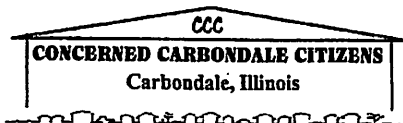


Request for City Council Action

Date: February 11, 2014

Agenda Section: Special Report No. 4		Originating Department: City Manager's Office		
Item: City of Carbondale's Response to Questions Posed on December 3, 2013, by the Concerned Citizens of Carbondale regarding the Application for a Special Use Permit by Brightfields Development, LLC for property located at 1555 North Marion Street. No. 4.1		Approved:		
<p>Background:</p> <p>Brightfields Development LLC, submitted an application for a Special Use Permit to construct a solar array on property located at 1555 North Marion Street. At the October 8, 2013, City Council meeting, the Council voted to “defer action on the application until a minimum of two meetings could be held on the northeast side of Carbondale within sixty days with representatives from Beazer, Brightfields, the Illinois EPA and the City”. At the December 3, 2013, City Council meeting, the Concerned Citizens of Carbondale submitted a series of questions as requested by members of the City Council. In a letter dated December 10, 2013, Brightfield's requested that the City temporarily postpone any further action on its application.</p> <p>The City (in conjunction with Brightfield's, Beazer East and the USEPA) have completed a review of the questions and now provide responses to the questions posed by the Concerned Citizens of Carbondale. Copies of the responses have been mailed to representatives of the Concerned Citizens of Carbondale. The two meetings referenced above have not been scheduled but will occur on dates to be determined, likely in March or April 2014. Public notice will be provided when the meetings have been scheduled.</p> <p>Recommended Action:</p> <p>It is recommended that the City Council accept and place on file the City of Carbondale's Response to Questions Posed on December 3, 2013, by the Concerned Citizens of Carbondale regarding the Application for a Special Use Permit by Brightfield's Development, LLC for property located at 1555 North Marion Street.</p>				
Engineering Approval Obtained	Finance Approval Obtained	Legal Approval Obtained	Approval Obtained	Manager's Approval Obtained
Council Action: Motion by _____ 2nd by _____ to _____				



**CONCERNED CARBONDALE CITIZENS' INTERROGATORIES/
QUESTIONS Requested By And Addressed To The CARBONDALE CITY COUNCIL**

In response to, and in compliance with the City of Carbondale's City Council's recent request for questions from the Concerned Carbondale Citizens (CCC), we hereby submit the following questions/interrogatories, listed below.

The CCC requests that each city council member be thorough when responding to these questions, in consideration of the sensitive subject matters currently being discussed.

QUESTIONS

1. What is/are the reason(s) that the Carbondale City Council is not allowing the toxic waste site to be cleansed as thoroughly as possible, in accordance with EPA standards/regulations: an estimated eight years of continuous sterilization work facilitated through aggressive maintenance?
2. What is the primary motivation for the Carbondale City Council to hastily approve the Special Use permit for a company, Brightfields (Development, LLC), to build a commercial establishment:
 - (a.) over land saturated with toxic waste;
 - (b.) in close proximity to residential property; and
 - (c.) in a predominantly African-American community that has been exposed to long-term toxic waste over the previous century that culminated in widespread adverse health effects, and deaths, in association with the former Kopper's Tie Plant; prior to the EPA inordinately late intervention?
3. Has the Carbondale City Council considered encouraging Brightfields, or any other business entity, to keep its structural facility's distance not less than a mile away from the surrounding community, from establishment to production and delivery of the end-product?
4. With respect to the two allotted meetings for the Concerned Carbondale Citizens, has the Carbondale City Council made any attempts to facilitate securing a nearby public establishment, such as the Eurma C. Hayes Community Center, within the city of Carbondale, to further facilitate discussions pertaining to concerns of residents adjacent to the site?

5. With respect to the two allotted meetings for the Concerned Carbondale Citizens, has the Carbondale City Council made any attempt to schedule these two meetings in a timely manner, as previously discussed?
6. What statutes or regulations has the Carbondale City Council used to guide its decision-making with respect to the special use permit currently being discussed?

Please be precise when citing regulations/statutes/laws, to include page and paragraph numbers.

