

Appendix A – Correspondence from PRP to EPA



**Irene and Tony Serio
P.O. Box 521
Kalispell, Montana 59903
561-502-7609**

**Sarah Rae Mail code: 80RC-LE-C
US EPA Region 8
1595 Wynkoop Street
Denver, Co 80202**

Dear Sir or Mam,

Please consider the Many facts as to why we believe, it would be an error on the part of the EPA to lien our property, where Recycling of Pine Tar Pitch from Lumber Mills was being Recycled into an environmentally safe Dust Control, for the betterment of the whole community in the 1990s. This is the property cleaned by the EPA in 2022 referred to as West Valley Drive or Sheep Herders Hill.

First I need to explain some background on how our business Sure Seal Dust Control got into recycling Pine Tar Pitch from Lumber Mills to be used as Dust Control. Pine Tar Pitch is what was in all the tanks on the land except for one.

In the '80s and the '90s, our business Sure Seal was in the business of applying Dust Control on roads. Sure Seal was a business that goes back as far as when there was nothing else to put on Roads except for Waste Oil for dust control. In the 80s, Lyman Dust Control and Sure Seal picked up waste oil at gas stations, to have a product to serve customers. Gas Stations and generators of waste oil paid up to .05 a gallon for us to haul it away and recycle it on roads. Eventually, Waste oil became a hazardous waste product and was no longer allowed to be used as dust control on Roads. This left the two Dust Control Businesses servicing Flathead County, Lyman and Sure Seal, to seek new material for Road Dust Control. Sure Seal was on the ground floor of introducing Magnesium Chloride and Lignite Liquor to customers for Dust Control. Sure Seal represented Riley Windover out of Salt Lake City and

GSL. The problem with both those products is that they do not stick well to the surface where oil was previously put on the road.

Around this same time, Under the federal, clean air act, both Champion/ Stimson and Plumcreek lumber mills were required by the EPA to put scrubbers on the stacks at their Lumber Mills. That caused them to end up with what is called Tall oil or Pine Tar Pitch. Also referred to as veneer dryer precipitator residue. The Lumber Mills were having this material disposed of in landfills. In fact Flathead County Land Fill. Sure Seal was familiar with using the Pine Tar Pith on roads because we had already bought this product from a plant in Langly BC.. plant in Langly BC.

While on a job for putting Magnesium Chloride on a road Forest Service Road for Clearance Tabor from the US Forest Service, Tony talked to Clarence Tabor about the Tall Pine Pitch that he had tried from Langly BC.

Clarence knew Dana Jeffries who was head of operation at Plum Creek. Clarence discussed it with Dana Jeffries when he saw him as he knew the Pine Tar Pitch was a new waste product that the mill was dealing with. Dana from Plum Creek called Sure Seal and spoke to Tony, and that is where the ideas were put in place and began. The Lumber Mills paid us to pick it up. Recycling Pine Tar Pitch, allowed Sure Seal to cut the cost of Dust Control in half for the customers who could not afford Dust Control and lived on Dusty County Roads. Flathead County had approx. 2,500 miles of Gravel Dirt Road at that time.

With a lot of hard work and research, their waste was recycled into Dust Control successfully. When we discovered what we could use to mix with the Pine Tar Pitch so it would spread, as it is very thick, we then gave the material to a Lab. The name of this Lab is Collied Lab, out of California. I am enclosing the report from the lab. Notice the Lab states your local officials should be happy with this product. A Material Safety Data Sheet was produced on the product. Please read next the exhibits that I received at the Records Office

In our defense, I am sending copies of the litigation. Flathead County VS. Sure Seal. I had copies made at the courthouse. We hope these papers can help you understand what led to the property's condition. Please consider :

- 1. Why the Recycling Process of using an environmentally safe product turned into a Dust Control product was halted stopped and interfered with, leading to conditions on the land that were beyond our control.**
- 2. Who was involved as to why the land was unattended for such a long time. This would include the generators of the products and Flathead County officials who were catalysts through abuse of power and unfair treatment that led to conditions beyond our control.**

I realize that accusing the county of abuse of power is a strong statement. I think after you read this letter you will agree and understand how and why I say this.

We had used Tall Pin on many county Roads and for the City of Kalispell in Alleys, as well as Big Mountain Ski Resort. One day after the work season in 1995 in October, we read in the local Newspaper as I am inclosing next. County sues dust control firm - You notice in the article that Joe Russell head of the County Environmental Health Division states I quote, that because of the difficulty and expense of sampling the material, the violation is being pursued under littering laws. Please read next.

Notice in the other newspaper article Joe Russell says that it should have been taken to a landfill capable of handling it. Yet Russell still claims residue is cancerous. Obviously, by Plum Creek's statement, we are no longer picking it up. No one had contacted the lumber mills about anything or talked to us about these supposed concerns. The Dumping allegation is based on two of one witness. One who didn't like her neighbor using it because it got on her car. So does Oil and the Magnesium that is now put on roads that people hate because of the salt that causes Rust. The other witness was untruths told by a Road Supervisor Marc Pittman. Allegations that were not proven. Most importantly how could a litter law be applied when there was never any mention of clean-up in any of these five places?

Upon reading the allegations in the paper we went to the office of the Road Department. This is when we learn that we are not allowed to conduct Business and that our permit is permanently revoked and has been revoked since 7/13/1994. It is now October of 1995.

The new Road Supervisor handed me a letter he had there at the office, Marc Pittman left behind as he now no longer worked for the County. A letter that we supposedly received.

This letter I said was bogus besides being an attack and unfair with no merit or proof or no due process of law. Not only does this letter say we are permanently Revoking your permit but we are now supposed to believe that we were put out of business a year ago. We had put Dust Control on many Roads in 1994 and the season of 1995. In my legal papers, I try to prove this through a Certificate of Insurance which I use as an exhibit to fight this. I also use a letter written to the County Commissioners on 1/10/1995 by a person who also feels Mark Pittman is not honest. I went to school with Guy Foy the new Road Supervisor. Guy Foy lives just down the road where the Tanks are. Guy no doubt knows the people on the hill that have to look at the tanks. I grew up not too far from Guy Foy. Ashley Creek was in my backyard - we swam in it every day in the summer. Now I have this guy I went to school with every day for years telling me we are permanently out of business and have been. Please read.

From the very beginning of this recycling project, Our Son Jesse Serio was involved and worked hard in the success of the recycling process. Jesse our 17-year-old son had run test patches on a road that goes up the hill on our property and is a joint easement road that leads to a gravel pit owned by Flathead County. Jesse needed to get the proper consistency for our spray bar and ran test patches. This is where the 3 of the 5 litter fines are derived from. Derived from what we were doing on our property.

You can NOT reach their actual Gravel Pit from our land. You may cross a boundary but you will not reach the gravel pit because there are big boulders in the way.

Now forward to 1997. The County is looking for evidence for their lawsuit. The only hope they have is to get a deposition from Jesse Serio several years later. Jesse is now around 19 or 20.

Please Read

Where were the facts and evidence when these fines and embarrassing accusations were announced in the Newspaper leading to the shutdown of the Recycling Process? There were no facts established. There was no real investigation. Now 2 years later this is their evidence?

The Road Department knew the product was being used. This product was no doubt a topic of conversation as they had a relationship with Lyman. Sure Seal had cut the cost of Dust Control for the public, as I said. At that time in the 90,s there were two dust Control Companies. Lyman Dust Control and Sure Seal. Once Sure Seal was shut down there was only one. By putting Sure Seal out of Business this would leave only one Dust Control Business in the area to service customers and this is how it remained for the next 30 years. With only one company to service roads, the cost of Dust Control doubled in price within just a few years. We were fully aware at the time of the relationship the Road Department had with Lyman Dust Control because for years he was given any work that the Flathead County Road Department had without any of that work being put out for bid. Often we would see Lymans Truck parked out at the Road Department. By the time of the deposition that was conducted with our son, he was 20 years old starting his life with a wife and baby. The rest of the family of 6 were completely displaced. Our lives were turned upside down. Everything we had worked for and invested in was gone. We were out of business going into winter when this news was released in the paper. The fastest recourse was for Tony to take at an Asphalt Company where a childhood friend of his from Illinois was working and got him on. Life was hard in Florida with a lot of ups and downs.

I paid the Flathead County Recorders office to make copies of the case Flathead Cty vs Sure Seal. There are 660 pages. I am sending you a copy as you will see the real mess started with the Road Department. At the time we had insurance that allowed a local law firm to fight the charges but all they did was make a deal with the County Officials to pay the false claim. By the time they made a deal, we were too damaged. The deal they made was to pay the trumped-up fine, which did us no good or covered the damages that the false claims had made, putting us out of the Recycling business, displaced and

out of business using the media to public embarrass us to our long-time customers.

You will see in this lawsuit I am not an attorney obviously but we were so invested in this recycling I had to try as hard as I could. I did not know how to fight such injustice. But I tried. If you read the Purposed Finding of Fact and Conclusions of Law you will see how I attempt to use common sense. I point out that we should all be working together for the betterment of the environment and community. I show that we did recycle a product in good faith successfully. I confront the issue of the permit as the County commissioner states he does not want to shut any company down but would like to see better relations between the Road Department and Sure Seal. I tried to show that Tony was very knowledgeable and capable of what was being accomplished. Then I attempt to point out that Pittman now wants to pick on our equipment. Our truck did shut off the spray bar from inside the cab. I try to confront the issue that we have been shut down while litigation or accusations are in process without due process.

These legal papers I file are in hopes that someone outside Flathead County will see the injustice.

When I finally learned that the Supreme Court would hear my case I was 42 and around 6 months Pregnant. (I joke about this - I did what every good poor person does - I got Pregnant.) I was exhausted, living in Florida, and feeling at a loss. I did not have the strength or know-how to go from there. Fortunately, a friend that was President of a Bank in Conrad Montana knew an Attorney in Great Falls Montana by the name of Mick Taleff. Mick took the case and wrote up papers to present to the Supreme Court. They are enclosed.

I will quote how the Supreme Court ruled. You can read yourself in paragraph 41. But I will quote part of it. Thus, Sure Seal raises this issue for the first time on appeal, and, as set forth above, this Court will not consider issues raised for the first time on appeal. The issue not being properly before us, we decline to address it further.

After the ruling, we never heard anything about paying the \$30,000 for the 5 places we supposedly littered. I think once an attorney and the Supreme Court were involved Hester started listening to the other side of the story. Hester may have finally noticed that we were a ligament recycling business in the Dust Control business. Hester may have finally realized that he was misled by the County Road Department while filing the papers on their claims. He believed them and did not investigate the allegations. I say this because of the Reply to Brief in objection to the motion for summary judgment before the Supreme Court ruling This is in it. Please read.

I would like to ask the EPA to consider the cradle-to-grave law as to who is responsible for the disposal of the tanks and what was in the tanks. Flathead County Road and Bridge department loaded and hauled 2 Tanks of 10,000 gallons each to the property. These tanks came from the Kalispell Hospital and the County Nursing Home. All the small tanks were given by Champion International Libby Montana. The large tank was given by Burlington Northern Railroad. One tank was given to us by Bigfork High School. Another tank was given to us by Glacier Park. All Material was Pine Tar Pitch except for one tank. One tank was Crude oil meaning Road oil that comes out of the wellhead from Cutbank Montana. Schurlock Premium hauled the oil to the West Valley Property. They are still in business as Plains Pipeline. We have a Material Safety Data sheet from Schurlock Premium.

Regarding that law, I read this:

“Cradle to Grave” states that a hazardous waste generator is responsible for its waste from initial generation through its ultimate disposal and beyond. Nothing will relinquish a generator of this responsibility. There’s no expiration date or time limit, and hiring someone else to transport and dispose of your waste does not transfer responsibility. That’s why it is vitally important to maintain compliance and ensure you are operating by the book. If an incident happens occurs at any point during your waste’s lifecycle, you can and will be held liable. It’s possible you may also be obligated to pay some, or all, costs associated with a response or a cleanup The Resource Conservation and Recovery Act (RCRA) gives EPA the authority to control hazardous waste from cradle to grave. But again I am not an attorney but would ask you to please consider that before putting a \$300,000 lien on our property that we need so badly at this time in our life.

Also, I would like to express to you how grateful we are that you stepped in and cleaned up the land. We could have never accomplished it as well and as quickly as you did by ourselves. It was us as a responsible company that helped the lumber mills find a new way to handle their veneer Pitch. Somewhere in the early 2000 we contacted the Lumber Mills and asked them to help clean the land by allowing us to bring the pitch back to the mill and run it through their broiler. We also mentioned the cradle-to-grave law. They said no and had their attorney write us a letter saying they would fight us vigorously. This was the number one attempt. I have that correspondence somewhere I think I can find if needed. We wanted to clean the land when coming back from Florida in 2021, we needed it, so another plan was to sell the crude oil in the large tank and use it on roads for a private community in Eureka Montana. I can show you the Bid we have for that job. We planned to use those proceeds to start cleaning the land. The Flathead County had closed the Green Recycling bins out near our land and people started putting old appliances and garbage on

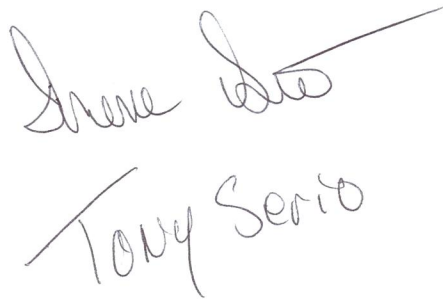
the land. Our son Jesse owns 5 dump trucks and we have a friend with an excavator that was willing to help.

When EPA contacted us in 2022 the house we were renting from my cousin after my aunt died was sold. It was not even for sale but my cousin said it was too good a deal to pass up and because the people paid cash we were out and in a housing dilemma. I apologize for my response to you when you called. I was the one that sent the uncalled words that Tony said don't and I did. I apologize. It was too hard to explain in a phone conversation the circumstances of the property and as I tried I was angry. I was very much on the defensive and said things I never should have said.

I also would like to address the financial situation that is on the land. We took a loan on the land to buy a business that would allow somewhat of a retirement plan. We did this in 2023. The business that we bought is renting space to vendors for antiques sales records comics, etc. The couple we bought it from made small areas with walls and rented them out to collectors and antique dealers. Of course, this business does not own the building so we rent the space from the owner of the building, and then the collectors of antiques, etc., pay us rent. We receive a percentage of the sales and work the desk to collect the sales. The business name is Swappers. There was a loan that was taken out on the land around 2006 from Glacier Bank. When we bought this business for \$25,000 the bank paid off the old loan and borrowed the \$25,000 to buy the business. If a lien from the EPA goes on the land it will financially ruin us. We do plead with the EPA to consider all the facts as to why the property was in the condition it was for reasons beyond our control and ask them not to put a Lien on the property. Would The Superfund Recycling Equity Act benefit our situation? Would not the Cradle to Grave apply to our land? Can you please consider these other options?

Thank You

Irene Serio
Tony Serio



Irene Serio
Tony Serio

2-7-2024

2-7-2024

Please note -

I use pages from the legal papers with the clip. I am sending them so you can read them in its entirety if you choose to.

The papers with the rubber Band are the other pages.

This way I am sending the complete Law Suite:

**Flathead County vs Sure Seal
Thank You**

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This way I am sending the complete Law Suite:

**Flathead County vs Sure Seal
Thank You**

COLLOID LABORATORY

P.O. Box 980094 WEST SACRAMENTO, CA 95756-0094 916.371.4485 FAX 916.371.4977

FAX TRANSMITTAL

August 9, 1994

ECOTECH
P. O. Box 9241
Kalispell, MT 59904-2241

Attention: Mr. Tony Serio

Dear Mr. Serio,

To manufacture the product that you were sampled with you will need to have a tank equipped with an agitator, either side mounted or top mounted, the tank should also be equipped with a thermometer to read the materials inside. It would be a good idea to have a bi-metal thermometer attached to the tank to read the inside material's temperature.

Store your material in the tank with a vent applied to allow for evaporation of the water vapor. Do not over-vent of the tank so that the water vapor will have a way to escape and not pressurize your storage tank. Agitation is important. The faster the agitation the faster the material will release the water. Once the base material in storage has reached a temperature above 220°F all of the moisture will be out and you are ready for the final step of production. You will either need to have a calibrated float system on your storage tank or have the tank weighed so that you can determine the total weight or gallons of the water free material left in the tank. After you determine what is remaining in the tank, either by gallons or by weight, add 23% by weight of CULU 102 from Arrow Chemical Company, 5 W. Park Ave., Merchantville, NJ 08109, and agitate the tank until the two materials have been completely mixed. Once this is done you will have a finished material which will have a Kinematic viscosity of approximately 925 cSt. The specification we worked with required the viscosity to be between 800-1600 cSt. Once you have received a sample and a MSDS, I would suggest you talk with your local paper manufacturing company and see if they can match the materials. This is a high fatty acid tall oil that you can probably get locally and save some money on transport. One thing about your finish product, it is completely organic and non-hydrocarbon. It should make all of the local authorities very happy.

If your base material is fairly consistent you will find that this procedure will work all of the time for you. I enjoyed working with this material and with you on this project. I hope to be able to work with you again in the future.

Regards,

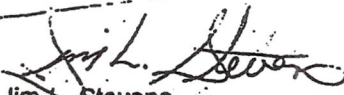

Jim L. Stevens
CLI

EXHIBIT A11

PURCHASER'S COPY

RETAIN THIS PURCHASER'S COPY. IT MUST BE INCLUDED WITH ALL REFUND REQUESTS. BE SURE TO READ IMPORTANT INFORMATION BELOW AND ON BACK.

NOT
NEGOTIABLE

04-530770677

AUG 02 94

*****400.00

Colloid Laboratory
Tony Serio OR Jim Dofimire

Issued by American Express Travel Related Services Company, Inc., Englewood, Colorado

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2nd Article

OCT 12, 1995 SPRINTED. K

Flathead County sues over illegal solid waste dumping

By TOM LUTEY
Staff Writer

It was like no road oil she had ever seen, Geri Hearn of rural Columbia Falls said, describing the gooey mess she found last October on the road leading to her Midway Drive home.

It stuck to her car and anything else it came in contact with.

Now the Flathead County Attorney's Office is suing Sure Seal Dust Control for allegedly dumping hundreds of gallons of solid waste on Midway Drive, Smith Lake Road, and a county gravel pit.

In a lawsuit filed Oct. 4, the county alleges that on five separate occasions, Sure Seal Dust Control, owned by Anthony Serio, dumped veneer dryer precipitator residue on county property.

Essentially, this residue is the pitch extracted from plywood while the wood is being dried. If convicted, Serio could be forced to pay \$5,000

for each violation plus any conditional cleaning costs.

Serio got the solid waste he allegedly dumped from Plum Creek Timber Company and Stimson Lumber of Libby. Plum Creek officials said Serio was supposedly using the residue to come up with a new concoction to oil roads.

However, the county has pictures of tanker truck dumping what it alleges is solid waste at the county's Shepherder Hill Gravel Pit. In one picture, a man prosecutors believe to be a Sure Seal Dust Control employee is smiling at the camera. Other photos reveal a tar like substance pooled on rural roads. Deputy County Attorney Dennis Hester said the tanker truck and the mess on the roads belong to Serio.

Had Serio developed a safe mix and applied it properly with the county's approval, County Sanitarian Joe

Russell said, the dust control company would have been OK.

The residue is cancerous, Russell said, and should have been spread into the road in a way that it would be absorbed. Otherwise the substance should have been taken to a landfill capable of handling it.

"This material has polynuclear aromatic hydrocarbons in it, which is one of the carcinogens that cause cancer," he said.

Plum Creek Environmental Engineer Mitchell Lew said his company had no idea Serio was allegedly dumping their solid waste illegally.

"At one time he was taking our stuff and testing it to see if he could use it for dust control, but when we found out what he was really doing with it we cut him off," Lew said.

He said Plum Creek now uses the residue to fuel their Evergreen plywood mill.

County sues dust-control firm

15th Article

1 The county is suing a local dust-control company for illegal dumping. The suit alleges that Sure Seal Dust Control illegally dumped lumber-mill waste on public roads and in a county landfill.

2 It asks for a penalty of \$30,000 and clean-up costs.

3 The case was originally investigated as a hazardous-waste violation, said Joe Russell, head of the county Environmental Health Division. But, because of the difficulty and expense of sampling the material, the violation is being pursued under littering and garbage-disposal laws.

4 The investigation has been under way for more than a year, said Russell.

The Kalispell company is accused of using "veneer dryer precipitator residue" in its dust coating. According to the lawsuit, Sure Seal contracted with lumber mills in Flathead and Lincoln counties to dispose of the residue.

The suit says the substance was used on Midway Road in Columbia Falls and Smith Lake Road. It also alleges that the residue was dumped at least four times in the county's Shepherder Hill gravel pit.

This is a clue

COPY

FLATHEAD COUNTY ROAD DEPARTMENT

Mailing Address: 800 S. Main
Delivery Address: 1249 Willow Glen Drive
Kalispell, Montana 59901
Phone 752-5300 Ext. 353 or 354

July 13, 1994

Sure Seal, Inc.
P. O. Box 7804
Kalispell, MT 59904-7804

ATTENTION: Tony Serio

RE: Dust Abatement Permit 1994 Season

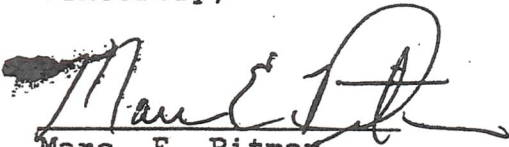
Dear Tony:

Your permit for the application of dust abatement on Flathead County Roads was valid until June 3, 1994. This permit has expired and is not being renewed.

This non-renewal is based upon failure to comply with the conditions outlined in the permit. Oil is being put down too heavy, not being blotted, and there appears to be a lack of control of the spray mechanism in that the operator cannot turn off the spray bar from within the cab.

This revocation will remain in effect for the remainder of the 1994 dust abatement season.

Sincerely,



Marc. E. Pitman
Superintendent

MEP:lmw

EX
H

P. O. Box 201
Kila, MT 59920
January 9, 1995

County Commissioners
Sharon Stratton &
Howard Gipe
800 S. Main
Kalispell, MT



Dear Sharon and Howard:

As I sat through the Road Department meeting of January 9, 1995, I listened to road department's Mark Pittman tell you that everything was under control on the icy roads of January 9, that all the graders had their ice bits on. He also stated the tonage of sand hauled and spread. My question is, where in the world did he put it today? On my way home after leaving the meeting, I noticed there was not a sand truck in sight on the west side. I know. I drove all the roads! Also, the grader that Bob Watne operated was sitting at the Grange Hall, where it has been for the last week, with no ice bits on. This brings me to ask, what in the world is going on. Did I not just 30 minutes earlier, hear Mr. Pittman say that all equipment and sand trucks were working? The only sand that I could find on a county road was on the pavement through Kila. It's good that part was sanded, but nothing else was. I would like to believe that Mark is not leading the two of you on. Maybe he just doesn't know what is going on. Either way, the time has come for you two to make a decision as to what to do. The tax payers deserve better than to pay for this kind of service. The commissioners, being highly respected, do not deserve to be deceived as they are being. At times like this, when the roads are at their worst, the people deserve the best. It's not happening, folks. In my opinion the man needs his employment opportunities broadened. **Fire him immediately!** The county can't afford him any longer. **I won't be lied to and hope you won't be either.**

I hope the people of Kila are not suffering because of my involvement in these matters, and I hope you won't let them suffer but it sure looks that way to me. I talked to Bob Watne at 8:00PM and explained the sand and grader problem to him. He said there was nothing done in his area either. Bad choice on Mark's part. **The man figures he can tell you and the public anything, do as he darn well pleases and answers to no one.**

Sincerely,

Charles Johnson

cc: BCC

ACORD. INSURANCE BINDER

ISSUE DATE (MM/DD/YY)

9-8-93

THIS BINDER IS A TEMPORARY INSURANCE CONTRACT, SUBJECT TO THE CONDITIONS SHOWN ON THE REVERSE SIDE OF THIS FORM.

PRODUCER

Mike Grachek Agency
P.O. Box 1715
Kalispell, MT 59903

COMPANY

Scottsdale

BINDER NO.

465

DATE	EFFECTIVE	TIME	EXPIRATION	TIME
9-08-93	3:30	x	11-8-93	x 12:01 AM NOON

CODE

SUB-CODE

THIS BINDER IS ISSUED TO EXTEND COVERAGE IN THE ABOVE NAMED COMPANY PER EXPIRING POLICY NO:

DESCRIPTION OF OPERATIONS/VEHICLES/PROPERTY (Including Location)

INSURED

Toni Serio
P.O. Box 2322
Kalispell, MT 59904

mixes pine tar pitch and vegetable oil forming solution for dust control on roads and parking lots.

