

In the Matter of: Lefevre Street Container Site, MAS Management LLC – Docket No. CERCLA-03-2022-0129LL

Microsoft Teams Transcript - Lien Hearing – February 28, 2023

0:0:0.0 --> 0:0:21.420

Lisa, Joseph

This morning's uh circline hearing before the United States Environmental Protection Agency EPA Region 3, concerns the Lefever St site, located at 2710 Lafever St in Philadelphia, PA. This is EPA docket number Cercla Dash, 03-2022.

0:0:22.70 --> 0:0:26.120

Lisa, Joseph

Dash 0129 lol.

0:0:26.910 --> 0:0:39.410

Lisa, Joseph

My name is Joseph. Lisa. I am the regional, judicial and presiding officer for EPA Region 3. The agencies and neutral and I have been designated to serve as the neutral for purposes of this matter.

0:0:41.190 --> 0:0:59.150

Lisa, Joseph

From my office. Uh, Miss Esposito is here. She is the EPA Region 3 regional hearing clerk, and she has and will continue serving as the hearing clerk for this matter. At this point, I would like the parties to enter their appearance for the record, so I'll start with you, Mr Howard. Good morning.

0:1:0.460 --> 0:1:19.670

Joseph Howard

Thank you and good morning. My name is Joseph Howard and I represent Moss MAS Management LLC, the owner of the prop. The current owner of the property with me today is Mahmoud Saeed, the 100% owner of that of that entity.

0:1:21.20 --> 0:1:23.690

Lisa, Joseph

Morning, Mr Saeed. Welcome to the lead hearing.

0:1:24.400 --> 0:1:24.770

Joseph Howard

Wanting.

0:1:26.120 --> 0:1:34.500

Lisa, Joseph

OK. For EPA, Mr Hassan, if you could please identify yourself for the record and who you have with you this morning?

0:1:36.80 --> 0:1:48.80

R3-PHL Maple Room 4301

Thank you, your honor. My name is Robert Hassen. I am a assistant Regional Council with the Office of Regional Council in EPA region. Three with me today are three people.

0:1:48.870 --> 0:1:57.570

R3-PHL Maple Room 4301

First uh Joanne Marinelli, who is the section chief of our Superfund cost recovery section.

0:1:59.320 --> 0:2:0.790

R3-PHL Maple Room 4301

I also have with me.

0:2:1.910 --> 0:2:2.840

R3-PHL Maple Room 4301

Virtually.

0:2:3.520 --> 0:2:10.450

R3-PHL Maple Room 4301

Ben Joseph, who works with Joanne in the cost recovery section and he's a civil investigator.

0:2:11.630 --> 0:2:18.50

R3-PHL Maple Room 4301

And last but not least, I have Lauren Brick, who is a new attorney in the Office of Regional Council.

0:2:19.900 --> 0:2:21.220

Lisa, Joseph

Hey, good morning, everyone.

0:2:22.10 --> 0:2:35.590

Lisa, Joseph

OK, so once again, this is a circular lean hearing. It's being conducted pursuant to the 1993 supplemental guidance on Federal Superfund leading liens.

0:2:36.710 --> 0:3:6.280

Lisa, Joseph

Pursuant to that guidance, this is an informal meeting at the end of the process, I will be issuing a recommended decision to the Regional Council for EPA Region three. I will not be making a determination in this matter a final decision that is for the Regional Council to decide the sole issue to be addressed in this proceeding is whether EPA has a reasonable or had a reasonable basis in law and fact to perfect.

0:3:6.370 --> 0:3:36.520

Lisa, Joseph

Super fun. Lean on the Lefever St property. I just once again the point out this is not an administrative adjudication subject to the Administrative Procedures Act or the part 22 consolidated rules of practice. The federal Rules of Civil Procedure, the Federal Rules of Evidence don't apply to this meeting this morning. This is an informal exchange of information between the parties. And as the guidance provides, neither party will be barred in future proceedings, if any.

0:3:37.20 --> 0:3:56.350

Lisa, Joseph

Concerning this matter, from raising any defense or asserting any claim, neither my recommended decision, nor did the final decision of the Regional Council will be a binding determination on MASH potential liability under cercla section 107 concerning the site.

0:3:58.520 --> 0:4:26.470

Lisa, Joseph

And finally, we will not be taking testimony this morning. We're not gonna be having people subject to direct across examination. This is an opportunity for both sides to make an informal statement to me as I'm going to note in a few seconds, I've read through your very detailed submissions and I believe that I'm familiar, very familiar with the arguments and facts raised by both sides. So this meeting is being recorded via Microsoft Teams.

0:4:27.80 --> 0:4:56.110

Lisa, Joseph

There will be a video and audio recording made available to the parties after the hearing. In addition, the teams program does have a transcript service and this will also be made available to the parties after the hearing. Miss Esposito is going to coordinate with you, Mr Hass, and with you, Mr Howard, the process by which you can get access to the video, audio recording and then the transcript of the proceedings.

0:4:58.40 --> 0:5:29.170

Lisa, Joseph

Umm. And then finally, as I noted before, after this hearing is concluded, I will be issuing a written recommended decision to the Regional Council. The parties will be served with a copy of this decision by Miss Esposito. At the same time that it is forwarded to the Regional Council and my intention is in light of the fact that the lien has already been perfected on the property and consistent with the supplemental guidance to expedite that process.

0:5:29.250 --> 0:5:36.780

Lisa, Joseph

And getting that recommended decision to the parties and to the written, sorry to the Regional Council.

0:5:37.490 --> 0:5:42.530

Lisa, Joseph

Anybody have any questions concerning the process for the meeting this morning? I'll start with you, Mr Howard.

0:5:44.20 --> 0:5:50.90

Joseph Howard

No, we don't. The only thing that I might ask is all of the folks that are in.

0:5:51.690 --> 0:5:58.670

Joseph Howard

The looks like it's labeled the Maple room attorney Hassan, attorney brick and and the cost.

0:5:59.680 --> 0:6:6.910

Joseph Howard

Uh, containment folks, they're all facing a camera. That's not the camera we're using. So I'm just looking at people's backs.

0:6:7.840 --> 0:6:9.380

R3-PHL Maple Room 4301

Apple. Let's see.

0:6:10.900 --> 0:6:16.510

Joseph Howard

So if you move, if you turn to your left, all three of you, there we are. That's the camera that we are all seeing.

0:6:18.80 --> 0:6:29.760

R3-PHL Maple Room 4301

But let me just see if we can. There are two cameras here and we're looking at a screen and there's a camera above it and we can see you. It would be kind of weird.

0:6:30.580 --> 0:6:35.130

R3-PHL Maple Room 4301

That we'd be speaking to, not you, but a window. So.

0:6:37.330 --> 0:6:39.740

R3-PHL Maple Room 4301

So give us a second.

0:6:37.560 --> 0:6:42.560

Joseph Howard

They've got, they've got a weird camera placement in there on you. OK, well, anyway.

0:6:41.740 --> 0:6:47.240

R3-PHL Maple Room 4301

Our third camera let me just press that does that, is that better? No.

