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DENVER, CO 80202

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**U.S. EPA REGION 8
HEARING CLERK**

Ref: 8ORC-LE-C

April 11, 2024

Sent via electronic mail

Ms. Barbara Nann
Neutral EPA Official
Office of Regional Counsel
U.S. Environmental Protection Agency Region 8
R8_Hearing_Clerk@epa.gov

RE: Valley Drive Abandoned Slurry Site, Kalispell, Montana
Superfund Lien – EPA Response to Written Objection

CERCLA-08-2024-0003

Dear Ms. Nann:

On December 14, 2023, Irene Serio submitted a Written Objection to EPA's intent to perfect a federal Superfund lien on the property currently owned by Ms. Serio and located within the Valley Drive Abandoned Slurry Site. Please find attached EPA Region 8's Response to Mr. Serio's Written Objection.

If you have any questions, please contact me by phone at (303) 312-6839 or by email at Rae.Sarah@epa.gov.

Sincerely,

Sarah Rae
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency Region 8

cc: Christopher Thompson, EPA
Erin Agee, EPA
Paul Peronard, EPA
Irene Serio

Valley Drive Abandoned Slurry Site
Superfund Lien – EPA Response

I. Site History

On July 14, 2022, EPA received a report via the National Response Center of 11 large, abandoned tanks located at 185 West Valley Drive, Kalispell, Montana (“Valley Drive Abandoned Slurry Site” or “Site”) containing possibly 50,000 gallons of various oils. The reporting party was a private citizen who stated that there was a present discharge of oils from these tanks.

After receiving the report from the National Response Center, EPA reached out to the reporting party via phone and email to gather additional information. The reporting party provided EPA with photos of the tanks located at 185 West Valley Drive, Kalispell, Montana (“Property”). The reporting party stated that he lives near the property and expressed concern about the leaking tanks contaminating the nearby well water and the nearby creek. The reporting party explained that the tanks are located uphill from the nearby creek. The reporting party also explained that Flathead County has been trying to contact the property owner to address the tanks, but the County has not had any luck tracking down the property owner.

On multiple occasions, EPA sought to obtain consent for access to the Property from the property owner, Irene Serio, for the purposes of investigating and responding to the conditions described by the reporting party. On July 27, 2022, Ms. Serio denied EPA access to the property via email. The email correspondence between the EPA and Ms. Serio is included as Appendix A.

On August 2 and 3, 2022, the EPA On-Scene Coordinator (OSC) for the Site observed the property conditions from the public right of way without entering the property. The OSC noted that the Property was mostly grass and trees, scattered with debris, and no visible house located on the Property. The OSC observed the tanks on the Property. They were visibly degrading and noticeably lacked any form of secondary containment. The OSC also observed a dark material leaking from a large tank that was leaning on the fence post. This material was pooling on the ground in the public right of way.

On September 6, 2022, EPA submitted an Ex Parte Application of the United States for Administrative Warrant to Enter and Access Property in the United States District Court for the District of Montana, Missoula Division. On September 8, 2022, the court issued the administrative warrant. On September 9, 2022, and September 23, 2022, EPA mailed and emailed Ms. Serio a copy of the signed warrant. The warrant documentation is included in the Lien Filing Record.

On September 15, 2022, EPA commenced the Removal Action at the Site. The Action Memorandum is included in the Lien Filing Record.

On September 23, 2022, Ms. Serio responded to EPA’s email correspondence regarding the signed administrative warrant. On September 24, 2022, October 9, 2022, and October 25, 2022, Ms. Serio provided supporting documentation via email. The email correspondence between EPA and Ms. Serio is included in Appendix A.

On October 27, 2022, EPA completed the removal work at the Property. The Final Pollution Report (POLREP) is included in the Lien Filing Record.

On May 24, 2023, July 26, 2023, and August 15, 2023, EPA mailed and emailed Ms. Serio a Demand Letter, seeking to recover its response costs and all interest authorized to be recovered under Section 107(a) of CERCLA. The Demand Letter included a copy of the Certified Cost Package for the Site, which shows that the total response costs identified through December 31, 2022 are \$386,552.83. The most recent Certified Cost Package for the Site shows that the total response costs identified through September 30, 2023 are \$705,009.57. The Certified Cost Packages are included in the Lien Filing Record.