COVERAGES

LIMITS

TYPE OF INSURANCE			COVERAGE/FORMS	AMOUNT	DEDUCTIBLE	COINSUR.
BASIC	BROAD	SPEC.				
PROPERTY CAUSES OF LOSS						
GENERAL LIABILITY						
<input checked="" type="checkbox"/>	COMMERCIAL GENERAL LIABILITY			GENERAL AGGREGATE	\$	500,000
	CLAIMS MADE	<input checked="" type="checkbox"/> OCCUR		PRODUCTS — COM/OP AGG.	\$	500,000
	OWNER'S & CONTRACTOR'S PROT.			PERSONAL & ADV. INJURY	\$	
				EACH OCCURRENCE:		500,000
				FIRE DAMAGE (Any one fire)	\$	50,000
				MED. EXPENSE (Any one person)	\$	
RETRO DATE FOR CLAIMS MADE:						
AUTOMOBILE LIABILITY						
	ANY AUTO			COMBINED SINGLE LIMIT	\$	
	ALL OWNED AUTOS			BODILY INJURY (Per person)	\$	
	SCHEDULED AUTOS			BODILY INJURY (Per accident)	\$	
	HIRED AUTOS			PROPERTY DAMAGE:	\$	
	NON-OWNED AUTOS			MEDICAL PAYMENT#	\$	
	GARAGE LIABILITY			PERSONAL INJURY PROT.	\$	
				UNINSURED MOTORIST	\$	
AUTO PHYSICAL DAMAGE						
	DEDUCTIBLE	ALL VEHICLES	SCHEDULED VEHICLES	ACTUAL CASH VALUE		
				STATED AMOUNT	\$	
				OTHER		
EXCESS LIABILITY						
	UMBRELLA FORM			EACH OCCURRENCE	\$	
	OTHER THAN UMBRELLA FORM			AGGREGATE	\$	
	RETRO DATE FOR CLAIMS MADE:			SELF-INSURED RETENTION	\$	
WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY				STATUTORY LIMITS		
				EACH ACCIDENT	\$	
				DISEASE-POLICY LIMIT	\$	
				DISEASE-EACH EMPLOYEE	\$	

SPECIAL CONDITIONS/OTHER COVERAGES

NAME & ADDRESS

MORTGAGEE
LOSS PAYEE
LOAN #

ADDITIONAL INSURED

AUTHORIZED REPRESENTATIVE

Mike Grachek
M. W. Grachek

EX. F

DATE (MM/DD/YY)
5/03/94

ACORD CERTIFICATE OF INSURANCE

PRODUCER Montana First Insurance Advisors
38 East Washington, Suite #5
Kalispell MT 59901

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

COMPANIES AFFORDING COVERAGE

COMPANY A National Casualty Company

COMPANY B

COMPANY C

COMPANY D

INSURED Sure Seal, Inc.
PO Box 7804
Kalispell MT 59904

COVERAGES

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
	GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR <input type="checkbox"/> OWNER'S & CONTRACTOR'S PROT				GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ PERSONAL & ADV INJURY \$ EACH OCCURRENCE \$ FIRE DAMAGE (Any one fire) \$ MED EXP (Any one person) \$
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	CA032095	5/03/94	5/03/95	COMBINED SINGLE LIMIT \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE \$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EACH ACCIDENT \$ AGGREGATE \$
	EXCESS LIABILITY <input type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN UMBRELLA FORM				EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY THE PROPRIETOR/PARTNERS/EXECUTIVE OFFICERS ARE: <input type="checkbox"/> INCL <input type="checkbox"/> EXCL				STATUTORY LIMITS EACH ACCIDENT \$ DISEASE - POLICY LIMIT \$ DISEASE - EACH EMPLOYEE \$
	OTHER				

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS

67 Ford F600 VIN#C60EUC169125
Coverage is per the policy language.

CERTIFICATE HOLDER

Flathead County
Road Department
Kalispell MT 59901

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE



ACORD. CERTIFICATE OF INSURANCE

ISSUE DATE (MM/YY)

July 27, 1992

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

Mike Grachek Agency
P.O. Box 1715
Kalispell, MT 59901

COMPANIES AFFORDING COVERAGE

- COMPANY LETTER A General Agents Insurance Co. of Am. Inc
- COMPANY LETTER B
- COMPANY LETTER C
- COMPANY LETTER D
- COMPANY LETTER E

Tony Serio
dba SURE SEAL
P.O. Box 2322
Kalispell, MT 59901

COVERAGES

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO. LTR.	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/YY)	POLICY EXPIRATION DATE (MM/YY)	ALL LIMITS IN THOUSANDS
	GENERAL LIABILITY				GENERAL AGGREGATE \$
	COMMERCIAL GENERAL LIABILITY				PRODUCTS-COMP/OP AGGREGATE \$
	CLAIMS MADE OCCUR				PERSONAL & ADV. INJURY \$
	OWNERS & CONTRACTOR'S PROT.				EACH OCCURRENCE \$
					FIRE DAMAGE (Any one fire) \$
					MEDICAL EXPENSE (Any one person) \$
	AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT \$500,000
	ANY AUTO				BODILY INJURY (Per person) \$
	ALL OWNED AUTOS				BODILY INJURY (Per person) \$
	SCHEDULED AUTOS	Opp 507 462-02	5-03-92	5-03-93	BODILY INJURY (Per accident) \$
	MIXED AUTOS				PROPERTY DAMAGE \$
	NON-OWNED AUTOS				PROPERTY DAMAGE \$
	SAVAGE LIABILITY				PROPERTY DAMAGE \$
	GROSS LIABILITY				EACH OCCURRENCE \$
	OTHER THAN UMBRELLA FORM				AGGREGATE \$
	WORKERS COMPENSATION				STATUTORY (EACH ACCIDENT) \$
	EMPLOYERS' LIABILITY				(DISEASE-POLICY LIMIT) \$
					(DISEASE-EACH EMPLOYEE) \$

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS
road drilling 1967 Ford tank truck SN C60EJ16925

CERTIFICATE HOLDER
Flathead County - Montana
Road Department
P.O. Box 1102
Kalispell, MT 59901

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE: *M.W. Grachek*
M.W. Grachek

ACORD. CERTIFICATE OF INSURANCE

ISSUE DATE (MM/YY)

1994

5/03/94

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

COMPANIES AFFORDING COVERAGE

- COMPANY A National Casualty Company
- COMPANY B
- COMPANY C
- COMPANY D

PRODUCER Montana First Insurance Advisors
35 East Washington, Suite #5
Kalispell MT 59901

INSURED Sure Seal, Inc.
PO Box 7804
Kalispell MT 59904

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO. LTR.	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/YY)	POLICY EXPIRATION DATE (MM/YY)	LIMITS
	GENERAL LIABILITY				GENERAL AGGREGATE \$
	COMMERCIAL GENERAL LIABILITY				PRODUCTS-COMP/OP AGGREGATE \$
	CLAIMS MADE OCCUR				PERSONAL & ADV. INJURY \$
	OWNERS & CONTRACTOR'S PROT.				EACH OCCURRENCE \$
					FIRE DAMAGE (Any one fire) \$
					MED EXP (Any one person) \$
	AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT \$1,000,000
	ANY AUTO				BODILY INJURY (Per person) \$
	ALL OWNED AUTOS				BODILY INJURY (Per person) \$
	SCHEDULED AUTOS	CA05205	5/03/94	5/03/95	BODILY INJURY (Per accident) \$
	MIXED AUTOS				PROPERTY DAMAGE \$
	NON-OWNED AUTOS				PROPERTY DAMAGE \$
	SAVAGE LIABILITY				PROPERTY DAMAGE \$
	GROSS LIABILITY				EACH OCCURRENCE \$
	OTHER THAN UMBRELLA FORM				AGGREGATE \$
	WORKERS COMPENSATION				STATUTORY (EACH ACCIDENT) \$
	EMPLOYERS' LIABILITY				(DISEASE-POLICY LIMIT) \$
					(DISEASE-EACH EMPLOYEE) \$

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS
67 Ford F600 VIN06081C169125
Coverage as per the policy language.

Flathead County
Road Department
Kalispell MT 59901

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE: *[Signature]*

THIS BINDER IS A TEMPORARY INSURANCE CONTRACT, SUBJECT TO THE CONDITIONS SHOWN ON THE REVERSE SIDE OF THIS FORM.

10+2 4-05-93

PRODUCER Mike Grachek Agency
P.O. Box 1715
Kalispell, MT 59903

COMPANY National Casualty - Mt Ser 041
DATE EFFECTIVE 4-05-93
TIME 10:30
DATE EXPIRATION 6-05-93

INSURED Sure Seal Inc.
445 Blanchard Lake Road
Whitefish, MT 59937

COVERAGES	TYPE OF INSURANCE	COVERAGE/FORMS	LIMITS
	PROPERTY CAUSES OF LOSS		AMOUNT DEDUCTIBLE COM
	BASIC BROAD SPEC		
GENERAL LIABILITY			GENERAL AGGREGATE \$
COMMERCIAL GENERAL LIABILITY			PRODUCTS-COMP/OP AGGREGATE \$
CLAIMS MADE OCCUR			PERSONAL & ADV. INJURY \$
OWNERS & CONTRACTOR'S PROT.			EACH OCCURRENCE \$
			FIRE DAMAGE (Any one fire) \$
			MED. EXPENSE (Any one person) \$
AUTOMOBILE LIABILITY			COMBINED SINGLE LIMIT \$1,000,000
ANY AUTO			BODILY INJURY (Per person) \$
ALL OWNED AUTOS			BODILY INJURY (Per person) \$
SCHEDULED AUTOS			BODILY INJURY (Per accident) \$
MIXED AUTOS			PROPERTY DAMAGE \$
NON-OWNED AUTOS			PROPERTY DAMAGE \$
SAVAGE LIABILITY			PROPERTY DAMAGE \$
GROSS LIABILITY			EACH OCCURRENCE \$
OTHER THAN UMBRELLA FORM			AGGREGATE \$
WORKERS COMPENSATION			STATUTORY (EACH ACCIDENT) \$
EMPLOYERS' LIABILITY			(DISEASE-POLICY LIMIT) \$
			(DISEASE-EACH EMPLOYEE) \$

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS
road drilling 1967 Ford SN C60EJ16925 1977 Kenworth SN 251519K
1959 Joplin SN 1503

ACCORD 75-B (7/80)

NAME & ADDRESS
Flathead County - Montana
Road Department
P.O. Box 1102
Kalispell, MT 59901

AUTHORIZED REPRESENTATIVE: *[Signature]*
M.W. Grachek

SCOTTSDALE INSURANCE COMPANY
COMMERCIAL GENERAL LIABILITY COVERAGE PART
SUPPLEMENTAL DECLARATIONS

These Supplemental Declarations form a part of policy number CLS 134777

LIMITS OF INSURANCE

General Aggregate Limit (other than Products/Completed Operations)	\$ 1,000,000.
Products/Completed Operations Aggregate Limit	\$ 1,000,000.
Personal and Advertising Injury Limit	\$ 1,000,000.
Each Occurrence Limit	\$ 1,000,000.
Fire Damage Limit	\$ 50,000. any one fire
Medical Expense Limit	\$ EXCLUDED any one per

BUSINESS DESCRIPTION AND LOCATION OF PREMISES

Form of business:
 Individual Joint Venture Partnership Organization (other than Partnership or Joint Venture)

Business description:
DUST CONTROL PRODUCT MFG.

Location of all premises you own, rent or occupy:
KALISPELL, FLATHEAD COUNTY, MONTANA

PREMIUM

Classification	Code No.	Premium Basis	PR/Co	All Other	Advance P/PrCo
ASPHALT OR TAR DISTILLING OR REFINING INCLUDING PRODUCTS AND/OR COMPLETED OPERATIONS	51240	\$) 50,000	2.290	5.806	\$309.00 p \$

ADDITIONAL INSURED (SEE CG2011)

FORMS AND ENDORSEMENTS (other than applicable forms and endorsements shown elsewhere in the Forms and endorsements applying to this Coverage Part and made part of this policy at time of issue:

(a) Area, (c) Total Cost, (m) Admission, (p) Payroll, (s) Gross Sales, (u) Units, (o) Other
THIS SUPPLEMENTAL DECLARATIONS AND THE COMMERCIAL LIABILITY DECLARATIONS, TOGETHER WITH THE POLICIES DESCRIBED HEREIN, CONSTITUTE THE ENTIRE CONTRACT BETWEEN THE ABOVE NAMED PARTIES.

1 thing you ever heated there, if I'm right -- and
 2 correct me if I'm wrong -- is in the two trucks,
 3 because you had propane heating tubes?
 4 A Heating tubes, yeah.
 5 Q Okay. And so it was your job to heat this
 6 material as opposed to your mother's job or your
 7 dad's job?
 8 A Yeah.
 9 Q Did you ever add anything else to the
 10 residue?
 11 A Yeah. We experimented a lot with it. We
 12 used alcohol. We used -- What's that called? I
 13 don't remember. We used some other stuff that we
 14 cut it with, but the best results we had is water
 15 and alcohol and heat it up really hot and circulate
 16 it.
 17 Q And you were the one, primarily, that
 18 would do the experimenting?
 19 A Uh-huh.
 20 Q Or would it be you and your dad that would
 21 work together to try to --
 22 A Yeah. We'd work together.
 23 Q What role did your father have in the
 24 company, and what role did your mother have? What
 25 were their primary duties, I guess?

1 A Yeah.
 2 Q Okay. Yeah. I used "Dumping," but
 3 spreading is fine.
 4 A There's a big difference there.
 5 Q Right. I understand that.
 6 A You probably need to change that before
 7 you guys go to court, because that makes us look
 8 like bad people.
 9 Q When you say you spread it, you did it --
 10 Was it road oil, or was it the residue on Midway
 11 Road?
 12 A It was residue.
 13 Q So that was spread out of one of your two
 14 trucks?
 15 A Yeah. With a spray bar.
 16 Q Was anyone with you when you did that?
 17 A No. Not that I remember.
 18 Q How was it that you went to Midway Road?
 19 In other words, did you have a client -- Did the
 20 company have a client up there that requested it?
 21 A Oh, yeah. The guy at the end of the road.
 22 Q Do you remember his name?
 23 A No. I mean, I know you have his name, so
 24 why are you asking me if I remember his name? I
 25 don't remember his name.

1 A Dad would help me when it would get busy,
 2 so I guess he was pretty much a truck driver, and
 3 mom would bill.
 4 Q Did your mother keep the books?
 5 A Yeah.
 6 Q Would your father also be involved in
 7 getting business for the company, or would you and
 8 your father obtain customers, try to get customers?
 9 A Yeah. We both would.
 10 Q Okay. One of the counts in this complaint
 11 that was filed involves Midway Drive. Have you seen
 12 a copy of the complaint?
 13 A Yeah. I shot the job, and I went up and
 14 looked at it. I never did read their complaint.
 15 I'd like to know what it says. Do you have it on
 16 you?
 17 Q Yeah. I have a copy I'll show you.
 18 A Okay. Then that must have been in '94.
 19 Q Yeah. What it says is --
 20 A That's when Pitman shut the permit off,
 21 wasn't it?
 22 Q October of '94, dumping residue on Midway
 23 Road.
 24 A We didn't dump it. We spread it.
 25 Q Okay. That's in Columbia Falls?

1 Q Okay. If you don't, that's fine.
 2 A He wanted his road oiled, and we oiled it.
 3 Q How did you know that he wanted his road
 4 oiled? Did he talk to you, or would he have called
 5 your parents?
 6 A He'd have called my parents, and I got
 7 sent out there.
 8 Q And let's say in that case, of Midway
 9 Road, you don't recall that anyone called the county
 10 to say, We're going out there. Could you blade the
 11 road for us?
 12 A No. I don't know what the deal was there,
 13 because -- You guys, obviously, weren't called. Is
 14 that why you guys are mad?
 15 Q I don't know if the road was bladed or
 16 not. I'm just -- Do you remember if it was bladed
 17 or not?
 18 A I know it wasn't washboarded when I shot
 19 it, or I wouldn't have shot it.
 20 Q Would you go to a road and, if it was
 21 washboardy, you would leave?
 22 A Yeah. Pretty much. I mean, that's what
 23 you're supposed to do, or the customer -- If you oil
 24 the road and the county comes through and grades it,
 25 you've got to oil it again. That's just a waste of

1 time and money.

2 Q Let's talk about Smith Lake Road, then.

3 A Okay.

4 Q The dates that the residue was applied
5 were November 28th or 29th of '94. Do you remember
6 that?

7 A What year was that?

8 Q '94.

9 A What job did we do?

10 Q It was on Smith Lake Road.

11 A Did we do a job?

12 Q You applied residue. I don't know if you
13 had a client or not. That's what I'm going to be
14 asking you, if you had a client out there. Residue
15 was applied on Smith Lake Road --

16 A We had a client right on the T. Is that
17 where we shot at, or do you know?

18 Q I don't know.

19 A You've got the weigh station, you know,
20 Highway 2, West, and then you turn right at the
21 fishing access, and then we do that T.

22 Q When you turn, which way would you turn?

23 A You make a left. Then you go up and go to
24 the T, and we always shot that T.

25 Q And who was the client there?

1 that's what you were applying, that you weren't
2 applying any oil. Is that --

3 A A very, very little bit we were applying
4 oil, but this pitch was working, you know.

5 Q Okay. You seem so certain in those
6 applications that it was residue, and that's because
7 that's what you were applying in almost all the
8 situations?

9 A Yeah. I mean, that's what I shot on the
10 railroad for two years, because they have that rock,
11 that really weird rock that they put on there. It's
12 called ballast rock. That worked really good for
13 that because it kept everything together.

14 Q Say in November of '94, on the Smith Lake
15 Road, when you were applying it, were you still in
16 the experimental stage where you were testing out
17 methods of application or a combination of materials
18 with the residue?

19 A I'm sure we were, I mean, because '95 was
20 when we really had it down. I mean, we tried a lot
21 of stuff, but the alcohol and the water worked the
22 best.

23 Q In those Smith Lake Road situations that
24 you've described, is that similar to the Midway Road
25 one where your father -- I assume it would be your

1 A I don't remember their names or anything
2 like that. There's a little trailer house, and
3 there's a gray house and some horse stalls and
4 stuff.

5 Q Was there another place on Smith Lake Road
6 where you had applied --

7 A Then up the road, we did some work up
8 there, and, then, let's see. I think we had a job
9 right up from Evergreen Disposal that we did.

10 Q Again, you would have been the one who
11 operated the truck in those applications?

12 A Uh-huh.

13 Q Was it residue at all those applications,
14 or was there road oil in any of them?

15 A Residue. No oil. With the residue we
16 didn't need oil. See, what we did is -- We had good
17 jobs, and we had bad jobs. All the bad jobs,
18 obviously, I guess, called you guys and made some
19 complaints.

20 Q Most people don't call us when things are
21 going well. When there's a good job, they usually
22 don't call us.

23 A Yeah.

24 Q I'm getting the impression that in '94 and
25 '95, when you were working with the residue, that

1 father or maybe your mother -- said, We have a
2 client at this location. Would you go out and do
3 it?

4 A And people loved it that you didn't have
5 an oil-based product, because, I mean, oil --
6 Eventually, they'll probably get oil not to be
7 spread on roads, I guess.

8 Q What I'm asking you is, you would be
9 directed, then, by your father or your mother --

10 A Uh-huh.

11 Q -- to go to this location because a client
12 had called Sure Seal?

13 A Uh-huh.

14 Q Again, am I to assume those roads were
15 graded, or else you wouldn't have applied material?

16 A Uh-huh.

17 Q Let's talk, then --

18 A Did someone write in and complain on the
19 Smith Lake Road?

20 Q That's one of the counts in the complaint,
21 yeah.

22 A Okay. What does he or she say?

23 Q I'll show you Count 3 in the complaint,
24 just so you know. It just says that, On or about
25 November 28th and 29th, again, dumping -- that's my

1 word -- the residue on Smith Lake Road west of
 2 Kalispell.
 3 A Do you know how many footage we did there?
 4 Q I don't know offhand, no.
 5 A My mom said she went and looked at that,
 6 and it doesn't -- That's the thing. I don't know
 7 why the county is saying they spent -- Did you guys
 8 spend money in fixing our mess ups? Did you guys
 9 haul gravel to Midway Rental -- Not Midway Rental.
 10 Q No.
 11 A Why are they making an issue out of it?
 12 Q We're kind of getting off the track here.
 13 I'm supposed to be asking you questions. We can go
 14 off the record at the end, and I'll answer some
 15 questions for you. I'll be happy to do that.
 16 Let's talk about Sheep Herder Hill. The
 17 Sheep Herder Hill gravel pit, you're familiar with
 18 that?
 19 A Uh-huh.
 20 Q On this Exhibit 1 it's shown up here in
 21 the northeast corner of that map. Is that about
 22 where it is?
 23 A Yeah.
 24 Q And it says "Road to county gravel pit".
 25 Does that road come through Sure Seal's property?

1 Q Does the Sure Seal property adjoin the
 2 gravel pit property, the county property, or is
 3 there another land owner in between?
 4 A I don't know about that, but -- Is there?
 5 Q No. I'm just asking if you know that.
 6 I'm not familiar with who owns what up here.
 7 Was there a fence along there so that you
 8 kind of knew where the properties started and ended,
 9 the property boundaries?
 10 A There was just the cattle guard.
 11 Q Do you remember when you first applied any
 12 of the residue up in the pit area, beyond the cattle
 13 guard, let's say?
 14 A No, I don't. I don't remember.
 15 Q Would it have been in, let's say, '94,
 16 when you were experimenting with this material?
 17 A Yeah. '94, and we were still
 18 experimenting with it in '95 too, so --
 19 Q So the purpose of applying any residue in
 20 the pit would be experimentation?
 21 A Uh-huh.
 22 Q Who determined whether to apply it up in
 23 the pit, you or your father?
 24 A My dad did. He said, I don't see a
 25 problem with it.

1 A Uh-huh.
 2 Q Was that open to the public, or was that a
 3 private road on Sure Seal property?
 4 A I don't know.
 5 Q Okay. Were there any gates on it?
 6 A No. Just a cattle guard up there.
 7 Q Was the cattle guard at the boundary of
 8 the property, at the beginning of the gravel pit
 9 property, for instance?
 10 A I think so, and we did experiment up in
 11 here and in here.
 12 Q When you say "Up in here," you're pointing
 13 to the road and then up in the area entitled "Gravel
 14 pit"?
 15 A Uh-huh.
 16 Q Again, by "Experiment," you were
 17 experimenting with the application of the residue?
 18 A Uh-huh.
 19 Q Application rates --
 20 A Yes.
 21 Q -- would be one way, and combinations of
 22 materials --
 23 A Mixed.
 24 Q -- mixed would be another way?
 25 A (Witness nodded head.)

1 Q So he would direct you, Here is what we
 2 want to do today with this material. Go up in the
 3 pit and give it a run?
 4 A Yeah. I mean, we were excited. We had
 5 the stuff -- They were giving it to us, and it
 6 worked. We wanted to get it working better so we
 7 could keep up with our competitor.
 8 Q Now, do you know that on the 20th -- Have
 9 you seen some of these pictures that were taken on
 10 the 20th?
 11 A Yeah.
 12 Q These are photocopies. I apologize for
 13 that. Do you remember? On the 20th you had applied
 14 material up in the Sheep Herder gravel pit; is that
 15 correct?
 16 A Uh-huh.
 17 Q And someone from the road department came
 18 out there?
 19 A Uh-huh. Yeah. These are the pictures I
 20 was telling you about.
 21 Q And someone from the road department came
 22 out, and at the time you were applying. Did they
 23 stop you, or did you stop the vehicle?
 24 A Stop them?
 25 Q Did they stop you, or did you just stop

when you saw them?

A As in what way, stop the vehicle?

Q Yeah. In other words, did they come and try and stop your vehicle and say, Hey, stop what you're doing. Get out and talk to us?

A No. They never said anything.

Q You just saw them and you stopped?

A I thought they wanted to talk to me, so I stopped.

Q Let me write on these as Exhibits 2, 3 and 4.

MR. HESTER: Hang on a second.
(Exhibits 2 through 4 were marked.)
(Brief recess.)

BY MR. HESTER:

Q Let's look at these. On the 20th, when these were taken, in Exhibit 2, that's a picture of you; is that right?

A Uh-huh.

Q And this is the Dodge truck?

A What am I holding here?

Q I could never tell. Maybe you had your hands in your pocket. I don't know. You don't recall holding anything?

A I wonder if I'm holding something or what.

1 Q And so it's conceivable that if you spread
2 going up the road you were still spreading as you
3 turned around until you ran out?

4 A Yeah.

5 Q Okay. I assume no one was with you on the
6 20th?

7 A No.

8 Q And, again, on the 20th or 19th, 18th,
9 whenever, you being up there, you would have been
10 directed by your father to go up and experiment with
11 whatever you were doing?

12 A We drove to the Fairchild Air Force Base,
13 I think it was, in December. We went and got some
14 of that alcohol. You got some of that alcohol, and
15 it's like rubbing alcohol, and then we bought -- We
16 tried soap, mixing soap with this stuff, but the
17 alcohol was the best solution to get it to penetrate
18 and stay on the roads.

19 Q Would this residue, let's say, on the 20th
20 have come directly from Plum Creek or Stimson, or
21 had you heated it down on the West Valley property
22 before you went up there?

23 A Now I don't remember. Sometimes we heated
24 it. Sometimes we had Plum Creek steam it, but,
25 ordinarily, in the wintertime, when it would come

Q And this is the Dodge truck that we've been talking about earlier?

A Uh-huh.

Q Do you remember how much material you spread on the 20th?

A No, I don't.

Q You had been up there the day before or two days before? Do you remember that?

A Uh-huh.

Q Was it the 18th or 19th, and you spread material then?

A Uh-huh.

Q Had you spread material before the 18th, 19th and 20th? This is January of '95. Had you spread it in December or November of '94 up there?

A And I don't remember, but my dad would probably know.

Q This wasn't the first time you had been up there?

A We experimented on our road, this road here.

Q If you went up the road to the gravel pit, you'd have to go up into the pit to turn around and come back down; is that correct?

A Yeah.

1 out of the tank, you could never shoot it, so I'm
2 sure I had to steam it before I --

3 Q It was always just cool enough --

4 A It was always cool enough you could blow
5 it out, but you could never spread it. You'd have
6 to heat it up.

7 Q Now, on the 21st -- that's the day after
8 these photos in Exhibits 2, 3 and 4 were taken --
9 someone came up to the pit and up that road with a
10 bobcat. Do you know who that was?

11 A Yeah. That was me.

12 Q Why did you go up there?

13 A Well, because Dad goes, Well, the county
14 is probably going to make a big deal out of it, just
15 like they did Midway Drive, so we went and cleaned
16 it up.

17 Q Your dad was concerned with what happened
18 on the 20th and asked you to go up and clean it up?

19 A Yeah.

20 Q And what did you do with the bobcat?

21 A I scooped it up and put it on our hill.

22 Q And by, On your hill, do you mean on the
23 road or off on the side of the road?

24 A On our road. The stuff is harmless. I
25 mean, like I told you before, it's not one bit --

1 You know, in fact, Stimson, they spent a lot of
2 money to make sure it wasn't, you know, harmless
3 (sic) or anything like that, or they'd have had it
4 hauled off.

5 Q To a special landfill, I assume?

6 A Yeah. In fact, Plum Creek was putting it
7 up at your guys' landfill for awhile in big garbage
8 bags.

9 Q Can you estimate about how many times you
10 applied or spread that residue material up here in
11 the gravel pit?

12 A Probably about three or four times, I
13 imagine. See, that's the thing is that, you know,
14 Joe Russell -- Is this getting off your --

15 Q No. Go ahead.

16 A If this is getting off, I don't want to --
17 You know, Joe Russell, Pitman, no one really
18 understood what we were doing. That's --

19 Q When you talked to the people on the 20th
20 and even before that, you knew that you were
21 spreading it on the county property; is that right?

22 A Uh-huh.

23 Q And your father knew that?

24 A I'm sure he did.

25 Q After the 20th, did you not spread anymore

1 CORRECTION PAGE
2 PAGE LINE CORRECTION

14 I have read the foregoing testimony and
15 believe the same to be true, except for the
16 corrections noted above.

17 DATED this ___ day of _____, 1997.

19 JESSE PARKER SERIO _____

20 Subscribed and sworn to before me this ___ day
21 of _____, 1997.

23 Notary Public for the _____
24 State of Montana.
25 Residing at _____
My Commission expires: _____

1 up in the pit?

2 A Yeah.

3 MR. HESTER: I don't think I have any
4 more questions that I can think of, Jesse.

5 Off the record.

6 (Discussion off the record.)

7 MR. HESTER: Jesse, you have the
8 right to read this deposition.

9 THE WITNESS: Yeah, I would like to.

10 (Whereupon, the deposition of
11 JESSE PARKER SERIO was concluded at 11:10 a.m., and
12 signature was reserved.)

3 REPORTER'S CERTIFICATE

5 I, Jolene Asa, Registered Professional
6 Reporter and Notary Public for the State of Montana,
do hereby certify:

7 THAT I did report the foregoing transcript
8 after having first duly sworn the witness to testify
to the truth;

9 THAT said transcript was taken at the time
10 and place stated on the caption hereto; and

11 THAT the testimony of the witness was
12 taken in shorthand by me and subsequently reduced to
writing under my direction; and

13 THAT the foregoing is a true and correct
14 description of all the testimony of said witness to
the best of my ability.

15 IN WITNESS WHEREOF, I have hereunto
16 subscribed my name and affixed my seal of office
17 this 24th day of October, 1997.

20 JOLENE ASA, RPR, and Notary Public
21 for the State of Montana.
22 Residing in Flathead County, Montana.
23 My Commission expires 8/10/00

IN THE ELEVENTH JUDICIAL DISTRICT,
STATE OF MONTANA, FLATHEAD COUNTY

FLATHEAD DISTRICT COURT
2007 AUG 28 AM 11:38

FLATHEAD COUNTY)
)
Plaintiff,)
)
vs)
)
SURE SEAL DUST CONTROL, et al)
)
Defendant.)

BY Mrs
DEPUTY
DV-95-538B
NOTICE RE: DEPOSITION of Jesse Parker
Serio

TO: Dennis Hester, Deputy, Flathead County Attorney's Office

Please take notice that the above-entitled action was closed by order dated January 6, 1998, and that the decision was affirmed upon appeal, filed February 16, 1999. The deposition will be disposed of within twenty (20) days of this date unless retrieved by counsel, or good cause shown.

DATED this 24th of August, 2007.

PEG L ALLISON
Clerk of the District Court

By: Rae Marie Baker
Rae Marie Baker, Deputy Clerk

Deposition received by the undersigned on date shown:

DATE: 8/28/2007 SIGNATURE DH came to pickup, couldn't find so sent to CA Mrs

Notice having been given, IT IS HEREBY ORDERED that the Deposition not being retrieved by counsel may be disposed of by the Clerk.

