



**BACKGROUND AND HISTORY OF THE ERIE COKE SITE**  
**&**  
**QUESTIONS AND ANSWERS**

**Background and History of the Site**

The Erie Coke Corporation Property ("Site") is located at the foot of East Avenue in the City of Erie. The current owner of the Site is Erie Coke Corporation ("Erie Coke"). The Site consists of approximately 194 acres in total, of which approximately half of which are land and approximately half of which are submerged under water.

The Site has been used for industrial purposes since approximately 1833. It was operated as an industrial coke production facility from approximately 1925 to 2019. Coke is produced by baking coal at extremely high heat. The resulting product, coke, is then used as fuel in blast furnaces to smelt iron ore at steel mills.

Erie Coke has a long history of environmental law violations at the Site. Erie Coke ceased operations at the Site in December 2019. No business activities have occurred at the Site since December 2019.

Erie Coke has essentially abandoned the Site and is believed to be completely insolvent. Erie Coke has not filed for bankruptcy to date.

Initial investigative reports from the environmental agencies confirm what is already well-known in the Erie community -- the Site is heavily contaminated by a wide variety of hazardous materials. A preliminary Site Investigation Report dated July 2023 ("Site Investigation Report"), which was commissioned by the Pennsylvania Department of Environmental Protection ("PADEP"), outlines what is presently known regarding the current environmental conditions at the Site. That Report recommended and concluded that additional environmental assessment work needs to be conducted to more fully characterize the extent of the contamination at the Site. The complete PADEP Site Investigation Report dated July 2023 can be found at the following link:

[https://files.dep.state.pa.us/RegionalResources/NWRO/NWROPortalFiles/Erie\\_Coke/Erie\\_Coke-Site\\_Investigation\\_Report-Final\\_July\\_2023.pdf](https://files.dep.state.pa.us/RegionalResources/NWRO/NWROPortalFiles/Erie_Coke/Erie_Coke-Site_Investigation_Report-Final_July_2023.pdf)

As outlined in that Site Investigation Report, the Site remains heavily contaminated and requires a massive environmental clean-up effort, the specifics of which is still unknown. Only very limited initial clean-up activities have occurred since Erie Coke ceased operations at the Site in December 2019. Specifically, the United States Environmental Protection Agency ("USEPA") conducted an emergency limited "removal action" at the Site between September 2020 and November 2022 under the federal CERCLA or "Superfund" environmental statute. A "removal action" by USEPA is a limited initial response only to certain immediate threats from hazardous substances at a site when the contamination poses an immediate threat to human health and the environment. At the Erie Coke Site, USEPA's removal action involved removal and off-site disposal of certain hazardous wastes in tanks, piping, barrels, and other containers, as well as removal of certain waste piles at the Site. It did not address or include a site-wide in-depth environmental investigation or remediation of the remaining significant contamination present in the soil and groundwater or environmental hazards associated with structures.

In January 2022, PADEP formally designated the Site under the Pennsylvania Hazardous Sites Cleanup Act ("HSCA") (Pennsylvania's state "Superfund" environmental statute) as a site where releases and threats of releases of hazardous substances have occurred and continue to occur, and stated that PADEP would conduct additional environmental investigation at the Site.

The environmental agencies (PADEP and USEPA) have taken a number of enforcement actions against Erie Coke. Most recently, in November of 2022, Erie Coke was indicted by the federal government for criminal violations of federal environmental laws. Erie Coke has pleaded not guilty to these charges and currently awaits trial.

The Port Authority and the Redevelopment Authority have been in discussions with PADEP and USEPA regarding available options and potential planning for the long-term clean-up of the Site. The two local Authorities are committed to considering the viable options for proceeding in the near term and to including the public in the process.

## **Questions and Answers**

### **1. Why is the Port Authority involved in this process?**

The Port Authority is the adjoining landowner to the Site, on the north and east with Lampe Marina and the port facilities, and on the south/southeast with the East Avenue boat ramp. As such, the Port Authority has a direct interest in addressing the environmental hazards at the Site. Also, the Port Authority's already-existing long-term plans (such as its 2018 Master Development and Facilities Plan) call for the expansion of the existing port facilities to provide additional space for future port activities. Such expansion could be accommodated by a portion of the Site.