On December 14, 2023, EPA sent Ms. Serio Notice of Potential Liability and Intent to Perfect Superfund Lien via Certified Mail. EPA's Notice is included in the Lien Filing Record. On January 10, 2024, Ms. Serio emailed EPA objecting to EPA's intent to perfect the lien. Ms. Serio also provided additional supporting documentation on January 18, 2024 and February 7, 2024. Ms. Serio's Written Objection (provided via email) and supporting documentation is included as Appendix A.

On January 16, 2024, EPA emailed Ms. Serio and established a January 26, 2024 deadline for submitting additional supporting documentation. On January 18, 2024, EPA emailed Ms. Serio and granted a two-week extension for providing additional supporting documentation. The new deadline was established as February 9, 2024. On January 19, 2024, EPA emailed Ms. Serio and provided information on Ability to Pay Settlements. In this email, EPA explained that Ms. Serio has the opportunity to submit the requested Ability to Pay financial documentation including federal tax returns for EPA's review. On March 13, 2024, EPA emailed Ms. Serio confirming receipt of the supporting documentation and established an April 1, 2024 deadline to submit Ability to Pay documentation. The April 1, 2024 deadline has now passed, and Ms. Serio has not provided the requested Ability to Pay documentation.

II. Standard of Review

Section 107(l) of CERCLA provides for the establishment of a federal lien in favor of the United States upon property which is the subject of a removal or remedial action (Superfund Lien). See 42 U.S.C. §9607(l). EPA's 1993 guidance titled "Supplemental Guidance of Federal Superfund Liens" (Lien Guidance)¹ outlines procedures for EPA regional staff to follow to provide notice and opportunity to be heard to potentially responsible parties (PRPs) whose property may be subject to a federal Superfund Lien. The Lien Guidance advises EPA staff to compile a Lien Filing Record that contains all documents relating to the decision to perfect the Superfund Lien and to provide notice to property owners of EPA's intent to perfect a Superfund Lien prior to filing papers to perfect the lien.

The Lien Guidance also recommends procedures for selecting and utilizing a neutral EPA official. The Lien Guidance states:

Timely Response: Written Response and No Request for Meeting

If a property owner presents written documentation in a timely manner purporting to show that the lien should not be perfected, but does not request a meeting, the Regional site attorney should review the documentation furnished. If the Region agrees that the property owner has produced facts to alter EPA's determination that it has a reasonable basis to file the lien, EPA should notify the property owner.

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

If the Regional Attorney determined that EPA still has a reasonable basis to perfect its lien, the Region should select a neutral official in accordance with the process described below to review the documentation furnished. At the conclusion of the neutral official's review, he or she should provide the property owner and Regional staff with a brief written recommended decision on whether EPA has a reasonable basis to perfect a lien. The document should set out the informational basis upon which the recommended decision is made, and should be placed in the Lien Filing Record, with a copy forwarded to the official in the Region delegated with the Authority to sign liens for action.

Selection of Neutral Official

The natural official selected by the Region should be an attorney who is a permanent or temporary employee of the Agency and who may perform other duties within the Agency. The person selected should not have performed any prosecutorial, investigative, or supervisory functions in connection with the case or site involved.

Regions may have judicial or presiding officers already appointed pursuant to other EPA programs who possess the qualifications outlined above. Where the Regions do not wish to select separate neutral officials to hear lien matters on a case-by-case basis, they may allow these hearing officers to conduct lien meetings.

Upon selection of the natural official, the designated keeper of the Lien Filing Record should provide the official with a copy of the Lien Filing Record, which includes any written response from the property owner and any subsequent supporting documentation submitted by the property owner.

Factors to Review

The neutral EPA official should consider all facts relating to whether EPA has a reasonable basis to believe that the statutory elements have been satisfied for the perfection of a lien. In particular, the neutral official should consider whether:

- The property owner was sent notice of potential liability by certified mail.
- The property is owned by a person who is potentially liable under CERCLA.
- The property is subject to or affected by a removal or remedial action.
- The United States has incurred costs with respect to a response action under CERCLA.
- The record contains any other information which is sufficient to show that the lien notice should not be filed.