- (a) What percentage of the entire above-entitled/referenced document have you read?
 - (b) Since when, month and year, have you been familiar with the existence of the above-entitled/referenced document?
 - (c) How many hours per week, on average have you spent reading the above-entitled/referenced document? Please include the date that you began reading the document.
7. How many expert sources do you rely on for information pertaining to the toxic waste at 1555 N. Marion Street?
 - (a) Please list all of the experts that you have relied on with respect to this toxic waste subject matter? Please list the names, titles, and organization(s) they are affiliated with.
 - (b) How many years of expertise do the sources you referenced above, in question 6(a), have?
 8. What other sources, such as published research data, have you relied on over the course of your decision-making with respect to the current environmental toxic waste at said site? Please state the title and publication that you referenced in this response.
 9. According to EPA observations, and in accordance with the EPA report dated July 16, 2013, contaminated soil at the former Kopper's Tie Plant is protected by a cover that has the potential to crack, tear or isolate, and therefore allow contaminants to escape. Based on this research data, shouldn't the Carbondale City Council be opposed to approving the special use permit for Brighfields?

NOTE: The questions contained herein have either been asked previously, or are supplementary to those questions/ interrogatories asked by the community at public meetings; including those presented to Brad Cole's administration. The CCC hereby reserves the right to amend the list of questions contained herein, as necessary.



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The City of Carbondale's Response to Questions Posed by the Concerned Citizens of Carbondale During the December 3, 2013 City Council Meeting

1. What is/are the reason(s) that the Carbondale City Council is not allowing the toxic waste site to be cleansed as thoroughly as possible, in accordance with EPA standards/regulations: an estimated eight years of continuous sterilization work facilitated through aggressive maintenance?

Response 1

The suggestion that the City *"is not allowing the toxic waste site to be cleansed as thoroughly as possible, in accordance with EPA standards/regulations"* is not accurate. The City has not taken any action that would preclude, or in any way interfere with, the United States Environmental Protection Agency's (USEPA) ability to require environmental remediation activities at the Former Koppers Wood Treating Site (Former Koppers Site) in accordance with its standards and regulations. USEPA has stated to the City that the completed and ongoing environmental remediation activities conducted at the Former Koppers Site are in compliance with USEPA standards and regulations, and are consistent with the environmental remediation approaches utilized at other sites throughout the country.

The City is unable to determine the basis for this question's concluding statement reading *"an estimated eight years of continuous sterilization work facilitated through aggressive maintenance"*. However, it should be noted that the current Site owner, Beazer East, Inc. (Beazer), is continuing to conduct operation, maintenance and monitoring activities at the Site, and USEPA has indicated that such obligations will continue into the foreseeable future.

The City Council will continue to rely on USEPA and other Federal and State regulatory agencies regarding environmental and public health matters at the Site. Citizens are free to contact USEPA regarding any questions or concerns about the Site. Ms. Carolyn Bury is the USEPA's Project manager for the Site, and her contact information is found below:

Carolyn Bury
U.S. EPA Project Manager
Land and Chemicals Division
312-886-3020
bury.carolyn@epa.gov

U.S. EPA toll-free: 800-621-8431, 8:30 a.m. - 4:30 p.m., weekdays

U.S. EPA Region 5
77 W. Jackson Blvd.
Chicago, IL 60604-3590

2. What is the primary motivation for the Carbondale City Council to hastily approve the Special Use permit for the company, Brightfields (Development, LLC), to build a commercial establishment:
 - (a). over land saturated with toxic waste;
 - (b). in close proximity to residential property; and
 - (c). in a predominately African-American community that has been exposed to long-term toxic waste over the previous century that culminated in widespread adverse health effects, and deaths, in association with the former Kopper's Tie Plant; prior to the EPA inordinately late intervention?