**2. Why is the Redevelopment Authority involved in this process?**

Remediation of blighted properties is part of the Redevelopment Authority's mission, and its staff has extensive experience in this area. The Redevelopment authority and its affiliated entities have a proven track record of acquiring contaminated industrial properties, attracting a variety of financial resources (primarily state and federal grants) to clean up such properties, and repurposing those properties for uses which are consistent with their environmental condition and community objectives. A good example of such activity is the Redevelopment Authority's recent clean-up of, and development plans for, the former EMI facility at 12th and Cherry Streets.

**3. Isn't it the responsibility of PADEP and USEPA to clean up sites such as Erie Coke?**

The USEPA and PADEP are primarily responsible for the enforcement of the environmental laws and addressing immediate threats to human health and the environment. Although they do become involved in certain long-term clean-up of sites, such as the old Harper Drive dump site in Millcreek, PADEP and USEPA typically do not acquire and clean-up properties with the objective of redeveloping such properties for future reuse. Such activities are generally carried out by local agencies such as the Redevelopment Authority.

**4. If the Port Authority and/or the Redevelopment Authority acquire the Site and begin the long-term clean-up process, will they then become liable for the entire clean-up costs and all of the environmental law violations of Erie Coke and its predecessors at the Site?**

No. the PADEP and USEPA hazardous site programs expressly contemplate the possibility of local agencies acquiring contaminated properties and beginning clean-up operations. In cases like this, PADEP and USEPA can provide to the local agencies formal written assurances (commonly known as and referred to as "comfort letters") that they will not be held liable for any past contamination. The Port Authority and the Redevelopment Authority will work with PADEP and USEPA to obtain such written assurances. No action will be taken by the Port Authority and the Redevelopment Authority to acquire the Site without first having obtained these written assurances.

**5. If the Erie Coke Property is acquired by condemnation, does that release Erie Coke Corporation from any civil or criminal or financial liability relating to the Site?**

No. A condemnation action would not release anyone from any liability, but rather would only transfer title and control of the Site to the Port Authority. Erie Coke would remain fully legally liable for any and all civil and criminal violations relating to the Site. The state and federal government agencies would retain all their legal authority, claims and enforcement rights (civil and criminal) against any and all parties who are legally responsible for the historic contamination at the Site. Moreover, PADEP and USEPA are the best parties to pursue any environmental claims and potential cost reimbursement for the Site.

A condemnation action will have no effect upon the ability or willingness of the PADEP and the USEPA to pursue Erie Coke and/or its predecessors or any other liable parties under applicable law. The pending criminal charges brought against Erie Coke are a clear indication of the commitment of the state and federal governments to pursue those who are legally responsible for the condition of the Site.

The condemnation action being considered by the Port Authority, with the assistance of the Redevelopment Authority, is focused on the urgent necessity of acting now on behalf of our community's environmental and economic future, not attempting to achieve legal redress for past wrongdoing. Cleaning up the Site, and holding past polluters accountable, are not mutually exclusive objectives. The Port Authority and the Redevelopment Authority are considering the urgent and critical tasks of acquiring the property and beginning a site clean-up, which they are well-suited to handle, while at the same time encouraging the state and federal governments to pursue Erie Coke by any available means, using their resources and experience to pursue any criminal and civil environmental and cost recovery claims that they deem feasible.

That said, Erie Coke appears to be completely insolvent, so our community must face reality and begin to reckon with the strong likelihood that there may simply be no way to recover substantial monies (if any money at all) from Erie Coke at this point in time.

**6. What is the first step in the long-term clean-up of the Site?**

The first step in the long-term clean-up of the Site is to acquire unencumbered control of the Site. At present, the Site is titled in the name of Erie Coke Corporation. The Site is subject to various liens of record at present, including but not limited to delinquent real estate taxes, delinquent water/sewer liens, unsatisfied mortgages, and a USEPA environmental cost lien. It is likely that additional USEPA and PADEP environmental cost liens will be filed against the Site.