DATED: this ___ day of _____, 2007

District Judge

Deposition disposed of this ___ day of _____, 2007

1 1. "Dumping" and "recycling".

2 Serio contests the use of the word "dumping", insisting, rather,
3 that he "applied" the residue to county roads and on a road in the
4 Sheepherder Hill Gravel Pit. He does not deny the latter is county
5 property. Nor does he deny that §75-10-212 M.C.A prohibits the disposal
6 of solid waste unless in a manner permitted by law. This includes but is
7 not limited to dumping or leaving solid waste. Characterizing the act of
8 disposal as "applying" or "recycling" does not lessen the fact that
9 disposal has occurred.

10 Veneer dryer precipitator residue meets the definition of solid
11 waste in §75-10-203(11), M.C.A. which states:

12 "Solid waste" means all putricible and nonputricible wastes,
13 including but not limited to . . . refuse . . . and wood products
14 and wood byproducts and inert materials. (emphasis added).

15 Serio's son and former employee, Jesse Serio, acknowledged during
16 his deposition that the residue is a wood by-product:

- 17 11. A. The residue
- 18 12. . . .
- 19 17. Q. This is, basically, a wood by-product --
- 20 18. A. Yeah
- 21 19. Q -- of a wood milling operation?
- 22 20. A. Yeah. . . .
- 23 (Deposition of Jesse Serio - p. 12, ll. 11-20).

24 Serio, in his brief, acknowledges that the residue is a wood by-
25 product produced by Plum Creek Lumber Co. and Stimson Lumber Co. But he
26 ignores the fact that both companies considered the residue a waste
27 product and paid him to dispose of it. (Defendant's Responses to
28 Plaintiff's First Interrogatories and Requests for Production - Exhibits
29 2, 3 and 18). As pointed out, Stimson documents refer to Serio as the
30 "Disposer" of the sludge. If the residue were indeed a marketable

1 byproduct, as he claims, these lumber companies would have sold it, not
2 paid a disposer to haul it away.

3 Although Serio would like to characterize himself as a noble
4 recycler, the manner in which he "recycled" this waste product was to
5 dump or "apply" it on county roads and to dump it in the Shepherder
6 Hill Gravel Pit, the latter on at least three separate days. Serio
7 apparently still does not understand that county roads and county
8 property are not his private repositories upon which to "recycle"
9 residue and dispose of waste. Nor are they testing grounds for him to
10 experiment with application rates and mixtures. It is because of people
11 like Serio that it was necessary for the County to institute a permit
12 system and adopt standards and regulations for applying substances on
13 roads.

14 2. Residue is environmentally safe.

15 Neither the County's Amended Complaint nor its Brief in Support of
16 Motion For Summary Judgment alleges the residue is a hazardous waste or
17 harmful to humans or the environment. Had the residue been a hazardous
18 waste this case would have been prosecuted under Title 75, Chapter 10,
19 Part 4.

20 That the residue is not a hazardous waste is not an issue and
21 Serio's argument in this regard is irrelevant.

22 3. The Road Superintendent could not revoke his permit or write a
23 letter.

24 Serio argues that then Road Superintendent Marc Pitman, being an
25 ex-employee, "does not have the power to write such a vague letter on
26 July 13, 1994. . . ." (Defendant's Brief in Objection, p.6). Yet he

B-6
1053

The Montana Talc Company

December 6, 1988

To Whom It May Concern:

Magnesium chloride, supplied by "Sure Seal", was applied as a dust suppressant on our mine access roads and plant site area. I am very satisfied with both the product and its application.

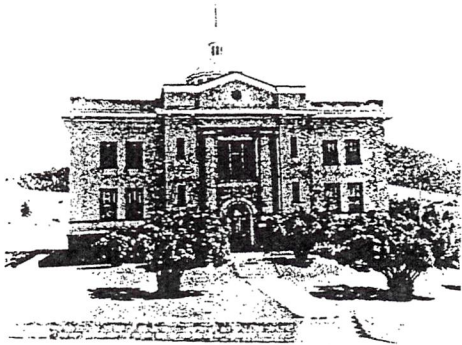
Mr. Tony Serio and Mr. Bob Holland provided excellent supervision and technical support to insure the magnesium chloride was applied in an efficient and cost effective manner, making the most of supplies and available equipment.

The Montana Talc Company will continue to employ "Sure Seal" for all of its dust suppressant needs and definitely recommend both their products and services.



Eric F. Loros
Process Superintendent
THE MONTANA TALC COMPANY

B-6
1052



Office of
The Board of County Commissioners
Granite County

COMMISSIONERS
FRANK WALDBILLIG, CHAIRMAN
P. O. BOX L — PHILIPSBURG, MT 59858
ROBERT E. IVIE
P. O. BOX 674 — PHILIPSBURG, MT 59858
CLIFFORD G. NELSON
STAR ROUTE — DRUMMOND, MT 59832

Post Office Box B
Philipsburg, Montana 59858

March 22, 1989

Sure-Seal
P. O. Box 2322
Kalispell, Montana 59901

To Whom It May Concern:

Please be advised that Sure-Seal made an application of magnesium chloride on a county road with very satisfactory results in the summer of 1988.

The company was very helpful with the engineering and the application of the product was extremely successful. We feel that the results of the project were excellent.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
OF GRANITE COUNTY

Frank Waldbillig
Frank Waldbillig, Chairman

CC/mk



L
1093

June 20, 1995

Tony Serio
SURE SEAL DUST CONTROL
170 Haggerman Lane (59901)
P.O. Box 7804
Kalispell, MT 59904

Dear Tony:

It has been a pleasure to talk to you the past several weeks. Hopefully we can find something that will emulsify your pitch to ease the distrution problems you are having.

I recieved your fax and after reviewing the information, I even feel more hopeful that one of the terpene products will work well.

As I mentioned during our conversation last week, the terpene products from Oakite are natural solvents that are derived from the timber industry. There is an old saying among old chemists that "like dissolves like". The terpenes are very strong solvents that do not have any of the health or environmental problems associated with petroleum, or chlorinated or flourinated solvents.

If you notice on the Fact Sheets I have included on TRS 60 and TRS 100, that they are not regulated under any of the Federal regulations regarding chemicals and their uses. They are also non carcinogenic.

Also note that these products can be used up to 200 F, which will fit your application. It can also be diluted in water to allow for economical solutions, that will evaporate and leave only your pitch blend on the road surface.

If these particular terpene solutions do not fill the bill there are 4 or 5 other products with this same chemistry that we can try. The TRS 60 or TRS 100 looked like the best fit on a first look.

I look forward to seeing you next week.

Best Regards,

Bruce Benoit
Technical Advisor

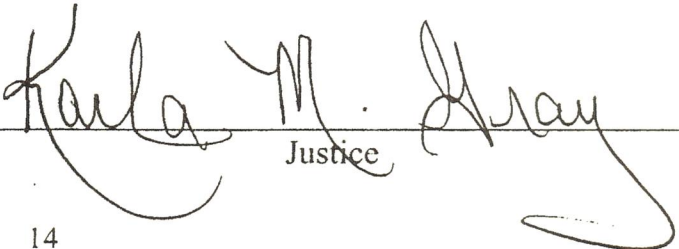
¶39 Parties must support their positions in the district court in order to obtain a ruling on the merits. Clearly, it is not the trial court's role to research and develop those positions for a party. Nor will we substantively address an issue on appeal which was not properly supported in the trial court.

¶40 **4. Did the District Court err by imposing a \$5,000 penalty for each of the five violations?**

¶41 In granting summary judgment to Flathead County, the District Court determined that Flathead County was entitled to the relief requested, namely, the assessment of a \$5,000 civil penalty for each of Sure Seal's five violations of § 75-10-212, MCA. On appeal, Sure Seal contends that the District Court committed legal error because \$5,000 is the maximum penalty allowed under § 75-10-233, MCA, for aggregated violations. Alternatively, it argues that the court abused its discretion in assessing the maximum available penalty for each

¶42 Flathead County's motion for summary judgment specifically addressed the statutory civil penalty and provided the rationale for assessing the maximum penalty for each violation. Sure Seal's response did not mention the penalty. Thus, Sure Seal raises this issue for the first time on appeal and, as set forth above, this Court will not consider issues raised for the first time on appeal. See *Cenex*, 283 Mont. at 337-38, 941 P.2d at 968 (citation omitted). The issue not being properly before us, we decline to address it further.

¶43 Affirmed.


Justice

SUPREME COURT

2-19-1999

Some Paper I filed

C. Plaintiff is being careless in using such a Letter in a attempt to prove false allegations of Sure Seal not having permission to continue in Business. Plaintiff must have knowledge of laws and due process of law to realize that a ex-employee of Road Department does not have the power to write such a vague letter on July 13, 1994 and say to defendant "your out of business". (Exhibit I).

D. Plaintiff is cognizant that we live in a Democracy not a Dictatorship. By using Pittman's letter as a witness to such a important issue as the right for a business to perform is obscured. Plaintiff in his brief using Pittman letter is to suggest that Pittman had the power to dictate Defendants livelihood with out any due process of law and the drop of a letter in the mail is consistent with the litigation at issue., The allegations and litigation being pursued by plaintiff is laden of malicious intent and reckless disregard of Defendants constitutional Right of pursuit of work and happiness.

OTHER ISSUES PERTAINING TO PERMIT IN OBJECTION TO PLAINTIFFS BRIEF

A. All permits are signed by and approved by County Commissioners. A copy of Defendants road permits since permit process was adopted by Flathead County is Exhibit J. Also is a copy of Insurance Policies that was given to the Road Department. each year. (Exhibit J).

B. If a problem exists concerning the application of Dust materials it needs to be brought before the Board of Commissioners for them to decide if any drastic action of stopping ones means of making a living be executed.

C. According to Flathead County Road and bridge Policy 'Booklet of laws it states that policies and procedures adopted by the Board of Commissioners of Flathead County shall govern the use and maintenance of all roads. 1.2 of Policy Booklet States "That Topics not covered shall be brought before the Board of Commissioners for consideration and disposition". This allows the accused to state his side of the alleged incident. That way people of the State can be treated according to The legal rights of the Constitution. This is a avenue of protection that Defendant has not been allowed to utilize more recently when Charlie Johnson Road Supervisor for Flathead County repeated this same type of injustice as Pittman to drop a letter in the mail saying "your out of Business" with out any justification of Who, What, When, and Where alleged incidents supposedly occurred. Commissioners are voted in by the people to protect the people. Commissioners in 1996 refused to speak to Sure Seal about their permit being valid, after Guy Foy of Road Department informed Sure Seal in Aug. of 1996 that Hester said your not allowed to oil any roads whatsoever.

that material was being distributed. Never was material dumped in a gravel pit at Shepherders Hill by defendant. Shepherder Hill Gravel Pit is adjoined to Defendants land. A Abandoned Road cuts through Defendants land leading to Plaintiffs land. Defendant used this abounded road as a practical road to test patch material. Again Plaintiff is misleading in allegations that material was dumped in a gravel pit.

(objection to 4 &5.)

Defendant agrees with Plaintiff Midway road and the Smith lake road are county roads. So are the many other roads that Pine Tar Pitch was applied to.

For Plaintiff to allege that Sure Seal was in business without permission of the County in 1994 is a False Statement for the following reasons:

1. Plaintiff quotes in his brief what permit at issue States on its face: "This permit will be extended upon proof of general liability insurance, through the 1994 season" Proof of Insurance was given to Road department on May 4, 1994 allowing just like it states for the permit to be extenuated. *(Exhibit F)*.

2. Plaintiff uses in his brief a affidavit of a ex-employee of the Road Department. For plaintiff, to use as evidence against Defendant, this one letter in Plaintiffs brief as a attempt to prove that Defendant was not allowed to proceed in Business is ridiculous. To believe that one man can dictate such a important issue as a citizens livelihood with out any evidence is absurd for the following reasons.

A. Letter written by Mark Pittman on July 13, 1994 accuses allegations, absent of evidence and details to where or when. Pittman states in this letter written July 13, 1994: "Oil is being put down too heavy", but he does not say where or when so that Defendant can even verify if alleged problem is valid or related to Defendant. Pittman says: " its not being blotted out", but again fails to mention where what or when. Pittman states: "There appears to be", when referring in letter to Defendants equipment. Pittman was careless and reckless in his imaginary false accusation and false statements as verified in the following Exhibit, of Minutes of Commissioners Meeting , Dated July 25, 1994 showing Pittman had not even yet looked at Defendants equipment. The minutes read like this: " Pittman stated that he plans to meet with Serio to determine if the Sure Seal Oil trucks meet the permit requirements. Pittman realizes that Serio has commitments and it is necessary for him to do these jobs. Serio agreed that he will notify the Road Department every Monday as what roads he will be oiling the next week.". *(Exhibit G)*

B. Currant Road Supervisor Charlie Johnson wrote to commissioners about the credibility and honesty of ex employee Pittman in a letter on record dated Jan 10, 1995. *(Exhibit H)*

D. Plaintiff admits that material was solid waste , but fails to grasp the concept of recycling solid waste into use.

3. M.C.A. Title 75, Chapter 10, Part 2, (11) (b) States that Solid waste does not mean Marketable Byproducts. Plaintiff has always had knowledge that the product at issue was being applied to roads as a marketable dust control, therefore according to law Plaintiffs is careless and groundless in there attempt to seek penalty of 75-10-233(2),M.C.A. as stated in Plaintiffs Brief (1st Par).

4. Defendant has a history of introducing innovative and practical safe road products for use on Roads throughout The State of Montana. The following proof of Defendants accomplishments should be considered as evidence that Defendant is qualified and knowledgeable as to develop for long time customers and Citizens of Flathead County a dust control product environmentally safe and economically attainable: (Exhibts B)

A. Defendant introduced this same Recyclable material of the lumber industry being Pine Tar Pitch to the City of Kalispell in 1991. It was purchased from a company out of Canada that recycled by a similar process. This Canadian resource was too far away for the product to be cost effective to continue its use. (Exhibit B-1)

B. Defendant was the first to sell Mgcl2 to the City of Kalispell for ice melt. This material proved to be affective and successful, proven by the fact it is the material extensively used today on Kalispell Streets. (Exhibit B-2).

C. Defendant was the first vendor to sell Lignite Sulfinite to the Flathead Forest Service for the alternative to oils for Dust Control. This product has proved successful and is also being used currently. (Exhibit B-3).

D. Defendant was the first to introduce the recycling of torn up old asphalt to Broadwater County by applying oil on recyclable asphalt millings. This Provided a extensive saving for the county in order to produce miles of dust free roads that are similar to a paved road being dust free for years . (Exhibit B-4).

E. Defendant was the first vendor to introduce Calcium Chloride to the Forest Service and lumber Contractors as far back as 1981. (Exhibit B-5).

F. From 1987 to 1991 Defendant was active in the educating and marketing of Mgcl2 to many Mines and Counties in the State of Montana. After the education work was accomplished, Disposers of Material began to sell Direct. Leaving Defendant with his seasonal Local Business of servicing Flathead County Rural Home Owners Dust Abatement on County Roads. (Exhibit B-6)

8. Defendant has purchased a copy of video, aired on channel news station of West Palm Beach, of a news segment that showed how the same product of issue, Pine Tar Pitch is being used in Florida as Dust Abatement.

9. A pile of Asphalt Millings like disposed of in Broad Water County is considered Hazardous waste until it is spread.

10. The product of issue was considered solid waste until currently used as heating fuel or put again on roads for Dust Abatement.

Dictionary definitions of recycle: To cause to undergo processes or treatment in order to be used again. There is nothing in untouched nature to compare with our extravagant use of energy and our failure to recycle essential materials. (Exhibit C).

M.CA Law 75-10-202 under Legislative findings and policy states : " it is declared the public policy of this state to control solid waste management systems to protect the public health and safety and to conserve natural resources whenever possible". Defendant claims that veneer dryer precipitator residue was conserved for public health by being used to control dust for a cleaner air environment and safer dust free roads for a cost effective price for and to the people of Flathead County.

(Objection to 3. a) of Plaintiffs Brief Page 2 initialed FACTS.)

Plaintiff is most obvious of malice by this allegation of dumping residues on Midway Road. Mark Pittman Road "Supervisor for Flathead County met with Defendant on Midway Drive at the time of the alleged dumping. (Exhibit D) being Mark Pittman's hand writing).

Mark Pittman did not find a dumped (Definition Exhibit C, to unload in a mass) pile of product. Instead he found it properly disposed of as marketable material spread on the road for dust abatement for a paying customer. This particular job where Pine Tar Pitch was applied is to this day substantially dust free with out treatment since 1994. Proof of the effectiveness of Pine Tar Pitch to bind dirt particles keeping gravel in place is clear and evident from test patches and applications done on county roads with the use of material at issue. Defendant recently took pictures of job on Midway Drive and Smith Lake Road as evidence of the effectiveness of this recyclable material.

(Objection to 3. b, c,d,) NOTICE the material at issue is not once in question, by Plaintiff in his brief, of any impurities or pollutants to the atmosphere, or ground. That is because Plaintiff knows that material at issue is environmentally safe. Plaintiffs argument continues throughout out his brief to allege dumping, knowing and seeing that material was disposed of by distributing. Plaintiff even has pictures of distributor truck and is fully aware of the vast amounts of storage space owned by Defendant for storage when not applied to roads or test patches with mixtures of various additives that Collide Laboratories and other Laboratories suggested for proper viscosity. Exhibit E., is a letter, Written August 9, 1994 from Colloid Laboratory outs of Sacramento CA, to defendant in responce for the research that was being obtained by defendant. Notice what it states: "One thing about you finish product, it is completely organic and nonhydrocarbon. It should make all of the local authorities very happy." (Exhibit E).

(Objection to 3. E)

In allegations, Plaintiff refers to dumping the residue in and upon the sheepherder hill gravel pit. Plaintiff use of the words "in and upon, must suggest the obvious truth,

Additional Supporting Documents Provided by Ms. Serio on 02/07/2024

(Available Upon Request)

- Flathead county v. Sure Seal Dust Control, complaint, 10/04/1995
- Flathead county v. Sure Seal Dust Control, Summons, 11/13/1995
- Flathead county v. Sure Seal Dust Control, Motion to Dismiss, 11/28/1995
- Flathead county v. Sure Seal Dust Control, Amended Complaint, 4/10/1996
- Flathead county v. Sure Seal Dust Control, Motion to Dismiss Amended Complaint, 08/01/1996
- Flathead county v. Sure Seal Dust Control, Answer to Amended Complaint, 09/09/1996
-
- Flathead county v. Sure Seal Dust Control, Motion for Continuance, 12/29/1997
- Flathead county v. Sure Seal Dust Control, Response in Opposition to Defendants' Motion to Continue, 12/31/1997
- Flathead county v. Sure Seal Dust Control, Brief in Support of Motion for Summary Judgment, 11/07/1997
- Flathead county v. Sure Seal Dust Control, Reply to Brief in Objection to Motion for Summary Judgment, 12/11/1997
- Flathead county v. Sure Seal Dust Control, Brief in Objection to Motion for Summary Judgment, 12/4/1997
- Flathead county v. Sure Seal Dust Control, Motion for Scheduling Order, 05/07/1997
- Flathead county v. Sure Seal Dust Control, Rule 16 Scheduling Order, 11/23/1997
- Flathead county v. Sure Seal Dust Control, Motion for Withdrawal From Representation, 7/30/1997
- Flathead county v. Sure Seal Dust Control, Affidavit of Stephen R. Brown, 07/30/1997
- Flathead county v. Sure Seal Dust Control, Notice of Deposition, 09/08/1997
- Flathead county v. Sure Seal Dust Control, Notice of Deposition, 09/17/1997
- Flathead county v. Sure Seal Dust Control, Notice of Deposition, 09/29/1997
- Flathead county v. Sure Seal Dust Control, Motion to File Discovery, 11/05/1997
- Flathead county v. Sure Seal Dust Control, Motion for Summary Judgment, 11/07/1997
- Flathead county v. Sure Seal Dust Control, Motion to Extend Briefing, 11/25/1997
- Flathead county v. Sure Seal Dust Control, Motion to Waiver Oral Argument, 12/4/1997
- Flathead county v. Sure Seal Dust Control, Waiver of Oral Argument, 12/4/1997
- Flathead county v. Sure Seal Dust Control, Order, 12/23/1997
- Flathead county v. Sure Seal Dust Control, Order on Motion to Continue and Rationale, 01/01/1998
- Flathead county v. Sure Seal Dust Control, Motion to Strike Order, 01/05/1998
- Flathead county v. Sure Seal Dust Control, Order on Motion for Summary Judgment and Rationale, 01/06/1998
- Flathead county v. Sure Seal Dust Control, Proposed Findings of Facts and Conclusions of Law, 01/08/1998
- Flathead county v. Sure Seal Dust Control, Supreme Court of Montana, Remittitur, 02/12/1999
- Flathead county v. Sure Seal Dust Control, Notice re Deposition of Jesse Parker, 08/28/2007

From: [Anthony Serio](#)
To: [Rae, Sarah \(she/her/hers\)](#)
Subject: Valley Drive Kalispell, Flathead County, Montana Ref: 80RC-LE-C
Date: Wednesday, January 10, 2024 2:23:07 PM
Attachments: [unnamed document.pdf](#)

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Ref: 80RC-LE-C

Dear Sara:

I recieved a certified letter yesterday from Region 8.

The Letter Pertains to Perfecting a lien on my property. For several reasons we would like to appeal to you why we feel this would be an error and unfair because of circumstances that I think need to be addressed

Today I would like to address why the clean up would be considered under The Superfund Recycling Equity Act. Tomorrow and next few days I will send Exhibits.

The product was collected with the intentions of Recycling it. We are talking here early 90's. Not only was recycling the intention but it was accomplished and doing well back then. Doing very well until Flathead County revoked our permit. This was after the recycled product was used on City Streets and allays In Kalispell. This was after this product was used at Big Mountain Ski Resort. This was after the recycled product was used on many county roads cutting the cost of Dust Control in half. The recycled safe product was a huge benefit for the people in Flathead County as they could afford to abate the dust in front of their houses at a reasonable affordable price at the time.

We had obtained a Material Safety Data Sheet for it from the generators. We had also invested in research and development to find safe additives to use for the emulsification Process.

Collied Lab gave a report on this in which I will forward to you.

Why would Flathead County shut us down without even taking a sample of our environmental Safe Dust Control? They never even asked us or talked to us or warned us - Just one day shut us down.

At the time there were Two Dust Control Companies. Lyman Dust Control and us Sure Seal. Flathead County at that time would allow only Lyman to bid on projects. After we were pushed out of business Lyman Dust Control remained for the next 30 years as the only major dust control business in the Flathead Valley. Back then Flathead County put an injection on our business and would not allow us to work shutting down the recycling project. With that being said I will send you paper work that show proof of these facts. I did send some at the time of the clean up. But I will send again. I also would like to address the Cradle To Grave Law. Stimpson Lumber and Plum Creek - there material was in the tanks.

I appreciate your understanding in this matter and will be sending exhibits.

Thank You Irene Serio



United States
Environmental Protection
Agency

August 2002

Superfund Recycling Equity Act of 1999: Factors To Consider In A CERCLA Enforcement Case

Office of Enforcement and Compliance Assurance
Office of Site Remediation Enforcement

Introduction

The Superfund Recycling Equity Act (SREA), Section 127 of CERCLA, 42 U.S.C. § 9627, exempts certain persons who “arranged for recycling of recyclable materials” from liability under Sections 107 (a)(3) and 107(a)(4). Owners and operators of CERCLA sites are ineligible for the exemption, as are arrangers and transporters of non-recyclable materials, or arrangers and transporters of recyclable material that fail to meet the criteria necessary for the exemption. SREA outlines the criteria necessary for a party to be eligible for the recycling exemption including the definition of a recyclable material, the factors needed to qualify as a recycling transaction, and the types of transactions and materials that are not exempt under the statute.

Since the passage of SREA, some site-specific transactions have raised questions and issues regarding what enforcement posture (e.g., whether to issue an information request letter or general or special notice letters, or how to develop settlement offers) the Agency may determine, in light of SREA, to be appropriate in evaluating a party’s activities. This guidance addresses some of the key factors the Agency may consider, and has been developed in the exercise of the Agency’s enforcement discretion.

SREA places the burden of proof on private parties seeking to establish their eligibility for the recycling exemption from CERCLA liability. Under subsections (c), (d) and (e) of Section 127, the party seeking the exemption from liability must “demonstrate by a preponderance of the evidence” that certain criteria are met. In addition, as a general matter a party seeking to take advantage of a statutory exemption has the burden of establishing

eligibility.¹ Furthermore, this burden encompasses a number of limitations on the protection afforded by Section 127. For example, Section 127(b)(2), the polychlorinated biphenyls (PCBs) exclusion from the exemption, states that “recyclable material” does not include any item of material that contained PCBs at a concentration exceeding 50 ppm, or any new standard promulgated pursuant to applicable Federal laws. Section 127(b)(2) serves to modify the requirements to qualify for the exemption outlined in subsection 127(c)-(e), as it restricts the scope of otherwise eligible recyclable material transactions to items of material that do not exceed 50 ppm concentration of PCBs.

This guidance addresses a number of issues. Section 1.0 addresses general considerations. Section 2.0 addresses the overall definition of “recyclable material,” as it pertains to scrap metal, batteries, and PCBs. Section 3.0 focuses primarily on scrap metal issues. Section 4.0 focuses on battery transactions. Section 5.0 focuses on transactions involving PCB-containing materials. In addition, this guidance contains two appendices. Appendix A provides technical information on some of the materials covered in this guidance. Appendix B provides a summary of judicial opinions dealing with the exemption.

1.0 General factors to consider regarding SREA

When evaluating the appropriate enforcement posture to take with respect to a party that may be eligible for the SREA exemption, Regions should consider relevant information provided by that private party and others, including but not limited to:

- the specific facts at a given site, including how the material at the site was actually recycled;
- how and when any hazardous substances that are included in the recycled material came to be associated with it;
- if applicable, the size of the shipping containers and the nature of any hazardous substances in the containers that hold or constitute the recycled material;
- the nature of the transaction, including prices paid;
- the extent of contamination at the site and impact of the recycled materials at the site based on their relative toxicity, mobility and persistence²;

¹ See, United States v. First City Nat. Bank of Houston, 386 U.S. 361 (1967), cited in Ekotek Site PRP Committee v. Self, 881 F.Supp.1516, 1524 (D. Utah 1995)(finding burden of proving applicability of CERCLA's petroleum exclusion to be on defendants to establish their right to the exemption); SEC v. Ralston Purina Co., 346 U.S. 119, 126 (1953) (party claiming the benefits of an exception to a broadly remedial statutory or regulatory scheme has the burden of proof to show that it meets the terms of the exception). See also, E.E.O.C. v. Chicago Club, 86 F.3d 1423, 1430 (7th Cir. 1996)(separate provisos or exceptions curtail or restrict the operation of a statute in a case to which it would otherwise apply).

² Regions should consider the hazardous substances that are part of the recycled material (e.g., lead oxide paste attached to a battery; PCBs in the plastic insulation on a metal wire).

- compliance by the party and the consuming facility with applicable standards regarding the storage, transport, and management, or other activities associated with the recyclable material; and,
- satisfaction of all other requirements in CERCLA Section 127.³

Effective consideration of the above factors will be facilitated significantly if the parties produce adequate, credible information to support their eligibility for a recycling exemption (including information establishing that a transaction involves recyclable material). The level of information will be determined on a site-by-site basis. In evaluating the factors, it may be useful to consider interpretations the Agency has taken in its administration of other federal environmental programs, such as the Resource Conservation and Recovery Act (RCRA) and the Toxic Substance Control Act (TSCA).

Finally, while SREA is an exemption, the exemption is not automatic, as the party must demonstrate that it qualifies for the exemption. In some instances, parties may prefer the protection afforded by a CERCLA settlement. For instance, they may conclude that the risk of failing to prove the applicability of the exemption is high enough to make a settlement preferable. In such cases, the Regions are encouraged to explore settlement with such parties, and may use this guidance as a tool for determining factors to consider in crafting an appropriate settlement.