Response 2

The City has not approved the Special Use Permit application submitted by Brightfields Development LLC (Brightfields) to construct a commercial solar facility on the Former Koppers Site. The City has been following its own Ordinances in response to Brightfields' Special Use Permit Application (Application) dated August 27, 2013. In accordance with the policies and procedures identified within Title 15, Chapter 6.8 of the Carbondale Revised Code, Brightfields' Application was first reviewed by the City's Planning Department and then forwarded to the Planning Commission for discussion and action. Carbondale's Planning Commission discussed Brightfields' Application at a Public Hearing during its September 18, 2013 meeting and voted to forward the Application to City Council for approval. Brightfields' Application was then brought before City Council for discussion and vote during the October 8, 2013 Council meeting. During this first opportunity for City Council to act on Brightfields' Application, several citizens raised questions and concerns about the Application. In response to those questions and concerns, the City Council voted unanimously to defer action on the Application until Brightfields held a minimum of two meetings on the northeast side of Carbondale to provide additional information to residents in the community close to the Site. In a letter dated December 10, 2013 Brightfields' requested that the City temporarily postpone any further action on its Application stating:

"Brightfields is presently working with Beazer East, Inc. ("Beazer"), the owner of the property, and USEPA to determine activities and milestones that will be necessary to develop the Project. These discussions will assist Brightfields in addressing questions raised by City residents and members of the Carbondale City Council. In order to allow those discussions to be completed, Brightfields is requesting that the Carbondale City Council temporarily postpone further consideration of Brightfields' Special Use Permit Application for approximately six months. Prior to requesting any further action by the Carbondale City Council, Brightfields will convene the two requested public meetings."

Specifically with regard to item a) above, when City Council does resume further consideration of Brightfields' Application it will be relying, in part, on USEPA's determination regarding the safety of placing a commercial solar facility on the Former Koppers Site. Based on the conceptual design information that has been provided to date, USEPA has stated its belief that a commercial solar facility is an appropriate use for the Site and will not reduce the effectiveness of any of the measures that have been used to clean up the Site. That input will be confirmed by City Council prior to any further action on the matter.

With regard to item b) above, City Council is bound by its own Ordinances concerning zoning, and setback requirements. Any use of the Former Koppers Site must comply with these Ordinances. Additionally, the preliminary plans presented to the City by Brightfields indicate that a green “buffer area” consisting of existing and/or new trees and shrubs will be provided along the southern portion of the property between the proposed solar panels and the residences south of the property.

Finally, Item c) above includes a number of assertions on which the City is in no position to comment. The City understands that sampling conducted within the community by USEPA, the City and Beazer has been reviewed by USEPA who has stated that the information collected does not indicate unacceptable environmental conditions within the community south of the Former Koppers Site. Additionally, the City is aware that the Agency for Toxic Substances and Disease Registry (ATSDR), in cooperation with the Illinois Department of Public Health (IDPH), conducted a Public Health Assessment in 2001. The ATSDR assessment concluded *“that current conditions at the former Koppers wood-treating facility do not threaten the health of nearby residents.”* City Council will continue to rely on USEPA and other Federal and State regulatory agencies regarding environmental and public health matters at the Site.

3. Has the Carbondale City Council considered encouraging Brightfields, or any other business entity, to keep its structural facility’s distance not less than a mile away from the surrounding community, from establishment to production and delivery of the end-product?

Response 3

City Council has not encouraged Brightfields, or any other business entity, to keep its facility away from the northeast community, or any other community within Carbondale, provided that its intended use is in conformance with the City’s zoning ordinances. The Former Koppers Site is zoned partly as General Industrial and partly as General Agriculture per the City’s current zoning designations. A commercial solar facility is considered a Special Use within these Zoning Districts. As discussed in Response 2 above, the City has been following its own policies and ordinances regarding Brightfields’ Application for a Special Use Permit to install a solar facility on the Former Koppers Site. If City Council were to approve Brightfields’ Application and issue a Special Use Permit for such a use, the construction of such a facility and any operations conducted on the property will need to be in conformance with any and all relevant City ordinances.

4. With respect to the two allotted meetings for the Concerned Carbondale Citizens, has the Carbondale City Council made any attempts to facilitate securing a nearby public establishment, such as the Eurma C. Hayes Community Center, within the City of Carbondale, to further facilitate discussions pertaining to concerns of residents adjacent to the site?

Response 4

As noted in Response 2 above, Brightfields is responsible for coordinating and conducting the two informational meetings stipulated by City Council when it voted on October 8, 2013 to defer any further action on Brightfields’ Application until such meetings occurred. The City understands that Brightfields intends to conduct its meetings at locations(s) that will be convenient for local community members to attend. In fact, Brightfields’ staff has indicated to City officials that Brightfields did endeavor to make contact with both the Eurma C. Hayes Community Center and the New Zion Baptist Church in an effort to plan the informational meetings, in recognition of the community’s desire to have the meetings at a

convenient location. However, no firm arrangements were made before Brightfields' issuance of its December 10, 2013 postponement request letter to the City. The City will encourage Brightfields to have at least one of the two informational meetings at the Eurma C. Hayes Community Center.

