



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

Office of Regional Counsel

Andrew S. Goldman (3RC41)
(215) 814-2487
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July 23, 2020

VIA EMAIL

Ronald L. Clever, Esquire
Box 3276
Allentown, PA 18106-0276

**Re: Chem Fab Superfund Site: Lien Proceeding
(CERCA-03-2019-0111LL)**

Dear Mr. Clever:

I received your voicemail of earlier this week and a copy of your letter dated July 22, 2020, to Regional Judicial Officer (RJO) Joseph Lisa in connection with this matter. I was not able to respond to your voicemail as I was in a work group meeting on Tuesday and Wednesday of this week.

In your letter to the RJO you request an extension to the deadline, set by Order of the RJO signed on June 5, 2020, for filing Turog's brief in this matter. You request such an extension because (1) you have recently been engaged to represent Turog and need time to review the matter, and (2) you claim that EPA has not responded to a request from Turog to provide certain documentation. The extension you seek is 30 days from the date you receive the information requested by Turog from EPA and a copy of all documents filed in this matter to date.

A. Deadline History

Your request will be the fourth time Turog has requested an extension of time to file its brief in this matter.

By letter dated February 13, 2020, the RJO set the initial deadline for submission of Turog's brief at March 9, 2020.

By letter dated February 26, 2020, Turog requested a 60-day extension in order to review documents in the possession of the Pennsylvania Department of Environmental Protection. EPA did not object to this extension, and by letter dated February 27, 2020, the RJO extended the deadline to May 8, 2020.

By email on May 4, 2020, Turog requested a 30-day extension to the filing deadline “[g]iven the circumstances [which we interpreted to mean the COVID19 pandemic], and in light of the non-emergent nature of the issue.” Again, EPA did not object to the requested extension and the RJO agreed, by email on May 5, 2020, to extend Turog's deadline to June 8, 2020.

On May 29, 2020, Turog requested a 45-day extension to the deadline in order to hire legal counsel. By email on June 1, 2020, I responded to Turog and the RJO that EPA would agree to this third extension if:

1. Turog certified to myself and the RJO that:
 - a. It has not taken steps to sell or otherwise transfer any portion of the property upon which EPA seeks to perfect the lien (“Property”) since receiving EPA's July 1, 2019 notice of intent to perfect the lien (“Lien Notice”), and will not take any such steps until the EPA Region 3 Regional Counsel makes a decision whether to perfect the lien;
 - b. It has not engaged in activity that could undermine the value of EPA's lien including, but not limited to, mortgaging the Property or otherwise using the Property as collateral for debt, since receiving the Lien Notice and will not do so until the EPA Region 3 Regional Counsel makes a decision whether to perfect the lien;
 - c. It has not filed for bankruptcy protection and has no current intention of doing so; and
 - d. It has paid all real estate taxes owed for the Property and that it intends to pay such taxes in the future at least until the EPA



Region 3 Regional Counsel makes a decision whether to perfect the lien; and

2. Turog agrees to notify myself and the RJO no less often than every seven calendar days of the date RJO approves an extension of time, of Turog's progress in retaining counsel for this matter.

By email on June 4, 2020, Turog advised me that:

“Turog will not:

Sell or convey any portion of the Site, and

Collateralize the Site for any future debt, and

Has not gone bankrupt, and has no current intention of doing so, and

Intends to pay the real estate taxes due to preclude a tax sale of the Site, and

Has interviewed potential counsel, and intends to formally retain counsel within days.”

On June 5, 2020, I notified the RJO and Turog that Turog's representations were satisfactory and that EPA therefore did not object to the request. By Order dated June 5, 2020, the RJO extended Turog's deadline to July 24, 2020.

This morning the RJO scheduled a conference call to discuss your request. In response to the meeting invitation, I (1) requested that the RJO delay such a call until I was able to consider your request, and (2) agreed to a 1-week extension to the deadline. The RJO agreed to reschedule the call to July 30, 2020 at 10:00am and extended the deadline for Turog's response to July 31, 2020 at 4:00pm.

B. The Requested Information

By letter dated December 1, 2019, Turog principal Heywood Becker requested the following documents from EPA:

1. “The analytical results of the May, 1995 TAT members collection of soil samples at 6 foot depths, the same having been shipped to be analyzed for hexavalent chromium;”
2. “The further analysis and/or sampling after TAT reviewed soil sample analytical results, finding trace amounts of contaminants as



stated on Wednesday, August 30, 1995;” and

3. “Any and all statements by the EPA, or any representative of the EPA, after the OSC After-Action Report, concerning the existence of contamination at the Site, and/or any and all remediation work to be yet done, or completed, whether as press reports, statements, releases or the like.”

