



Metropolitan
Transportation
Authority

One Gateway Plaza
Los Angeles, CA
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MTA BOARD
OCTOBER 24, 2002

SUBJECT: ASSUMPTION OF USG ENVIRONMENTAL LIABILITY

ACTION: ACCEPT USG'S ASSIGNMENT OF ENVIRONMENTAL OBLIGATIONS AT THE GIBSON ENVIRONMENTAL, INC. SITE

RECOMMENDATION

Assume and authorize payment of Union Station Gateway's ("USG's") financial obligations related to the remediation of the Gibson Environmental, Inc. Site in Bakersfield, California.

ISSUE

USG, a non-profit public benefit corporation, was created by the MTA and Catellus Development Corporation to construct the MTA Headquarters Building, and the adjacent transit plaza, parking facility and entrance to Union Station. Having successfully completed its purpose, USG elected on October 10, 2002 to dissolve and wind up its affairs. Before USG can be dissolved and its remaining assets returned to MTA, the USG Board must either pay or provide for the payment of all corporate debts or liabilities, including its environmental obligations at the Gibson Site.

OPTIONS

The MTA may decline USG's delegation and assignment of environmental obligations. This option is not recommended because of administrative costs in maintaining USG beyond the successful completion of its purpose. USG's environmental obligations are project construction costs properly chargeable to MTA. Therefore, since MTA funds will be used to satisfy USG's share of clean up costs at the Gibson Site, it makes sense to dissolve USG, with MTA assuming and directly paying USG's environmental obligations.

FINANCIAL IMPACT

The expenses incurred to date of \$139,650 will be funded by USG's FY03 capital budget. Staff will need to identify a funding source for future expenses assumed by the MTA for the environmental remediation. At this time, the potential costs of those assessments are unknown.

BACKGROUND

On a six-acre parcel in Bakersfield, from June 1987 to October 1995, Gibson Environmental operated a facility used primarily for oil storage and treatment. It also received contaminated soils. Many parties, including the Southern California Rapid Transit District and the Los Angeles County Transportation Commission, lawfully sent liquid and/or solid waste to the Site during that time frame. During construction of the MTA Headquarters, parking structure and transit plaza in 1993-1994, USG contributed 34,185 tons of solid waste to the Site.

After Gibson ceased operations, it became insolvent, and on November 9, 1999, the California Environmental Protection Agency's Department of Toxic Substances Control ("DTSC") issued a remedial action order to 26 potential responsible parties who were considered by DTSC to be the main contributors to the waste at the Site. DTSC acted as a result of the release of hazardous substances at the Site, which pose an imminent and substantial endangerment to the environment.

The Group began clean-up work on January 17, 2000. Initial work focused on site security and liquid removal from the above-ground storage tanks. To date, approximately 740,000 gallons of liquid and 1,750 tons of sludge have been removed from the Site. All tanks have been removed. DTSC has ordered several additional work plans, including plans for public participation, soil pile stabilization and stormwater drainage, tank demolition and soil pile characterization. The Group is currently developing or has completed those plans.

USG was not named in this order, most likely because DTSC reviewed a limited sub-set of documents which did not identify USG. The Group has finished reviewing a much larger set of documents revealing the sources of the waste found at the Site. These documents identify USG as a substantial contributor of solid waste. On a percentage basis, USG is responsible for 11.349% of the solid waste generated by entities participating in the cleanup of the Gibson Site.

Current Group members have been assessed for cleanup costs in excess of \$6 million. New members are being asked to pay an entry fee, based on their pro rata share of cleanup costs attributable to liquids and/or solids, to put them on an equal footing with current members. Entry fees from new members will be used to fund future remedial work at the Site, and all members' contributions will be separately accounted for and reconciled to ensure that each member pays its pro rata share of the total cleanup cost. USG's entry fee, \$139,650.18, is based on its share (11.349%) of response costs (\$1,230,506.60) attributable to solid waste generators. Since USG did not contribute liquid waste to the Site, it is not being

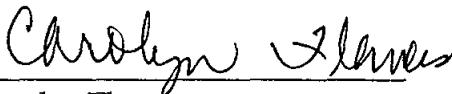
assessed any portion of the \$5+ million in costs incurred by liquid waste generators.

As a generator of hazardous waste, USG is strictly, jointly and severally liable for the cost of remediation when its waste is, or threatens to be, released into the environment at a disposal site. While USG did not own the real property from which the contaminated soil was excavated, it is nevertheless legally responsible for the waste as a generator. Moreover, it appears that USG has no clear right to seek indemnification from the property owners (Catellus and the City of Los Angeles). Therefore, USG is potentially liable for at least its proportionate share of the solid waste cleanup costs at the Site.

DTSC has reserved the right to take appropriate enforcement actions against parties who do not join the Group. To avoid DTSC enforcement actions or lengthy and expensive lawsuits brought by Group members for contribution at this Site, USG accepted on October 10, 2002 the invitation to join the Group and pay its proportionate share of cleanup costs to date in the amount of \$139,650.18. Future cleanup costs attributable to USG are unknown as Group representatives are still negotiating with DTSC regarding the scope of further remediation activities at the Site.

Under California law, before USG can dissolve and return its remaining assets to MTA, the USG Board must either pay or provide for the payment of all corporate debts or liabilities. Thus, at its October 10, 2002 meeting, the USG Board delegated and assigned to MTA, subject to its approval and assumption, USG's managerial and financial responsibilities for the cleanup of the Gibson Site on an on-going basis.

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