0:6:48.240 --> 0:6:48.550

Joseph Howard

No.

0:6:49.90 --> 0:6:49.420

Lisa, Joseph

No.

0:6:50.180 --> 0:6:50.640

R3-PHL Maple Room 4301

Umm.

0:7:1.910 --> 0:7:5.130

Joseph, Ben

I second that from where I'm sitting. I'm also seeing your size.

0:7:6.180 --> 0:7:9.630

R3-PHL Maple Room 4301

Yeah, I think it has to do with the in your camera.

0:7:11.0 --> 0:7:13.290

R3-PHL Maple Room 4301

Turn off incoming video, no.

0:7:18.340 --> 0:7:18.830

R3-PHL Maple Room 4301

Control.

0:7:20.430 --> 0:7:20.920

R3-PHL Maple Room 4301

Try that.

0:7:26.860 --> 0:7:28.10

Joseph Howard

Hey, there we go.

0:7:23.200 --> 0:7:28.190

R3-PHL Maple Room 4301

Our front camera rear. So this one. Yeah. Camera front that is that weather.

0:7:29.40 --> 0:7:30.580

Lisa, Joseph

That's better. OK.

0:7:29.950 --> 0:7:33.60

Joseph Howard

Now I could see faces. Sure. That's great. Thank you.

0:7:32.910 --> 0:7:33.240

Lisa, Joseph

OK.

0:7:33.380 --> 0:7:34.390

R3-PHL Maple Room 4301

Think about that.

0:7:34.840 --> 0:7:38.650

Lisa, Joseph

OK. Any other questions, Mr Howard, about the process, OK.

0:7:37.260 --> 0:7:41.480

Joseph Howard

No, about the process, no. I'm familiar with the process and and thank you for your introduction.

0:7:42.860 --> 0:7:44.670

Lisa, Joseph

And Mr Hasson, any questions from you.

0:7:46.500 --> 0:7:47.30

R3-PHL Maple Room 4301

No.

0:7:49.140 --> 0:8:19.290

Lisa, Joseph

OK, so once again, I've noted I've reviewed the written submissions of the parties. I handle my lean hearings a little bit differently than a number of the RJOS across the nation. My preference is to have the parties submit detailed written documents setting forth their positions prior to the meeting. I found my experience has been that this sort of helps us focus and it also helps us narrow the issues for the hearing. And I'm going to compliment.

0:8:19.770 --> 0:8:38.380

Lisa, Joseph

You, Mr Howard, and you, Mr Hassan, for your submissions. I think you did a very good service for your clients. And you did a very good job of setting forth the positions of your clients and more importantly for me, narrowing the issues for purposes of this hearing. So based upon those submissions.

0:8:39.80 --> 0:9:11.690

Lisa, Joseph

Seems to me we have basically just of the five requirements under the Circulus Statute for the perfection of the lien. There really is just one that's that issue and so on the general level it is whether EPA had a reasonable basis to conclude that MAS is a current owner PRP under the Circulus Statute, but more specifically really is whether EPA had a reasonable basis to conclude that mass would not be able to meet its burden of proving the innocent landowner affirmative defense.

0:9:11.850 --> 0:9:23.420

Lisa, Joseph

I know that's a strange way of phrasing it, but that's what's required for purposes of the supplemental guidance. So for purposes of this meeting, I really would like to focus on that issue.

0:9:25.100 --> 0:9:34.90

Lisa, Joseph

But once again I I have once again I've noted that I have read your written submissions in detail. They are part of the record of this case.

0:9:35.490 --> 0:9:44.700

Lisa, Joseph

And so the way I like to handle this this morning is this. I have some questions, not a lot, a few questions that will help me sort of clarify or confirm.

0:9:46.40 --> 0:10:16.350

Lisa, Joseph

Some of the major things that I've seen in your briefs and I like to go through those and then I will provide both parties with an opportunity to make a presentation, a statement for purposes of this hearing. And Mr Howard, I will note that if Mr Saeed would like to address this proceeding, it's totally up to him. I'd be very, very happy to hear from him. I welcome him if that's something that he would like to do so.

0:10:17.280 --> 0:10:17.620

Joseph Howard

Thank you.

0:10:16.410 --> 0:10:31.910

Lisa, Joseph

Definitely provide him that opportunity before the hearing is concluded. So assuming that nobody has any questions about that, I'd like to move in to the questions that I have. Is that OK with everyone, Mr Howard?

0:10:32.980 --> 0:10:33.550

Joseph Howard

Yes.

0:10:34.160 --> 0:10:35.300

Lisa, Joseph

OK, Mr Hassan.

0:10:35.680 --> 0:10:36.670

R3-PHL Maple Room 4301

Yes, thank you.

0:10:36.870 --> 0:10:37.280

Lisa, Joseph

OK.

0:10:38.120 --> 0:10:43.370

Lisa, Joseph

So I'm gonna start off basically with what I see is the ultimate question in this case.

0:10:44.610 --> 0:10:57.170

Lisa, Joseph

And so I'm. I'm gonna reference you to. So EPA, in his brief of November 18th, 2022 is on pages 24 and 25 makes the following assertion.

0:10:57.930 --> 0:11:21.430

Lisa, Joseph

Once again, I think that this is sort of the ultimate question and to this quote, unless MAS can produce a written report that was prepared and certified by an environmental professional prior to EMS March

16th, 2018, purchase of the property, and this report also satisfies all of the requirements in 40 CFR part 312.

0:11:22.50 --> 0:11:31.840

Lisa, Joseph

He all appropriate inquiries requirement of the innocent land or the defense cannot be proven by Ms by a preponderance of the evidence. So I like to explore this a little bit.

0:11:32.850 --> 0:12:3.300

Lisa, Joseph

And once again, you know, I'll just note for the record in for you, Miss Harry. So, you know, Circula is a creature of statute and a creature of regulation. The liability scheme, the strict liability scheme, the limited affirmative defenses, the innocent landowner defense, they are all subjects of that statutory and regulatory scheme which set out specific things that need to be done in order to take advantage of that affirmative defense. So let me start off with.

0:12:3.800 --> 0:12:6.260

Lisa, Joseph

The issue of an environmental professional.

0:12:7.20 --> 0:12:19.770

Lisa, Joseph

Umm, in MAS brief of December 16th, 2022 on page 2, it references a company called RT Environmental Services.

0:12:21.350 --> 0:12:28.830

Lisa, Joseph

Can you please clarify for me what RT Environmental services involvement with the site has been?

0:12:30.260 --> 0:12:36.120

Joseph Howard

Well, allow my client to clarify if I miss a point.

0:12:36.740 --> 0:12:56.190

Joseph Howard

But to my understanding, there was an initial conversation between, I believe, field agent Jack Kelly and my client, the owner of the property sometime late 2018 or early 2019. And at that time.

0:12:57.100 --> 0:12:58.930

Joseph Howard

The onus for cleanup.

0:12:59.660 --> 0:13:5.80

Joseph Howard

If there was going to be a clean up and testing if there was going to be testing.

