

Georgia Department of Natural Resources

Environmental Protection Division – Land Protection Branch

2 Martin Luther King Jr., Dr., Suite 1054, Atlanta, Georgia 30334

(404) 657-8600; Fax: (404) 651-9425

Richard E. Dunn, Director

July 28, 2016

Toyoko Inn Atlanta, LLC
c/o Mr. Bruce White
One North Wacker Drive
Suite 4400
Chicago, IL 60606-2833

Re: VRP Progress Report # 1
HSI Site Number: 10899
90-94 Forsyth St. and 85 Luckie St.
a.k.a., Toyoko Inn Atlanta, LLC
Tax Parcel ID # 14 007800120574
Atlanta, Fulton County

Dear Mr. White:

The Environmental Protection Division (EPD) has received the June 16, 2016 Voluntary Remediation Program (VRP) Progress Report for the 90-94 Forsyth St. and 85 Luckie St. facility, in Atlanta, Fulton County, submitted by NewFields Atlanta, LLC (NewFields) on behalf of Toyoko Inn Atlanta, LLC (Toyoko Inn Atlanta). After completing its review of the report, EPD has prepared the following comments:

1. Rather than refer the reader outside the document for basic matters as done in Section 1, Introduction, Toyoko Inn Atlanta should provide a short executive summary of the site's history, previous investigations, delineation, and the evaluation of exposure pathways and potential receptors in the discussion.
2. In Section 3, Schedule, Toyoko Inn Atlanta states,

“Subsequent annual inspections for pavement breaches will be conducted at the beginning of spring each year (late March/early April) so that any deterioration caused by the winter weather will be identified in a timely manner.”

In a footnote to the term “pavement breaches”, Toyoko Inn Atlanta clarifies significant cracks are considered to be any cracks in the asphalt greater than 1 inch in width or 3 feet in length. However, EPD is concerned that smaller cracks and pavement conditions, especially where the Pavement Condition Index (PCI) scores less than 70, could provide water infiltration pathways through the cap.

Crack sealing and filling are generally maintenance operations, though it is sometimes done in conjunction with pavement rehabilitation projects. Most maintenance crack sealing is done on the narrow cracks, but over 6 mm (¼”) in width, that appear within the first 3 years after construction.

Crack filling is done when cracks get wider than 25 mm (1"). Crack filling usually involves placing and compacting cold or hot mix asphalt. Sometimes the bottom of a crack may be filled with fine aggregates, then emulsified asphalt, then more aggregates then squeegeed smooth.

As mentioned in EPD's December 16, 2015 comment letter on the Application, EPD's observed deterioration of the asphalt cap, especially given the numerous and widespread alligator cracks and potholes, indicates that at a minimum, an overlay is likely necessary, with a major reconstruction possible. EPD recommended an Asphalt Institute or similarly qualified engineer be contacted for assistance to ensure the asphalt cap is upgraded to be adequate to function as an impermeable barrier and contain any contaminated soils.

3. There are a few minor changes that should be made to the Environmental Covenant:
 - a. It appears that Toyoko Inn Atlanta is using an older version of the Model Environmental Covenant than what is currently found on EPD's website¹. For instance, the proposed Environmental Covenant has the wrong address for the EPD.
 - b. The date that the property was conveyed from Selig Enterprises, Inc. to Toyoko Inn, LLC is missing, along with a map of the immediately surrounding area (Exhibit B).
 - c. The class of compounds (PAHs) detected in the sub-surface soils at the site is not defined as a "regulated substance" under the Georgia Hazardous Site Response Act, O.C.G.A. § 12-8-90 et seq., and the rules implementing the law (the HSRA Rules). Please list the actual regulated contaminants of concern detected in the sub-surface soils.
 - d. Activity and/or Use Limitation No. 4, Monitoring, calling for Toyoko Inn Atlanta to visually inspect the asphalt cap for cracks greater than one inch in width or three feet in length is insufficient to assure EPD that smaller cracks and pavement conditions will protect against water infiltration through the cap.
 - e. Activity and/or Use Limitation No. 5, Periodic Reporting, states that Toyoko Inn Atlanta will submit to EPD an annual progress report as specified in the January 2016 Revised Voluntary Remediation Program Application. More accurately, the owners shall inspect the property and applicable property instruments at least annually to ensure compliance with the Covenant. Annually, by no later than June 16th, commencing after a Compliance Status Report (CSR) has been approved by the EPD, the Owner shall complete and submit to EPD an Annual Property Evaluation Report. The report should include photographs of the property, document maintenance and inspection activities, certify non-residential use, and affirm whether or not the activity and use limitations in the covenant are being abided by.
 - f. Please revise to indicate that Toyoko is required to submit reports on a semi-annual basis. Also, EPD's December 16, 2015 letter approved the May 22, 2015 Application, not the application that was revised and submitted by Toyoko in January 2016.

¹ <http://epd.georgia.gov/sites/epd.georgia.gov/files/Uniform%20Environmental%20Covenant16.doc>

- g. Activity 10 has been removed but installation and maintenance of a permanent marker that denotes a Type 5 restriction is required pursuant to Section 391-3-19-.08(7)(b)4 the HSRA Rules. The language in the Model Environmental Covenant should be included in the covenant. (See Section 391-3-19-.07(10) of the HSRA Rules regarding criteria for Type 5 Standards.)
- h. In the Notices section, the address provided for Toyoko Inn Atlanta is the physical address of the site. EPD is not aware that mail for Toyoko Inn Atlanta can be delivered to that address. Please confirm or revise the address.
- i. Toyoko Inn Atlanta needs to sign as the Grantor and on a separate line as the Holder. Additionally, the signature pages of the proposed Environmental Covenant do not match the EPD's Model Environmental Covenant in that the signature page must have the Unofficial Witness signatures and notary signature and seal.
- j. Similar to Item 3a above, the signature page lacks the Unofficial Witness signatures and notary signature and seal that is found in the Model Environmental Covenant currently found on the EPD website.

The above listed comments must be addressed to EPD's satisfaction in order to demonstrate compliance with the provisions, purposes, standards and policies of the Act. EPD may, at its sole discretion, review and comment on documents submitted by Toyoko Inn Atlanta. However, failure of EPD to respond to a submittal within any timeframe does not relieve Toyoko Inn Atlanta from complying with the provisions, purposes, standards, and policies of the Act. Should you have any questions or concerns regarding this site, please contact Mr. Tom Brodell of the Response and Remediation Program at (404) 657-8600.

Sincerely,



David Brownlee
Unit Coordinator
Response and Remediation Program

cc: Michael Wild, NewFields (mwild@newfields.com)

File: VRP – 90-94 Forsyth St. and 85 Luckie St. # 10899