



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

U.S. EPA-REGION 3-RHC
FILED-13DEC2019am10:24

December 13, 2019

VIA HAND DELIVERY

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

**Re: Magnate, LLC Site, Edinburg, Shenandoah County,
Virginia: Lien Proceeding CERC 03-2019-0120LL**

Dear Presiding Officer Lisa:

During yesterday's telephone hearing in the above-referenced matter, Your Honor requested that I supply support for my statement that Magnate, LLC conducted scrapping operations at its property between the 2011 asbestos abatement project and EPA's visit to the property in February 2016. The reason I made this statement was to demonstrate that Magnate has not proven, by a preponderance of evidence, that a third party was solely responsible for asbestos contamination as required to make out a third-party defense under Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3).¹ My statement is supported by the following documents:

1. The unsigned December 18, 2017 letter from Darryl Bates to Scott Pruitt included in Rebuttal Exhibit 11 clearly evidences demolition/scrapping activities following completion of the 2011 abatement. Mr. Bates states on the second and third unnumbered pages:

¹ This argument was included on page 22 of *EPA's Rebuttal to Arguments Presented by Magnate, LLC in its July 4 and July 28, 2019 Objection to EPA's Perfection of a CERCLA § 107(l) Lien* (filed September 26, 2019) ("Rebuttal").

“In early 2011, I decided to remove a large low ceiling building (approximately 100,000 s.f.) and the old original building with Tectum roof panels & asbestos floor tiles. In order to demo, I needed an asbestos/PCB abatement.

“I hired Winchester Environmental to oversee and monitor the abatement project. I put the project out to bid and took the low bid of Semco Inc. This entire project was under the supervision of DOLI & WECI and cost \$175,000.00 which I had to borrow.

“Before demolition could proceed, It [sic] was necessary to get a demolition permits [sic] from state and county authorities, once abatement was completed. And I did.

“I hired Moyer Construction out of Luray, VA. to take down buildings, recycle the metal and create piles of rubber roofing (recycled), Tectum panels, and brick& block. We took down the buildings in order to make concrete decks available for lease to large glass recycling company [sic]. The lease would have provided funds to take large piles of Tectum to landfill (½ mile away) and use brick and block for fill. The perspective [sic] tenant left under suspicious circumstances after a substantial investment. At the same time, I lost a contract to sell about 7% of the property to a large scrap metal company (\$965,000). They also left under troubling circumstances.

“After the demo of the buildings, I was visited by Doug Wiggins of DOLI, who had overseen the abatement project. While touring the site, he found a piece friable asbestos pipe wrap perched upon a cinder block in plain [sic] sight. Wiggins asked “What is this doing here?” My response, “I didn't put it there, and it was not in the building that you approved for demolition”.

Recall that Magnate’s own contractor made clear that, *following completion of the abatement project*:

“[t]here remains a significant amount of asbestos material in the facility that was not removed due to time and budget constraints, as well the materials not being damaged. These materials consist primarily of any non-fiberglass pipe insulation

in the building, and all floor tiles remaining in the building. In the future, and [sic] materials found in the facility that were not tested by WECI in their inspection report dated 3/25/11 will need to be tested by a VA licensed asbestos inspector prior to any work that may disturb it.”

2. *EPA’s January 18, 2018 Endangerment Determination* (Rebuttal Exhibit 9) states, at page 2:

“The Site contains, among other things, numerous buildings in various states of demolition, open pads where buildings once stood, debris piles, a basement and tunnel (pipe chase to boiler house), and various water and oil storage tanks. Many of the buildings are in advanced stages of decay. Asbestos from tiling, mastic, roofing materials, pipe wrap, and other sources is present on the ground both inside and outside many buildings. Recent scrapping/salvaging activities have likely contributed to the spread of asbestos.”

3. *EPA’s May 31, 2018 Action Memorandum* (Lien Filing Record 006) states, at page 1:

“During the course of its ownership of the parcels, current owner Magnate LLC has been cited for improper demolition of buildings containing asbestos and unpermitted onsite solid waste disposal. At present the Site is used for a variety of activities including being rented by a portable toilet company for equipment storage, storage of numerous vehicles, and general scrapping operation.”

Please let me know if Your Honor seeks additional or different support for my statement.

Respectfully,

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

ANDREW S. GOLDMAN
Sr. Assistant Regional Counsel

cc: Brad Pollack, Esquire

Docket No. CERCLA 03-2019-0120LL

CERTIFICATE OF SERVICE

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

By First Class Mail and Email:

Bradley G. Pollack, Esquire
753 South Main Street
Woodstock, VA 22664
bpollack@shentel.net

By Hand Delivery:

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

Documents Provided	
1.	Letter from Andrew Goldman to Joseph Lisa (December 13, 2019).



Andrew S. Goldman, Esquire
Sr. Assistant Regional Counsel

12/13/19

Date