**7. How would the Port Authority and/or the Redevelopment Authority obtain control of the Site?**

There are two potential ways to acquire control of the Site: (a) purchase from the existing owner, Erie Coke; or (b) condemnation.

**8. Is the purchase option a viable option?**

The purchase option does not appear to be feasible for several reasons.

First, it is not clear as to whether there is even anyone who can act with authority on behalf of Erie Coke at this point in time.

Second, a purchase from Erie Coke would not divest the various liens on the Site. Given the magnitude of the liens and the potential for additional liens, a purchase would not result in complete, effective control of the Site.

Third, any attempt to resolve the liens as part of a purchase process would require negotiations with multiple parties. Such negotiations could drag on for an extended period, with no guarantee of ultimate success.

**9. Is the condemnation option a viable option?**

The condemnation option appears to be the best means of proceeding with a timely acquisition and clean-up of the Site for several reasons.

Condemnation is likely to be the least expensive and most expeditious means of proceeding, which is in the best interest of the Erie community. The legal basis for challenging a condemnation under these circumstances is very limited and, absent a successful legal challenge, the Port Authority would obtain title to the Site relatively quickly after condemnation proceedings are filed. It is believed that Erie Coke is unlikely to challenge the condemnation, given its abandonment of the Site.

**10. How does a condemnation work?**

A condemnation action would be commenced by the issuance of a "Declaration of Taking" by the Port Authority. If no challenge to the legality of the condemnation is made, then the Port Authority would automatically become the owner of the property. If a legal challenge is asserted, then there is an expedited procedure for resolving that legal challenge. Once any legal issues are addressed, the only issue left to be resolved is the value of the property, meaning the amount of the condemnation award.

**11. Who would be the condemnor in this situation, the Port Authority or the Redevelopment Authority?**

The logical condemnor would be the Port Authority, due to the fact that it is an adjoining landowner with a public mission to promote community opportunities on the Erie waterfront and its long-term port development plans for the areas around the Site.

**Note:** This would not be the first time that the Port Authority exercised the right of eminent domain with respect to the Erie Coke Corporation. In 1998 the Port Authority condemned 4.158 acres at the north end of the Site to accommodate expansion of the Port Authority's activities.

**12. How much would the condemnation award be? Would it take into account the environmental condition of the Site? Who would pay for the acquisition and clean-up of the Site?**

The eminent domain code requires that a condemnor pay the condemnee the "fair market value" of the property. Fair market value takes into account the existing condition of the property (including adverse environmental conditions), the likelihood of further liabilities (including additional USEPA and PADEP mandated future assessment and clean-up costs), and potential successor liability under applicable environmental laws.

Based on what is now known about the Site and the value of similarly situated properties, it is believed that the anticipated environmental clean-up costs will far exceed the value of the Site absent such environmental liabilities. If that is the case, the fair market value of the Site, and the consequent condemnation award, would be of little or no value.

Regarding the acquisition of the site, the Port Authority hopes to utilize state and/or federal grant funding to cover the costs of acquisition. Regarding the Site assessment and clean-up, the Port Authority and the Redevelopment Authority hope to utilize state and/or federal grant funding to cover those costs. Both the Port Authority and the Redevelopment Authority have successful track records in obtaining significant grant funding for such purposes in the past.

### **13. What are the next steps in this process?**

The Port Authority will receive and consider any public comments submitted at the October 23rd public hearing and during the public comment period ending November 10, 2023 regarding whether the Port Authority should acquire the Erie Coke property by condemnation.

Also, the Port Authority, with the assistance of the Redevelopment Authority, will obtain a real estate appraisal of the Site and an environmental clean-up cost estimate for the Site.

In addition, the Port Authority and the Redevelopment Authority will seek the written assurances (comfort letters), as referenced above, from both PADEP and USEPA that they will not be held liable for the existing environmental contamination at the Site.

Finally, at a future public meeting to be held sometime after the above items are completed, the Port Authority will consider and vote upon whether or not to move forward and take official action to condemn the Erie Coke property.