0:13:5.990 --> 0:13:13.420

Joseph Howard

Was uh, at least conversationally directed to my client, so that they would.

0:13:15.320 --> 0:13:19.160

Joseph Howard

Pick up the mantle of this testing impossible cleanup.

0:13:20.50 --> 0:13:49.540

Joseph Howard

In order to explore that process, they brought in RT environmental and this would have been again early 2019, maybe summer of 2019. And our T environmental began to do a site inspection and a plan and produced a cleanup plan with a projected cost and those were discussed.

0:13:50.120 --> 0:13:57.190

Joseph Howard

Between Moss and Mr. Kelly sometime either late in 2019 or early in 2020.

0:14:2.450 --> 0:14:2.770

Lisa, Joseph

This.

0:13:57.270 --> 0:14:3.30

Joseph Howard

You're number of meetings with them and it was an ongoing process in terms of this dialog.

0:14:4.110 --> 0:14:9.240

Lisa, Joseph

So the Ms is involvement with RT occurred after it had purchased the property.

0:14:10.240 --> 0:14:26.500

Joseph Howard

And after and admittedly, let's let's clarify cause I know you're looking very closely at the timeline. It was after their initial meeting or a series of meetings with the on site.

0:14:27.250 --> 0:14:31.360

Joseph Howard

Uh coordinator or on site person for the EPA?

0:14:33.300 --> 0:14:36.150

Lisa, Joseph

Basically, OSC on scene coordinator Jack Kelly.

0:14:36.700 --> 0:14:37.190

Joseph Howard

Correct.

0:14:36.980 --> 0:14:37.290

Lisa, Joseph

You're.

0:14:46.130 --> 0:14:51.910

Lisa, Joseph

So just to confirm, prior to the purchase of the property in 2018.

0:14:52.890 --> 0:14:57.980

Lisa, Joseph

Did MAS contract with or have any involvement with an environmental professional?

0:15:1.410 --> 0:15:1.910

Joseph Howard

No.

0:15:3.440 --> 0:15:3.720

Lisa, Joseph

OK.

0:15:14.400 --> 0:15:43.960

Lisa, Joseph

And once again, just to confirm, I want to make sure I'm clear and everything, so I'm once again I've looked at the submissions of the parties, I've checked all the exhibits and I do not see anything in the record that was submitted by MAS as well. What would basically be an environmental report as you know, set forth a required by the Cercla Statute and EPA's regulations. Is that correct? That that mask does not have one of those reports?

0:15:44.920 --> 0:15:46.620

Joseph Howard

That's correct. There was none.

0:15:47.330 --> 0:15:50.30

Joseph Howard

There were no environmental reports generated.

0:15:51.100 --> 0:15:53.510

Joseph Howard

Outside of the.

0:15:56.680 --> 0:16:0.680

Joseph Howard

Outside of the documents that were produced as part of a tidal surge.

0:16:1.290 --> 0:16:1.620

Lisa, Joseph

OK.

0:16:1.740 --> 0:16:4.320

Joseph Howard

It showed the 2009 cleanup.

0:16:7.370 --> 0:16:11.860

Lisa, Joseph

OK. So when you say the title search showed the 2009 cleanup.

0:16:12.790 --> 0:16:15.950

Joseph Howard

They reviewed part of their documents for purchase.

0:16:16.700 --> 0:16:17.880

Joseph Howard

They uh.

0:16:19.20 --> 0:16:26.130

Joseph Howard

They reviewed the city documents in and around there. There's a series of city documents.

0:16:27.0 --> 0:16:27.320

Lisa, Joseph

OK.

0:16:27.30 --> 0:16:32.110

Joseph Howard

Uh, in and around the activity in 2009.

0:16:33.570 --> 0:16:33.980

Lisa, Joseph

OK.

0:16:37.290 --> 0:16:40.640

Joseph Howard

Previous owner said that, you know, there's not an issue.

0:16:42.10 --> 0:16:46.510

Joseph Howard

And to be clear, we have a situation in which the owner.

0:16:47.610 --> 0:16:49.420

Joseph Howard

Umm before closing?

0:16:50.810 --> 0:17:21.530

Joseph Howard

In his uh, yeah, the owners disclosure. Yeah. So as part of the purchase process, in addition to other documents that are very standard, is not, there's nothing out of the ordinary here. There was a title search done. There was a contract for the sale of real estate. There was an investigation done by Moss, but it was really very focused on what the task at hand was. So this property was a converted property.

0:17:22.160 --> 0:17:27.970

Joseph Howard

The Joyce owner, the son was, you know, he had inherited it from his father.

0:17:29.200 --> 0:17:44.230

Joseph Howard

He had already put forth a whole series of documents and drawings where he was going to create 8 apartments. It was 24 packs, right? Yeah. So he was going to do a. So if you think about the property.

0:17:44.920 --> 0:17:47.240

Joseph Howard

It's got 30 row homes around it.

0:17:48.840 --> 0:17:52.740

Joseph Howard

On the 4th side, it has an entrance to the street.

0:17:53.450 --> 0:18:0.150

Joseph Howard

He was going to create a small Rd with two apartment buildings on either side, each with four units.

0:18:0.840 --> 0:18:31.330

Joseph Howard

And Joyce had already done all the work to prepare the the city he had done the work to to get drawings he had already gotten approved drawings which he kept in abeyance, and there's a process where once you get the drawings approved, you can go back every two years and get them re permitted. And he did so in 2011, 2013. And again, I believe in 2015. So when my client approached the property as a potential purchase.

0:18:31.810 --> 0:18:34.930

Joseph Howard

It was, you know, developers flat land.

0:18:35.660 --> 0:18:48.170

Joseph Howard

So there's there's, there's always this idea in the development community that you create an improvement to the property you have and you can either then.

0:18:49.270 --> 0:19:19.180

Joseph Howard

Follow through on your plans, which require normally we understand developers that requires the investment of other people's money or you can sell the land with your improvement. Hopefully at an improved cost. And so Joyce touted this land as fully prepared for development. He showed his plans, he showed his approved plans and it was essentially a pad site, if you will, for the future development of multifamily housing.

0:19:20.60 --> 0:19:20.770

Joseph Howard
Ohm.

0:19:22.130 --> 0:19:23.810

Joseph Howard
The issue for mass.

0:19:24.470 --> 0:19:55.530

Joseph Howard

Was an investigation into whether or not Joyce's claims were a valid and and what they did was they validated the fact that he had in fact gone through the development process and that was the extent of their investigation as to any documents related to cleanup, the city had posted a series of approximately 8 documents, all related to what they term as the successful.

0:19:56.220 --> 0:20:1.860

Joseph Howard

Removal of a series of storage containers. Now when I say storage containers, these were not.

0:20:2.710 --> 0:20:3.410

Joseph Howard
Umm.

0:20:4.90 --> 0:20:8.360

Joseph Howard

Full tank was not a Yankee tank process. It was not.

0:20:9.780 --> 0:20:21.560

Joseph Howard

It was not a subsurface, So what it was was a series of barrels and five gallon pails and also other containers which I believe would describe later as one gallon containers.

