

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 3**

In the Matter of: :
 :
MAGNATE, LLC : **Docket No. CERCLA 03-2019-0120LL**
 :
Magnate, LLC Site, :
Edinburg, Shenandoah County, :
Virginia :
 :

U.S. EPA-REGION 3-RHC
FILED-12SEP2019AM8:43

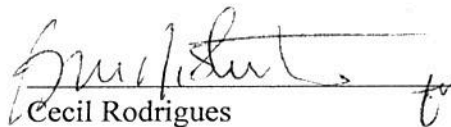
ORDER OF ASSIGNMENT

Regional Judicial Officer Joseph Lisa (hereinafter "Presiding Officer") is hereby designated as the "neutral official" to preside over this proceeding relating to the perfection of a lien on property pursuant to Section 107(l) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9607(l), in accordance with procedures outlined in EPA's "Supplemental Guidance on Federal Superfund Liens" (OSWER Directive No. 9832.12-1a (July 29, 1993)).

The property owner's written response to EPA's offer of opportunity to show that EPA did not have a reasonable basis to perfect the lien is provided to the Presiding Officer herewith. I have determined, after consultation with the Region 3 staff, that it is appropriate to proceed in this matter.

The Region 3 Office of Regional Counsel will file with the Regional Hearing Clerk and serve on the Presiding Officer and the property owner a copy of the Lien Filing Record and a written reply to the property owner's response on or before twenty (20) calendar days or such later time as the Presiding Officer may permit if he deems appropriate.

9/11/19
Date


Cecil Rodrigues
Regional Counsel
EPA Region 3

Goldman, Andrew

From: Brad Pollack <bgpollack@gmail.com>
Sent: Sunday, July 28, 2019 2:58 PM
To: Goldman, Andrew
Cc: Parshalle, Genevieve (ENRD); Darryl Bates
Subject: Re: Magnate LLC Site: Notice of Intent to Perfect CERCLA 107(l) Lien
Attachments: Magnate, LLC Response Letter.pdf

Dear Mr. Goldman:

Magnate believes the EPA's information in the Acting Regional Counsel's July 1, 2019, letter to me is in error. Information relevant to the issues raised in it is attached.

We request to meet with a neutral EPA official to present information that indicates that EPA does not have a reasonable basis to perfect a lien on the property based on the statutory requirements.

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Magnate, LLC
3102 Headley Road
Maurertown, VA. 22644

July 4, 2019

Andrew S. Goldman (3RC10)
Sr Assistant Regional Counsel United States
Environmental Protection Agency Region III
1650 Arch Street,
Philadelphia, PA. 19103-2029

Letter of Response
To Notice of Intent to Perfect Federal Superfund Lien

Magnate, LLC will be exercising the "Third Party Defense" also found in CERCLA 107. It is the same defense that Magnate has been offering since the first day that the OSC, Myles Bartos, first visited the site. At that time, Magnate initiated the Third Party Defense by informing the OSC that Magnate had an abatement of the property that should have rendered the property free of asbestos & PBC's. We also informed the OSC that the agents that summoned the OSC to the property, were the same agents that signed off on the previous abatement and were responsible for the debris remaining on site. At that initial meeting, responding to a complaint, when asked who had made the complaint; they were not at liberty to say. At that point, I pointed out that an illegal ATF/Sheriff's Office "tobacco sting" operation had taken place on the property and their need to be covert had caused many suspicious events. I told the OSC that any contamination found would have had to be planted. Having made these facts clear; Magnate was more than willing to give EPA complete and unfettered access to perform a thorough investigation. Magnate was willing to allow an investigation, due to the fact that any reasonable investigation would seek to determine liability that

would exclude Magnate from the chain of liability. At every juncture in the investigation, Magnate offered to help and offered evidence that might lead to a PRP.

Once Magnate perceived that there was never going to be an investigation into liability and that the OSC was going to limit his investigation to "analytical evidence" and completely avoid any accountability; Magnate started to bolster his case of "Third Party Defense". This was met with the stiff arm of resistance and "due process" avoidance.

When an OSC is presented with evidence of a 'Third Party Defense' and fails to consider, and does an investigation without consideration of that evidence, knowing that cost recovery from Magnate is eminent, an injustice is created. When the OSC, on October 11, 2017, moved the on site meeting to an off site location, one can only surmise that it was done in order to obfuscate Magnate's third party defense.

When Magnate was presented with a letter of Potential Liability on May 31, 2017, Magnate responded with a letter to Scott Pruitt on December 18, 2017. Magnate's letter laid out the evidence for a third party scenario. The response from EPA via Karen Melvin states: "The "sting" operation to which you refer in your letter appears to have occurred entirely prior to any EPA Superfund involvement. The circumstances of the "sting" operation had no influence on EPA's assessment of environmental conditions at the Site or selection of a response action. The details of the "sting" operation were not known to EPA until you provided the two articles in your letter to EPA. Similarly, other than the representations in your letter, EPA has no knowledge or familiarity with any alleged efforts by government officials to interfere with the marketing or sale of the property. Those alleged circumstances would also have had no impact on EPA's assessment of environmental conditions at the Site or selection of response action." This response is not only factually erroneous, but clearly states that the determination made, ignored a third party possibility.

To date, there has yet to be an investigation into a determination of the liability. That investigation was avoided by the OSC/EPA, like the plague. In light of Magnate's notification of a third party as PRP and no investigation even considered; Magnate can only assume that the response action taken was without a legitimate predicate.

Liability, the fifth word represented in the CERCLA abbreviation, is key to the sustainability of the Superfund. Without a determination of liability the Superfund is in jeopardy. When an investigation fails to seek liability, which this investigation clearly did, an injustice occurs. It is difficult to believe, that the failure to determine the "responsible party" is an act of gross incompetence after the corruption witnessed, by Magnate, of the ATF "sting" operation.

Magnate is clearly not the responsible party. And, if this response is not clear enough, Magnate will certainly agree to a meeting before a neutral EPA officer. However, Magnate will require the use of rules of evidence and judicial procedures. This will be done to insure "Due Process", which has been avoided to date. Magnate will also reserve the right to interrogate the OSC to have him confirm his actions or the lack thereof. Magnate will also require video tape recording of meeting to insure complete transparency that may be necessary for further adjudication.

Magnate will reserve the right to have adjudication of the findings in the courtroom of the Honorable Michael J. Urbanski.

Regards,

Darryl W. Bates

cc: Andrew R. Wheeler, Myles Bartos, Karen Melvin
Genevieve S. Parshalle, William P. Barr