5. With respect to the two allotted meetings for the Concerned Carbondale Citizens, has the Carbondale City Council made any attempts to schedule these two meetings in a timely manner, as previously discussed?

Response 5

As noted in Responses 2 and 4 above, during the October 8, 2013 Council meeting, in response to questions and concerns raised by citizens, the City Council voted unanimously to defer action on the Brightfields' Application until Brightfields held a minimum of two informational meetings. Thus, it is Brightfields' responsibility to schedule and conduct the two subject informational meetings. Additionally, as noted in Response 2 above, Brightfields has recently requested that "...Carbondale City Council temporarily postpone further consideration of Brightfields' Special Use Permit Application for approximately six months. Prior to requesting any further action by the Carbondale City Council, Brightfields will convene the two requested public meetings." While the City does not know when the subject meetings will be held, City officials are aware that the Concerned Carbondale Citizens wish to have these meetings scheduled. Please be assured that the City Council will take no action regarding approval of Brightfields' Application for a Special Use Permit until the two meetings are held.

6. What statutes or regulations has the Carbondale City Council used to guide its decision-making with respect to the special use permit currently being discussed?

Please be precise when citing regulations/statutes/laws, to include page and paragraph numbers.

- (a) What percentage of the entire above-entitled/referenced document have you read?
- (b) Since when, month and year, have you been familiar with the existence of the above-entitled/referenced document?
- (c) How many hours per week, on average have you spent reading the above-entitled/referenced document? Please include the date that you began reading the document.

Response 6

The Carbondale City Council adopted the revised Zoning Code in April 2013. Prior to the adoption, the Carbondale Planning Commission held numerous meetings to discuss the proposed changes. The recommendation of the Planning Commission was then forwarded to the Carbondale City Council who likewise thoroughly reviewed the document prior to adoption.

As indicated in several Responses above, the only decision that the City Council has made with respect to Brightfield's Application is to defer any further consideration until additional public information meetings have been held by Brightfields.

As noted in Responses 2 and 3 above, the City's Zoning Ordinance (Title 15, Chapter 6) governs the review and approval process concerning all Special Use Permit applications submitted to the City,

including the Brightfields' Application. The City's Planning Department works with these Ordinances and guidelines on a daily basis, and City Council relies on the Planning Department's expertise and recommendations concerning all Special Use Permit applications. These Ordinances will be the basis for any decisions ultimately made by the Council with regard to Brightfields' Application.

With specific regard to the Brightfields' Application for a Special Use Permit to install a solar facility on the Former Koppers Site and any potential adverse effects that construction of such a facility may have on the clean-up activities previously completed there, City Council is relying on the expertise of USEPA. Brightfields has explained that its commercial solar facility would be constructed in a manner that would not affect the function of the cleanup measures that exist at the subject. The documents submitted by Brightfields with its Application explain that this objective would be accomplished in currently capped areas by installing solar panels that can be placed directly on the ground and held in place with paving blocks or similar ballast. In clean areas of the site, the panels would be installed on poles driven into the subsurface. Installing panels using these methods would not affect the function of the existing clean up measures. Brightfields also explained this approach during the July 16, 2013 Open House conducted by Beazer and Brightfields at the Former Koppers Site. To date, USEPA has continued to indicate that construction of Brightfields' proposed solar facility in the manner described in the Application will not adversely affect any of the completed clean-up actions and will not disturb any contaminated materials that remain at the Former Koppers Site.

7. How many expert sources do you rely on for information pertaining to the toxic waste at 1555 N. Marion Street?
 - (a) Please list all of the experts that you have relied on with respect to this toxic waste subject matter? Please list the names, titles, and organization(s) they are affiliated with.
 - (b) How many years of expertise do the sources you referenced above, in question 6(a), have?