0:20:22.790 --> 0:20:27.130

Joseph Howard

And those were removed and they were removed by the city of Philadelphia.

0:20:40.690 --> 0:20:41.260

Lisa, Joseph
Well, the.

0:20:27.890 --> 0:20:42.420

Joseph Howard

Along with what I understood to be what you might call construction or demolition debris related to the demolition of a a previous storage facility on the property. So that's the investigation that was done.

0:20:43.280 --> 0:20:47.780

Lisa, Joseph

The OK the so the 2009 removal of those is really not.

0:20:48.830 --> 0:21:12.340

Lisa, Joseph

It's not part of the lean in this matter, so to the extent that it doesn't address the lean I I I I wanna differentiate between what occurred in 2009 and then what occurred 2018 to 2021. OK. So I I'm looking at your brief on page 15, Mr Howard, where you go through basically what was done before.

0:21:13.400 --> 0:21:17.910

Lisa, Joseph

The the property was purchased by MAS, so now I have a question for Mr Hassan.

0:21:20.160 --> 0:21:24.20

Lisa, Joseph

And Mr Howard, if I if I mistake your position, let me know. So, Mr Hasson.

0:21:25.280 --> 0:21:31.780

Lisa, Joseph

One page 15 of the December 2022 brief of Mr Howard.

0:21:33.100 --> 0:21:37.650

Lisa, Joseph

He indicates as he just stated, that prior to the purchase.

0:21:39.180 --> 0:21:40.250

Lisa, Joseph

MSD did.

0:21:40.480 --> 0:21:42.930

Lisa, Joseph

A an appraisal.

0:21:43.860 --> 0:21:51.690

Lisa, Joseph

Title search. There was a research for purposes of a commercial loan with regard to zoning on the property.

0:21:52.390 --> 0:22:9.660

Lisa, Joseph

So I think what Mr must once again, Mr could tell me if I'm if I'm wrong and how I characterize this, I think what Mr Howard is arguing is that this is the functional equivalent of all appropriate inquiry. Is that a fair characterization, Mr Howard?

0:22:13.330 --> 0:22:14.240

Joseph Howard

It it is.

0:22:14.850 --> 0:22:24.50

Lisa, Joseph

OK. So then, Mr, Mr Hassan, I I would just like to have you specifically respond to that is would these actions that.

0:22:24.950 --> 0:22:36.550

Lisa, Joseph

That mass had performed prior to the purchase. Does that satisfy the all appropriate inquiry standard under CERCLA and EPA's regulations?

0:22:38.360 --> 0:22:39.870

R3-PHL Maple Room 4301

Your honor. No, it would not.

0:22:40.660 --> 0:22:45.930

R3-PHL Maple Room 4301

Of the requirements of all appropriate inquiries are laid out in.

0:22:48.580 --> 0:22:51.520

R3-PHL Maple Room 4301

In 40 CFR part 312.

0:22:52.500 --> 0:22:54.750

R3-PHL Maple Room 4301

And one of those.

0:22:56.50 --> 0:22:58.950

R3-PHL Maple Room 4301

Is something you've mentioned earlier, which is that.

0:22:59.770 --> 0:23:7.250

R3-PHL Maple Room 4301

The all appropriate inquiries must be done by an environmental professional who submits a written report.

0:23:7.870 --> 0:23:15.940

R3-PHL Maple Room 4301

And certifies that she or he has followed the requirements for all appropriate inquiry.

0:23:17.870 --> 0:23:19.990

R3-PHL Maple Room 4301

Now it's possible that.

0:23:21.30 --> 0:23:25.230

R3-PHL Maple Room 4301

Some of the items that are mentioned on page 15 or grief.

0:23:26.450 --> 0:23:28.560

R3-PHL Maple Room 4301

Or some of the.

0:23:29.850 --> 0:23:34.190

R3-PHL Maple Room 4301

The issues that Mister Howard just discussed would be addressed in such a report.

0:23:35.340 --> 0:23:35.730

R3-PHL Maple Room 4301

But.

0:23:37.750 --> 0:23:40.980

R3-PHL Maple Room 4301

It doesn't meet the requirements of all appropriate inquiries.

0:23:44.980 --> 0:23:47.340

Lisa, Joseph

And specifically, how have the federal courts?

0:23:48.440 --> 0:23:49.270

Lisa, Joseph

Address.

0:23:49.980 --> 0:24:1.210

Lisa, Joseph

Standard of performance or the standard of compliance with regard to the statute or the regulations with regard to what needs to be done for all appropriate inquiry.

0:24:2.220 --> 0:24:2.650

R3-PHL Maple Room 4301

So.

0:24:3.700 --> 0:24:7.800

R3-PHL Maple Room 4301

I think I cite 2 cases, two or three cases in the brief, but.

0:24:9.300 --> 0:24:13.680

R3-PHL Maple Room 4301

First of all, they it has to be done within one year.

0:24:14.700 --> 0:24:15.750

R3-PHL Maple Room 4301

Of the purchase.

0:24:17.190 --> 0:24:18.710

R3-PHL Maple Room 4301

And there were certain.

0:24:18.300 --> 0:24:20.860

Lisa, Joseph

Prior to that, that's prior to the purchase, correct?

0:24:20.800 --> 0:24:22.460

R3-PHL Maple Room 4301

Prior to the purchase, right?

0:24:24.310 --> 0:24:24.990

R3-PHL Maple Room 4301

There's.

0:24:26.20 --> 0:24:27.430

R3-PHL Maple Room 4301

Some requirements.

0:24:28.80 --> 0:24:29.420

R3-PHL Maple Room 4301

In part 312.

0:24:30.710 --> 0:24:31.220

R3-PHL Maple Room 4301

That.

0:24:31.850 --> 0:24:36.860

R3-PHL Maple Room 4301

Have to be the have to be revised within 180 days.

0:24:38.20 --> 0:24:41.290

R3-PHL Maple Room 4301

Because that happens before courts.

0:24:41.980 --> 0:24:42.650

R3-PHL Maple Room 4301

Have.

0:24:44.550 --> 0:24:45.940

R3-PHL Maple Room 4301

Disqualified.

0:24:47.730 --> 0:24:49.360

R3-PHL Maple Room 4301

Essentially phase one.

0:24:50.110 --> 0:24:51.720

R3-PHL Maple Room 4301

Investigations of.

0:24:53.30 --> 0:24:55.280

R3-PHL Maple Room 4301

Contaminated property when.

0:24:57.140 --> 0:25:0.690

R3-PHL Maple Room 4301

Disqualified them as all appropriate inquiry when.

0:25:1.370 --> 0:25:2.540

R3-PHL Maple Room 4301

They haven't been done.

0:25:3.210 --> 0:25:6.880

R3-PHL Maple Room 4301

Within the right, right time period and when they haven't been certified.

0:25:7.690 --> 0:25:13.330

R3-PHL Maple Room 4301

By an environmental professional as an environmental professional is defined.

