

Date: July 31st, 2021

TO: Town of Rico Board of Trustees  
FROM: Kari Distefano, Rico Town Manager  
SUBJECT: August 4th Board of Trustee's meeting

**Voluntary Cleanup Agreement with ARCO.**

I have included in this packet documents that address the potential voluntary cleanup agreement with ARCO. These documents include the following:

- 2020 Rico VCUP Funding Agreement Term Sheet
- The Draft VCUP Application
- The Draft Appendix D Work Plan
- Proposed Rico Land Use Code Appendix D

These documents include comments from myself, the two attorneys that have been working on these documents for the Town, Tom Bloomfield and Samantha Caravello, and ARCO. The comments from all parties can be seen in the sidebars of the documents. Members of the Board of Trustees have had a number of conversations about the funding agreement and are familiar with it.

The Draft VCUP Application is what will be submitted to the Colorado Department of Health and Environment (CDPHE) for their review and approval. Without CDPHE approval, cleanup cannot go forward.

Section 1 is a summary of work that has been performed since the 2004 VCUP application, the status of soil sampling, remediation and a summary of the proposed work.

Section 2 covers general information such as parcel ownership, property locations and sources of contamination.

Program inclusion is covered in Section 3. This section limits the VCUP to properties within the Town of Rico.

Section 4 describes the Environmental Assessment that was performed by Formation Environmental, L.L.C. Section 4 also describes existing soil conditions and geological characteristics that contribute to background lead levels which, are discussed in Section 4.5.2. In that section, there is also a list of previously conducted studies. Sampling methods that must conform with CDPHE standard are described in Section 4.5.3.

Section 5 describes the process by which the EPA and the CDPHE assess health risks that occur from ingesting lead. From that information they determined the remediation levels that are currently set at 1100ppm for residential uses and 1700ppm for non-residential uses. These level determinations are under review by the CDPHE since the EPA and CDC have updated levels of concern in blood from 10 micrograms per deciliter to 5 micrograms per deciliter.

Section 6 describes the proposed cleanup activities both on parcels and roads. I have included in this package a graphic depiction of the proposed cleanup on parcels. As detailed in the funding agreement, ARCO has agreed to provide technical and monetary support for landowners who own parcels with elevated lead levels. Section 6 also describes the record keeping that will be associated with the cleanup program.

Section 7 discusses scheduling. The hope is that agreement will be in place prior to the 2022 building season.

Specifics of the work described in the VCUP application are described in the work plan, which includes step by step documentation of work that will be conducted in this clean up effort.

As part of the VCUP, Institutional Controls will be adopted by the Town as a portion of the Town's Land Use Code. A copy of the proposed institutional controls is included in this packet as well as a graphic depiction of how they will work. Section 6 has a more detailed description of the soils management program that will ensure safe and responsible handling of contaminated soils. Section 6 also makes provisions for public outreach.

I have been involved in two conversations with representatives and consulting scientists from ARCO, the EPA and the CDPHE regarding remediation levels. They are in the process of reviewing remediation action levels, but it may be some time before the CDPHE, who will have the final say in this matter, have come to a conclusion. The Town's attorney has proposed that the VCUP application be submitted to the CDPHE without explicitly stating remediation levels. That would allow the State to review the application while remediation levels are being determined and thus expedite the process.

“Appendix D – Phase 1 VCUP Work Plan (Version 1.4) details work that will take place during cleanup activities including sampling methodologies and remediation activities on parcels and roadways. This document is relatively easy to read and provides a roadmap to the Soil Management Program described in the VCUP application.

Rico Land Use Code Appendix D is what the Town would adopt into the Rico Land Use Code should the VCUP be approved by the Board of Trustees. It reflects the Appendix D – Phase 1 VCUP Work Plan (Version 1.4) that detailed the way contaminated lots are remediated. An item that is still open for discussion is D, page 20 regarding P.U.D.s. ARCO has expressed reluctance to commit to funding remediation of large-scale developments but P.U.D.s can be designated on small parcels that are within the more developed areas of Town. The environmental officers that are mentioned in this document would be a contractor(s) funded by ARCO to oversee individual work plans and soil management.

A letter from concerned citizens was sent on July 1<sup>st</sup>, 2021, to Scott Sudweeks of the Agency for Toxic Substances and Disease Registry, Region 8 requesting investigation of soil contamination in Rico from that agency. The agency is involved, and they are in the process of investigating the claim. While it is difficult at this point to determine the outcome of this investigation, the immediate result is increased scrutiny from the EPA that will likely lead to pressure on both the Town and ARCO to engage in a cleanup agreement.

#### **Consideration of a Multi-year Agreement between the Town of Rico and the Rico Center.**

The Town is in the process of negotiating an agreement with the Rico Center regarding multi-year funding. This has been discussed by the Board in a prior meeting.