1.1 Structure of recycling exemption

CERCLA Section 127(b) provides that the liability exemption applies only to the recycling of certain materials: scrap paper, scrap plastic, scrap glass, scrap textiles, scrap rubber (other than whole tires), scrap metal, and spent lead-acid, nickel-cadmium and other batteries, as well as minor amounts of material incident to or adhering to the scrap material as result of its normal and customary use prior to becoming scrap. Therefore, the arranger or transporter must show that its scrap material qualifies as a “recyclable material” (e.g., this includes making sure the scrap material meets the definition above, including whether the scrap material had more than minor amounts of material incident to or adhering to it as a result of its normal and customary use prior to becoming scrap). Furthermore, the arranger or transporter must then show that its transaction(s) involving the recyclable material was an “arrangement for recycling”

³ See e.g., the criteria set forth in Section 127(c) that also must be met for transactions covered under subsections (d) and (e), as well as the exclusions under Section 127(f) that apply to all recycling transactions. These criteria and additional requirements address what is necessary to qualify for the exemption depending on whether the relevant transaction occurred on or before February 27, 2000 (90 days from the enactment of SREA). For example, for transactions occurring after that date, the party must have exercised reasonable care to determine whether a consuming facility is in compliance with all applicable environmental laws. 42 U.S.C. § 127(c)(5). The “reasonable care” analysis requires consideration of the applicable provisions of other statutes and regulations, such as the Resource Conservation and Recovery Act (RCRA) or the Toxic Substance Control Act (TSCA), and related regulations. Such an evaluation of other applicable environmental laws may apply to the arranger or transporter, depending on whether the transaction under consideration was pre- or post-enactment. See also, 42 U.S.C. § 127(f)(1)(A)(iii), (C).

by providing evidence that all criteria in Section 127(c) were met at the time of the transaction.⁴ If the recyclable material is a scrap metal or spent battery or both, Sections 127(d) and (e) outline specific criteria for the recycling of these materials that must be met in addition to the criteria of Section 127(c). However, if any of the exclusions set forth in Section 127(f) are met, then the exemption will not apply.⁵

2.0 Definition of “recyclable materials”

CERCLA Section 127(b) contains an overall definition of the “recyclable material” covered by the SREA recycling exemption. Other subsections contain further, more specific clarifications of this overall definition.

CERCLA Section 127(b) states:

“For purposes of this section, the term ‘recyclable material’ means scrap paper, scrap plastic, scrap glass, scrap textiles, scrap rubber (other than whole tires), scrap metal, or spent lead-acid, spent nickel-cadmium, and other spent batteries, as well as minor amounts of material incident to or adhering to the scrap material as a result of its normal and customary use prior to becoming scrap.”

Sections 3.0 and 4.0 of this document discuss the scrap metal and whole battery exemptions in greater detail.

In addition, the overall definition found in Section 127(b) contains two exclusions. The first one addresses certain types of containers. The relevant language excludes, “shipping containers of a capacity from 30 liters to 3,000 liters, whether intact or not, having any hazardous substance (but not metal bits and pieces or hazardous substance that form an integral part of the container) contained in or adhering thereto.” The second one excludes “any item of material that contained polychlorinated biphenyls at a concentration in excess of 50 parts per million or any new standard promulgated pursuant to applicable Federal laws.” Section 5.0 discusses the PCB exclusion in greater detail.

2.1 Transactions involving “minor amounts of material”

⁴ “Time of the recycling transaction” may not be limited to the time when the parties entered into a contract. It may include the time when the recyclable material is delivered to the recycling process. There may be situations where the parties enter into a relationship in which one party supplies the other with recyclable materials over a period of time, in which case, “time of transaction” may mean several points in time when the person arranges for recycling of recyclable material.

⁵ Section 127(f) outlines five circumstances in which the arranger or transporter would be ineligible for the exemption.

SREA does not disqualify as “recyclable material,” materials that may contain “minor amounts of material incident to or adhering to the scrap material as a result of its normal and customary use prior to becoming scrap.” The statute does not define the phrase “minor amounts.” When evaluating the appropriate enforcement posture to take, Regions should determine on a case-by-case basis whether “minor amounts,” or more than “minor amounts,” of material were present by considering the volume and/or weight of the recyclable material composition as compared to the total volume or weight of metal. For example, when the purported recyclable material is metal, such as wire, it is relevant whether the wire is:

- bare metal⁶; or
- metal with only residual (post-stripping) amounts of insulation or coating remaining on the metal⁷; or
- metal with a minor amount of insulation or coating fully intact⁸.

3.0 Transactions involving scrap metal

In addition to the overall definition of recyclable material provided in Section 127(b), Section 127(d)(3) provides that the term “scrap metal” means:

“bits and pieces of metal parts (e.g., bars, turnings, rods, sheets, wire) or metal pieces that may be combined together with bolts or soldering (e.g., radiators, scrap automobiles, railroad box cars), which when worn or superfluous can be recycled, except for scrap metals that the Administrator excludes from this definition.”

This definition of scrap metal is the same as the RCRA regulatory definition of scrap metal set forth in 40 C.F.R. Section 261.1(c)(6).⁹

⁶ For example, metal that did not meet the manufacturer’s specifications.

⁷ For example, an arranger or transporter sends metal with insulating material to a stripping/chopping company to separate the insulating or coating material from the metal and the metal with residual amounts of insulation or coating remaining was sent to a recycling facility to be recycled. The residual material was once an essential part of the scrap during its normal and customary use prior to becoming scrap and therefore may be considered “minor amounts.”

⁸ For example, an arranger or transporter sends metal with insulation or coating which cannot be mechanically removed because of the relative weight of the insulation or coating as compared to the metal itself. The insulation or coating was once an essential part of the scrap during its normal and customary use prior to becoming scrap and therefore may be considered “minor amounts.”

⁹ Agency interpretation and regulatory actions involving scrap metal taken pursuant to RCRA may provide some guidance in determining which enforcement posture to take in CERCLA cases involving scrap metal issues. For example, in the preamble to the final rule where EPA promulgated 40 C.F.R. Section 261.1(c)(6), EPA stated

When evaluating the appropriate enforcement posture to take in CERCLA cases involving SREA's scrap metal provisions, Regions should determine whether RCRA and its implementing regulations have addressed similar or related scrap metal recycling issues, and whether the RCRA regulatory approach to the material involved at the site would be appropriate for CERCLA purposes.

3.1 Transactions that may involve “bits and pieces of metal parts”

When evaluating the appropriate enforcement posture to take in CERCLA cases involving bits and pieces of metal parts, Regions should consider the size of the metal involved in the transaction, whether the metal was attached to or combined with other materials, and whether the metal was in a solid or liquid form and whether it was melted prior to being recycled.

CERCLA Section 127(d)(3) defines scrap metal to include “bits and pieces of metal parts (e.g., bars, turnings, rods, sheets, wire).” Transactions involving “bits and pieces of metal parts” could involve metal parts in different sizes such as metal blocks, metal shavings, grindings, and floor sweepings. The size of the metal may be important. For example, material that is powdery or dust-like may not fall within the definition of “scrap metal” as a bit or a piece of metal.

The nature of the metal is also important. Mercury, for example, is a liquid metal that typically is different from solid metal in content, physical form and manageability. In its liquid state, mercury normally would not represent “bits and pieces of metal parts . . . or metal pieces that may be combined together with bolts or soldering.”

3.2 Transactions involving scrap automobiles

Scrap metal under Section 127(d)(3) may include “metal pieces that may be combined together with bolts or soldering (e.g., radiators, scrap automobiles, railroad box cars).” Regions should consider whether the fluids were removed from the vehicle or device prior to the transaction, whether the material is only composed of metal (e.g., does the material also contain plastic or other synthetic components), and whether there are “minor amounts” or greater than minor amounts of other substances adhering to it (e.g., PCBs, fluid, oil, etc.).

3.3 Transactions involving scrap metal that has been melted

that the definition of scrap excludes, *inter alia*, “residues generated from smelting and refining operations (i.e., drosses, slags, and sludges).” 50 Fed. Reg. 624 (Jan. 4, 1985). However, EPA's interpretations and regulatory actions taken pursuant to RCRA may not always be applicable. RCRA and CERCLA are different statutes with different purposes, a distinction that may be relevant in determining the appropriate approach to take under CERCLA. CERCLA is a remedial statute, that creates liability for past acts of disposal of hazardous substances. RCRA is a regulatory statute that addresses cradle to grave management of hazardous waste.

When evaluating the appropriate enforcement posture to take, Regions should consider whether the metal involved in the transaction was melted prior to the recycling transaction. CERCLA Section 127(d)(1)(C) provides that an arranger must demonstrate that it did not melt the scrap metal prior to the recycling transaction. To the extent material such as dross is melted prior to the recycling transaction, it may be covered by the exclusion in Section 127(d)(1)(C) and may be outside the scope of the recycling exemption.

On the other hand, solder baths (when cooled) are solidified bits and pieces of metal that generally are different in physical form and content from process residues such as sludges, slags, and drosses.¹⁰ To the extent solidified solder baths are not melted prior to the recycling transaction, they may not be covered by the exclusion in Section 127(d)(1)(C) and thus eligible for the exemption.¹¹

3.4 Transactions involving other scrap lead-bearing material

A. Lead-bearing components removed from whole spent batteries

1. plates/grids

When evaluating the appropriate enforcement posture to take in CERCLA cases involving battery parts, Regions should consider whether the material involves part of a spent battery and whether that part represents a valuable component that has been recovered prior to the recycling transaction.

The overall definition of “recyclable material” in CERCLA Section 127(b) includes spent batteries and scrap metal. CERCLA Section 127(e) addresses battery recycling in particular and excludes from the exemption a person who recovers the valuable components (e.g., lead plates) of a battery prior to it being recycled. These provisions suggest that Congress intended that arrangements involving whole batteries may qualify for the exemption, while arrangements involving battery parts may not qualify, either as batteries, or as scrap metal.

Limiting the exemption to whole batteries encourages the sound practice of selling whole batteries to a properly equipped recycling facility and discourages the cracking of batteries by smaller dealers on their own property. Improper handling (e.g., of the battery casing and acid)

¹⁰ In a preamble to a RCRA rule, EPA reiterates its earlier interpretation from a 1993 letter which states that spent solder baths, in general, meet the definition of scrap metal contained in 40 C.F.R. Section 261.1(c)(6). *See* 62 Fed. Reg. 26013 (May 12, 1997). Letter from Jeffery D. Denit to Jeffrey T. Miller, Lead Industries Association, Inc. (September 20, 1993).

¹¹ This exclusion may not apply to melting that occurs during a manufacturer’s production process.

can cause serious environmental hazard. Sulfuric acid, battery case material and lead compounds are the main sources of air emissions generated from battery breaking.¹²

2. battery mud/paste and battery acids

When evaluating the appropriate enforcement posture to take in CERCLA cases involving battery parts, Regions should consider whether the material is in a solid or liquid form, whether the material is composed of only metal (e.g., does the material also contain plastic or other synthetic components), and if the material is scrap metal, whether there are only “minor amounts” of other substances adhering to it (see discussion in 2.1 above).

Typically, where a whole battery has been broken or cracked open to drain and/or remove the acid, the drained spent battery still contains materials such as battery mud/paste, sulfuric acid and the battery grid. Alone, the sulfuric acid and battery mud/paste would not be covered by the definitions of recyclable material or scrap metal under SREA as they are not “bits and pieces of metal.”¹³ In addition, broken batteries are not necessarily candidates for the recycling exemption, as discussed above in Section 3.4.¹⁴

B. Reject materials (e.g., off-specification commercial products)

Sometimes a metal plate/grid (e.g., a battery component) fails to meet the manufacturer’s specifications and becomes “reject” material that does not become part of a whole battery and does not have any other substances (e.g., lead oxide paste) adhering to it. In such cases, Regions should consider how the material was used and how it may have been recycled (e.g., were the battery plates removed from the reject battery prior to being sent to a recycling facility).¹⁵

4.0 Transactions involving whole batteries

¹² EPA Office of Compliance Sector Notebook Project. “Profile of the Nonferrous Metals Industry.” U.S. Environmental Protection Agency, Office of Compliance, Office of Enforcement and Compliance Assurance. September 1995, at page 37. Experience has also shown that sulfuric acid and lead compounds drained and/or removed from a spent battery can cause soil and groundwater contamination.

¹³ This is consistent with the preamble to a RCRA rule, in which the Agency has stated “..liquid metal wastes (i.e., liquid mercury), or metal-containing wastes with a significant liquid component, such as spent batteries” are not scrap metal as defined by RCRA. *See* 50 Fed. Reg. 624 (January 4, 1985).

¹⁴ *See also* footnote 3 (providing a discussion on additional exclusions of Section 127(f)).

¹⁵ There may be situations where the arranger or transporter sent reject battery plates covered with battery paste; in such cases the party may not qualify for the SREA exemption.

Section 127(e) states, “transactions involving spent lead-acid batteries, spent nickel-cadmium batteries, or other spent batteries shall be deemed to be arranging for recycling if the person who arranged for the transaction (by selling recyclable material or otherwise arranging for the recycling of recyclable material) can demonstrate by preponderance of the evidence that at the time of the transaction- -

“(1) the person met the criteria in subsection (c), but did not recover the valuable components of such batteries; and

“(2)(A) with respect to transactions involving lead acid-batteries, the person was in compliance with applicable Federal environmental regulations or standards and, any amendments thereto, regarding the storage, transport, management, or other activities associated with the recycling of spent lead-acid batteries;

“(B) with respect to transactions involving nickel-cadmium batteries, Federal environmental regulations or standards are in effect regarding the storage, transport, management, or other activities associated with the recycling of spent nickel-cadmium batteries, and the person was in compliance with applicable regulations or standards or any amendments thereto; or

“(C) with respect to transactions involving other spent batteries, Federal environmental regulations or standards are in effect regarding the storage, transport, management, or other activities associated with the recycling of such batteries, and the person was in compliance with applicable regulations or standards or any amendments thereto.”

4.1 Transactions involving recovery of valuable components of batteries

CERCLA Section 127(e)(1) limits the recycling exemption to parties that “did not recover the valuable components” of batteries prior to the recycling transaction. One example of recovering “valuable components” may involve battery cracking. Batteries are sometimes cracked in order to retrieve the metal plates inside; the plates can then be sold. Battery plates are often covered with significant amounts of battery paste which contains lead.

When evaluating the appropriate enforcement posture to take, Regions should consider whether any component of a battery has been removed prior to the recycling transaction and whether that component has any commercial value. If those factors are present, valuable components may have been recovered for purposes of Section 127(e)(1) and the arranger or transporter may not be eligible for the SREA exemption.

4.2 Transactions involving lead-acid batteries

CERCLA Section 127(e)(2)(A) addresses lead-acid batteries. One condition of the recycling exemption with respect to transactions involving lead-acid batteries is “compliance with applicable Federal environmental regulations or standards and, any amendments thereto, regarding the storage, transport, management, or other activities associated with the recycling of spent lead-acid batteries.”

The Agency first promulgated regulations under RCRA generally dealing with hazardous waste in 1980.¹⁶ However, in such regulations, EPA deferred Subtitle C regulation of wastes which are beneficially used or reused, or legitimately recycled or reclaimed, or accumulated, stored, or treated prior to beneficial use or reuse. Therefore, there were no Federal regulations applicable to the recycling of batteries at that time. In 1985, the Agency added the first RCRA regulations pertaining specifically to batteries. One provision exempted from regulation all spent batteries, including lead-acid and nickel-cadmium batteries, that were returned to a battery manufacturer for regeneration.¹⁷ Another provision of the 1985 rule-making, specifically addressed the reclamation¹⁸ of spent lead-acid batteries.¹⁹ *See* C.F.R. Section 266.80.

In 1995, the Agency promulgated regulations providing streamlined management standards for certain “universal wastes.”²⁰ The universal waste standards provide an alternative regulatory framework under RCRA. These management standards generally prohibit universal waste handlers from treating or disposing of universal waste, and establish requirements, during transportation and at temporary transfer facilities, for various activities such as storage, tracking, labeling, and release response.²¹ One category of universal wastes includes a number of different types of batteries, including lead-acid batteries. *See* 40 C.F.R. Part 273. Parties that handle lead-acid batteries have the choice of following either 40 C.F.R. Section 266.80 or 40 C.F.R. Part 273.

¹⁶ On May 19, 1980, EPA promulgated regulations for generators, transporters, and Treatment, Storage, and Disposal Facilities (TSDFs) of hazardous wastes, including lead and cadmium-containing wastes.

¹⁷ This provision was codified at 40 C.F.R. Section 261.6(a)(3)(ii). *See* 50 Fed Reg. 614 (January 4, 1985). The Universal Waste Rule, promulgated in 1995, removed this exemption and added management provisions at 40 C.F.R. Section 273.13(a) and Section 273.33(a). *See* 60 Fed. Reg. 25492 (May 11, 1995).

¹⁸ A material is “recycled” if it is used, reused, or reclaimed. A material is “reclaimed” if it is processed to recover a usable product, or if it is regenerated. *See* C.F.R. 261.1(4) and (7).

¹⁹ On January 4, 1985, EPA promulgated regulations to govern hazardous wastes which are recycled, including special streamlined standards for lead-acid battery reclamation. This regulation went into affect July 5, 1985. This provision was originally codified in 40 C.F.R. 261.6(a)(2)(v), but has since been redesignated as Section 261.6(a)(2)(iv).

²⁰ The Universal Waste Rule, codified at 40 C.F.R. Part 273, became effective on May 11, 1995.

²¹ Treatment, disposal and recycling of universal wastes at destination facilities is covered by 40 C.F.R. Part 273 Subpart E, which generally subjects such facilities to all RCRA subtitle C requirements (except for recyclers who do not store universal waste and instead are subject to 40 C.F.R. Section 261.6(c)(2)).

Under Section 3006 of RCRA, 42 U.S.C. § 6926, individual States can be authorized by EPA to administer their own equivalent hazardous waste programs in lieu of the Federal program.²² Therefore, the Federal requirements applicable to the recycling of batteries in a particular State may be the authorized State regulations.

As a range of Federal regulations regarding batteries exists, there may be other Federal regulations or standards that may apply regarding the storage, transport, management, or other activities associated with the recycling of spent lead-acid batteries.²³

Thus, when evaluating the appropriate enforcement posture to take in CERCLA cases involving lead-acid batteries, Regions should consider whether the transaction involving a lead-acid battery occurred on or before July 5, 1985, between July 6, 1985 and May 11, 1995, or after May 11, 1995, to determine which federal regulations, if any, may have been applicable. The Region also should consider whether the transaction occurred in a state that was authorized to administer the federal RCRA program in lieu of EPA. Finally, the Region should consider whether the party conducting the transaction was in compliance with regulations that were applicable at the time.

4.3 Transactions involving nickel-cadmium and other spent batteries

CERCLA Section 127(e)(2)(B) addresses nickel-cadmium batteries. One condition of the recycling exemption for nickel-cadmium batteries is the existence of “regulations or standards [that] are in effect regarding the storage, transport, management, or other activities associated with the recycling of spent nickel-cadmium batteries,” as well as compliance with those “regulations or standards or any amendments thereto.” CERCLA Section 127(e)(2)(C) contains identical provisions for “other spent batteries.”

As discussed above, prior to the universal waste rule, there were two types of used batteries that were addressed by RCRA regulations: lead-acid batteries being reclaimed and batteries (of any type) returned to the manufacturer for regeneration. *See* Section 4.2. After May 11, 1995, however, the streamlined universal waste management standards provided an

²² Under the Mercury-containing Rechargeable Battery Act of 1996, the federal universal waste regulations apply to the collection, storage and transportation of certain batteries unless a state receives approval for identical state regulations.

²³ The other Federal regulations or standards that may apply regarding the storage, transport, management, or other activities associated with spent batteries include the following: 1) 23 C.F.R. Section 751.7 (Department of Transportation; Federal Highway Administration); 2) 25 C.F.R. Section 226.34 (Department of the Interior; Bureau of Indian Affairs); 3) 29 C.F.R. Section 1910.106 (Department of Labor; Occupational Safety and Health); 4) 36 C.F.R. Sections 6.4, 6.5, 6.9, and 9.36 (Department of Interior; National Park Service); and 5) 49 C.F.R. Sections 172.101, 172.102, 173.159, 173.185, 173.189, 174.102, 175.10(ii), and 177.839 (Department of Transportation; Research and Special Administration).

alternative regulatory scheme for certain handlers of certain types of batteries, including nickel-cadmium and other spent batteries.²⁴

As with lead-acid batteries, a range of Federal regulations regarding batteries exists, and there may be other Federal regulations or standards that may apply regarding the storage, transport, management, or other activities associated with the recycling of these types of batteries.²⁵

Thus, when evaluating the appropriate enforcement posture to take in CERCLA cases involving nickel-cadmium batteries and other spent batteries, Regions should consider whether the transaction involving a nickel-cadmium or other spent battery occurred on or before July 5, 1985, between July 6, 1985 and May 11, 1995, or after May 11, 1995. If the transaction involves “other spent batteries,” the Region should consider whether the batteries fall within the definition of 40 C.F.R. Section 273.9. The Region also should consider whether the transaction occurred in a state that was authorized to administer the federal RCRA program in lieu of EPA. Finally, the Region should consider whether the party conducting the transaction was in compliance with the regulations that were applicable at the time.

5.0 Transactions involving PCB-containing materials

CERCLA Section 127(b)(2) states that the term “recyclable material” shall not include “any item of material that contained polychlorinated biphenyls (PCBs) at a concentration in excess of 50 parts per million or any new standard promulgated pursuant to applicable Federal laws.”

PCBs are the only hazardous substance specifically addressed in Section 127.²⁶ In addition, the PCB exclusion is not tied to “the time of the transaction,” as is the case for other scrap material addressed in Section 127(c), (d) and (e). Furthermore, the term “item” is not defined in SREA or elsewhere in CERCLA.²⁷

²⁴ 40 C.F.R. Section 273.9 includes a definition of “battery” for purposes of the universal waste rule that includes an “intact, unbroken battery from which the electrolyte has been removed.” The electrolyte is the medium for movement of ions within the cell. This definition may be broad enough to cover a whole reject battery (*i.e.*, an off-specification commercial chemical product that has either not been used or does not meet the manufacturer’s product specifications).

²⁵ *See* footnote 23.

²⁶ The inclusion of a specific provision addressing PCBs supports recognition by Congress of the risks to human health and the environment posed by PCB contamination, as well as the often high cost of remediating PCB contamination.

²⁷ Regulations promulgated under TSCA may provide guidance in defining an “item”. Under TSCA regulations, PCB items fall into four categories: 1) PCB Articles (have had direct contact with PCBs) and include PCB transformers, PCB capacitors, PCB Hydraulic Machines, PCB-contaminated electrical equipment, and other

5.1 General factors to consider for PCB-containing material

When evaluating the appropriate enforcement posture to take in CERCLA cases involving transactions that may involve PCBs, Regions should consider: the type of material associated with the PCBs at the site (e.g., transformers);²⁸ the concentration of PCBs in the material at the time of the transaction, as well as before the transaction; and, the number of items with PCB concentrations in excess of 50 ppm.

5.2 Determining PCB concentrations

When evaluating the appropriate enforcement posture to take in CERCLA cases involving transactions that may involve PCBs, Regions should consider whether there is any evidence pertaining to the PCB concentrations of the items of material sent to be recycled and whether each item is known to have contained PCBs greater or less than 50 ppm at some previous point in time. In the absence of credible evidence demonstrating that an item did not exceed 50 ppm, Regions as a matter of enforcement discretion may presume that a party sent non-exempt hazardous materials (>50 ppm PCBs) if PCB contamination is present at the site.

The concentration of PCBs in an item may be demonstrated by such methods as sampling data that may have been collected to comply with TSCA disposal regulations, service records, manufacturing labels, or known specifications for similar items built or used in the same period.²⁹

Pursuant to current regulations under TSCA, owners seeking to dispose of equipment (which includes sending PCB equipment for recycling) must dispose of the equipment based on its actual concentration at the time of disposal. TSCA regulations provide that actual concentration of PCBs can be determined by analytical testing or by assuming a worst case scenario (i.e., the equipment is 500 ppm). 40 C.F.R. Section 761.50.³⁰ If gathered, sampling

PCB articles; 2) PCB Containers (have had direct contact with PCBs); 3) PCB Article Containers (have had no direct contact with PCBs); and 4) PCB equipment (has had no direct contact with PCBs). See 40 C.F.R. Section 761.3. For purposes of SREA, however, an “item” is not necessarily limited to the TSCA definition.

²⁸ An example of an item for which it may be appropriate to broadly apply the exclusion is a transformer. Even if a transformer has been drained and filled with new fluid at a concentration \neq 50 ppm, it is possible that the transformer may contain parts (such as a core or coil) that are made of porous materials (such as wood or fabric) that may retain concentrations > 50 ppm. Thus, although sampling of the oil may reflect PCB concentration \neq 50 ppm, the inner core of the transformer (e.g., porous material) could still contain a PCB concentration > 50 ppm.

²⁹ See Appendix A at p. 23 (question on how PCB concentration is typically measured when sampled).

³⁰ Sampling procedures in the PCB disposal regulations can be found in 40 C.F.R. Section 761, Subparts P, R.

data could be the best evidence to demonstrate that an item did not contain in excess of 50 ppm PCBs. These TSCA PCB regulations apply to transactions occurring after July 2, 1979.³¹

5.3 Amount of scrap material containing PCB concentrations in excess of 50 ppm

Section 127(b) of SREA excludes “any item of material that contained polychlorinated biphenyls at a concentration in excess of 50 parts per million” from qualifying for the exemption. Where a transaction involves a shipment that contains both items contaminated with PCBs in excess of 50 ppm and less than 50 ppm, the exemption under SREA may not be applicable. However, in those situations where a party cannot adequately demonstrate the concentration levels of *all* the items of material sent to the site, Regions as a matter of enforcement discretion may consider an appropriate share of liability at the site based on at least partial eligibility under SREA.³²

5.4 Summary

This document provides guidance to EPA Regions concerning how the Agency intends to exercise its enforcement discretion when evaluating the appropriate enforcement posture to take under SREA. The guidance is designed to implement national guidance on these issues. Some of the statutory provisions described in this document may contain legally binding requirements. However, this document does not substitute for those provisions, nor is it a regulation itself. Thus, it cannot impose legally binding requirements on EPA, States, or the regulated community, and may not apply to a particular situation based upon the circumstances. Any decisions regarding a particular settlement or other enforcement decision will be made based on the statute and applicable regulations, and EPA decision makers retain the discretion to adopt approaches on a case-by-case basis that differ from this guidance where appropriate.

³¹ As noted in Section 3.0 with regard to RCRA, TSCA may provide some guidance for evaluating the appropriate enforcement posture to take under SREA in cases involving PCB-containing materials. For example, in some cases dilution may be allowed under TSCA. *See* 40 C.F.R. Section 761.30(a)(2)(v)(transformers may be drained of PCBs and refilled with non-PCB dielectric fluid; although residual PCBs are expected to remain in the transformer and contaminate the non-PCB dielectric fluid used to refill it, it is considered authorized dilution). While such dilution may be authorized as a regulatory matter under TSCA, it may not be appropriate at a Superfund site for purposes of Section 127.

³² Thus, for example, if credible evidence provided by a party demonstrates that only three transformers out of a truckload of 15 transformers may have exceeded 50 ppm PCBs, the Region may consider reducing that party’s share of liability to account for the fact that most of the items sent to the site were exempt under SREA (assuming the other elements in Section 127 are met).

APPENDIX A
TECHNICAL BACKGROUND INFORMATION FOR VARIOUS SCRAP MATERIALS
(QUESTION AND ANSWER FORMAT)

Q: What is insulated wire and cable?