0:25:14.90 --> 0:25:16.830

R3-PHL Maple Room 4301

In 40 CFR part 312.

0:25:18.520 --> 0:25:19.820

R3-PHL Maple Room 4301

The certification.

0:25:20.420 --> 0:25:25.950

R3-PHL Maple Room 4301

That must be included in the report is also set forth.

0:25:27.240 --> 0:25:29.100

R3-PHL Maple Room 4301

In 40 CFR part 312.

0:25:31.700 --> 0:25:34.530

Lisa, Joseph

Yeah, I think I. So I see it in in your.

0:25:35.980 --> 0:25:49.780

Lisa, Joseph

PH January 6, 2023 a reply brief it's on page 4. You you cite a few cases, you cite a van Duprin, which is, I believe, a 7th Circuit case.

0:25:50.460 --> 0:25:56.0

Lisa, Joseph

And vogenthaler, which is a 9th Circuit case, Mr Howard.

0:25:57.330 --> 0:26:7.510

Lisa, Joseph

Are are you familiar with or have you come across any decisions by any federal courts that would support this functional equivalent?

0:26:8.310 --> 0:26:8.890

Lisa, Joseph

Argument.

0:26:12.0 --> 0:26:41.290

Joseph Howard

No, I will grant you that strict adherence seems to be the rule. I've found some really miserable cases where in one case the inquiry was done 185 days before purchase where the window was 180 days and it was disqualified. I found another where it seems to be from the content of the filing, or at least the opinion doesn't doesn't give you all the details.

0:26:41.720 --> 0:27:11.650

Joseph Howard

But the content of the filing was such that the phase one was submitted without or it truncated the last page of the report, which were the qualifications of the inspector reviewer, the professional, the. And because the report was submitted officially but lacked the last page, which was the qualification page of the environmental professional, it too was rejected, even though it was timely.

0:27:11.850 --> 0:27:26.580

Joseph Howard

So I would unfortunately agree with Mr Assad that strict interpretation of that rule is the norm, and certainly the extent of my findings during my research similar to his.

0:27:27.900 --> 0:27:28.470

Joseph Howard

Case.

0:27:29.220 --> 0:27:29.880

Joseph Howard

The values.

0:27:28.190 --> 0:27:32.970

Lisa, Joseph

And that's the that's been mine also. I've done. I've done some awesome research and that's what I'm trying, OK.

0:27:33.670 --> 0:27:34.260

Lisa, Joseph

Uh.

0:27:35.60 --> 0:27:43.810

Lisa, Joseph

OK, I'd like to move on to the issue of due care. With regard to the fencing.

0:27:44.500 --> 0:28:12.830

Lisa, Joseph

Around the property, so there seems to be some dispute between the parties as to whether the fencing was in good condition or if the fencing had issues in terms of sections being down. So EPA and its action memo of March the 11th, 2020 indicates that a 20 foot section of fence separating the property from the residential neighbors.

0:28:14.140 --> 0:28:21.660

Lisa, Joseph

Have been completely torn down and a portion of cyclone fencing on Lefever St was pulled away.

0:28:22.430 --> 0:28:30.490

Lisa, Joseph

And that's exhibit 1.04 and EPA later also supplied photographs.

0:28:31.130 --> 0:28:34.240

Lisa, Joseph

From February 2020.

0:28:34.890 --> 0:28:39.290

Lisa, Joseph

Uh, this is exhibit 1.20 that.

0:28:39.930 --> 0:28:44.720

Lisa, Joseph

Here to verify to confirm these conditions so.

0:28:46.280 --> 0:28:49.400

Lisa, Joseph

I would like to provide MAS with an opportunity.

0:28:50.880 --> 0:28:58.540

Lisa, Joseph

To to respond with regard to the photographs and EPA's observations, and I note that.

0:28:59.320 --> 0:29:2.430

Lisa, Joseph

In MAS, December 2022 brief.

0:29:3.140 --> 0:29:17.460

Lisa, Joseph

Page 15. It indicated that when it purchased the property in 2018, it quote UN quote entire sections of fencing we're missing. So if I could just have MAS address this further.

0:29:18.690 --> 0:29:30.600

Joseph Howard

You know, I'll introduce again, my client is my mood. Saeed's, the current owner of the property on whatever St. And as we discussed in the brief, this was.

0:29:32.180 --> 0:29:37.380

Joseph Howard

A. A site that had been submitted for development but like.

0:29:38.990 --> 0:30:9.0

Joseph Howard

Like the documents relate, the Joyce family seemed to have a bunch of moribund properties in and

around the northeast section of Philly, and in fact, their claim is that they were at the Belgrade transformer site and heard about the sale and then ran over to Lafever Street. And at that time, Moss MAS had undertaken to secure the property after its purchase.

0:30:9.340 --> 0:30:20.520

Joseph Howard

And I'll let Mr Saeed talk about the ongoing process and the dialogue with Jack Kelly related to these various enclosures and improvements.

0:30:21.220 --> 0:30:25.270

Joseph Howard

So when we when we bought the property, can you hear him?

0:30:26.130 --> 0:30:26.660

R3-PHL Maple Room 4301

Yes.

0:30:25.830 --> 0:30:28.60

Lisa, Joseph

Yes, yeah, you're you're good, Mr Sayed.

0:30:28.340 --> 0:30:49.660

Joseph Howard

Yeah. OK. So, so when we bought the property in 2018, you know, all the fans was pretty OK. But we did, you know, repair some of the sections, which were very minor sections because because one of the neighbor complaint was the property was properly locked when Mr Jack Kelly approached us.

0:30:50.380 --> 0:31:20.980

Joseph Howard

In 2019, we had already gone for a a variance approval with the City of Philadelphia and we were in the middle of our public hearing proceedings with as required by the variance process. So we had changed some plans and we required a variance from City of Philadelphia. So when Mr Jack Kelly approached us, we offered him to enter the site. We gave him the keys of the log.

0:31:21.420 --> 0:31:24.300

Joseph Howard

And since then, you know.

0:31:24.990 --> 0:31:28.890

Joseph Howard

When we got the variance, our project is just, you know.

0:31:29.710 --> 0:31:36.600

Joseph Howard

We can't proceed further because of this issue. So Mr Jail, Mr Jack Kelly has been involved since.

0:31:37.680 --> 0:31:45.60

Joseph Howard

2019 early 2019 and only here's, you know, only he has approached the site after that.

0:31:45.810 --> 0:31:53.790

Joseph Howard

Because he went for the initial testing, then he came back and again for again went for another testing.

0:31:54.490 --> 0:32:3.330

Joseph Howard

And when the report came, we all got a sampled and you know, we involved our key and you know we we had number of meetings with EPA so.

0:32:4.10 --> 0:32:8.520

Joseph Howard

Mr Jack Kelly was very much involved since.

0:32:9.410 --> 0:32:19.960

Joseph Howard

After few months of our purchase and when we went initially with Mr Jack Kelly, the the property was totally secured. There was nothing wrong with the property.

0:32:22.150 --> 0:32:22.810

Lisa, Joseph

I guess I guess.

