentration of 12 mg/kg. The SPH01 boring was the deepest sample collected (bottommost sample) drilled to a depth of 45 bss. Based on this result, please note that any additional subgrade borings underneath Stockpile H may need to be readjusted based on the soil lab results to determine if found contaminants leached from Stockpile H into the ground below.

Section 5.5.6 of the SNO also provides, in part, as follows:

Within 60 calendar days of the LEA's notification, Milan shall develop a workplan that describes the safe removal of the contaminated stockpiles or the contaminated parts thereof above screening levels in instances requiring action, including all reasonably necessary timelines for accomplishing the removal. The LEA shall review the workplan and, within 60 calendar days, approve or reject with comments regarding any deficiencies. In the event of noted deficiencies, Milan shall revise the workplan based on LEA's comments, but no later than 45 calendar days

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from the date that Milan receives the LEA's comments. The LEA shall not unreasonably withhold approval of a final workplan for the removal of contaminated stockpiles. Upon approval by the LEA, Milan shall implement the final approved workplan in accordance with the plan's requirements and timelines.

Based on the foregoing, please submit to the LEA a workplan that describes the safe removal of the Stockpile H off the Site, including all reasonably necessary timelines for accomplishing the removal.

If you have any questions, please contact Dan Weerasekera by phone at (714) 433-6255 or by email at dweerasekera@ochca.com.

Sincerely,

Dan Weerasekera
Hazardous Materials Specialist
Solid Waste Local Enforcement Agency
Environmental Health Division

Soheil Afshari
Senior Civil Engineer
Solid Waste Local Enforcement Agency
Environmental Health Division

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