Response 7

As noted in Responses 2 and 6 above, the City is relying on the USEPA's expertise pertaining to all environmental matters at the Former Koppers Site. USEPA has been working with Beazer to complete the environmental investigation, design and remediation activities at the Former Koppers Site under the federal government's Resource Conservation and Recovery Act (RCRA) program. USEPA employs trained environmental professionals to implement its RCRA program and will contract with supplemental environmental experts when necessary. Given the USEPA's statutory authority to implement the federal government's RCRA program, the City relies on the expertise of USEPA to make all final decisions regarding environmental matters at the Former Koppers Site. Note also that the IEPA has been involved in corrective action activities at the site since the 1980s and is given opportunity to review and comment on all project submittals.

However, the City does receive periodic updates from Beazer and USEPA regarding the environmental activities being conducted at the Former Koppers Site and has regularly reviewed documents associated with these activities. Additionally, in 2005 the City hired Hurst-Rosche to review a number of documents and to implement a soil sampling program within the residential community located south of the Former Koppers Site. Hurst-Rosche is an environmental consulting firm located in Hillsboro. Following their review of Site-related documents and implementing a soil-sampling program, Hurst-Rosche concluded "based on the activities completed within the scope of work for this project and information gathered therefrom, it is our professional opinion that appropriate corrective action

measures have been selected and appropriate procedures are being followed to address contamination present at the former Koppers Wood Treating facility in Carbondale.” A copy of the complete opinion report is on file with the City and available for public review.

8. What other sources, such as published research data, have you relied on over the course of your decision-making with respect to the current environmental toxic waste at said site? Please state the title and publication that you referenced in this response.

Response 8

As stated in numerous Responses above, the City is relying on the expertise of the USEPA and other Federal and State regulatory agencies with regard to environmental matters at the Former Koppers Site.

9. According to EPA observations and in accordance with the EPA report dated July 16, 2013, contaminated soil at the former Kopper’s Tie Plant is protected by a cover that has the potential to crack, tear or isolate, and therefore allow contaminants to escape. Based on this research data, shouldn’t the Carbondale City Council be opposed to approving the special use permit for Brightfields?

Response 9

The City believes that the USEPA report being referenced in this question is a July 2013 Newsletter issued by USEPA. As explained in the Newsletter, USEPA issued the Newsletter in-part to address several questions raised by citizens attending a May 22, 2013 public meeting concerning the Former Koppers Site that indicated some residents believe that there is still a risk of exposure to contamination because all contaminated materials present at the Site were not removed to an off-site landfill, but are being contained and managed in-place. So, the Newsletter explained that the clean-up strategy used at the Former Koppers Site eliminates exposure to contamination now and into the future.

The Newsletter states “EPA selected a remedial strategy of on-site management of clean-up wastes including soil, sediment and debris at the Koppers site. This strategy is used at sites across the country. Additionally, liquid wastes are being extracted from the ground and taken off-site for disposal or recycling.” Among many other items of information the Newsletter provided, USEPA explains “...about 37 acres of contaminated soils are contained beneath a low- permeability cover. Some of the cover areas include a high-density polyethylene liner for additional isolation. All of the covers have one foot of soil, and grass or roadway surfaces. Covers do not destroy or remove contaminants. Instead, they isolate them, keep the soil in place, and prevent people and wildlife from coming into contact with contaminants. A cover is effective as long as it does not erode, develop holes or cracks, and stays in place. Regular inspections will continue to be required at Koppers to make sure that weather, plant roots, wildlife or humans have not damaged the soil cover.”

So while EPA’s Newsletter mentions the potential for the cover to erode or crack, the Newsletter goes on to state the USEPA requires continued inspections of the cover to make sure erosion or cracking does not take place. Additionally, as mentioned in the Response 1 above, the City understands that the current Site owner, Beazer, is continuing to conduct operation, maintenance and monitoring activities at the Site, and USEPA has indicated that such obligations will continue into the foreseeable future. Thus, contaminants are not expected to escape from the covered areas.

Further, as explained in Response 6 above, USEPA has continued to indicate that construction of

Brightfields' proposed solar facility in the manner described in their Application for a Special Use Permit will not adversely affect any of the completed clean-up actions and will not disturb any contaminated materials that remain at the Former Koppers Site. City Council will confirm USEPA's position regarding all environmental issues related to Brightfields' proposed commercial solar facility before taking any further action on Brightfields' Application.