Ans: When wire is covered with coating or insulation it is usually referred to as insulated wire. The insulation is typically coating of dielectric or essentially nonconducting material which serves the purpose of preventing the transmission of electricity. The insulating material can be any material that is a poor conductor of heat or electricity and is used to suppress the flow of heat or electricity. In ordinary electric wiring, plastics are commonly used as insulating sheathing (cover or encasing) for the wire itself. Very fine wire, such as that used for the winding of coils and transformers, may be insulated with a thin coat of enamel.³³

The insulation of wires inside electric equipment may be made of mica³⁴ or glass fibers with a plastic binder. Polyethylene and polystyrene are used in high-frequency applications (e.g., telecommunications). Other materials used as insulating material include nylon, silicone rubber, epoxy polyesters, polyurethane, and neoprene.³⁵ Asbestos is another material used in insulation for hot water piping.³⁶ The specific choice of an insulating material is usually determined by its application.

Cable is composed of one or more stranded conductors (composed of a group of wires or of any combination of groups of wires). Cable which is covered by insulation and sometimes a protective sheath is used for transmitting electric power or the impulses of an electric communications system.³⁷ Transmission cables have aluminum as the conducting metal. Utilities use insulated aluminum power cable as outside distribution cable but primarily use insulated copper wire for inside distribution. Building, communication, electronics and automotive markets normally use copper as the conducting metal.

Q: What methods are used to separate insulation (e.g., plastic) from metal?

Ans: Normally, for the metal to be recycled, the metal is separated from the insulation. The various techniques used for stripping insulation from wire and cable include mechanical

³³ In industry, enamel is a coating often used primarily for the protection of a surface against corrosion or abrasion. Industry enamel is usually applied to cast iron or sheet that has previously been stamped into shape. The enamel is composed of raw materials such as borax, silica, fluorspar, and feldspar that are mixed and melted by heat. *Microsoft Encarta Encyclopedia 2000* <<http://encarta.com>>. [Accessed August 11, 2000]

³⁴ Mineral that crystallizes in thin, somewhat flexible, translucent or colored, easily separated layers and resistant to heat. *Webster New World Dictionary, Third College Edition. 1988.*

³⁵ "Insulation," *Microsoft Encarta Encyclopedia 2000* <<http://www.encarta.msn.com>>. [Accessed April 26, 2000]

³⁶ *Id.*

³⁷ "Cable," *Microsoft Encarta Encyclopedia 2000* <<http://www.encarta.msn.com>>. [Accessed April 26, 2000]

stripping, thermal stripping (high temperature or low temperature), chemical stripping,³⁸ or a mechanical chopping/grinding process. According to the Bureau of International Recycling, the predominant way of recovering the metal from cable scrap is automated cable chopping.³⁹

Once the insulation is removed, the metal is either sent to a scrap metal recycling facility or recycled on-site, and the insulation is either disposed of or recycled as well. Polyvinyl Chloride (PVC) can be recycled into pellets or directly reused for insulation of electric cable, insulation tape, carpet lining, flooring and footwear, etc.⁴⁰

Q: How are lead-acid batteries used and what are the components that make up a lead-acid battery?

Ans: Manufacturing of lead-acid batteries is the predominant end use for lead in the U.S. Lead-acid batteries are secondary, wet cell batteries, which means they can be recharged for many uses and they contain liquid. They are the most widely used rechargeable battery in the world.⁴¹ Most spent lead-acid batteries, in particular automobile batteries, are recycled. It is estimated that approximately 80 to 95 percent of all spent automobile lead-acid batteries generated in the U.S. are recycled.⁴²

Spent lead-acid batteries are the principal source of feed materials for secondary lead smelters. At present, most smelters purchase whole batteries rather than buying pre-separated lead-bearing components.⁴³ The lead bearing components include plates, groups, and lead oxide paste. Within each cell of a battery, several individual lead grids (plates) are combined to form a single unit (group) that is held together by a lead-oxide paste. Once these plates or groups are removed from a battery, they are considered to be hazardous material by the U.S. Department of

³⁸ One example of chemical stripping involves the use of a hot bath to melt the plastic (e.g., PVC) away from the scrap copper wire. The high temperatures decompose plastic insulation into carbon, which separates out as a granular black material, and also enhances the dissolution of lead from the plastic insulation and copper from the metal wire. *SSPC Issues Technology Update on Chemical Stripping* <<http://www.sspc.org>>. [Accessed April 24, 2001]

³⁹ Plastic Coated Cable Scrap. *Bureau of International Recycling* <<http://www.bir.org/cable>>. [Accessed August 18, 2000]

⁴⁰ *Id.*

⁴¹ Hawker Energy's <<http://www.hepi.com/basics/pb.htm>>. [Accessed December 23, 2001]

⁴² Smith, Bucklin and Associates, Inc., "Battery Council International National Recycling Rate Study." December 1996.

⁴³ Midwest Research Institute. "Background Document for Secondary Lead Smelters Association Request for a Solid Waste variance." Prepared for the U.S. EPA, Office of Solid Waste (August 26, 1988).

Transportation and, therefore, are subject to its hazardous material requirements.⁴⁴ As a result of these restrictions and other factors, only 10 percent of the batteries recycled are opened by independent battery breakers prior to being recycled.⁴⁵

The typical lead-acid automobile battery weighs approximately 36 pounds and consists of about 14 pounds of battery paste, 8 pounds of battery grid, 2 pounds of casing, 2 pounds of separators, and 10 pounds of sulfuric acid.⁴⁶ Highlight 2 presents a typical grid and paste content.⁴⁷

Highlight 2: Typical grid and paste analyses

Components	Grid (%)	Paste (%)
Lead metal	89	1
Lead oxide	1	30
Lead sulfate	1	45
Antimony	1.6	0.3
Tin	0.2	<0.1
Arsenic	0.2	<0.1
Moisture	6	20
Silica	-	2
Carbon	-	2
Organics	1	1
Total	100	100

Q: What are the methods used to recover the lead-bearing components of a whole battery?

Ans: The most prevalent method used by smelting facilities to recover the lead-bearing components of a whole battery is to saw off the top with a large, slow-speed saw. Another method is to crush the entire battery in a crusher. Before beginning the breaking operation, a facility would first receive a bulk shipment of discarded batteries from its customers. Following the breaking operation, the various components of the batteries are separated. The acid is

⁴⁴ Midwest Research Institute. “Background Document for Secondary Lead Smelters Association Request for a Solid Waste variance.” Prepared for the U.S. EPA, Office of Solid Waste (August 26, 1988).

⁴⁵ *Id.*

⁴⁶ Queneau, Paul et al. June 27–29, 2000. “Recycling Metals from Industrial Waste.” Sponsored by Office of Special Programs and Continuing Education, Colorado School of Mines.

⁴⁷ *Id.*

allowed to drain from the opened case and is collected for disposal or resale. The plates and groups are removed from the cases, mechanically or manually, and transported to storage. All lead-bearing components, such as terminal posts and lead oxide (paste), are stored with the plates and groups. The lead-bearing components from the batteries comprise the major portion of the materials charged into the lead recovery furnace.⁴⁸

Q: What is solder?

Ans: Solder is any of several metallic alloys that melt at comparatively low temperatures and are used for the patching or joining of metal parts or surfaces. Solder is classified into several groups of metal alloys⁴⁹ (e.g., lead, nickel, silver, steel, tin, etc.).⁵⁰ Solders are commonly classified as soft and hard solders, depending upon their melting points and strengths.⁵¹ Solders are supplied in wire, bar, or premixed-paste form, depending on the application.⁵²

Q: What process is used for soldering metal?

Ans: In joining two pieces of metal with solder, the metal surfaces to be joined are first cleaned mechanically and then coated with a flux, usually of rosin or borax, that cleans them chemically and assists the solder in making a bond. The surfaces are then heated, either with a hot metal tool called a soldering iron or soldering copper or with some form of alcohol or gas blowtorch. The metal surfaces are heated to the melting point of the solder, the solder is applied and it is allowed to run freely, solidifying as the surfaces cool. In the form of soldering known as sweating⁵³, the metal pieces to be joined are first coated individually with solder and then clamped together and heated to form the finished joint.⁵⁴

⁴⁸ Midwest Research Institute. "Background Document for Secondary Lead Smelters Association Request for a Solid Waste variance." Prepared for the U.S. EPA, Office of Solid Waste (August 26, 1988).

⁴⁹ Alloy refers to a mixture of two or more metals usually to convey certain properties to the **base metal** (the main metal of the alloy). Examples of alloys include stainless steel (steel, chromium and nickel), brass (copper and zinc), and bronze (copper and tin). Alloy metals are usually added to base metals to convey different properties such as corrosion resistance, hardening, and malleability.

⁵⁰ Roy A. Lindberg and Norman R. Braton. "Welding and Other Joining Processes." (1976).

⁵¹ "Solder," *Microsoft Encarta Encyclopedia 2000* <<http://www.encarta.msn.com>>. [Accessed May 1, 2000]

⁵² "Soldering," *Britannica* <<http://www.britannica.com>>. [Accessed June 1, 2000]

⁵³ Sweating is a term of art in SREA. It relates to soldering as a way to unite or extract metal parts by heating at the point of contact.

⁵⁴ "Solder," *Microsoft Encarta Encyclopedia 2000* <<http://www.encarta.msn.com>>. [Accessed June 1, 2000]

Q: What is the difference between solder baths, solder skimmings, and solder dross?

Ans: Solder baths are solidified tin/lead metal used in wave soldering in printed wire and electronics production. **Solder dross (or sometimes referred to as dross or solder skimmings)** is the material that forms on the surface of the solderbath.⁵⁵ Physically, dross is a grey, heavy metallic sludge which floats on top of the solderbath and sets into breakable heavy lumps when it cools.⁵⁶ Solder dross, a process residue, is different from scrap metal in physical form and content.⁵⁷

Q: What is the difference between dross and agglomerated dross?

Ans: Dross is a by-product from the melting, processing, and fabrication of metal. It's a metallic sludge which floats on top of the solderbath and sets into breakable (disperable) heavy lumps when it cools. When the dross is manually or mechanically altered (sintered or melted) it becomes agglomerated dross. Agglomerated drosses are solid chunks of metal in a physical state that does not allow them to be easily crushed, split or crumbled.

Q: How is liquid mercury used in industry?

Ans: Mercury is a metallic element that is a mobile liquid, silvery-white in color that shines.⁵⁸ Electrical products such as dry-cell batteries, fluorescent light bulbs, switches, and other control equipment account for 50% of mercury used. Mercury is also used in paint manufacture (12%) and dental preparations (3%). Lesser quantities are used in industrial catalyst manufacture (2%), pesticides manufacture (1%), general laboratory use (1%), and pharmaceuticals (0.1%).⁵⁹

Q: How are used automobiles typically recycled?

Ans: Vehicle salvage facilities, also known as “dismantlers,” usually are the first places that receive vehicles after their useful life. The nature of operations generally depends on the size

⁵⁵ In the preamble to a RCRA rule, the Agency stated that the definition of scrap metal does not include “residues generated from smelting and refining operations (i.e., drosses, slags, and sludges).” See 50 Fed. Reg. 624 (January 4, 1985).

⁵⁶ Strauss, Rudolf, *SMT Soldering Handbook*, Linacre House, Oxford, (2nd Edition, 1998).

⁵⁷ In the preamble to a RCRA rule, the Agency stated that the definition of scrap metal does not include residues generated from smelting and refining operations (e.g., drosses, slags, and sludges). See 50 Fed. Reg. 624 (January 4, 1985).

⁵⁸ “Mercury,” Mallinckrodt Chemicals. Material Safety Data Sheet <<http://www.mallchem.com/msds/ml599.htm>>. [Accessed January 24, 2002]

⁵⁹ Technical Fact Sheet on Mercury. U.S. EPA, Office of Water <<http://www.epa.gov/OGWDW/dwh/tioc/mercury.html>>. [Accessed August 10, 2000]

and location of the facility. Vehicles are typically dismantled upon arrival, parts are segregated, cleaned, and stored. Remaining hulks are generally sold to scrap dealers.⁶⁰ Once the vehicle is brought to the site, fluids may be drained and the tires, gas tank, radiator, engine and seats may be removed. The dismantler may separate and clean parts. Such cleaning may include steam cleaning of the engine and transmission as well as the use of solvents to remove oil and grease and other residues. Usable parts are then inventoried and stored for resale. The remaining car and/or truck bodies are stored onsite for future sale of the sheet metal and glass. Stripped vehicles and parts that have no resale value are typically crushed and sold to a steel scrapper. Some operations may convert used vehicles and parts into steel scrap as a secondary operation. This is accomplished by incineration, shearing (bale shearer), shredding, or baling.⁶¹

Q: How are vehicles shredded and separated?

Ans: Vehicle shredders generally perform two primary tasks; shredding and separation. The shredding process chops the vehicle hulks received from the salvage facilities into small pieces no bigger than a fist. Once shredded, the pieces are separated according to the materials from which they are made. Most of the vehicle's iron and steel is removed magnetically. While the shredded material passes under a powerful magnet, these metals stick to the magnet, while all the other materials continue on to other separation processes. The materials remaining after magnetic separation then are further separated through a variety of processes. For example, materials may be washed in water; the heavy pieces sink to the bottom of the bath, while light objects, such as plastics, float. The materials that sink are separated into various metals (e.g., copper or aluminum), glass, and heavy rubber and plastic materials.⁶²

Iron and steel, aluminum, and other metals may represent 75 percent of the vehicle weight that is typically recycled.⁶³ The materials that remain are the plastics, rubber, and glass (sometimes called "fluff" or automotive shredder residue).⁶⁴

Q: What are the potential pollutant sources from activities that commonly take place at automobile salvage yards?

⁶⁰ In a final notice for the National Pollutant Discharge Elimination System (NPDES) Storm Water Multi-Sector General Permit for Industrial Activities, EPA states that in urban areas, the remaining hulks are sold to scrap dealers due to limited space. In rural areas, remaining hulks are sold to scrap dealers less frequently. *See* 60 Fed. Reg. 189 (September 29, 1995).

⁶¹ *See* 60 Fed. Reg. 189 (September 29, 1995).

⁶² "Salvage Facilities and Vehicle Shredders," <<http://www.environmentaldefense.org/programs/PPA/vlc/shredders.html>>[Accessed November 28, 2001]

⁶³ *Id.*

⁶⁴ *Id.*

Ans: Below is a table identifying the common pollutant sources.⁶⁵

Salvage Yard Activity	Pollutant Source	Pollutants
Vehicle Dismantling	Oil, anti-freeze, gasoline, diesel fuel, hydraulic fluids	Oil and grease, ethylene glycol, heavy metals
Used Parts Storage	Batteries, chrome bumpers, wheel balance weights, tires, rims, filters, radiators, catalytic converters, engine blocks, hub caps, doors, drive-ins, galvanized metals, mufflers	Sulfuric acid, galvanized metals, heavy metals, petroleum hydrocarbons, suspended solids
Outdoor Vehicle and Equipment Storage	Leaking engines, chipping/corroding bumpers, chipping paint, galvanized metal	Oil and grease, arsenic, organics, heavy metals, TSS
Vehicle and Equipment Maintenance	Parts cleaning, disposal of rags, oil filters, batteries, hydraulic fluids, transmission fluids, radiator fluids, degreasers	Chlorinated solvents, oil and grease, heavy metals, acid/alkaline wastes, arsenic, organics, ethylene glycol
Vehicle, Equipment, and Parts Washing Areas	Washing and steam cleaning waters	Oil and grease, detergents, heavy metals, chlorinated solvents, phosphorus, salts, suspended solids
Liquid Storage in Above Ground Storage Tanks	External corrosion and structural failure, installation problems, spills and overfills due to operator error	Fuel, oil and grease, heavy metals, materials being stored
Illicit Connection to Storm Sewer	Process wastewater, sanitary water, floor drain, vehicle washwaters, radiator flushing wastewater, leaking underground storage tanks	Oil and grease, heavy metals, chlorinated solvents, fuel, ethylene glycol, detergents, phosphorus, suspended solids

Q: How is PCB concentration measured?

Ans: Under TSCA regulations there are two basic ways of measuring PCB concentration. For example, when PCB oil is tested, the sampling results are measured in parts per million (ppm). When a transformer shell is surface wiped to determine PCB concentration, the sampling results are measured in micrograms per 100 centimeters squared ($\mu\text{g}/100 \text{ cm}^2$). While these measurements are not scientifically equivalent, as one measures volume, the other surface area, TSCA regulations provide an equivalency between bulk PCB concentrations and PCB contaminated surface measurements, so that they are effectively regulated in the same way. 40 C.F.R. Section 761.1(b)(3). Provisions that apply to PCBs at concentrations of $< 50 \text{ ppm}$ apply also to contaminated surfaces at PCB concentrations of $\#10\mu\text{g}/100 \text{ cm}^2$. Provisions that apply to

⁶⁵ See 60 Fed. Reg. 189 (September 29, 1995).

PCBs at concentrations of ≤ 50 to < 500 ppm apply also to contaminated surfaces at PCB concentrations of $> 10 \mu\text{g}/100 \text{ cm}^2$ to $< 100 \mu\text{g}/100 \text{ cm}^2$. Provisions that apply to PCB concentrations of ≤ 500 ppm apply also to contaminated surfaces at PCB concentrations of $\leq 100 \mu\text{g}/100 \text{ cm}^2$.

PCB concentrations can also be established from a permanent label, mark or other documentation from a manufacturer, service records or other documentation indicating the PCB concentration of all fluids used to service the equipment since date of manufacture, or testing (as described above). *See* 40 C.F.R. Section 761.2 - 761.3. While TSCA only allows these concentration assumptions while the equipment is in use, and not at the time of disposal, such evidence may nevertheless be considered in evaluating the applicability of SREA. For example, the Defense Reutilization and Marketing Service (DRMS) currently considers PCB transformers of < 2 ppm to be non-hazardous items and sells transformers containing < 2 ppm. Department of Defense (DoD) activities could identify such transformers by manufacturer plates but may not provide sampling data. Thus, there may not be sampling data to prove that the item did not contain PCBs > 50 ppm, but the Defense Reutilization and Marketing Office (DRMO) would refer to its policy and certification procedures for evidence the item was non-hazardous and make such representation to EPA for purposes of satisfying CERCLA Section 127(b)(2). EPA would then consider all the evidence regarding the item and transaction to determine SREA's impact on liability.

APPENDIX B
(SUMMARY OF JUDICIAL OPINIONS DEALING WITH THE EXEMPTION)

Case Law Pertaining to SREA

I. Cases pertaining to government actions

1). United States v. Mountain Metal Co., 137 F. Supp. 2d 1267 (N.D. Ala. 2001). (ILCO CERCLA liability Trial and Settlements)

Judge Clemon rendered his opinion in this matter on April 5, 2001, finding the defendant Jowers Battery liable under Section 107(a)(3) of CERCLA for sending spent lead-acid batteries to the ILCO Site, and finding the Defendant Madewell and Madewell and consolidation Defendant Lion Metals not liable under Section 107(a)(3) of CERCLA for sending only batteries plates to the ILCO Site.

With respect to Jowers Battery, the Court followed the existing case law holding that Jowers did not sell a useful product to ILCO. The Court focused specifically on the fact that the batteries had to be broken open and the lead plates recovered. This process was found to amount to a treatment of a hazardous substance as defined by CERCLA. In contrast, the Court held that Madewell and Lion Metals sold useful products that did not have to be broken open by ILCO, thereby avoiding creation of the waste problem batteries generally created, citing to Douglass County Neb. v. Gould, 871 F. Supp 1242 (D. Neb. 1994) and RSR Corp. v. Avanti Dev. Inc., 58F. Supp 1037 (S.D. Ind. 1999).

With respect to Madewell and Lion Metals, the Court found that, “while the batteries themselves were no longer useful for their original intended purposes, the lead plates were in a form that allowed ILCO to place them directly in the furnace for smelting. As such they constituted a ‘complete useful product,’ [Douglass cite omitted] or raw material for processing rather than disposal.” The Court responded to U.S. arguments that the lead plates still required treatment, as they contained sulfuric acid, by stating that, “while the testimony at trial indicated that a certain level of residual acid sometimes remained on the plates by necessity, [cite omitted] selling a useful product, albeit hazardous substances ‘to serve a particular purpose’ does not alone create arranger liability [citing to Douglass County and AM Int’l Inc. v. Int’l Forging Equipment Corp. 982 F. 2d 989 (6th Cir. 1993)].

The Court also discussed SREA liability, and found that though SREA’s provisions had retroactive effect, the United States had a pending judicial action pursuant to CERCLA Section 127(i) and therefore, SREA did not apply. SREA did apply, however, to exempt the defendants from the action filed by the private plaintiffs, who were the settlors under the RD/RA Consent Decree for the ILCO Site. With regard to lead plates, the Court held that the recycling of lead plates is a defense to arranger liability under CERCLA, as lead plates are not excluded from the definition of “scrap metal” as a “recyclable material” under SREA. The Court found that both Lion Metals and Madewell met the exemption requirements under SREA, and were not excluded in that the plaintiffs were unable to show that either defendant had an objectively reasonable basis to believe that ILCO was not in compliance with environmental laws at the time they sold their lead plates to ILCO. The Court also found Jowers to be exempt under SREA, and not

subject to the exclusion for the same reasons as it found neither Madewell nor Lion Metals to be excluded. Finally, the Court ruled that the attorneys fees provisions under SREA did not apply because, “there was no notice to the plaintiffs of the fee-shifting provision before the commencement of this action.”

2). United States v. Atlas Lederer Co., 97 F. Supp.2d 830 (S.D. Ohio 2000).

The United States brought an action against a property owner and a number of generators to recover response costs for cleanup and the defendants asserted contribution claims against another PRP, Livingston. On Livingston’s motion for summary judgment, the Court held that SREA did not preclude third party contribution claims in action filed before the adoption of SREA. Contribution claims constitute part of the same “pending judicial action” brought by the United States, so Livingston’s argument regarding the inapplicability of 127(i) to the cross-claims and third-party claims for contribution was rejected.

While Defendant Livingston admitted that the terms of SREA specifically state that the law shall not affect “any pending judicial action initiated by the U.S. prior to” the enactment of the exemption, (conceding that it is deprived of the literal application of SREA for the claim asserted by the U.S.), it argued that SREA should be applicable to the cross-claims and third-party contribution claims because they were not initiated by the U.S.. Livingston relied in part on the legislative statement read into the Congressional Record by Senator Lott to demonstrate Congress’ intent that “any third party action or joinder of defendants, brought by a private party shall be considered a private party action, regardless of whether or not the original lawsuit was brought by the United States.” 145 Cong. Rec. S14985-03 (daily ed. Nov. 19, 1999). The Court, however, found this argument unpersuasive. The Court found no “true” legislative history to support Livingston’s interpretation of the provision.

Thus, the Court rejected Livingston’s argument, holding that the plain language of SREA did not preclude the contribution claims in this lawsuit. The Court found that the present litigation, as a whole, constitutes a “judicial action,” initiated by the U.S., and although the cross-claims and counterclaims are “claims,” they are not “actions” as contemplated by the statute. The Court found that Livingston’s argument failed to recognize the distinction between “actions” and “claims;” there is only one action, but there can be numerous claims, and therefore SREA was not applicable to the present lawsuit since it was commenced before passage of the exemption. Furthermore, the Court could not agree with Livingston’s assertion that SREA merely constitutes codification of existing case law on the useful product defense. Livingston had argued for the Court to consider this case law in order to apply the “spirit and intent” of the law and the exemption to the contribution claims against Livingston notwithstanding Section 127(i).

[Note that there were four decisions, in which the Southern District of Ohio consistently held that the United States’ pending claims, as well as private party cross- and third-party claims for contribution raised in the United States’ action, are preserved. These decisions were issued on February 16, 2000 (97 F. Supp. 2d 830, (S.D. Ohio 2000)) (where the Court denied a

contribution defendant Livingston's motion for summary judgment); on February 22, 2000 (where the Court denied a motion for partial summary judgment filed by another defendant); February 21, 2001 (which distinguished DTSCA [described below] and rejected adherence to Lott statement because it "muddied" the plain meaning of Section 127(i), particularly in light of Daschle's having distanced himself from such statement); and March 12, 2001 (where the Court denied Livingston's motion to certify the question for immediate appeal). Note also that these decisions are not yet appealable.]

II. Cases pertaining to contribution claims

1). Gould, Inc. v. A & M Battery & Tire Serv., 232 F.3d 162 (3d Cir. 2000).

The Third Circuit held that: 1) SREA applies retroactively to judicial actions for CERCLA contribution initiated by private parties before November 29, 1999, if the actions were still pending on that date; 2) the definition of spent batteries means the entire battery, including non-recyclable components therein, such as rubber casings. Therefore, the Court vacated a district court grant of summary judgment in favor of a battery recycler who sought contribution costs from PRPs in connection with contamination at a battery recycling site.

The battery recycler entered into a consent agreement with EPA under CERCLA for the contamination. The recycler then initiated a contribution action against several PRPs, and the district court held the PRPs liable for a portion of the recycler's costs. After the PRPs filed their notices of appeal, however, Congress passed SREA. The Act states that it has no effect on any concluded judicial or administrative action or any pending judicial action initiated by the United States before November 29, 1999. The Court held that the Act may be applied retroactively in a judicial action initiated by a private party that is still pending as of November 29, 1999 because the Act is silent with respect to actions initiated by private parties. Contrary to the recycler's argument, the Court found that a private judicial action that was initiated following a related federal administrative action, in this case, the consent agreement, should not be deemed as having been initiated by the United States. Additionally, the it found Act does not violate the Fifth Amendment's due process guarantee for lacking a rational basis. It reasoned that the distinction between privately and federally initiated judicial actions is rationally related to preserving public finances. Finally, the Court based its finding (that SREA applied retroactively to pending private actions) on SREA's implication or negative inference. In addition, the Court found that Lott's "legislative history," inserted into the record by unanimous consent, supported a common sense construction of the Act that applies it retroactively to private judicial actions. The Court, therefore, remanded the case to determine whether the PRPs satisfy the Act's requirements for exemption from liability.

2). Morton Int'l, Inc. v. A.E. Staley Mfg. Co., 106 F. Supp.2d 737 (D.N.J. 2000).

The district court ruled that SREA can be applied retroactively in pending CERCLA private party actions for contribution. Accordingly, the Court granted a company's motion to amend its defense to encompass the provision. The Court found that Congress provided for the retroactivity of SREA in a manner that was "sufficiently express and unambiguous" and, therefore, a recycler may make a defense under the law.

In so ruling, the Court cited United States v. Atlas Lederer Co., 97 F. Supp. 2d 830 (S.D. Ohio 2000), and Department of Toxic Substances Control v. Interstate Non-Ferrous Corp., 99 F. Supp. 2d 1123, (E.D. Cal. 2000), two other recent cases that address whether the recycling law applies retroactively in CERCLA actions. The Court also cited the U.S. Supreme Court decision in Landgraf v. USI Film Products, 511 U.S. 244 (1994), in which the high Court said that statutes should not be applied retroactively unless Congress has expressly commanded or implied them to be. The Court, in assessing statements from Sens. Trent Lott, Blanche Lincoln, and Thomas Daschle, as well as the Act's plain meaning, concluded the congressional intent of SREA was for the law to be applied retroactively. In statements to Congress in 1999, Sen. Lott asserted that "Section 127 under CERCLA clarifies liability for recycling transactions and provides relief from liability for both retroactive and prospective transactions." Sen. Lincoln, in her statements to Congress, stated that she "first introduced the bill (Section 127) to relieve legitimate recyclers of scrap metal from unintended Superfund liability. The bill was developed in conjunction with the recycling industry, the environmental community and the administration and the Act is both retroactive and prospective." The Court interpreted this legislative history as expressing an intent by Congress to apply SREA retroactively. "Section 127 should be applied retrospectively here. The language, purpose, and legislative history of Section 127 support that determination. This determination, however, is not dispositive as a finding for any party. The Court rejected plaintiffs' argument that even if Section 127 were applicable, the defense would be futile because, it argued, mercury in liquid or sludge form is not "recyclable material." Rather, the Court left that issue for disposition in trial. The defendants seeking to add the Section 127 defense must still prove by a preponderance of the evidence that they meet all requirements set forth in this amendment," the Court said.