On January 10, 2020, Mr. Becker and I exchanged emails in an effort to clarify the scope of #3 of his request. During that exchange, Mr. Becker agreed that he was seeking documents fitting the description in his request and created between EPA’s issuance of the On Scene Coordinator’s Report (OSC Report) for the 1994 cleanup at the Chem Fab Site and Turog’s acquisition of the property in September 1998.

Unfortunately, the OSC Report was not dated. Noting that the last day for which events were reported in the OSC Report was October 24, 1995, I conservatively set the start date for the document search at October 24, 1995. Mr. Becker reported that Turog acquired the property in the second week of September 1998. With this information I conservatively set the end of the relevant time window at September 30, 1998.

My search of EPA’s electronic file system for documents within this timeframe (October 24, 1998 through September 30, 1998) yielded no responsive results. I additionally asked OSC Eduardo Rovira, Remedial Project Manager Huu Ngo, and Civil Investigator Joan Martin-Banks (all assigned to this case) if they were aware of any responsive documents within this time frame. They were not.

By letter dated January 14, 2020, I provided EPA’s response to Mr. Becker’s December 1, 2019 request (copy attached). The documents EPA sent to him on a CD and which he provided his counsel (the lab reports) were responsive to #1 of his request. My letter indicated that we had not located any documents responsive to #2 of his request. Similarly, my letter reported that we were unable to locate any documents responsive to #3 of his request.

By email to me on July 15, 2020, Mr. Becker stated the following:

“I had Staples convert the digital info into one inch of paper, and mailed it to my attorney, who resides in another county. He mailed it back, and I have read them. They are lab reports. I thought I



requested press reports. I wanted all of the EPA public statements made from the time of the Site investigations in the late 20th Century onwards. The lab reports are untethered to any index, table or anything understandable, and do not enable me to point to publicly disseminated EPA reports, press releases or Public Impact Statements, or the like, which is what I intended to request of you.”

Later that day I sent Mr. Becker an email which stated:

“If I understand your email below correctly, you are represented by counsel in this matter (which I interpret to be EPA’s perfection of a lien on the Turog property). As such I cannot communicate with you directly without receiving the consent of your counsel. Please have him/her contact me via email.”

I received neither a response from Mr. Becker nor any contact from counsel regarding this issue until your letter of July 22.

EPA has fully responded to Turog’s December 1, 2019 request, as modified via agreement on January 20, 2020. We are aware of no documents that are responsive to this request other than those sent to Mr. Becker on January 14, 2020.

With respect to your request for a copy of the filings in this lien matter, you may access the filings here:

[https://yosemite.epa.gov/oa/rhc/epaadmin.nsf/Dockets%20by%20EPA%20Region?SearchView&Query=chem-fab+and+\(\[Region\]=\(03\)\)&SearchMax=0&SearchWV=TRUE](https://yosemite.epa.gov/oa/rhc/epaadmin.nsf/Dockets%20by%20EPA%20Region?SearchView&Query=chem-fab+and+([Region]=(03))&SearchMax=0&SearchWV=TRUE)

C. Turog’s Fourth Request for an Extension of Time

EPA has previously accepted three deadline extensions requested by Turog in this matter which have delayed the briefing schedule, the hearing requested by Turog, and perfection of the lien.

EPA policy on CERCLA § 107(l) liens¹ provides that, in general, a landowner’s opportunity to be heard will provided in advance of EPA’s perfection of a lien. The policy acknowledges, however, that there may be circumstances in

¹ See <https://www.epa.gov/sites/production/files/2013-09/documents/guide-liens-rpt.pdf>.



which perfection may occur before the opportunity to be heard has been provided. Given the slow pace with which Turog has participated in this process and the fact that EPA has received no guarantee that the instant request for an extension will be Turog's last one, EPA is willing to agree to Turog's request to extend the deadline if Turog agrees that it will not object to EPA's perfection of the lien prior to completion of this hearing process. If, as a result of this hearing process, the Regional Counsel (the official to whom authority to perfect a lien has been delegated) decides that perfection of the lien was not warranted, EPA will file a lien release document removing EPA's lien from the land records.

Please advise me as soon as possible whether Turog agrees not to object to perfection of the lien prior to completion of the lien hearing process in which we are now involved. I look forward to your response.