0:32:24.20 --> 0:32:24.360

Lisa, Joseph

Go ahead.

0:32:21.960 --> 0:32:28.930

Joseph Howard

And I and I think we've there were two things that I think were frustrating about the report, it's that.

0:32:30.600 --> 0:32:37.800

Joseph Howard

The EPA in its report, seems to talk about infrequent contact, which I I think.

0:32:38.600 --> 0:32:59.470

Joseph Howard

Was belied by our report showing that there were a series of dates where the EPA met with Boss, met with Moss, and RT met with Moss and other folks regarding the property and that there was an extended period of dialogue. And during that time there were multiple site visits. There were site visits by the owners.

0:33:0.200 --> 0:33:31.10

Joseph Howard

And the owner's representative there were site visits by our T there was site visits by Jack Kelly. And if during any of those, like any vacant piece of property, if there had been damage to a fence, if there had been trespassed, if there had been any concerns along the way, those were communicated in, in, in rectified. I think the 2020 report, frankly, I, I I think I think if viewed as.

0:33:31.290 --> 0:34:2.400

Joseph Howard

They make contact in early 2019 and then a year later the EPA goes and the site is more abundant and torn down. I think that that's a frustrating sort of timeline without an appropriate level of contact. These people were, and I'm not gonna say that they were calling each other every day, but they were certainly having meetings every five or six weeks and site visits along those lines as well.

0:34:2.580 --> 0:34:33.470

Joseph Howard

So if there was damage to a fence, or if there was evidence that again there were 32 homes around this property on three sides, all of which backyards back up into this property, and there's plenty, there's plenty of foot traffic and other there. So if there was ever a problem, the front gate was never breached. At one point in time, it was replaced and upgraded by Moss as part of this process, there were sections of.

0:34:33.590 --> 0:34:38.40

Joseph Howard

Existing fence that were torn down in hurricane fence put in its place.

0:34:39.260 --> 0:35:2.110

Joseph Howard

So I I I understand the report from 2020, but if it makes it sound like it had been a year by the time anybody had shown up or the fact that as things happen dynamically to the property, were they not being addressed by MAS, I think that that report is misleading at best.

0:35:4.460 --> 0:35:5.270

Lisa, Joseph
Mr Hasson.

0:35:6.50 --> 0:35:6.990

Lisa, Joseph
Do you like to comment?

0:35:8.80 --> 0:35:8.520

R3-PHL Maple Room 4301
Umm.

0:35:11.470 --> 0:35:14.620

R3-PHL Maple Room 4301
Just just briefly, your Honor, I it.

0:35:16.80 --> 0:35:26.910

R3-PHL Maple Room 4301
Mr Hardy, the I think the document that you referring to is EPA's action memo, and that is more than a report. It's a decision document.

0:35:28.320 --> 0:35:30.850

R3-PHL Maple Room 4301
Selecting a cleanup for a site.

0:35:32.270 --> 0:35:38.100

R3-PHL Maple Room 4301
Putting that aside, I think the pictures speak for themselves and I I do think that there's.

0:35:38.840 --> 0:35:42.740

R3-PHL Maple Room 4301
The best you could say is here there is a difference of opinion as to whether.

0:35:43.440 --> 0:35:49.160

R3-PHL Maple Room 4301
Do care was exercised by the owners in the relevant time period.

0:35:50.670 --> 0:35:51.20

R3-PHL Maple Room 4301
I.

0:35:51.910 --> 0:35:52.580

R3-PHL Maple Room 4301
I think.

0:35:54.180 --> 0:35:55.880

R3-PHL Maple Room 4301
The difference of opinion.

0:35:58.140 --> 0:36:3.750

R3-PHL Maple Room 4301
Indicates that EPA has a reasonable basis to believe that that.

0:36:4.710 --> 0:36:7.130

R3-PHL Maple Room 4301
Do care element of the defense.

0:36:8.270 --> 0:36:14.320

R3-PHL Maple Room 4301
Would also not be able to be proven by a preponderance of the evidence.

0:36:17.60 --> 0:36:17.320

Lisa, Joseph
Sorry.

0:36:18.650 --> 0:36:24.850

Lisa, Joseph
That sort of takes me into my my next question. This is also something that you raised, Mr Harrod, which is the issue of.

0:36:25.630 --> 0:36:34.440

Lisa, Joseph

I'm going to turn them as trespassers. People entering the property without permission of the property owner. And I note that.

0:36:35.750 --> 0:37:4.110

Lisa, Joseph

In your in in MAS December 2022 brief page 15 it indicates that when MAS purchased the property, quote UN quote neighborhood people freely crossed the site for many of the 21 different backyards that a but the property. So I want to give you an opportunity to talk about what steps, if any, that mass MAS took to try to.

0:37:4.570 --> 0:37:8.700

Lisa, Joseph

We made that trespass limit, that traffic coming into the property.

0:37:9.760 --> 0:37:10.310

Lisa, Joseph

Mr.

0:37:9.210 --> 0:37:10.340

Joseph Howard

So actually when?

0:37:11.130 --> 0:37:17.30

Joseph Howard

When we went for the public hearing and when we approached the neighbors immediately after.

0:37:17.690 --> 0:37:27.10

Joseph Howard

Uh filing that variance, we we were, you know, told by the neighbors that some of the fans says, you know, they're not.

0:37:27.980 --> 0:37:38.440

Joseph Howard

You know strong enough and they're there has been some sort of a trespassing. So on the complaint of neighbors we we we went there we.

0:37:39.150 --> 0:37:58.800

Joseph Howard

We repaired the the fans, we repaired the the front fans, the fans, we put up a lock there and since then we haven't heard heard anything from the neighbors. You know, initially it was all reported by the neighbors. So after we repaired all those.

0:37:59.790 --> 0:38:2.450

Joseph Howard

Areas and we put up a lock and.

0:38:3.130 --> 0:38:19.460

Joseph Howard

And we gave the key to Mr Jack Kelly. He was the first one to to to enter the land after that. So it was properly locked. And we haven't had any complaint after that. We have been involved with the Community because of all the variance process.

0:38:20.50 --> 0:38:21.220

Joseph Howard

Ohh I'd.

0:38:23.480 --> 0:38:28.670

Joseph Howard

So. So, Mr Jack, Eddie is well aware of the.

0:38:29.440 --> 0:38:30.800

Joseph Howard

The site situation.

0:38:31.820 --> 0:38:49.630

Joseph Howard

Since March 2019, and neither Mr Jack Kelly, never, you know, told us that, you know, we need to do something extra to make the the site more secure. You just once mentioned if we can cut the grass and we did that.

0:38:50.690 --> 0:38:53.680

Joseph Howard

As far as I remember, no, it's it's been so many years.

0:38:55.0 --> 0:38:56.370

Joseph Howard

This is what I remember.

0:38:57.420 --> 0:39:0.630

Lisa, Joseph

I just had a point of clarification, Mr Saeed. This is very helpful.

0:39:1.850 --> 0:39:8.840

Lisa, Joseph

So you referenced this public hearing, so filing for variance, what year did that occur in?