3). RSR Corp. v. Avanti Dev., Inc., 2000 WL 1449859 (S.D. Ind. 2000).

On June 13, 2000, the Court declined to decide whether SREA applied to a pre-enactment contribution action [as the Court had previously decided that the PRP's connection with the site was too attenuated to impose arranger liability; the Court did not reach whether SREA would then exempt the party], but suggested that retroactive imposition of Section 127(j)'s fee-shifting provision would result in manifest injustice. The Court noted that the Supreme Court had held in Key Tronic Corp. v. United States, 511 U.S. 809 (1994) that attorney and expert fees were not recoverable in a CERCLA contribution case, and that Section 127 changed that rule for cases covered by SREA. The Court suggested that change might result in manifest injustice, if it were applied retroactively. The Court reasoned that the plaintiffs made their decision about who to sue at a time when CERCLA did not allow a prevailing party in a contribution action to obtain costs and fees from its opponent. Further, the Court noted that to burden such a plaintiff's decision now with the imposition of attorney and expert fees of any

defendant that prevails under Section 127 is inconsistent with the “familiar considerations of fair notice, reasonable reliance, and settled expectations” identified in Key Tronic Corp. v. United States, 511 U.S. 809 (1994). [The case settled shortly after the Court issued its June 2000 Order, so there were no other decisions in the case addressing SREA.]

4). Department of Toxic Substances Control v. Interstate Non-Ferrous Corp., 99 F. Supp.2d 1123 (E.D. Cal. 2000).

The Court held that SREA applies to non-federal CERCLA enforcement actions pending at the time of its enactment. Therefore, the SREA exemption applies to a state environmental agency's CERCLA Sections 107(a) and 113(g) actions against several scrap metal recyclers. In enacting SREA, Congress did not explicitly mention every class of pending case to which Section 127 liability exemption applies. Nevertheless, SREA's structure, express language, purpose, and legislative history militate in favor of retrospectivity as to all pending actions brought by any party except the United States.

The Court held that Congressional intent that SREA apply retrospectively to pending cases initiated by parties other than the United States could be gleaned from: [1] the headings used in SREA indicating that Congress intended to clarify, not change, the law; [2] SREA's stated purpose, which was to exempt eligible recyclers from liability; [3] language throughout SREA, which fixes different requirements based on when the transaction occurred; [4] and, *inter alia*, the statement of Senator Lott, a chief co-sponsor of SREA, which was not “legislative history,” but was to be accorded substantial weight. The Court, however, did not find SREA to be retroactive, meaning that it did not find that SREA attaches new legal consequences to prior acts, because: [1] no new liability was created, and the State of California's “rights” were not impaired (it would have cleaned up the site whether or not it thought it could recover costs from the parties it sued); and because [2] SREA clarified existing law, it did not change it.

Nevertheless, the retrospective application of the exemption to pending actions does not result in an automatic exemption because any party seeking to avoid liability under Section 127 must prove by a preponderance of the evidence all of the exemption requirements. In addition, the exemption does not apply retroactively to actions resolved before the passage of SREA.

From: [Tony Serio](#)
To: [Rae, Sarah](#)
Subject: All gone
Date: Friday, January 27, 2023 4:21:00 PM

Why are these pictures posted ?
You did clean it up correct?
Must you post what been corrected?
Or did they not correct the problem the Flathead Beacon did interview with your representative contractor and he embellished what 58

https://response.epa.gov/site/site_profile.aspx?site_id=15686

Shared via the [Google app](#)

Sent from my iPhone

From: [Tony Serio](#)
To: [Rae, Sarah](#)
Subject: Site Profile - Valley Drive Abandoned Slurry - EPA OSC Response
Date: Sunday, January 15, 2023 11:36:31 AM

Why does the EPA keep this posted?

Did the EPA really clean it up?

If so this post is misleading it is implying that this still on going.

Please stop posting this resolved problem. Or please give us a reason for posting this inflammatory and I un-neighborly dangerous looking site!

Thank you Tony

Sent from my iPhone

From: [Tony Serio](#)
To: [Rae, Sarah](#)
Subject: Site Profile - Valley Drive Abandoned Slurry - EPA OSC Response
Date: Wednesday, December 14, 2022 7:57:50 AM

https://response.epa.gov/site/site_profile.aspx?site_id=15686

Sent from my iPhone

From: [Tony Serio](#)
To: [Rae, Sarah](#)
Subject: Site
Date: Tuesday, October 25, 2022 7:24:43 AM

Site

185 West Valley Drive ^[SEP] **Flathead County** ^[SEP] **Kalispell, MT**
59901

response.epa.gov/ValleyDriveSlurry

Thank you for your help!

6901 et seq. (1976) The Resource Conservation and Recovery Act (RCRA)

What Does Cradle to Grave Mean?

First things first, “cradle to grave” states that a hazardous waste generator is responsible for its waste from initial generation through its ultimate disposal and beyond. Nothing will relinquish a generator of this responsibility. There’s no expiration date or time limit, and hiring a someone else to transport and dispose of your waste does not transfer responsibility. That’s why it is vitally important to maintain compliance and ensure you are operating by the book. If an incident happens occurs at any point during your waste’s lifecycle, you can and will be held liable. It’s possible you may also be obligated to pay some, or all, costs associated with a response or a cleanup

_____ - Is this law really enforceable?

Wood pitch / approximately 30,000
(Generator)

1.Plum Creek Timber/Weyerhaeuser

+Evergreen plywood plant (Residual blue steam to scrubber)- Veneer pressing process

Weyerhaeuser Company

220 Occidental Ave. S.

Seattle, WA 98104

NEW YORK (Reuters) - **Weyerhaeuser Co WY. N** will purchase Plum Creek Timber Co Inc PCL. N in a deal announced on Sunday that the two companies said would create a \$23 billion timber, land and forest products company, the largest in the United States. Nov 8, 2015

*Wood pitch
Approximately 10,000 gallons
(Generator)

2. Champion International/Stimson Lumber Co.
: 520 SW Yamhill Street Suite 700 Portland, OR 97204 United States

+Libby plywood plant (Residual blue steam to scrubber)- Veneer pressing process

*Crude oil
Approximately 23,000 gallons
(Generator)
3. Scurlock Permian Corporation/ Plains pipeline
333 Clay Street, Suite 1600, Houston, TX 77002
713.646.4100

+ Cutbank Montana pipeline (Abandoning and removing pipeline at Tank Hill)

Note: MSDS on record at Flathead County courthouse
Flathead County VS Sure Seal

Note: Product information for the wood pitch and the crude oil is on record at the Flathead county Road department both MSDS and product information was required of sure seal upon getting a permit to apply it on county roads

Note:(In connection the so called dumplings fine)Flathead county dismissed all fine in late 90s- Or early to 2000s.
Check that out. Why?

Their act under § 75-10-212, MCA
(The Flathead county did prevented any future recycling of all materials in the tanks on the West Vally land!
The \$25,000 in fines that Flathead County was charging sure seal was for five occasions at \$5000 a piece for of each occasions four of these occasions were on county roads that sure seal was granted a permit to preform services on.
The fifth occasion was on the 185 West Valley Joint easement the roadway heading up to the county gravel pit the test area for the R&D for the wood pitch.

“ And forced us to be homeless and go on government assistance)
Check that out. Why?

We never had “Animosity” towards the generators!

Note: also stop engaging in the pick up of any / wood pitch/ crude oil or and other materials!

Note:Note: As people who appreciated our suppliers of the wood pitch. We instructed them how they can burn the wood pitch in their boilers. We gave them references of mills in Wyoming that were doing that vary same method. Re: Dana Jefferys (Plum Creek Timber)

Note: We approached the generators in the early 2000s to help with clean up. We sited the “cradle to grave “ law.

*Plum Creek Timber responded with their lawyers saying they will fight this “Vigorously” and other generators never responded back at all.

The “David and Goliath” scenario is how this Big Business and Government used heavy hands and powerful “Threats” to scare and intimidate us into hiding in the crags of life.

“Again “

Thank you for your help!

Please if are you to going “ Finish” us off by fines and take our land do it speedy and painless as possible!

Hazard waste receptacle

The Resource Conservation and Recovery Act (RCRA) gives EPA the authority to control hazardous waste from cradle to grave. This includes the generation, transportation, treatment, storage, and disposal of hazardous waste. RCRA also set forth a framework for the management of non-hazardous solid wastes.

“Hazard waste receptacle”

Taking place in the 1990s

39,000 tank containing crude oil

Tank given by BN railroads Whitefish Mt

Randy Wolf

10,000 red tank containing crude oil given by Bigfork High School

School head custodian

2-10,000 tank containing wood pitch residue Tank given by Flathead Country Road & Bridge Dept.

One tank came from old hospital of east side of Kalispell (the storage tank for # 5 fuel)

Second tank came from Flathead county nursing home off Willow Glen Dr Kalispell (the storage tank for # 5 fuel)

Flathead county road and bridge dept loaded and hauled and placed tanks at west valley property

Jack L Lingo (Bridge department) Guy Foy (Road Dept) Joe Russel (Heath Dept)

All the small tank give by Champion International Libby

Tanker trailer Malcolm Cutts Libby Mt.

1000 tank containing SS1 asphalt tackifier give by Glaicer National Park Maintenance Dept .
West Glacier Mt

FYI

When the county remove those tanks, tank number one at the old hospital on the east side Kalispell Mt. The lines leading to the boiler house had leaked oil over for decades and when the county backfill that they covered up all that contaminated soil at number one tank site Jack lingo /Guy Foy/ Joe Russell with the health department were all present

Tank number two which came from the adult assistant living moff of Willow Glen Drive same scenario they removed a tank and when they backfilled where the tank was that line That went to the boiler also leaked for decades that soil was also contaminated they chose to do the same thing they backfilled and buried the contaminated soil Jack lingo /Guy Foy/ To my knowledge

Joe Russell was not involved in that backfilling and covering up contaminated soil.

Sent from my iPhone

From: [Tony Serio](#)
To: [Rae, Sarah](#)
Subject: Site
Date: Sunday, October 9, 2022 8:31:21 PM

Site

185 West Valley Drive [SEP] **Flathead County** [SEP] **Kalispell, MT**
59901

response.epa.gov/ValleyDriveSlurry

6901 et seq. (1976) The Resource Conservation and Recovery Act (RCRA)

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+Evergreen plywood plant (Residual blue steam to scrubber)

NEW YORK (Reuters) - **Weyerhaeuser Co WY. N** will opurchase Plum Creek Timber Co Inc PCL. N in a deal announced on Sunday that the two companies said would create a \$23 billion timber, land and forest products company, the largest in the United States.Nov 8, 2015

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Champion International/Stimson Lumber Co.
+Libby plywood plant (Residual blue steam to scrubber)

*Crude oil

Approximately 23,000 gallons

(Generator)

3.Scurlock Permian Corporation/ Plains pipeline

+ Cutbank Montana pipeline (Abandoning and removing pipeline at Tank Hill)

Note: MSDS on record at Flathead Country courthouse
FlatheadCounty VS Sure Seal

Note:(In connection the so called dumplings fine)Flathead county dismissed all fine in late
90s- Or early to 2000s.

Check that out. Why?

Their act (The Flathead county prevented any future recycling of all materials in the tanks on
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Sent from my iPhone

From: [Tony Serio](#)
To: [Rae, Sarah](#)
Subject: Site
Date: Sunday, October 9, 2022 8:24:32 AM

Site

185 West Valley Drive [SEP] **Flathead County** [SEP] **Kalispell, MT**
59901

response.epa.gov/ValleyDriveSlurry

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Tanker trailer Malcolm Cutts Libby Mt.

1000 tank containing SS1 asphalt tackifier give by Glaicer National Park Maintenance Dept .

West Glacier Mt

Sent from my iPhone

From: [Irene Serio](#)
To: [Rae, Sarah](#)
Subject: Re: Leaking Tanks at 185 West Valley Drive, Kalispell, Montana - Notice of Ex Parte Warrant and Opportunity for Split Samples
Date: Monday, September 26, 2022 1:25:53 PM
Attachments: [stimpson_champion_old.pdf](#)

Hi Sara,

I am inclosing some of the Exhibits that were filed with Flathead County many years ago.

Our hard efforts and using Pine Tar Pitch was already being done in Canada at the time. After visiting the Sight in Canada in the 90s we came home to the Flathead Valley, with our 4 kids, to make an affordable Safe dust Control. You will see as one of the exhibits that Waste oil was not to be used on Roads and we were in the Dust Control Business.

We came up with a solution. We were paid to pick up the product at Champion and Plum Creek as you see in the pdf I am sending. We have MSD sheet on the product from Colloid Lab you can find this also in Flathead County Court House.

When we picked up Pine Tar Pitch from the Lumber Mills, it was too thick to use so we found environmental product to mix with it, cutting the cost of Dust Control in Half for the customers in the Valley. We then sent samples to Collided Lab.

Collide Lab said it was environmentally safe. (MSD from them is an exhibit I can get you). And is in County records.

The Big Mountain Ski Resort loved the product. The City of Kalispell used it in some of their alleys. The County was another story. One day we read in paper local Dust Control Business being sued I think \$10,000.00 if I remember right.

VERY EMBARRASSING as I owned a Dance Studio at the time. Plus our customers would be alarmed! The Flathead County put an injection on us and we thought we were living in a communist Country. It was Hard to fight without an attorney but we tried hard. We went as far as Supreme Court. We never had to pay the bogus Flathead County trumped up charge.

The Flathead County said we dumped it in a dump. LIE. The land was once a Dump and we did all our test patches on a road on the land where your guy has his white trailer right now on the land on a road that goes up the hill. Pine tar Pitch comes from trees from the lumber mills. One of the sheets I am sending-You will see where we put tall on roads — people paid us. Tall is for Tall Pine. That is what is in most those Tanks.

It is my opinion that The Flathead County (staff) forced us out of business because of the kick backs they had going on with Lyman Dust Control. When jobs came up for Bid only Lyman was asked to bid. Bids back then were not put out for bid like now. 30 Years later Lyman Dust Control is the only Dust Control Business in the Flathead Valley. Like I said we had a safe cheeper way for the public to get Dust Control on all the Dirt roads in the Valley. We were attacked for it.

We returned back to Montana in 2020 during Covid, and have the oil in the one tank sold for A dust Control Job next spring.

Our plans were to clean up the land this Fall 2022, when our work season slowed down. (We Seal Asphalt, it is seasonal.) We have approached Plum Creek and Champion in

the past for their help because of the Cradle to Grave Law.

But we have not been able to afford an attorney to get them to help. (I have that documentation) We have 5 Children - most live in Montana. We had to leave our home for over 20 years and work start over in another state. My husband is 70 now and I am 66.

All the past and why those tanks are there is will documented in The Flathead County

I have a lot more to send you about this but this is what I have now in my Computer. If you want to read about what is on that land for product and where it came from look at Flathead County Records - Flathead County VS Sure Seal Infact you guys took that original Sure Seal Tank off that land I saw today.

Thank You

Irene Serio

561-502-7609

On Sep 26, 2022, at 7:03 AM, Rae, Sarah <Rae.Sarah@epa.gov> wrote:

Thank you Irene. We will send the split samples to you at 209 Lake Hills Court Bigfork Montana 59911.

Sarah Rae

Senior Assistant Regional Counsel

US EPA – Region 8

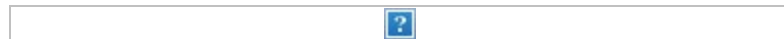
1595 Wynkoop Street

Denver, CO 80202

(303) 312-6839

Rae.Sarah@epa.gov

Pronouns: she/her/hers



From: Irene Serio <reneserio1956@icloud.com>

Sent: Friday, September 23, 2022 5:54 PM

To: Rae, Sarah <Rae.Sarah@epa.gov>

Subject: Re: Leaking Tanks at 185 West Valley Drive, Kalispell, Montana - Notice of Ex Parte Warrant and Opportunity for Split Samples

My Address has been and is 209 Lake Hills Court Bigfork Montana 59911. Same as my Drivers License Since 2010. 22 Years.

Irene Serio

On Sep 23, 2022, at 5:11 PM, "Rae, Sarah" <Rae.Sarah@epa.gov> wrote:

Ms. Serio,

Per your request, I am forwarding my email correspondence from today to the new email address you have provided. I will use this email address going forward for any correspondence regarding 185 West Valley Drive. Please respond to this email and provide me with an alternative address to send the split samples. We are not able to send them to the PO Box that you previously provided.

If you have any questions, please contact me at (303) 312-6839 or Rae.Sarah@epa.gov. If you are represented by legal counsel, please provide me with the name of your attorney and contact information.

Respectfully,

Sarah Rae

Senior Assistant Regional Counsel

US EPA – Region 8

1595 Wynkoop Street

Denver, CO 80202

(303) 312-6839

Rae.Sarah@epa.gov

Pronouns: she/her/hers

From: Rae, Sarah

Sent: Friday, September 23, 2022 1:02 PM

To: Tony Serio <sseriotony@aol.com>

Cc: Peronard, Paul <Peronard.Paul@epa.gov>

Subject: RE: Leaking Tanks at 185 West Valley Drive, Kalispell, Montana - Notice of Ex Parte Warrant and Opportunity for Split Samples

Importance: High

Ms. Serio,

Please respond to this email and provide me with an alternative address to send the split samples. We are not able to send them to the PO Box that you previously provided.

If you have any questions, please contact me at (303) 312-6839 or Rae.Sarah@epa.gov. If you are represented by legal counsel, please provide me with the name of your attorney and contact information.

Respectfully,

Sarah Rae

Senior Assistant Regional Counsel

US EPA – Region 8

1595 Wynkoop Street

Denver, CO 80202

(303) 312-6839

Rae.Sarah@epa.gov

Pronouns: she/her/hers

From: Rae, Sarah

Sent: Friday, September 23, 2022 11:36 AM

To: Tony Serio <sseriotony@aol.com>

Cc: Peronard, Paul <Peronard.Paul@epa.gov>

Subject: RE: Leaking Tanks at 185 West Valley Drive, Kalispell, Montana -
Notice of Ex Parte Warrant and Opportunity for Split Samples

Ms. Serio,

I received your voicemail this morning and attempted to call you back just now at (561) 502-7609. In your voicemail you requested that EPA provide you with split samples. In the emails below, you requested that the split samples be sent to you at the following address: PO Box 521, Kalispell, Montana 59903. We will move forward with sending the split samples to you at this address.

If you have any questions, please contact me at (303) 312-6839 or Rae.Sarah@epa.gov. If you are represented by legal counsel, please provide me with the name of your attorney and contact information.

Respectfully,

Sarah Rae

Senior Assistant Regional Counsel

US EPA – Region 8

1595 Wynkoop Street

Denver, CO 80202

(303) 312-6839

Rae.Sarah@epa.gov

Pronouns: she/her/hers

From: Tony Serio <sseriotony@aol.com>

Sent: Friday, September 23, 2022 10:36 AM

To: Rae, Sarah <Rae.Sarah@epa.gov>

Subject: Re: Leaking Tanks at 185 West Valley Drive, Kalispell, Montana - Notice of Ex Parte Warrant and Opportunity for Split Samples

If you can not send to my PO Box you can send to the address on my Drivers License.

Sent from my iPhone

From: Tony Serio <sseriotony@aol.com>
Sent: Friday, September 23, 2022 10:26 AM
To: Rae, Sarah <Rae.Sarah@epa.gov>
Subject: Re: Leaking Tanks at 185 West Valley Drive, Kalispell, Montana - Notice of Ex Parte Warrant and Opportunity for Split Samples

That is Not My Address on the attached . You should have had the right address for me it's on my Drivers License for years!!! I have nothing to do with Antler Bluff !! Send all samples to my PO Box 521 kalispell montana 59903

Sent from my iPhone

From: Tony Serio <sseriotony@aol.com>
Sent: Friday, September 23, 2022 10:17 AM
To: Rae, Sarah <Rae.Sarah@epa.gov>
Subject: Re: Leaking Tanks at 185 West Valley Drive, Kalispell, Montana - Notice of Ex Parte Warrant and Opportunity for Split Samples

Never searved with any papers what so ever. My husband handed this e-mail me today. 1st time I ever saw anything about this!!!

Sent from my iPhone

From: Tony Serio <sseriotony@aol.com>
Sent: Friday, September 23, 2022 10:15 AM
To: Rae, Sarah <Rae.Sarah@epa.gov>
Subject: Re: Leaking Tanks at 185 West Valley Drive, Kalispell, Montana - Notice of Ex Parte Warrant and Opportunity for Split Samples

Tanks were not leaking
I want all samples. I was never contacted about any of this. Pine tar pitch from Stimpson and Plum Creek - cradle to grave law they are responsible for product in tanks.

Sent from my iPhone

On Sep 23, 2022, at 9:50 AM, Rae, Sarah <Rae.Sarah@epa.gov> wrote:

Dear Ms. Serio,

EPA previously contacted you via letter, email, and phone regarding the leaking tanks on your property located 185 West Valley Drive in Kalispell, Montana and requested that you sign a Consent for Access form. You informed EPA that you would not provide consent to access the property. EPA is now notifying you that it has obtained a warrant from the federal district court for the District of Montana to investigate and cleanup the tanks and releases of hazardous substances on your property. The warrant has been issued pursuant to EPA's authority provided under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9601 et seq. A copy of the warrant is enclosed.

EPA is required to provide you with a receipt describing any samples obtained on your property, the results of any analysis made of such samples, and if requested, a portion of any samples taken ("split samples"). 42 U.S.C. § 9604(e)(4)(b). The receipt and any sampling analysis results will be provided via mail at the address listed in the attached cover letter. We did not receive a response to the September 9, 2022 correspondence, therefore we assume that you do not want EPA to provide split samples. I have CCed EPA On-Scene Coordinator, Paul Peronard, who will be performing the sampling.

If you have any questions, please contact me at (303) 312-6839 or Rae.Sarah@epa.gov. If you are represented by legal counsel, please provide me with the name of your attorney and contact information.

Respectfully,

Sarah Rae

Senior Assistant Regional Counsel

US EPA – Region 8

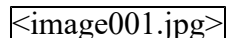
1595 Wynkoop Street

Denver, CO 80202

(303) 312-6839

Rae.Sarah@epa.gov

Pronouns: she/her/hers

 <image001.jpg>

From: Rae, Sarah

Sent: Friday, September 9, 2022 6:57 AM

To: Tony Serio <sseriotony@aol.com>

Cc: Peronard, Paul <Peronard.Paul@epa.gov>

Subject: Leaking Tanks at 185 West Valley Drive, Kalispell, Montana - Notice of Ex Parte Warrant and Opportunity for Split Samples

Dear Ms. Serio,

EPA previously contacted you via letter, email, and phone regarding the leaking tanks on your property located 185 West Valley Drive in Kalispell, Montana and requested that you sign a Consent for Access form. You informed EPA that you would not provide consent to access the property. EPA is now notifying you that it has obtained a warrant from the federal district court for the District of Montana to investigate and cleanup the tanks and releases of hazardous substances on your property. The warrant has been issued pursuant to EPA's authority provided under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9601 et seq. A copy of the warrant is enclosed.

EPA is required to provide you with a receipt describing any samples obtained on your property, the results of any analysis made of such samples, and if requested, a portion of any samples taken ("split samples"). 42 U.S.C. § 9604(e)(4)(b). The receipt and any sampling analysis results will be provided via mail at the address listed in the attached cover letter. If you would like to request split samples, you may do so by emailing me at Rae.Sarah@epa.gov. If we do not hear back from you within the next **five days**, we will assume that you do not want EPA to provide split samples. I have CCed EPA On-Scene Coordinator, Paul Peronard, who will be performing the sampling.

If you have any questions, please contact me at (303) 312-6839 or Rae.Sarah@epa.gov. If you are represented by legal counsel, please provide me with the name of your attorney and contact information.

Respectfully,

Sarah Rae

Senior Assistant Regional Counsel

US EPA – Region 8

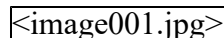
1595 Wynkoop Street

Denver, CO 80202

(303) 312-6839

Rae.Sarah@epa.gov

Pronouns: she/her/hers



From: Tony Serio <sseriotony@aol.com>

Sent: Wednesday, July 27, 2022 3:09 PM

To: Rae, Sarah <Rae.Sarah@epa.gov>

Subject: Re: Leaking Tanks at 185 West Valley Drive, Kalispell, Montana - Request for Access to Property

Fuck you and the horse u rode in with

Sent from my iPhone

On Jul 27, 2022, at 2:32 PM, Rae, Sarah <Rae.Sarah@epa.gov> wrote:

Ms. Irene Serio,

Please read the attached letter regarding the leaking tanks of “Tac Oil” at 185 West Valley Drive. I have also mailed this letter to you at the addresses listed in the letter. EPA is planning to deploy a response team to investigate and address the tanks pursuant to its authority provided under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (“CERCLA”), 42 U.S.C. §§ 9601, the Clean Water Act (“CWA”), 33 U.S.C. §1251 et seq. (1972), and the Oil Pollution Act (“OPA”), 33 U.S.C. §2701 et seq. (1990).


Please sign and return the Consent for Access to Property form, which will allow EPA and its contractors to investigate and address the tanks on your Property. You can email to me a scanned copy or a photo image of the signed form and, thereafter, send the original to me at:

Sarah Rae (Mail Code ORC-C)
US EPA – Region 8
1595 Wynkoop Street
Denver, CO 80202

We need to act quickly. If we do not hear back from you within the next seven days, we will assume that you are denying access and will consider requesting access from the federal district court in Montana. If you have any questions, please contact me at (303) 312-6839 or Rae.Sarah@epa.gov. If you are represented by legal counsel, please provide me with the name of your attorney and contact information. Please give this matter your immediate attention. We appreciate your cooperation in this matter.

Respectfully,

Sarah Rae
Senior Assistant Regional Counsel

US EPA – Region 8
1595 Wynkoop Street
Denver, CO 80202
(303) 312-6839
Rae.Sarah@epa.gov
Pronouns: she/her/hers


<KalisPELL Valley Drive Tanks -Request for Access
Cover Letter 07 27 2022 FINAL.pdf>

<KalisPELL Valley Drive Tanks - Warrant Cover Letter SIGNED.pdf>

<Signed Warrant.pdf>

From: [Tony Serio](#)
To: [Rae, Sarah](#)
Subject: Site
Date: Monday, September 26, 2022 6:49:04 AM

Site

185 West Valley Drive ^[SEP] **Flathead County** ^[SEP] **Kalispell, MT**
59901

response.epa.gov/ValleyDriveSlurry

6901 et seq. (1976) The Resource Conservation and Recovery Act (RCRA)

What Does Cradle to Grave Mean?

First things first, “cradle to grave” states that a hazardous waste generator is responsible for its waste from initial generation through its ultimate disposal and beyond. Nothing will relinquish a generator of this responsibility. There’s no expiration date or time limit, and hiring a someone else to transport and dispose of your waste does not transfer responsibility.

That’s why it is vitally important to maintain compliance and ensure you are operating by the book. If an incident happens occurs at any point during your waste’s lifecycle, you can and will be held liable. It’s possible you may also be obligated to pay some, or all, costs associated with a response or a cleanup.

