

Esposito, Bevin

From: Brad Pollack <bgpollack@gmail.com>
Sent: Saturday, January 04, 2020 6:59 PM
To: Goldman, Andrew; Esposito, Bevin
Subject: Fwd: Summation of EPA Filing 12-13-19 (Letter to RJO)
Attachments: Summation of EPA Filing 12-13-19 (Letter to RJO).pdf

Dear Presiding Officer Lisa,

Please see the Summation of Magnate prepared by Darryl Bates, attached.

Thanks very much,

Brad Pollack
Attorney
753 South Main Street
Woodstock, VA 22664
bgpollack@gmail.com
540-459-8600
540-459-8670 (fax)

U.S. EPA-REGION 3-RHC
FILED-7JAN2020AM7:51

----- Forwarded message -----

From: Darryl Bates (via Google Docs) <darrylwbates@gmail.com>
Date: Wed, Jan 1, 2020 at 10:51 AM
Subject: Summation of EPA Filing 12-13-19 (Letter to RJO)
To: <bgpollack@gmail.com>

darrylwbates@gmail.com has attached the following document:



Summation of EPA Filing 12-13-19 (Letter to RJO)



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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 111650 Arch Street
Philadelphia, Pennsylvania 19103-2029

VIA HAND DELIVERY

December 31, 2019

U.S. EPA-REGION 3-RHC
FILED -13DEC2019SAM10:25

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:

Having reviewed the transcript, and despite a few small typos and word selections, Magnate is satisfied with the transcript going forward as the record. Though we do not agree with a number of assertions that Mr. Goldman makes; it is irrelevant to the case at hand. So please allow me this opportunity to make my summation.

Summation

Magnate asserts that EPA has no reasonable basis to perfect the lien, due to Virginia state statute 43-25 that requires three basic elements to perfect a lien within its jurisdiction; amount certain, stated compensation for amount certain and 90 days to file from completion of work to be compensated for. EPA does not meet any of these requirements. These requirements by the state of Virginia are there to assure "due process" to both parties involved. The lien that EPA wishes to perfect, will just be another attempt to skirt the justice that due process provides. Magnate contends that the OSC/EPA usurped the authority of the President of the United State of America, abused it and exceeded it. Now, EPA wants to do the same to the Commonwealth of Virginia.

Furthermore, when I asked of Mr. Goldman what effect that the lien on two parcels would have on the other four parcels, it was not to seek his counsel; but to ask his perspective as the counsel for EPA. I know my lawyer's position and I know my position is quite knowledgeable, but I wanted to know what options he had considered. I am somewhat satisfied with Mr. Goldman's explanation. So let me make these suppositions in order give perspective to EPA's position : Peradventure, EPA perfects the lien, which without a judgement in a federal court that renders EPA no closer to any compensation (which is what this is all about) than they are today. In a courtroom where "due process" is the only consideration, the burden of proof falls upon EPA and Magnate is presumed innocent until proven guilty (to be the PRP). EPA under these circumstances would be foolhardy to ever appear in court. On the other hand, EPA perfects the lien for an amount uncertain with no judgement certain and Magnate, in the words of Mr. Goldman, is free to do whatever it pleases. I am not sure what planet he has been living on, but here is a reality check. E-P-A are the "scarlet letters" of commercial and industrial real estate. Just the fact that EPA was ever concerned about the property, is enough the scare even the bravest away. With the perfection of the lien, no bank or financial institution will ever touch the property. No reasonable party will ever invest in a property with the EPA cloud over it. No reasonable leasee will ever want to be subject to what I've gone through, and no lawyer will ever allow their client to be subject to the negative consequences that the uncertainty of this lien poses. I have a contract pending for a lease option sale of one of my parcels. Neither my lawyer or the other party's lawyer will be a party to the lease option until this lien goes away. And the cloud of EPA will linger, making the property effectively "condemned", if not "condamned".

So, the perfection of the lien gets EPA no closer to compensation, violates Virginia state law, and creates a cloud of uncertainty that will only destroy the property for all intensive purposes. And for all intensive purposes, the perfecting of the lien will be FUTILE in obtaining the stated purpose of COMPENSATION.

But here is one last scenario to consider in your attempt at cost recovery. Say a third party wanted the property. And they used your lien and my financial condition, and the EPA "cloud" in order to own the property. And, that third party used a tax sale to get it. They can be assured that they would be the only bidder due to the EPA cloud. And at a tax sale even your lien goes away. EPA gets nothing. It may seem farfetched, but that third party has been present from day one until that infamous June 5th meeting that excluded me from the record and had three representatives of that "third party" present, for no apparent reason.

Furthermore, Magnate will be filing a complaint with the Inspector General of the Environmental Protection Agency. The complaint will include complaints of lack of predicate, lack of process, lack of determination of cause, failure of OSC to execute procedures with "due process", and will cite multiple violations of 103(a)2 by the OSC. This complaint will include FOIA requests in order to complete the record that has been, to date, concealed from Magnate. Magnate will be taking this action, no matter your decision. This injustice must end!

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

Regards, Darryl W. Bates

cc: Brad Pollack, Esquire
cc: Andrew S. Goldman

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@cshentej.net

By Hand Delivery:

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

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Philadelphia, PA 19103

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

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Andrew S. Goldman, Esquire Sr. Assistant Regional Counsel

Date