0:39:9.520 --> 0:39:10.280

Joseph Howard

It was true.

0:39:9.790 --> 0:39:10.740

Lisa, Joseph

Is that in 2000?

0:39:14.780 --> 0:39:15.20

Lisa, Joseph
OK.

0:39:11.330 --> 0:39:16.460

Joseph Howard
It it was 2018 and 2019. The process took more than six months.

0:39:18.290 --> 0:39:18.580

Lisa, Joseph
OK.

0:39:19.320 --> 0:39:19.610

Lisa, Joseph
OK.

0:39:21.670 --> 0:39:22.70

Joseph Howard
And.

0:39:23.630 --> 0:39:53.240

Joseph Howard
To to put a finer point on that, the the petition that they filed in order to get the variance was filed not long after the purchase in 2018 and the wheels of the you know Community review and appropriate city review move fairly slowly. It was a multi month process and it was incumbent upon them.

0:39:54.290 --> 0:40:18.820

Joseph Howard
That if someone came to the site that the site be fenced, locked, secured, any city officials using reviewing the property as part of the submission would have that as a base expectation. And that was a requirement that that took place in 2018 after their purchase of the property.

0:40:20.320 --> 0:40:32.560

Joseph Howard
And like they said, they were directed at some point in time by EPA not to touch the property. And then at some point in time to go in and mow grass. So they went, so they they had left it.

0:40:33.470 --> 0:40:37.620

Joseph Howard
Uh, the initial contact with EPA was spring of 2019.

0:40:38.320 --> 0:41:0.570

Joseph Howard
If I remember right, it was Elena. 2019. Yeah, early in 2019. And then so the grass was growing over the summer and then they talked to Jack Kelly about whether or not they could enter the property, whether or not they could make investigations. And that's when they were having RT. And then there was suggested that they mow the lawn and the property. And so they went in and and had the lawn mowed.

0:41:3.370 --> 0:41:32.400

Lisa, Joseph

I'm good. I have one final question, then I'll give everyone a chance to make a statement. So my final question is for MAS, and it concerns the September 29th, 2009 EPA closeout bulleted. This is a document that both parties have cited have quoted from in their briefs. Mr Howard it's referenced in.

0:41:33.250 --> 0:41:39.500

Lisa, Joseph

Your December 19th, 2022 brief at page 11.

0:41:52.710 --> 0:41:52.920

R3-PHL Maple Room 4301

It's.

0:41:40.420 --> 0:42:2.240

Lisa, Joseph

Uh, it seems to be a very important document with regards to who knew what about contamination at the property and when. So my my question is this, when was the first time that MAS actually had this document was able to review this document and see what was in it? If if it's known if you know?

0:42:11.370 --> 0:42:12.20

Lisa, Joseph

When did that?

0:42:4.70 --> 0:42:13.20

Joseph Howard

They did not have the document when I was engaged in Council as Council for this project, and that was after the early notice.

0:42:14.540 --> 0:42:14.800

Lisa, Joseph

But.

0:42:14.70 --> 0:42:15.20

Joseph Howard

So it would have been.

0:42:20.190 --> 0:42:20.530

Lisa, Joseph

OK.

0:42:17.220 --> 0:42:23.60

Joseph Howard

Some spring of last year, summer of last year when I went through, I pulled.

0:42:24.190 --> 0:42:27.70

Joseph Howard

What I could regarding the because the lien the lien.

0:42:27.930 --> 0:42:43.240

Joseph Howard

The lean document had been placed on them. They had an attorney and you usually had Paul the time, right? Yeah. So they had an attorney. They hired me to come in in 2022. I pulled the entire leaned, lean file document. So not.

0:42:44.590 --> 0:42:47.110

Joseph Howard

I was not pulling documents that that.

0:42:48.580 --> 0:42:56.770

Joseph Howard

We're publicly available because what I had done was gone on to the city website and pulled all of the tickets from the city.

0:42:58.50 --> 0:43:19.630

Joseph Howard

And all of their backup, plus all of their submitted paperwork, all of which indicates that the property was clean and and cleaned and ready for for development, which was a subsequent document when the the first drawings were submitted by Joyce, the owner. And I believe 2010 or 2011.

0:43:20.290 --> 0:43:20.920

Joseph Howard

Ohm.

0:43:21.890 --> 0:43:27.390

Joseph Howard

So I pulled that record 1st and then I pulled the lean record and that's when I found.

0:43:28.140 --> 0:43:32.320

Joseph Howard

The closeout document with the the hip pocket.

0:43:33.280 --> 0:43:33.630

R3-PHL Maple Room 4301

Thanks.

0:43:33.80 --> 0:43:35.180

Joseph Howard

Umm contamination notes.

0:43:41.220 --> 0:43:41.750

Lisa, Joseph

That's right.

0:43:36.460 --> 0:43:43.760

Joseph Howard

And I I I say that sorry I'm from Maine hip pocket means someone's holding on to it.

0:43:44.620 --> 0:43:44.880

Lisa, Joseph
OK.

0:43:44.520 --> 0:43:47.150

Joseph Howard
It seems like someone's holding on to it. Sorry about that.

0:43:50.810 --> 0:43:52.630

Joseph Howard
Yeah, you sure do you guys?

0:43:54.960 --> 0:43:55.360

Joseph Howard
OK.

0:43:47.10 --> 0:44:5.900

Lisa, Joseph
That we we have our own sayings down here in South Jersey and Philadelphia as you, as you know, I'm I'm from Cherry Hill myself. So and Terry Hill has its own saying. So. OK good. So so basically then I think so the answer they really didn't have it until like the spring summer of of 2022. That was the first time that MAS.

0:44:8.680 --> 0:44:9.330

Joseph Howard
That's correct.

0:44:6.760 --> 0:44:9.380

Lisa, Joseph
Yeah, had this document was able to review it correct.

0:44:10.80 --> 0:44:10.500

Joseph Howard
Yes.

0:44:10.210 --> 0:44:10.640

Lisa, Joseph
OK.

0:44:17.200 --> 0:44:17.460

R3-PHL Maple Room 4301
Umm.

0:44:12.290 --> 0:44:18.80

Lisa, Joseph
Mr Hassan, just a quick question about the closeout special Bulletin would.

0:44:18.230 --> 0:44:31.750

Lisa, Joseph

You. Is that a document that would be subject to like a foyer request? Would that be something that the agency would produce and response to it for your request, or would it be something that the Agency would?

0:44:33.10 --> 0:44:34.880

Lisa, Joseph

Prohibit disclosure for some reason.

0:44:36.570 --> 0:44:37.940

R3-PHL Maple Room 4301

Your Honor would be.

0:44:38.760 --> 0:44:45.430

R3-PHL Maple Room 4301

It would be responsive to a request for information under the foyer and it would be releasable, in my opinion.

0:44:46.940 --> 0:44:53.560

R3-PHL Maple Room 4301

I would also point out on this issue that this is an area of.

0:44:54.960 --> 0:45:0.10

R3-PHL Maple Room 4301

Distinct disagreement between EPA and Moss.

