

## **PUBLIC NOTICE**

### **ENVIRONMENTAL PROTECTION**

### **CONTAMINATED SITE REMEDIATION & REDEVELOPMENT PROGRAM**

**Notice to Receive Interested Party Comments on proposed Modifications to the Direct Oversight Requirements for the BCS Associates Site at 1437 East State Street in Hamilton Township, Mercer County, Department Program Interest Number G000009743.**

**Take notice** that the New Jersey Department of Environmental Protection (the “Department”) hereby gives notice of proposed modifications of the requirements for Direct Oversight under N.J.S.A. 58:10C-27c. and N.J.A.C. 7:26C-14.2(b). The Department is providing public notice of the proposed modifications in accordance with the Site Remediation Reform Act (SRRA) at N.J.S.A. 58:10C-27.g.(2) and upon the determination that the adjustments set forth herein are in the public interest and protective of public health and safety and the environment.

The property referenced above is in Direct Oversight because the parties responsible for conducting the referenced remediation have violated one or more statutory, mandatory, and/or expedited site-specific remediation timeframes established pursuant to the SRRA (N.J.S.A.58:10C-1 et. seq). Specifically, failure to submit the remediation action report by the mandatory timeframe of May 6, 2023. To address this violation and demonstrate adjustments to Direct Oversight are in the public interest and protective of public health and safety and the environment, Cherokee Realty III Limited Liability Company and 1437 East State Street LLC (Ordered Parties) have agreed to (a) return to compliance by retaining a Licensed Site Remediation Professional (LSRP), (b) submit a Public Participation Plan, (c) submit an LSRP certified Remediation Cost Review, (d) execute an Administrative Consent Order (ACO) and (e) post a Remediation Funding Source (excluding a Self-Guarantee) to financially guarantee the completion

of the cleanup within the timeframes established pursuant to an ACO. In addition, the Ordered Parties have agreed to pay a penalty to resolve past remediation timeframe violations. Under the terms of the ACO the following proposed adjustments to Direct Oversight would be made:

- 1) Additional proposed Direct Oversight adjustments are earned as follows:
  - a) The Ordered Parties may proceed with the remediation without prior Department approval;
  - b) The Ordered Parties may pay annual remediation fees in lieu of Direct Oversight costs;
  - c) The Ordered Parties would not be required to submit a Feasibility Study;
  - d) The Ordered Parties would not be required to submit a Direct Oversight Summary Report; and
  - e) The LSRP retained by the Ordered Parties may select the protective remedy, rather than the Department doing so.
- 2) The Remedial Action Report shall be submitted by October 31, 2028, with no extension.

Should the Ordered Parties fully comply with the terms of the ACO, additional adjustments to Direct Oversight under #1 above may be granted, allowing the case to proceed in a manner consistent with the intent of the SRRA and the Licensed Site Remediation Professional Program with the exception that the Ordered Parties shall continue to post a Remediation Funding Source. The Remediation Funding Source is based on an Annual Remediation Cost Review certified by an LSRP and is required until the remediation is completed with the LSRP retained to complete the remediation issuing either (a) an unrestricted use Response Action Outcome (RAO) or (b) either a

limited restricted use or restricted use RAO that includes requirements to comply with an approved Remedial Action Permit.

Should the Ordered Parties fail to comply with the proposed adjusted Direct Oversight terms of the ACO, the Ordered Parties would have agreed as conditions of the ACO (a) that the terms of compliance revert back to full compliance with all provisions of Direct Oversight, (b) to pay stipulated penalties, (c) that the Department may draw down on the Remediation Funding Source to conduct the cleanup, and (d) that the Department may enforce the ACO in Superior Court as a final order.

Based on the ACO terms and no known impacts to public health at this time, the Department is making a determination that this proposed Direct Oversight modification is in the public interest and protective of public health and safety. With the Ordered Parties agreeing to the proposed terms and with a financial commitment established as a Remediation Funding Source, Department resources are best utilized by allowing this matter to proceed without direct Department oversight and instead under an LSRP who is obligated to ensure the remediation being conducted is protective of public health and the environment.

In accordance with the SRRA at N.J.S.A. 58:10C-27.g.(2), the information noted above serves as the Department's written determination of and rationale for the proposed modifications to the requirements of Direct Oversight. The action set forth herein shall not be effective until at least 60 calendar days from the date of this notice.

Nothing in this public notice affects Cherokee Realty III Limited Liability Company's and 1437 East State Street LLC's potential liability and obligations to the State Trustee, the Department or its Commissioner regarding natural resource injuries or damages.

A copy of the Department's files concerning the Site is available for review by contacting the Office of Record Access, NJDEP, PO Box 420, Mail Code 401-06Q, Trenton, NJ 08625-0420 or via e-mail at [records.custodian@dep.nj.gov](mailto:records.custodian@dep.nj.gov).

Interested persons may submit written comments on the proposed adjustments to Direct Oversight to Joseph LaPlaca, Enforcement Manager, NJDEP, Contaminated Site Remediation & Redevelopment Program, Bureau of Enforcement and Investigations, 401 East State Street, PO Box 420 - Mail Code 401-06U, Trenton, NJ 08625-0420 or electronically at [Joseph.LaPlaca@dep.nj.gov](mailto:Joseph.LaPlaca@dep.nj.gov).

All comments must be submitted within 30 calendar days of the date of this public notice. The Department will consider all comments received and may decide to withdraw or withhold consent to the proposed adjustments to Direct Oversight if comments disclose facts or considerations that show that the adjustments to Direct Oversight are inappropriate, improper, inadequate, or not protective of public health and safety and the environment.

The action set forth herein shall not be effective until at least 60 calendar days from the date of this notice.