### **14. Will the public have input in this process?**

Yes. Public input will be critical to a successful long-term outcome relating to the Erie Coke Site. The clean-up and ultimate reuse of this Site will require multiple years of ongoing discussion, cooperation and commitment by local, state and federal officials -- and the citizens of Erie should be involved and participate actively in the process.

Initially, the Port Authority and the Redevelopment Authority have set up a public comment period and a public hearing to provide for extensive community input and feedback before the Port Authority decides whether or not to condemn the Erie Coke property. After that process, the decision of whether or not to ultimately proceed with the condemnation action would then require a vote at a subsequent public meeting of the Port Authority in accordance with the Sunshine Act. The public will also have the opportunity to formally comment at that meeting, prior to any vote.

If the decision is then made to move forward and acquire the property by condemnation, the Port Authority and the Redevelopment Authority will utilize a public involvement plan to continue to involve the public regarding the assessment and clean-up of the Site.

Most importantly, there will be opportunities for extensive public involvement regarding the future permissible, feasible and desirable potential uses for the property.

Members of the public are free at any time to contact either the Port Authority or the Redevelopment Authority to provide comments and/or to ask questions about this process.

**15. Are there any alternatives to proceeding in the manner described above? What will likely occur if there is no action taken by any local agencies?**

From a local governmental perspective, it appears there are no other practical alternative means of moving forward. If the Port Authority and the Redevelopment Authority do not take action, it is likely that the Site will remain in its present condition for an indefinite period of time, without addressing the environmental, health and safety risks to the community. The greatest risk is that this Site will not get cleaned-up for many years, as we have seen with other former industrial sites around the County. It is a matter of whether we, as a community, take control over our own future, particularly with respect to such an important and environmentally sensitive part of our community.

**16. Will moving forward with this process have the effect of pre-determining the level of clean-up at the Site or future uses of the Site? Will the public have the opportunity to provide input into what level of clean-up is undertaken and how the Site will eventually be developed?**

There is no pre-determined plan for the level of clean-up or the future use of the Site, nor could there realistically be any such plan at this point in time, given the circumstances our community is facing with respect to the Site.

The clean-up of the Site, by all indications, will be a long, difficult and expensive process. The approach under consideration is simply the beginning of that process. However, the longest journey begins with the first step, and we as a community must begin that journey, not only for our own sake but that of future generations of Erieites.

Importantly, the environmental investigation is in the early stages and still ongoing. Remediation modeling and planning has not yet even commenced. Therefore, it is not possible to identify what levels of clean-up can reasonably be achieved, or what uses would be suitable or even permissible for the Site given the reasonably achievable levels of clean up. PADEP and USEPA retain the power to ultimately determine and approve/disapprove the acceptable type and level of any clean-up activities, as well as what types of future uses would be consistent with any given level of clean-up.

The speed with which the clean-up will occur and the level to which a clean-up can reasonably be achieved will be dependent almost exclusively on the availability of state and federal grant monies. No one can reasonably put a timeline on when those funds will be available or the amount of funds that will be available. That uncertainty, however, should not deter us from moving forward. We have every indication that we will receive substantial support in this endeavor from both state and federal officials. We need to put ourselves in the best possible

position to attract state and federal funds for the project, which can only happen if we collectively move forward with an achievable plan and with community consensus supporting that plan.

**17. What is the timeline for clean-up and reuse of the Site?**

The timeline is unknown. A full site assessment needs to be completed to determine the extent of contamination and what remediation activities will need to be taken before any realistic timeline for the clean-up and subsequent reuse can be determined.

**18. Absent the environmental concerns, the Site should be a very valuable piece of property. Won't a private developer acquire the Site, clean it up, and put it to a productive use?**

Based on past experience in the Erie region, it is unrealistic to hope or expect that private investors will assume the costs of environmental assessment and clean-up of the Site. The existing liens on the Site, plus the future environmental assessment and clean-up obligations relating to the Site which would be imposed by PADEP and USEPA, will almost certainly far outweigh any expected return on investment by a potential private investor.

The choice we have as a community is either to: (a) take up the admittedly long, arduous, and expensive task of cleaning up the Site in accordance with these Authorities' public missions; or (b) allow the Site to remain as it is, probably literally for decades to come.