*Pine tar pitch / approximately 30,000
(Generator)

1.Plum Creek Timber/Weyerhaeuser
+Evergreen plywood plant (Residual blue steam to scrubber)

NEW YORK (Reuters) - **Weyerhaeuser Co WY. N** will opurchase Plum Creek Timber Co Inc PCL. N in a deal announced on Sunday that the two companies said would create a \$23 billion timber, land and forest products company, the largest in the United States.Nov 8, 2015

*Pine tar pitch
Approximately 10,000 gallons

(Generator)
2. Stimson Lumber Co
Champion International/Stimson Lumber Co.
+ Libby plywood plant (Residual blue steam to scrubber)

*Crude oil
Approximately 23,000 gallons
(Generator)
3. Scurlock Permian Corporation/ Plains pipeline
+ Cutbank Montana pipeline (Abandoning and removing pipeline at Tank Hill)

Note: MSDS on record at Flathead Country courthouse
FlatheadCounty VS Sure Seal

Sent from my iPhone

CORRECTED (if checked)

PAYER'S name, street address, city, state, and ZIP code CHAMPION INTERNATIONAL CORP. % ACCTG SUPPORT (513) 868-4230 KNIGHTSBRIDGE HAMILTON OH 45020		1 Rents \$	OMB No. 1545-0115 1993	Miscellaneous Income
		2 Royalties \$		
		3 Prizes, awards, etc. \$		
PAYER'S Federal identification number 13-1427390	RECIPIENT'S identification number 361-48-2009	4 Federal income tax withheld \$	5 Fishing boat proceeds \$	Copy B For Recipient This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this income is taxable and the IRS determines that it has not been reported.
RECIPIENT'S name (first, middle, last) street address, city, state, and ZIP code TONY SERIO PO BOX 2322 KALISPELL, MT 59901		6 Medical and health care payments \$	7 Nonemployee compensation \$ 3,128.55	
		8 Substitute payments in lieu of dividends or interest \$	9 Payer made direct sales of \$5,000 or more of consumer products to a buyer (recipient) for resale <input type="checkbox"/>	
		10 Crop insurance proceeds \$	11 State income tax withheld \$	
Account number (optional)		12 State/Payer's state number		

Form 1099-MISC

(Keep for your records.)

Department of the Treasury - Internal Revenue Service

VOID CORRECTED

PAYER'S name, street address, city, state, and ZIP code Stimson Lumber Co. - Montana P.O. Box 1120 Bonner, Mt. 59823		1 Rents \$	OMB No. 1545-0115 1994	Miscellaneous Income
		2 Royalties \$		
		3 Other income \$		
PAYER'S Federal identification number 93-0290630	RECIPIENT'S identification number	4 Federal income tax withheld \$	5 Fishing boat proceeds \$	Copy 1 For State Tax Department This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this income is taxable and the IRS determines that it has not been reported.
RECIPIENT'S name, street address (including apt. no.), city, state, and ZIP code Tony Serio Box 7804 Kalispell, Mt. 59904-0804		6 Medical and health care payments \$	7 Nonemployee compensation \$ 9262.61	
		8 Substitute payments in lieu of dividends or interest \$	9 Payer made direct sales of \$5,000 or more of consumer products to a buyer (recipient) for resale <input type="checkbox"/>	
		10 Crop insurance proceeds \$	11 State income tax withheld \$	
Account number (optional)		12 State/Payer's state number		

Form 1099-MISC

Department of the Treasury - Internal Revenue Service

CORRECTED (if checked)

PAYER'S name, street address, city, state, and ZIP code PLUM CREEK TIMBER COMPANY, L.P. P.O. BOX 160 COLUMBIA FALLS MT 59912		1 Rents \$	OMB No. 1545-0115 1993	Miscellaneous Income
PAYER'S Federal identification number 911443693		2 Royalties \$		
RECIPIENT'S identification number 361482009		3 Prizes, awards, etc. \$		
RECIPIENT'S name SERIO, TONY P O BOX 2322 Street address (including apt. no.) City, state, and ZIP code KALISPELL MT 59903		4 Federal income tax withheld \$	5 Fishing boat proceeds \$	Copy B For Recipient This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this income is taxable and the IRS determines that it has not been reported.
Account number (optional) 5656		6 Medical and health care payments \$	7 Nonemployee compensation \$ 8130.54	
2nd TIN Not <input type="checkbox"/>		8 Substitute payments in lieu of dividends or interest \$	9 Payer made direct sales of \$5,000 or more of consumer products to a buyer (recipient) for resale <input type="checkbox"/>	
		10 Crop insurance proceeds \$	11 State income tax withheld \$	
		12 State/Payer's state number		

Form 1099-MISC

(Keep for your records.)

Department of the Treasury - Internal Revenue Service

CORRECTED (if checked)

PAYER'S name, street address, city, state, and ZIP code PLUM CREEK TIMBER COMPANY, L.P. P.O. BOX 160 COLUMBIA FALLS MT 59912		1 Rents \$	OMB No. 1545-0115 1994	Miscellaneous Income
PAYER'S Federal identification number 911443693		2 Royalties \$		
RECIPIENT'S identification number 361482009		3 Other income \$		
RECIPIENT'S name, street address (including apt. no.), city, state, and ZIP code SERIO, TONY P O BOX 7804 KALISPELL MT 59904-0804		4 Federal income tax withheld \$	5 Fishing boat proceeds \$	Copy B For Recipient This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this income is taxable and the IRS determines that it has not been reported.
Account number (optional) 5656		6 Medical and health care payments \$	7 Nonemployee compensation \$ 31190.13	
		8 Substitute payments in lieu of dividends or interest \$	9 Payer made direct sales of \$5,000 or more of consumer products to a buyer (recipient) for resale <input type="checkbox"/>	
		10 Crop insurance proceeds \$	11 State income tax withheld \$	
		12 State/Payer's state number		

Form 1099-MISC

(keep for your records)

Department of the Treasury - Internal Revenue Service

EXHIBIT 5

1. Change all Reference to Sure Seal to Tony Serio

Box 2322
KALISPELL, MT 59903

✓ ~~✓~~

2. No EPA ID # , NOT HAZ WASTE OR EPA REGULATED

3. 1 YEAR WITH Tony HAVING FIRST OPTION TO EXERCISE
CONTRACT RENEWAL

AT END OF EACH YEAR COST WILL BE NEGOTIATED

4. ELIMINATE 30 DAY CANCELLATION CLAUSE

5. LANGUAGE THAT GIVES TONY FIRST RIGHT TO ANY AND
ALL PRODUCT MFG BY TC

6. Price 35¢ / per gallon

This is from
Plum Creek

	\$178.50	GLACIER GRANT RESORTS	MAY		S	OIL	
	\$110.00	GLACIER NAT. PARK (O.P.	APRIL		S	OIL	
	\$325.00	GORTON	MAY		S	OIL	

CK NO	CREDITS 2	K	ACCOUNT 1	MO 3	DA 4	COD 5	SUB CO 6	YEAR
	\$146.00		GRAY, PAUL E.	MAY		S	OIL	
	\$207.00		HALL, EDWIN	MAY		S	OIL	
	\$82.00		HALL, HOWARD	MAY		S	OIL	
	\$82.00		HALL, MICHAEL & ROMA	MAY		S	OIL	
	\$294.00		HARDING READY MIX	JULY	11	S	OIL	
	\$90.00		HEISETH, ROGER	MAY		S	OIL	
	\$250.00		HENDERSON, MARY ALICE	JULY	9	S	OIL	
2731E	\$75.00		HOLMAN AVAITAION	DEC	26	S	OPU	
	\$75.00		HOSEK, ERIC & LINDA	JULY	3	S	TALL	
	\$175.00		HOULBERG, PAUL & MARY	JUNE		S	OIL	
	\$80.00		HURST, BOB	JULY	9	S	OIL	
	\$205.00		HUSTON	MAY		S	OIL	
	\$237.50		INEZ, CORY	JULY	10	S	TALL	
	\$128.00		JOHN OR RUTH HORN	JULY	11	S	TALL	
	\$80.00		JOHNSON, ALFRED	JULY	5	S	TALL	
	\$90.00		JOHNSON, MARGARET	MAY		S	OIL	
	\$300.00		JONES, RAY & IRIS	JUNE		S	TALL	
	\$190.00		JUNCTION GAS & GROC.	JUNE	4	S	TALL	
	\$285.00		K MART	MARCH		S	OPU	
	\$75.00		KATES, SUE	MAY		S	OIL	
	\$700.00		KELLEY, SANDRA	JULY	3	S	TALL	
	\$160.00		KICKLAUG, GENE	MAY		S	OIL	
	\$75.00		KNOTT, WILLIAM	JULY	5	S	TALL	
	\$187.50		KORN BUICK	APRIL		S	OPU	
	\$97.50		KOWALSKI, EVA	JULY	3	S	TALL	
	\$97.50		KOWALSKI, GLEN	JULY		S	OIL	
	\$150.00		KOZLOWSKI	MAY		S	OIL	
	\$97.50		LAMBERSON, LELAND	JUNE	14	S	OIL	
	\$175.00		LARSON, KEITH	JULY	9	S	TALL	
	\$295.00		LEVENGOOD, SCOTT	MAY		S	OIL	
	\$80.00		LEVITT, KEN	JUNE		S	OIL	
	\$1970.00		LEWIS AND CLARK	APRIL		S	OTHER	
	\$800.00		LEWIS AND CLARK	MAR		S	OTHER	
	\$134.00		LEWIS, GORDON	MAY		S		
	\$90.00		LUCAS, JAMES & DOROTHY	MAY	17	S	OIL	
	\$135.00		MALENSEK, EDWARD	JULY	5	S	TALL	
	\$258.00		MANICKE, WINSTON & ROSE	MAY		S	OIL	
	\$250.00		MARTIN, MORRIS & MARGA	JUNE		S	TALL	
	\$175.00		MAST, ELMA & MYRON	JULY	3	S	TALL	
	\$184.00		MAYNARD, LINDA	JULY	3	S	TALL	
	\$117.50		MCCALLUM, ROBERT & SHIR	MAY		S	OIL	

	\$247.00	MILES, ROBERT	MAY		S	OIL	
	\$90.00	MILL RD 1315	JULY	16	S	TALL	
	\$490.00	MILL RD 1375	JULY	16	S	TALL	

CK NI	CREDITS 2	K	ACCOUNT 1	MO 3	DA 4	COD 5	SUB CO 6	YEAR
	\$160.00		NICKLAUS, JANETTE	MAY		S	OIL	
	\$145.00		OLSEN MAXINE OR GENE	JULY	16	S	TALL	
	\$125.00		OTTO, LEROY & JEANNETTE	JUNE		S	TALL	
	\$183.00		PLUM CREEK	JUNE	6	SS	OIL	
	\$200.00		PLUM CREEK	FEB		S	OPU	
	\$75.00		PONDERSA MOTORS	JAN		S	OPU	
	\$2500.00		PUMNEA	JUNE		S	MAG	
	\$80.00		QUILLIN, JAMES JR.	JULY	5	S	OPU	
	\$80.00		REYNOLDS, DON	JUNE	6	S	OIL	
	\$99.00		RIPLEY, JILL & HUNGER, WIL	JUNE		S	OIL	
	\$67.50		ROBERTS, BONNIE	MAY		S	OIL	
	\$67.50		ROBERTS, DUANE	MAY		S	OIL	
	\$75.00		ROBINSONS YEAR ROUND PRO	JULY	16	S	TALL	
	\$100.00		ROGERS MARY	JULY		S	TALL	
	\$275.00		ROY STANLY	MARCH		S	OPU	
	\$125.00		ROY STANLY	FEB		S	OPU	
	\$180.00		ROY STANLY	JULY	7	S	TALL	
	\$87.00		RUNFRO, MILLIE	MAY		S	TALL	
	\$120.00		RUSSEL, WALTER	JUNE	6	S	TALL	
	\$198.00		SCHAFFER, ARTHUR	JULY	9	S	TALL	
	\$100.00		SCHEMD, TERRY	JUNE		S	OIL	
	\$145.00		SCHMIDT, EDWARD	MAY		S	OIL	
	\$135.00		SCHRADER, DANIEL	APRIL		S	OIL	
	\$80.00		SCHWARTZ, JOHN	APRIL		S	OIL	
	\$2270.50		SLACK, JOHN	MAY		S	OIL	
	\$180.00		SMITH, JAQUELYN	MAY	9	S	OIL	
	\$400.00		SMITH, MONTY	MAY		S	OIL	
	\$100.00		SORG, KENT	MAY		S	TALL	
	\$1188.00		SOWER, JACK	MAY		S	OIL	
	\$350.00		TABBERT CONST., HELENA	JULY	4	S	TALL	
	\$225.00		TARPLEY, CHARLIE	MAY		S	OIL	
	\$480.00		TAYLOR, JOHN	JULY	10	S	TALL	
	\$96.25		THORSTAD, JERRY	JUNE	6	S	OIL	
	\$200.00		TKACHYK, KIPP & DEBBIE	MAY		S	OIL	
	\$175.00		TOAVS, JAMES	MAY		S	OIL	
	\$3103.00		TOWN PUMP	JUNE		S	MAG	
	\$67.50		VEILE, DON	MAY		S	OIL	
	\$75.00		VERA UNDERWOOD	JUNE	14	S	OIL	
	\$409.50		WALKER, WADE	MAY		S	OIL	
	\$2000.00		WATERSKI, MANIA	JULY	4	S	TALL	
	\$75.00		WENTHINE, DUANE & BEATRI	JUNE		S	TALL	

DEPARTMENT OF
HEALTH AND ENVIRONMENTAL SCIENCES

Waste Management Division
Hazardous Waste Program
(406) 444-1430

FAX # (406) 444-1499



STATE OF MONTANA

OFFICE 2209 PHOENIX AVE.
LOCATION: HELENA, MONTANA

MAILING PO BOX 200901
ADDRESS: HELENA, MT 59620-0901

September 9, 1994

Virgin Oil *Some chemical*
Asphalt *MC70*
(Emulsify it)

TO ALL INTERESTED PERSONS:

Enclosed is a copy of the final rule adopted by the Montana Department of Health and Environmental Sciences which prohibits most applications of used oil for dust suppression. This rule, which became effective September 8, 1994, is similar to the federal prohibition on use of used oil for dust suppression adopted by the U.S. Environmental Protection Agency. The rule is designed to minimize the environmental and public health threats posed by the application of used oil to the ground.

The Department received numerous comments during the public comment period for this rule. Enclosed is a description of the comments received and the Department's response to those comments.

The Department strongly encourages the use of alternate dust suppressants and the recycling, rather than disposal, of used oil. We have available lists of alternate dust suppressants, firms that offer used oil collection service, and used oil collection sites in the State.

To obtain any of the above lists or if you would like additional information regarding the used oil rule, please feel free to call the Hazardous Waste Program at 444-1430.

Sincerely,

Handwritten signature of Don Vidrine in black ink.

Don Vidrine
Manager

Bob Rienke

*Bob
Rienke*

Ed Anshur

Bill Pots • Regulator

ACORD. INSURANCE BINDER

ISSUE DATE (MM/DD/YY)

9-8-93

THIS BINDER IS A TEMPORARY INSURANCE CONTRACT, SUBJECT TO THE CONDITIONS SHOWN ON THE REVERSE SIDE OF THIS FORM.

CER

Mike Grachek Agency
P.O. Box 1715
Kalispell, MT 59903

COMPANY

Scottsdale

BINDER NO.

465

DATE	EFFECTIVE	TIME	AM	EXPIRATION	DATE	TIME
9-08-93	3:30	x	PM	11-8-93		X 12:01 AM NOON

THIS BINDER IS ISSUED TO EXTEND COVERAGE IN THE ABOVE NAMED COMPANY PER EXPIRING POLICY NO:

CODE SUB-CODE

DESCRIPTION OF OPERATIONS/VEHICLES/PROPERTY (Including Location)

INSURED

Toni Serio
P.O. Box 2322
Kalispell, MT 59904

mixes pine tar pitch and vegetable oil forming solution for dust control on roads and parking lots

COVERAGES

TYPE OF INSURANCE			COVERAGE/FORMS	AMOUNT	LIMITS	
BASIC	BROAD	SPEC.			DEDUCTIBLE	COINSUR.
PROPERTY CAUSES OF LOSS						
GENERAL LIABILITY						
<input checked="" type="checkbox"/>			COMMERCIAL GENERAL LIABILITY	GENERAL AGGREGATE	\$	500,000
			CLAIMS MADE <input checked="" type="checkbox"/> OCCUR	PRODUCTS — COMP/OP AGG.	\$	500,000
			OWNER'S & CONTRACTOR'S PROT.	PERSONAL & ADV. INJURY	\$	
				EACH OCCURRENCE		500,000
				FIRE DAMAGE (Any one fire)	\$	50,000
				MED. EXPENSE (Any one person)	\$	
			RETRO DATE FOR CLAIMS MADE:			
AUTOMOBILE LIABILITY						
			ANY AUTO	COMBINED SINGLE LIMIT	\$	
			ALL OWNED AUTOS	BODILY INJURY (Per person)	\$	
			SCHEDULED AUTOS	BODILY INJURY (Per accident)	\$	
			HIRED AUTOS	PROPERTY DAMAGE	\$	
			NON-OWNED AUTOS	MEDICAL PAYMENTS	\$	
			GARAGE LIABILITY	PERSONAL INJURY PROT.	\$	
				UNINSURED MOTORIST	\$	
					\$	
AUTO PHYSICAL DAMAGE						
	DEDUCTIBLE		ALL VEHICLES	ACTUAL CASH VALUE		
			SCHEDULED VEHICLES	STATED AMOUNT	\$	
				OTHER		
EXCESS LIABILITY						
			UMBRELLA FORM	EACH OCCURRENCE	\$	
			OTHER THAN UMBRELLA FORM	AGGREGATE	\$	
			RETRO DATE FOR CLAIMS MADE:	SELF-INSURED RETENTION	\$	
WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY						
				STATUTORY LIMITS		
				EACH ACCIDENT	\$	
				DISEASE-POLICY LIMIT	\$	
				DISEASE-EACH EMPLOYEE	\$	
SPECIAL CONDITIONS/OTHER COVERAGES						

NAME & ADDRESS

MORTGAGEE

ADDITIONAL INSURED

LOSS PAYEE

LOAN #

AUTHORIZED REPRESENTATIVE

M. W. Grachek
M. W. Grachek

From: [Irene Serio](#)
To: [Rae, Sarah](#)
Subject: Flathead County VS Sure Seal - will tell why and What
Date: Saturday, September 24, 2022 8:33:03 PM
Attachments: [stimpson champion old.pdf](#)

Hi Sara,

I am inclosing some of the Exhibits that were filed with Flathead County many years ago.

Our hard efforts and using Pine Tar Pitch was already being done in Canada at the time. After visiting the Sigt in Canada in the 90s we came home to the Flathead Valley, with our 4 kids, to make an affordable Safe dust Control. You will see as one of the exhibits that Waste oil was not to be used on Roads and we were in the Dust Control Business.

We came up with a solution. We were paid to pick up the product at Champion and Plum Creek as you see in the pdf I am sending. We have MSD sheet on the product from Colloid Lab you can find this also in Flathead County Court House.

When we picked up Pine Tar Pitch from the Lumber Mills, it was too thick to use so we found environmental product to mix with it, cutting the cost of Dust Control in Half for the customers in the Valley. We then sent samples to Collied Lab.

Collide Lab said it was environmentally safe. (MSD from them is an exhibit I can get you). And is in County records.

The Big Mountain Ski Resort loved the product. The City of Kalispell used it in some of their alleys. The County was another story. One day we read in paper local Dust Control Business being sued I think \$10,000.00 if I remember right. VERY EMBARRASSING as I owned a Dance Studio at the

time. Plus our customers would be alarmed! The Flathead County put an injection on us and we thought we were living in a communist Country. It was Hard to fight without an attorney but we tried hard. We went as far as Supreme Court. We never had to pay the bogus Flathead County trumped up charge.

The Flathead County said we dumped it in a dump. LIE. The land was once a Dump and we did all our test patches on a road on the land where your guy has his white trailer right now on the land on a road that goes up the hill. Pine tar Pitch comes from trees from the lumber mills. One of the sheets I am sending-You will see where we put tall on roads — people paid us. Tall is for Tall Pine. That is what is in most those Tanks.

It is my opinion that The Flathead County (staff) forced us out of business because of the kick backs they had going on with Lyman Dust Control. When jobs came up for Bid only Lyman was asked to bid. Bids back then were not put out for bid like now. 30 Years later Lyman Dust Control is the only Dust Control Business in the Flathead Valley. Like I said we had a safe cheeper way for the public to get Dust Control on all the Dirt roads in the Valley. We were attacked for it.

We returned back to Montana in 2020 during Covid, and have the oil in the one tank sold for A dust Control Job next spring.

Our plans were to clean up the land this Fall 2022, when our work season slowed down. (We Seal Asphalt, it is seasonal.) We have approached Plum Creek and Champion in the past for their help because of the Cradle to Grave Law.

But we have not been able to afford an attorney to get them to help. (I have that documentation) We have 5 Children - most live in Montana. We had to leave our home for over 20 years and work start over in another state. My husband is 70 now and I am 66.

All the past and why those tanks are there is will documented in The Flathead County

I have a lot more to send you about this but this is what I have now in my Computar. If you want to read about what is on that land for product and where it came from look at Flathead County Records - Flathead County VS Sure Seal

Infact you guys took that original Sure Seal Tank off that land I saw today.

Thank You

Irene Serio

561-502-7609

CORRECTED (if checked)

PAYER'S name, street address, city, state, and ZIP code CHAMPION INTERNATIONAL CORP. % ACCTG SUPPORT (513) 868-4230 KNIGHTSBRIDGE HAMILTON OH 45020		1 Rents \$	OMB No. 1545-0115 1993	Miscellaneous Income
		2 Royalties \$		
		3 Prizes, awards, etc. \$		
PAYER'S Federal identification number 13-1427390	RECIPIENT'S identification number 361-48-2009	4 Federal income tax withheld \$	5 Fishing boat proceeds \$	Copy B For Recipient This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this income is taxable and the IRS determines that it has not been reported.
RECIPIENT'S name (first, middle, last) street address, city, state, and ZIP code TONY SERIO PO BOX 2322 KALISPELL, MT 59901		6 Medical and health care payments \$	7 Nonemployee compensation \$ 3,128.55	
		8 Substitute payments in lieu of dividends or interest \$	9 Payer made direct sales of \$5,000 or more of consumer products to a buyer (recipient) for resale <input type="checkbox"/>	
		10 Crop insurance proceeds \$	11 State income tax withheld \$	
Account number (optional)		12 State/Payer's state number		

Form 1099-MISC

(Keep for your records.)

Department of the Treasury - Internal Revenue Service

VOID CORRECTED

PAYER'S name, street address, city, state, and ZIP code Stimson Lumber Co. - Montana P.O. Box 1120 Bonner, Mt. 59823		1 Rents \$	OMB No. 1545-0115 1994	Miscellaneous Income
		2 Royalties \$		
		3 Other income \$		
PAYER'S Federal identification number 93-0290630	RECIPIENT'S identification number	4 Federal income tax withheld \$	5 Fishing boat proceeds \$	Copy 1 For Recipient Copy 1 For State Tax Department
RECIPIENT'S name, street address (including apt. no.), city, state, and ZIP code Tony Serio Box 7804 Kalispell, Mt. 59904-0804		6 Medical and health care payments \$	7 Nonemployee compensation \$ 9262.61	
		8 Substitute payments in lieu of dividends or interest \$	9 Payer made direct sales of \$5,000 or more of consumer products to a buyer (recipient) for resale <input type="checkbox"/>	
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Account number (optional)		12 State/Payer's state number		

Form 1099-MISC

Department of the Treasury - Internal Revenue Service

CORRECTED (if checked)

PAYER'S name, street address, city, state, and ZIP code PLUM CREEK TIMBER COMPANY, L.P. P.O. BOX 160 COLUMBIA FALLS MT 59912		1 Rents \$	OMB No. 1545-0115 1993	Miscellaneous Income
PAYER'S Federal identification number 911443693		2 Royalties \$		
RECIPIENT'S identification number 361482009		3 Prizes, awards, etc. \$		
RECIPIENT'S name SERIO, TONY P O BOX 2322 Street address (including apt. no.) City, state, and ZIP code KALISPELL MT 59903		4 Federal income tax withheld \$	5 Fishing boat proceeds \$	Copy B For Recipient This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this income is taxable and the IRS determines that it has not been reported.
Account number (optional) 5656		6 Medical and health care payments \$	7 Nonemployee compensation \$ 8130.54	
2nd TIN Not <input type="checkbox"/>		8 Substitute payments in lieu of dividends or interest \$	9 Payer made direct sales of \$5,000 or more of consumer products to a buyer (recipient) for resale <input type="checkbox"/>	
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Department of the Treasury - Internal Revenue Service

EXHIBIT 5

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Box 2322
KALISPELL, MT 59903

✓ ~~✓~~

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CONTRACT RENEWAL

AT END OF EACH YEAR COST WILL BE NEGOTIATED

4. ELIMINATE 30 DAY CANCELLATION CLAUSE

5. LANGUAGE THAT GIVES TONY FIRST RIGHT TO ANY AND
ALL PRODUCT MFG BY TC

6. Price 35¢/gallon

This is from
Plum Creek

	\$178.50	GLACIER GRANT RESORTS	MAY		S	OIL	
	\$110.00	GLACIER NAT. PARK (O.P.	APRIL		S	OIL	
	\$325.00	GORTON	MAY		S	OIL	

CK NO	CREDITS 2	K	ACCOUNT 1	MO 3	DA 4	COD 5	SUB CO 6	YEAR
	\$146.00		GRAY, PAUL E.	MAY		S	OIL	
	\$207.00		HALL, EDWIN	MAY		S	OIL	
	\$82.00		HALL, HOWARD	MAY		S	OIL	
	\$82.00		HALL, MICHAEL & ROMA	MAY		S	OIL	
	\$294.00		HARDING READY MIX	JULY	11	S	OIL	
	\$90.00		HEISETH, ROGER	MAY		S	OIL	
	\$250.00		HENDERSON, MARY ALICE	JULY	9	S	OIL	
2731E	\$75.00		HOLMAN AVAITAION	DEC	26	S	OPU	
	\$75.00		HOSEK, ERIC & LINDA	JULY	3	S	TALL	
	\$175.00		HOULBERG, PAUL & MARY	JUNE		S	OIL	
	\$80.00		HURST, BOB	JULY	9	S	OIL	
	\$205.00		HUSTON	MAY		S	OIL	
	\$237.50		INEZ, CORY	JULY	10	S	TALL	
	\$128.00		JOHN OR RUTH HORN	JULY	11	S	TALL	
	\$80.00		JOHNSON, ALFRED	JULY	5	S	TALL	
	\$90.00		JOHNSON, MARGARET	MAY		S	OIL	
	\$300.00		JONES, RAY & IRIS	JUNE		S	TALL	
	\$190.00		JUNCTION GAS & GROC.	JUNE	4	S	TALL	
	\$285.00		K MART	MARCH		S	OPU	
	\$75.00		KATES, SUE	MAY		S	OIL	
	\$700.00		KELLEY, SANDRA	JULY	3	S	TALL	
	\$160.00		KICKLAUG, GENE	MAY		S	OIL	
	\$75.00		KNOTT, WILLIAM	JULY	5	S	TALL	
	\$187.50		KORN BUICK	APRIL		S	OPU	
	\$97.50		KOWALSKI, EVA	JULY	3	S	TALL	
	\$97.50		KOWALSKI, GLEN	JULY		S	OIL	
	\$150.00		KOZLOWSKI	MAY		S	OIL	
	\$97.50		LAMBERSON, LELAND	JUNE	14	S	OIL	
	\$175.00		LARSON, KEITH	JULY	9	S	TALL	
	\$295.00		LEVENGOOD, SCOTT	MAY		S	OIL	
	\$80.00		LEVITT, KEN	JUNE		S	OIL	
	\$1970.00		LEWIS AND CLARK	APRIL		S	OTHER	
	\$800.00		LEWIS AND CLARK	MAR		S	OTHER	
	\$134.00		LEWIS, GORDON	MAY		S		
	\$90.00		LUCAS, JAMES & DOROTHY	MAY	17	S	OIL	
	\$135.00		MALENSEK, EDWARD	JULY	5	S	TALL	
	\$258.00		MANICKE, WINSTON & ROSE	MAY		S	OIL	
	\$250.00		MARTIN, MORRIS & MARGA	JUNE		S	TALL	
	\$175.00		MAST, ELMA & MYRON	JULY	3	S	TALL	
	\$184.00		MAYNARD, LINDA	JULY	3	S	TALL	
	\$117.50		MCCALLUM, ROBERT & SHIR	MAY		S	OIL	