Respectfully,

ANDREW S. GOLDMAN
Sr. Assistant Regional Counsel

Attachment

Cc: RJO Joseph Lisa
Bevin Esposito
Joanne Marinelli
Joan Martin-Banks





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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Philadelphia, Pennsylvania 19103-2029

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U.S. EPA-REGION 3-RHC
FILED-14JAN2020pm4:49

January 14, 2020

VIA UPS OVERNIGHT & EMAIL

Turog Properties, Limited
c/o Heywood Becker
5382 Wismer Road
Pipersville, PA 18947

**Re: Chem Fab Superfund Site, Doylestown, Bucks County,
Pennsylvania: Lien Proceeding CERC 03-2019-0111LL**

Dear Mr. Becker:

By letter dated December 1, 2019, but not received by me until I received your January 6, 2020 email, you requested copies of documents described as follows:

1. “[A]nalytical results of the May, 1995 TAT members collection of soil samples at 6 foot depths, the same having been shipped to be analyzed for hexavalent chromium;”
2. The further analysis and/or sampling after TAT reviewed soil sample analytical results, finding trace amounts of contaminants as stated on Wednesday, August 30, 1995;” and
3. “Any and all statements by the EPA, or any representative of the EPA, after the OSC After-Action Report, concerning the existence of

contamination at the Site, and/or any and all remediation work to be yet done, or completed, whether as press reports, statements, releases or the like.”

By email on January 10, 2020, I asked the following question with respect to request number 3, above:

“Given the context of your request (looking for documents that would have alerted Turog to the disposal of hazardous substances prior to its acquisition of the property) would it be accurate to conclude you are looking for material created after issuance of the OSC Report and before Turog acquired the property? If so, can you identify the date on which Turog acquired (your July 17, 2019 letter indicates that this occurred in 1998 but does not specify [sic] a date).”

By email later that day, you responded:

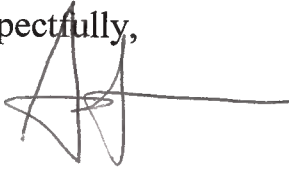
“I believe the tax sale was in the second week of September, 1998. So, any such documents prior thereto.”

After a reasonable search of EPA electronic record system, I provide the following response to your request:

1. Enclosed find a compact disc containing a report submitted EPA contractor Roy F. Weston, Inc.
2. We have been unable to locate any further analysis or testing performed pursuant to TAT’s recommendation on August 30, 1995. I note that at some point in or around 1998, the Commonwealth of Pennsylvania resumed responsibility for the Chem Fab Site and retained lead agency status until 2007 or 2008. Presently, EPA is conducting a Remedial Investigation/Feasibility Study for the Chem Fab Site.
3. We have been unable to locate any documents meeting your description, as modified by agreement.

If you have further questions, please contact me at (215) 814-2487 or goldman.andrew@epa.gov.

Respectfully,

A handwritten signature in black ink, appearing to be 'A. Goldman', with a long horizontal line extending to the right.

ANDREW S. GOLDMAN
Sr. Assistant Regional Counsel

Enclosure: CD/SEMS Doc. No. 2097519

cc: RJO Joseph Lisa (letter only)

Docket No. CERCLA 03-2019-0111LL

CERTIFICATE OF SERVICE

I hereby certify that a copy of the documents identified below were provided to the following persons:

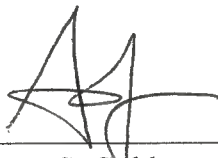
By Overnight Mail and Email:

Turog Properties, Limited
c/o Heywood Becker
5382 Wismer Road
Pipersville, PA 18947

By Hand Delivery:

Joseph Lisa (3RC00)
Regional Judicial Officer
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103

Documents Provided	
1.	Letter from Andrew Goldman to Turog Properties, Limited, re: Chem Fab Superfund Site, Doylestown, Bucks County, Pennsylvania: Lien Proceeding CERC 03-2019-0111LL (January 14, 2020).



Andrew S. Goldman, Esquire
Sr. Assistant Regional Counsel

1/14/2020
Date

Docket No. CERCLA 03-2019-0111LL

CERTIFICATE OF SERVICE

I hereby certify that a copy of the documents identified below were provided to the following persons:

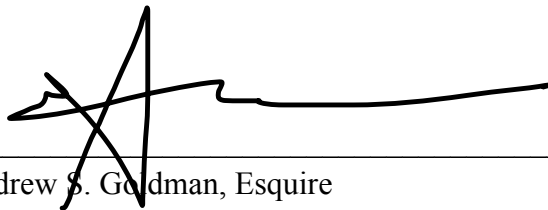
By Email:

ronclever@aol.com

By Email:

Lisa.joseph@epa.gov

Documents Provided	
1	Letter to Ronald J. Clever, Esquire from Andrew S. Goldman, Sr. Assistant Regional Counsel, re: "Chem Fab Superfund Site: Lien Proceeding (CERCA-03-2019-0111LL)" (July 23, 2020).



Andrew S. Goldman, Esquire
Sr. Assistant Regional Counsel

July 23, 2020