The property owner may present information or submit documents purporting to establish that EPA has erred in believing that it has a reasonable basis to perfect a lien based on the above factors or has made a material error with respect to the above factors. On making his or her decision, the neutral EPA official should consider all facts in the Lien Filing Record established for the perfection of a lien and all presentations made at the meeting, which will be made part of the Lien Filing Record.

III. EPA has a reasonable basis to believe that the statutory elements have been satisfied for the perfection of a Superfund Lien

A. EPA sent Notice of Potential Liability and Intent to Perfect Superfund Lien to Ms. Serio via certified mail on December 14, 2023

On December 14, 2023, EPA sent a Notice of Potential Liability and Intent to Perfect Superfund Lien to Ms. Serio via certified mail. On January 10, 2024, Ms. Serio emailed EPA objecting to EPA's intent to perfect a Superfund Lien on the Property. To date, Ms. Serio has not requested an appearance before a neutral EPA official.

B. EPA has reason to believe that Ms. Serio is potentially liable under CERCLA

Responsible parties under CERCLA Section 107(a) include, among others, owners or operators at the time of disposal of any hazardous substance, as well as current owners or operators. 42 U.S.C. §9607(a). Responsible parties may be held liable for monies expended by the federal government in taking response actions, including investigative, planning, removal, remedial and enforcement actions at and around sites where hazardous substances have been released. *Id.*

The EPA has reason to believe that Ms. Serio is the current owner of the Property, which is the location of the Valley Drive Abandoned Slurry Site. A 1993 Warranty Deed, a 2007 Quitclaim Deed, and the Montana Cadastral Database all list Irene J Serio as the current owner of the property located at 185 West Valley Drive, Kalispell, Montana (assessor number 0000325250). These documents are included in the Lien Filing Record. Ms. Serio does not dispute that she is the current owner of record for the Property.

C. The Property is subject to CERCLA removal action where EPA has incurred costs

In response to the release and threatened release of hazardous substances at the Site, EPA conducted a Removal Action at the Site to reduce any immediate threat to the environment or human health. As a part of the Removal Action, the EPA inspected and obtained samples and analysis from 14 tanks and the surrounding area and properly disposed of the contents of the tanks. EPA commenced the Removal Action at the Site on September 15, 2022 and completed the work on October 27, 2022. The Action Memorandum and the Final Pollution Report (POLREP) are included in the Lien Filing Record.

EPA has incurred costs with respect to its Removal Action at the Site. To date, the approximate total response costs identified through December 31, 2022, for the Site are \$386,552.83. The Certified Cost Package is included in the Lien Filing Record.

D. The record does not contain any other information that is sufficient to show that the lien should not be filed

On January 10, 2024, Ms. Serio emailed EPA objecting to EPA's intent to perfect a Superfund lien on the Property. Ms. Serio also provided additional supporting documentation on January 18, 2024 and February 7, 2024. Ms. Serio's email correspondence and supporting documentation is included as Appendix A. EPA has reviewed the information and supporting documentation that Ms. Serio has provided and has determined that the information is insufficient to show that the lien should not be filed. After considering all of the information in the Lien Filing Record and the information provided by Ms.

Serio, EPA has determined that it still has a reasonable basis to perfect its Superfund lien on the property.

IV. Conclusion

After considering all of the information included in the Lien Filing Record, Ms. Serio's Written Objection and supporting documentation, and this Response, the neutral EPA official should find that EPA has a reasonable basis to believe that the statutory elements have been satisfied for the perfection of a Superfund Lien against the Property.

CERTIFICATE OF SERVICE

The undersigned certifies that the attached RESPONSE in the matter of Valley Drive Abandoned Slurry Site, Kalispell, Montana, was filed with the Regional Hearing Clerk on April 11, 2024.

Further, the undersigned certifies that a true and correct copy of the documents were sent via certified receipt email on April 11, 2024, to:

Respondent

Irene Serio

Email: reneserio1956@icloud.com, tonyserio2017@gmail.com

April 11, 2024

Sarah Rae
Senior Assistant Regional Counsel
EPA R8, ORC