	\$247.00	MILES, ROBERT	MAY		S	OIL	
	\$90.00	MILL RD 1315	JULY	16	S	TALL	
	\$490.00	MILL RD 1375	JULY	16	S	TALL	

CK NI	CREDITS 2	K	ACCOUNT 1	MO 3	DA 4	COD 5	SUB CO 6	YEAR
	\$160.00		NICKLAUS, JANETTE	MAY		S	OIL	
	\$145.00		OLSEN MAXINE OR GENE	JULY	16	S	TALL	
	\$125.00		OTTO, LEROY & JEANNETTE	JUNE		S	TALL	
	\$183.00		PLUM CREEK	JUNE	6	SS	OIL	
	\$200.00		PLUM CREEK	FEB		S	OPU	
	\$75.00		PONDERSA MOTORS	JAN		S	OPU	
	\$2500.00		PUMNEA	JUNE		S	MAG	
	\$80.00		QUILLIN , JAMES JR.	JULY	5	S	OPU	
	\$80.00		REYNOLDS, DON	JUNE	6	S	OIL	
	\$99.00		RIPLEY, JILL & HUNGER, WIL	JUNE		S	OIL	
	\$67.50		ROBERTS, BONNIE	MAY		S	OIL	
	\$67.50		ROBERTS, DUANE	MAY		S	OIL	
	\$75.00		ROBINSONS YEAR ROUND PRO	JULY	16	S	TALL	
	\$100.00		ROGERS MARY	JULY		S	TALL	
	\$275.00		ROY STANLY	MARCH		S	OPU	
	\$125.00		ROY STANLY	FEB		S	OPU	
	\$180.00		ROY STANLY	JULY	7	S	TALL	
	\$87.00		RUNFRO, MILLIE	MAY		S	TALL	
	\$120.00		RUSSEL, WALTER	JUNE	6	S	TALL	
	\$198.00		SCHAFFER, ARTHUR	JULY	9	S	TALL	
	\$100.00		SCHEMD, TERRY	JUNE		S	OIL	
	\$145.00		SCHMIDT, EDWARD	MAY		S	OIL	
	\$135.00		SCHRADER, DANIEL	APRIL		S	OIL	
	\$80.00		SCHWARTZ, JOHN	APRIL		S	OIL	
	\$2270.50		SLACK, JOHN	MAY		S	OIL	
	\$180.00		SMITH, JAQUELYN	MAY	9	S	OIL	
	\$400.00		SMITH, MONTY	MAY		S	OIL	
	\$100.00		SORG, KENT	MAY		S	TALL	
	\$1188.00		SOWER, JACK	MAY		S	OIL	
	\$350.00		TABBERT CONST., HELENA	JULY	4	S	TALL	
	\$225.00		TARPLEY, CHARLIE	MAY		S	OIL	
	\$480.00		TAYLOR, JOHN	JULY	10	S	TALL	
	\$96.25		THORSTAD, JERRY	JUNE	6	S	OIL	
	\$200.00		TKACHYK, KIPP & DEBBIE	MAY		S	OIL	
	\$175.00		TOAVS, JAMES	MAY		S	OIL	
	\$3103.00		TOWN PUMP	JUNE		S	MAG	
	\$67.50		VEILE, DON	MAY		S	OIL	
	\$75.00		VERA UNDERWOOD	JUNE	14	S	OIL	
	\$409.50		WALKER, WADE	MAY		S	OIL	
	\$2000.00		WATERSKI, MANIA	JULY	4	S	TALL	
	\$75.00		WENTHINE, DUANE & BEATRI	JUNE		S	TALL	

DEPARTMENT OF
HEALTH AND ENVIRONMENTAL SCIENCES

Waste Management Division
Hazardous Waste Program
(406) 444-1430

FAX # (406) 444-1499



STATE OF MONTANA

OFFICE 2209 PHOENIX AVE.
LOCATION: HELENA, MONTANA

MAILING PO BOX 200901
ADDRESS: HELENA, MT 59620-0901

September 9, 1994

Virgin Oil *Some chemical*
Asphalt *MC70*
(Emulsify it)

TO ALL INTERESTED PERSONS:

Enclosed is a copy of the final rule adopted by the Montana Department of Health and Environmental Sciences which prohibits most applications of used oil for dust suppression. This rule, which became effective September 8, 1994, is similar to the federal prohibition on use of used oil for dust suppression adopted by the U.S. Environmental Protection Agency. The rule is designed to minimize the environmental and public health threats posed by the application of used oil to the ground.

The Department received numerous comments during the public comment period for this rule. Enclosed is a description of the comments received and the Department's response to those comments.

The Department strongly encourages the use of alternate dust suppressants and the recycling, rather than disposal, of used oil. We have available lists of alternate dust suppressants, firms that offer used oil collection service, and used oil collection sites in the State.

To obtain any of the above lists or if you would like additional information regarding the used oil rule, please feel free to call the Hazardous Waste Program at 444-1430.

Sincerely,

Handwritten signature of Don Vidrine in black ink.

Don Vidrine
Manager

Bob Rienke

*Bob
Rienke*

Ed Anshur

Bill Potts - Regulator

ACORD. INSURANCE BINDER

ISSUE DATE (MM/DD/YY)

9-8-93

THIS BINDER IS A TEMPORARY INSURANCE CONTRACT, SUBJECT TO THE CONDITIONS SHOWN ON THE REVERSE SIDE OF THIS FORM.

CER

Mike Grachek Agency
P.O. Box 1715
Kalispell, MT 59903

COMPANY

Scottsdale

BINDER NO.

465

DATE	EFFECTIVE	TIME	AM	EXPIRATION	DATE	TIME
9-08-93	3:30	x	PM	11-8-93		X 12:01 AM NOON

THIS BINDER IS ISSUED TO EXTEND COVERAGE IN THE ABOVE NAMED COMPANY PER EXPIRING POLICY NO:

CODE SUB-CODE

DESCRIPTION OF OPERATIONS/VEHICLES/PROPERTY (Including Location)

INSURED

Toni Serio
P.O. Box 2322
Kalispell, MT 59904

mixes pine tar pitch and vegetable oil forming solution for dust control on roads and parking lots

COVERAGES

TYPE OF INSURANCE			COVERAGE/FORMS	AMOUNT	LIMITS	
BASIC	BROAD	SPEC.			DEDUCTIBLE	COINSUR.
PROPERTY CAUSES OF LOSS						
GENERAL LIABILITY						
<input checked="" type="checkbox"/>	COMMERCIAL GENERAL LIABILITY		GENERAL AGGREGATE	\$	500,000	
	CLAIMS MADE <input checked="" type="checkbox"/> OCCUR		PRODUCTS — COMP/OP AGG.	\$	500,000	
	OWNER'S & CONTRACTOR'S PROT.		PERSONAL & ADV. INJURY	\$		
	RETRO DATE FOR CLAIMS MADE:		EACH OCCURRENCE		500,000	
			FIRE DAMAGE (Any one fire)	\$	50,000	
			MED. EXPENSE (Any one person)	\$		
AUTOMOBILE LIABILITY						
	ANY AUTO		COMBINED SINGLE LIMIT	\$		
	ALL OWNED AUTOS		BODILY INJURY (Per person)	\$		
	SCHEDULED AUTOS		BODILY INJURY (Per accident)	\$		
	HIRED AUTOS		PROPERTY DAMAGE	\$		
	NON-OWNED AUTOS		MEDICAL PAYMENTS	\$		
	GARAGE LIABILITY		PERSONAL INJURY PROT.	\$		
			UNINSURED MOTORIST	\$		
AUTO PHYSICAL DAMAGE						
	DEDUCTIBLE	ALL VEHICLES	SCHEDULED VEHICLES	ACTUAL CASH VALUE		
				STATED AMOUNT	\$	
				OTHER		
EXCESS LIABILITY						
	UMBRELLA FORM		EACH OCCURRENCE	\$		
	OTHER THAN UMBRELLA FORM		AGGREGATE	\$		
	RETRO DATE FOR CLAIMS MADE:		SELF-INSURED RETENTION	\$		
WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY						
			STATUTORY LIMITS			
			EACH ACCIDENT	\$		
			DISEASE-POLICY LIMIT	\$		
			DISEASE-EACH EMPLOYEE	\$		
SPECIAL CONDITIONS/OTHER COVERAGES						

NAME & ADDRESS

MORTGAGEE

ADDITIONAL INSURED

LOSS PAYEE

LOAN #

AUTHORIZED REPRESENTATIVE

M. W. Grachek

CORRECTED (if checked)

PAYER'S name, street address, city, state, and ZIP code CHAMPION INTERNATIONAL CORP. % ACCTG SUPPORT (513) 868-4230 KNIGHTSBRIDGE HAMILTON OH 45020		1 Rents \$	OMB No. 1545-0115 1993	Miscellaneous Income
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VOID CORRECTED

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PAYER'S Federal identification number 911443693		2 Royalties \$		
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Department of the Treasury - Internal Revenue Service

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Box 2322
KALISPELL, MT 59903

✓ ~~✓~~

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	\$128.00		JOHN OR RUTH HORN	JULY	11	S	TALL	
	\$80.00		JOHNSON, ALFRED	JULY	5	S	TALL	
	\$90.00		JOHNSON, MARGARET	MAY		S	OIL	
	\$300.00		JONES, RAY & IRIS	JUNE		S	TALL	
	\$190.00		JUNCTION GAS & GROC.	JUNE	4	S	TALL	
	\$285.00		K MART	MARCH		S	OPU	
	\$75.00		KATES, SUE	MAY		S	OIL	
	\$700.00		KELLEY, SANDRA	JULY	3	S	TALL	
	\$160.00		KICKLAUG, GENE	MAY		S	OIL	
	\$75.00		KNOTT, WILLIAM	JULY	5	S	TALL	
	\$187.50		KORN BUICK	APRIL		S	OPU	
	\$97.50		KOWALSKI, EVA	JULY	3	S	TALL	
	\$97.50		KOWALSKI, GLEN	JULY		S	OIL	
	\$150.00		KOZLOWSKI	MAY		S	OIL	
	\$97.50		LAMBERSON, LELAND	JUNE	14	S	OIL	
	\$175.00		LARSON, KEITH	JULY	9	S	TALL	
	\$295.00		LEVENGOOD, SCOTT	MAY		S	OIL	
	\$80.00		LEVITT, KEN	JUNE		S	OIL	
	\$1970.00		LEWIS AND CLARK	APRIL		S	OTHER	
	\$800.00		LEWIS AND CLARK	MAR		S	OTHER	
	\$134.00		LEWIS, GORDON	MAY		S		
	\$90.00		LUCAS, JAMES & DOROTHY	MAY	17	S	OIL	
	\$135.00		MALENSEK, EDWARD	JULY	5	S	TALL	
	\$258.00		MANICKE, WINSTON & ROSE	MAY		S	OIL	
	\$250.00		MARTIN, MORRIS & MARGA	JUNE		S	TALL	
	\$175.00		MAST, ELMA & MYRON	JULY	3	S	TALL	
	\$184.00		MAYNARD, LINDA	JULY	3	S	TALL	
	\$117.50		MCCALLUM, ROBERT & SHIR	MAY		S	OIL	

	\$247.00	MILES, ROBERT	MAY		S	OIL	
	\$90.00	MILL RD 1315	JULY	16	S	TALL	
	\$490.00	MILL RD 1375	JULY	16	S	TALL	

CK NI	CREDITS 2	K	ACCOUNT 1	MO 3	DA 4	COD 5	SUB CO 6	YEAR
	\$160.00		NICKLAUS, JANETTE	MAY		S	OIL	
	\$145.00		OLSEN MAXINE OR GENE	JULY	16	S	TALL	
	\$125.00		OTTO, LEROY & JEANNETTE	JUNE		S	TALL	
	\$183.00		PLUM CREEK	JUNE	6	SS	OIL	
	\$200.00		PLUM CREEK	FEB		S	OPU	
	\$75.00		PONDERSA MOTORS	JAN		S	OPU	
	\$2500.00		PUMNEA	JUNE		S	MAG	
	\$80.00		QUILLIN, JAMES JR.	JULY	5	S	OPU	
	\$80.00		REYNOLDS, DON	JUNE	6	S	OIL	
	\$99.00		RIPLEY, JILL & HUNGER, WIL	JUNE		S	OIL	
	\$67.50		ROBERTS, BONNIE	MAY		S	OIL	
	\$67.50		ROBERTS, DUANE	MAY		S	OIL	
	\$75.00		ROBINSONS YEAR ROUND PRO	JULY	16	S	TALL	
	\$100.00		ROGERS MARY	JULY		S	TALL	
	\$275.00		ROY STANLY	MARCH		S	OPU	
	\$125.00		ROY STANLY	FEB		S	OPU	
	\$180.00		ROY STANLY	JULY	7	S	TALL	
	\$87.00		RUNFRO, MILLIE	MAY		S	TALL	
	\$120.00		RUSSEL, WALTER	JUNE	6	S	TALL	
	\$198.00		SCHAFFER, ARTHUR	JULY	9	S	TALL	
	\$100.00		SCHEMD, TERRY	JUNE		S	OIL	
	\$145.00		SCHMIDT, EDWARD	MAY		S	OIL	
	\$135.00		SCHRADER, DANIEL	APRIL		S	OIL	
	\$80.00		SCHWARTZ, JOHN	APRIL		S	OIL	
	\$2270.50		SLACK, JOHN	MAY		S	OIL	
	\$180.00		SMITH, JAQUELYN	MAY	9	S	OIL	
	\$400.00		SMITH, MONTY	MAY		S	OIL	
	\$100.00		SORG, KENT	MAY		S	TALL	
	\$1188.00		SOWER, JACK	MAY		S	OIL	
	\$350.00		TABBERT CONST., HELENA	JULY	4	S	TALL	
	\$225.00		TARPLEY, CHARLIE	MAY		S	OIL	
	\$480.00		TAYLOR, JOHN	JULY	10	S	TALL	
	\$96.25		THORSTAD, JERRY	JUNE	6	S	OIL	
	\$200.00		TKACHYK, KIPP & DEBBIE	MAY		S	OIL	
	\$175.00		TOAVS, JAMES	MAY		S	OIL	
	\$3103.00		TOWN PUMP	JUNE		S	MAG	
	\$67.50		VEILE, DON	MAY		S	OIL	
	\$75.00		VERA UNDERWOOD	JUNE	14	S	OIL	
	\$409.50		WALKER, WADE	MAY		S	OIL	
	\$2000.00		WATERSKI, MANIA	JULY	4	S	TALL	
	\$75.00		WENTHINE, DUANE & BEATRI	JUNE		S	TALL	

DEPARTMENT OF
HEALTH AND ENVIRONMENTAL SCIENCES

Waste Management Division
Hazardous Waste Program
(406) 444-1430

FAX # (406) 444-1499



STATE OF MONTANA

OFFICE 2209 PHOENIX AVE.
LOCATION: HELENA, MONTANA

MAILING PO BOX 200901
ADDRESS: HELENA, MT 59620-0901

September 9, 1994

Virgin Oil *Some chemical*
Asphalt *MC70*
(Emulsify it)

TO ALL INTERESTED PERSONS:

Enclosed is a copy of the final rule adopted by the Montana Department of Health and Environmental Sciences which prohibits most applications of used oil for dust suppression. This rule, which became effective September 8, 1994, is similar to the federal prohibition on use of used oil for dust suppression adopted by the U.S. Environmental Protection Agency. The rule is designed to minimize the environmental and public health threats posed by the application of used oil to the ground.

The Department received numerous comments during the public comment period for this rule. Enclosed is a description of the comments received and the Department's response to those comments.

The Department strongly encourages the use of alternate dust suppressants and the recycling, rather than disposal, of used oil. We have available lists of alternate dust suppressants, firms that offer used oil collection service, and used oil collection sites in the State.

To obtain any of the above lists or if you would like additional information regarding the used oil rule, please feel free to call the Hazardous Waste Program at 444-1430.

Sincerely,

Handwritten signature of Don Vidrine in black ink.

Don Vidrine
Manager

BOB Rienke

*BOB
Rienke*

Ed Anshew

Bill Potts - Regulator

ACORD. INSURANCE BINDER

ISSUE DATE (MM/DD/YY)

9-8-93

THIS BINDER IS A TEMPORARY INSURANCE CONTRACT, SUBJECT TO THE CONDITIONS SHOWN ON THE REVERSE SIDE OF THIS FORM.

CER

Mike Grachek Agency
P.O. Box 1715
Kalispell, MT 59903

COMPANY

Scottsdale

BINDER NO.

465

DATE	EFFECTIVE	TIME	AM	EXPIRATION	DATE	TIME
9-08-93	3:30	x	PM	11-8-93		X 12:01 AM NOON

THIS BINDER IS ISSUED TO EXTEND COVERAGE IN THE ABOVE NAMED COMPANY PER EXPIRING POLICY NO:

CODE SUB-CODE

DESCRIPTION OF OPERATIONS/VEHICLES/PROPERTY (Including Location)

INSURED

Toni Serio
P.O. Box 2322
Kalispell, MT 59904

mixes pine tar pitch and vegetable oil forming solution for dust control on roads and parking lots

COVERAGES

TYPE OF INSURANCE			COVERAGE/FORMS	AMOUNT	DEDUCTIBLE	COINSUR.
BASIC	BROAD	SPEC.				
PROPERTY CAUSES OF LOSS						
GENERAL LIABILITY						
<input checked="" type="checkbox"/>			COMMERCIAL GENERAL LIABILITY	GENERAL AGGREGATE	\$	500,000
			CLAIMS MADE <input checked="" type="checkbox"/> OCCUR	PRODUCTS — COMP/OP AGG.	\$	500,000
			OWNER'S & CONTRACTOR'S PROT.	PERSONAL & ADV. INJURY	\$	
				EACH OCCURRENCE		500,000
				FIRE DAMAGE (Any one fire)	\$	50,000
				MED. EXPENSE (Any one person)	\$	
			RETRO DATE FOR CLAIMS MADE:			
AUTOMOBILE LIABILITY						
			ANY AUTO	COMBINED SINGLE LIMIT	\$	
			ALL OWNED AUTOS	BODILY INJURY (Per person)	\$	
			SCHEDULED AUTOS	BODILY INJURY (Per accident)	\$	
			HIRED AUTOS	PROPERTY DAMAGE	\$	
			NON-OWNED AUTOS	MEDICAL PAYMENTS	\$	
			GARAGE LIABILITY	PERSONAL INJURY PROT.	\$	
				UNINSURED MOTORIST	\$	
					\$	
AUTO PHYSICAL DAMAGE	DEDUCTIBLE	ALL VEHICLES	SCHEDULED VEHICLES	ACTUAL CASH VALUE		
				STATED AMOUNT	\$	
				OTHER		
EXCESS LIABILITY						
				EACH OCCURRENCE	\$	
				AGGREGATE	\$	
				SELF-INSURED RETENTION	\$	
			RETRO DATE FOR CLAIMS MADE:			
WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY						
				STATUTORY LIMITS		
				EACH ACCIDENT	\$	
				DISEASE-POLICY LIMIT	\$	
				DISEASE-EACH EMPLOYEE	\$	
SPECIAL CONDITIONS/OTHER COVERAGES						

NAME & ADDRESS

MORTGAGEE

ADDITIONAL INSURED

LOSS PAYEE

LOAN #

AUTHORIZED REPRESENTATIVE

M. W. Grachek

From: [Tony Serio](#)
To: [Rae, Sarah](#)
Subject: Re: Leaking Tanks at 185 West Valley Drive, Kalispell, Montana - Notice of Ex Parte Warrant and Opportunity for Split Samples
Date: Friday, September 23, 2022 10:17:04 AM

Never searched with any papers what so ever. My husband handed this e-mail me today. 1st time I ever saw anything about this!!!

Sent from my iPhone

On Sep 23, 2022, at 9:50 AM, Rae, Sarah <Rae.Sarah@epa.gov> wrote:

Dear Ms. Serio,

EPA previously contacted you via letter, email, and phone regarding the leaking tanks on your property located 185 West Valley Drive in Kalispell, Montana and requested that you sign a Consent for Access form. You informed EPA that you would not provide consent to access the property. EPA is now notifying you that it has obtained a warrant from the federal district court for the District of Montana to investigate and cleanup the tanks and releases of hazardous substances on your property. The warrant has been issued pursuant to EPA's authority provided under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9601 et seq. A copy of the warrant is enclosed.

EPA is required to provide you with a receipt describing any samples obtained on your property, the results of any analysis made of such samples, and if requested, a portion of any samples taken ("split samples"). 42 U.S.C. § 9604(e)(4)(b). The receipt and any sampling analysis results will be provided via mail at the address listed in the attached cover letter. We did not receive a response to the September 9, 2022 correspondence, therefore we assume that you do not want EPA to provide split samples. I have CCed EPA On-Scene Coordinator, Paul Peronard, who will be performing the sampling.

If you have any questions, please contact me at (303) 312-6839 or Rae.Sarah@epa.gov. If you are represented by legal counsel, please provide me with the name of your attorney and contact information.

Respectfully,

Sarah Rae
Senior Assistant Regional Counsel
US EPA – Region 8
1595 Wynkoop Street
Denver, CO 80202
(303) 312-6839
Rae.Sarah@epa.gov
Pronouns: she/her/hers



From: Rae, Sarah
Sent: Friday, September 9, 2022 6:57 AM

To: Tony Serio <sseriotony@aol.com>

Cc: Peronard, Paul <Peronard.Paul@epa.gov>

Subject: Leaking Tanks at 185 West Valley Drive, Kalispell, Montana - Notice of Ex Parte Warrant and Opportunity for Split Samples

Dear Ms. Serio,

EPA previously contacted you via letter, email, and phone regarding the leaking tanks on your property located 185 West Valley Drive in Kalispell, Montana and requested that you sign a Consent for Access form. You informed EPA that you would not provide consent to access the property. EPA is now notifying you that it has obtained a warrant from the federal district court for the District of Montana to investigate and cleanup the tanks and releases of hazardous substances on your property. The warrant has been issued pursuant to EPA's authority provided under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9601 et seq. A copy of the warrant is enclosed.

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If you have any questions, please contact me at (303) 312-6839 or Rae.Sarah@epa.gov. If you are represented by legal counsel, please provide me with the name of your attorney and contact information.

Respectfully,

Sarah Rae

Senior Assistant Regional Counsel

US EPA – Region 8

1595 Wynkoop Street

Denver, CO 80202

(303) 312-6839

Rae.Sarah@epa.gov

Pronouns: she/her/hers



From: Tony Serio <sseriotony@aol.com>

Sent: Wednesday, July 27, 2022 3:09 PM

To: Rae, Sarah <Rae.Sarah@epa.gov>

Subject: Re: Leaking Tanks at 185 West Valley Drive, Kalispell, Montana - Request for Access to Property

Fuck you and the horse u rode in with

Sent from my iPhone

On Jul 27, 2022, at 2:32 PM, Rae, Sarah <Rae.Sarah@epa.gov> wrote:

Ms. Irene Serio,

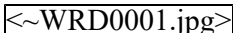
Please read the attached letter regarding the leaking tanks of “Tac Oil” at 185 West Valley Drive. I have also mailed this letter to you at the addresses listed in the letter. EPA is planning to deploy a response team to investigate and address the tanks pursuant to its authority provided under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (“CERCLA”), 42 U.S.C. §§ 9601, the Clean Water Act (“CWA”), 33 U.S.C. §1251 et seq. (1972), and the Oil Pollution Act (“OPA”), 33 U.S.C. §2701 et seq. (1990).

Please sign and return the Consent for Access to Property form, which will allow EPA and its contractors to investigate and address the tanks on your Property. You can email to me a scanned copy or a photo image of the signed form and, thereafter, send the original to me at:

Sarah Rae (Mail Code ORC-C)
US EPA – Region 8
1595 Wynkoop Street
Denver, CO 80202

We need to act quickly. If we do not hear back from you within the next seven days, we will assume that you are denying access and will consider requesting access from the federal district court in Montana. If you have any questions, please contact me at (303) 312-6839 or Rae.Sarah@epa.gov. If you are represented by legal counsel, please provide me with the name of your attorney and contact information. Please give this matter your immediate attention. We appreciate your cooperation in this matter.

Respectfully,

Sarah Rae
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US EPA – Region 8
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Denver, CO 80202
(303) 312-6839
Rae.Sarah@epa.gov
Pronouns: she/her/hers


<Kalispell Valley Drive Tanks -Request for Access Cover Letter 07 27 2022
FINAL.pdf>

<Kalispell Valley Drive Tanks - Warrant Cover Letter SIGNED.pdf>

<Signed Warrant.pdf>

From: [Tony Serio](#)
To: [Rae, Sarah](#)
Subject: Re: Leaking Tanks at 185 West Valley Drive, Kalispell, Montana - Notice of Ex Parte Warrant and Opportunity for Split Samples
Date: Friday, September 23, 2022 10:15:32 AM

Tanks were not leaking
I want all samples. I was never contacted about any of this. Pine tar pitch from Stimpson and Plum Creek - cradle to grave law they are responsible for product in tanks.
Sent from my iPhone

On Sep 23, 2022, at 9:50 AM, Rae, Sarah <Rae.Sarah@epa.gov> wrote:

Dear Ms. Serio,


EPA previously contacted you via letter, email, and phone regarding the leaking tanks on your property located 185 West Valley Drive in Kalispell, Montana and requested that you sign a Consent for Access form. You informed EPA that you would not provide consent to access the property. EPA is now notifying you that it has obtained a warrant from the federal district court for the District of Montana to investigate and cleanup the tanks and releases of hazardous substances on your property. The warrant has been issued pursuant to EPA's authority provided under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9601 et seq. A copy of the warrant is enclosed.

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Respectfully,

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US EPA – Region 8
1595 Wynkoop Street
Denver, CO 80202
(303) 312-6839
Rae.Sarah@epa.gov
Pronouns: she/her/hers



From: Rae, Sarah
Sent: Friday, September 9, 2022 6:57 AM

To: Tony Serio <sseriotony@aol.com>

Cc: Peronard, Paul <Peronard.Paul@epa.gov>

Subject: Leaking Tanks at 185 West Valley Drive, Kalispell, Montana - Notice of Ex Parte Warrant and Opportunity for Split Samples

Dear Ms. Serio,

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Respectfully,

Sarah Rae

Senior Assistant Regional Counsel

US EPA – Region 8

1595 Wynkoop Street

Denver, CO 80202

(303) 312-6839

Rae.Sarah@epa.gov

Pronouns: she/her/hers



From: Tony Serio <sseriotony@aol.com>

Sent: Wednesday, July 27, 2022 3:09 PM

To: Rae, Sarah <Rae.Sarah@epa.gov>

Subject: Re: Leaking Tanks at 185 West Valley Drive, Kalispell, Montana - Request for Access to Property

Fuck you and the horse u rode in with

Sent from my iPhone

On Jul 27, 2022, at 2:32 PM, Rae, Sarah <Rae.Sarah@epa.gov> wrote:

Ms. Irene Serio,

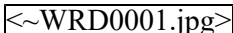
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<Kalispell Valley Drive Tanks - Warrant Cover Letter SIGNED.pdf>

<Signed Warrant.pdf>

From: [Tony Serio](#)
To: [Rae, Sarah](#)
Subject: Re: Leaking Tanks at 185 West Valley Drive, Kalispell, Montana - Request for Access to Property
Date: Wednesday, July 27, 2022 3:08:50 PM

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Sent from my iPhone

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