0:45:2.90 --> 0:45:2.900

R3-PHL Maple Room 4301

First of all.

0:45:5.370 --> 0:45:6.460

R3-PHL Maple Room 4301

I think it's in.

0:45:7.970 --> 0:45:15.270

R3-PHL Maple Room 4301

Lean filing record document 1.20 ohh which are exhibits to.

0:45:16.230 --> 0:45:18.250

R3-PHL Maple Room 4301

EPA's January brief.

0:45:18.880 --> 0:45:20.70

Lisa, Joseph

Yes, that's where I found it.

0:45:21.290 --> 0:45:27.950

R3-PHL Maple Room 4301

I think there's at least two exhibits in there of the one that stands out to me is exhibit 18.

0:45:29.230 --> 0:45:32.170
R3-PHL Maple Room 4301
It's an e-mail from Jack Kelly.

0:45:33.240 --> 0:45:33.900
R3-PHL Maple Room 4301
To.

0:45:34.720 --> 0:45:36.430
R3-PHL Maple Room 4301
Zara Saeed.

0:45:39.70 --> 0:45:41.820
R3-PHL Maple Room 4301
On July 10th, 2018.

0:45:45.210 --> 0:45:47.560
R3-PHL Maple Room 4301
There's a link to a website.

0:45:49.70 --> 0:45:49.960
R3-PHL Maple Room 4301
4.

0:45:50.720 --> 0:45:52.390
R3-PHL Maple Room 4301
The Lefever St site.

0:45:54.730 --> 0:45:59.180
R3-PHL Maple Room 4301
There's the documents that are on that site include.

0:45:59.850 --> 0:46:1.280
R3-PHL Maple Room 4301
This closeout memo.

0:46:5.300 --> 0:46:13.780
R3-PHL Maple Room 4301
There's also in that e-mail or it's another e-mail and I think it might be the next exhibit. Yes, it's exhibit 19.

0:46:14.460 --> 0:46:15.170
R3-PHL Maple Room 4301
Dated.

0:46:16.0 --> 0:46:18.90
R3-PHL Maple Room 4301
July 16th.

0:46:18.800 --> 0:46:22.680

R3-PHL Maple Room 4301
2018 also to Zara Sayed.

0:46:23.830 --> 0:46:24.930

R3-PHL Maple Room 4301
Saeed, I'm sorry.

0:46:26.970 --> 0:46:27.440

R3-PHL Maple Room 4301
That.

0:46:28.850 --> 0:46:45.520

R3-PHL Maple Room 4301

Appears to have a link to the closeout Bulletin or an attachment to the closeout bulletin. So we we would disagree that that information was not available 2022. It was provided to the owners at that time.

0:46:49.260 --> 0:46:49.510

R3-PHL Maple Room 4301
And.

0:46:53.280 --> 0:46:55.190

R3-PHL Maple Room 4301

I I don't, is there anything else?

0:46:51.630 --> 0:46:57.520

Lisa, Joseph

But I guess I'll hear. Sorry, I I think for the question I have is prior to the the sale.

0:46:56.400 --> 0:47:6.700

R3-PHL Maple Room 4301

Ask you about you asked about whether it was publicly available via FOIA response. It was, and it was publicly available to anyone who was looking at the time.

0:47:7.990 --> 0:47:16.540

Lisa, Joseph

So I mean, I think to me, I'm gonna. I latched on. I saw this it draw drew my attention. I think both sides, both you and Mr Harward included this.

0:47:17.700 --> 0:47:20.660

Lisa, Joseph

Specifically for this one paragraph that.

0:47:22.160 --> 0:47:36.110

Lisa, Joseph

I'll just read it in the record, quote UN quote, informed the City of Philadelphia Law Department about a claim by a reputable source that PCB oils may have been permitted to leak in the rear portion of the vacant lot.

0:47:37.270 --> 0:48:6.780

Lisa, Joseph

So I mean I my my my question for clarification purposes for mass was whether or not they had obtained this document prior to their purchase of the property. My question for you was basically just on whether it was publicly available prior to the purchase of the property, if an environmental professional had been looking for it, would it have been something that they would have been able to see and latch on to? I know the parties.

0:48:6.850 --> 0:48:22.50

Lisa, Joseph

Have different positions with regard to the significance, how it should be interpreted with the impact was on future decision or subsequent decision making processes by the city or different parts of the city, but once again.

0:48:23.370 --> 0:48:52.50

Lisa, Joseph

I'm I'm focusing on very. You know that that one issue about the affirmative defense for innocent landowner, all appropriate inquiry and really that is addressing from a time wise perspective what occurred prior to the purchase. But I just wanted to clarify that for my notes, those are the questions that I have. So when I'm now going to do is I'm going to open this up, I'll Mr Howard, I'll let you.

0:48:52.980 --> 0:49:2.470

Lisa, Joseph

Start once again. You know I'm. I'm here to listen. To hear what you have to say. As I noted, I have read everybody's submissions in detail.

0:49:3.390 --> 0:49:9.480

Lisa, Joseph

And so if there's things that you'd like to highlight, I would suggest focusing on.

0:49:10.280 --> 0:49:14.290

Lisa, Joseph

The main issue, as I've identified, but once again, it's your opportunity to address me.

0:49:15.590 --> 0:49:28.40

Lisa, Joseph

Please feel free to do so and also Mr Saeed once again if you have something that you would like to specifically say and put into the record, please I I welcome you your opportunity and then Mr Hass and I'll let you have an opportunity.

0:49:29.890 --> 0:49:30.120

R3-PHL Maple Room 4301

Thanks.

0:49:32.130 --> 0:49:32.720

Joseph Howard

Thank you.

0:49:33.610 --> 0:49:34.540

Joseph Howard
So I.

0:49:36.680 --> 0:49:41.590

Joseph Howard
I think you see at the end of our paperwork that our argument.

0:49:42.820 --> 0:49:51.940

Joseph Howard
Is essentially that the EPA's position visa via these people and their ownership of the property was disingenuous to a fault.

0:49:53.380 --> 0:50:3.740

Joseph Howard
And in fact, put them in a situation where they could not or would not have been able to determine the potential for.

0:50:4.460 --> 0:50:21.150

Joseph Howard
Uh contamination on the property and and I believe that disingenuousness is on clear display in the very exhibit Mr Hassan just mentioned you read into the record and I won't repeat it.

0:50:22.430 --> 0:50:28.340

Joseph Howard
That in 22,009 Mr. Kelly finds a reputable source.

0:50:29.360 --> 0:50:36.20

Joseph Howard
And the reputable soil says that there is transformer leakage and they believe that there is soil contamination.

0:50:36.900 --> 0:50:40.940

Joseph Howard
He makes this as a credible uh finding.

0:50:41.690 --> 0:51:6.740

Joseph Howard
He marks it is credible. He uses an adjective to describe the the testifier or or a tipster as credible. He then goes on to say that he will take a follow up steps not of cleaning the property and not of investigating the property, but of telling someone in. In Philly's law division that there's this credible information.

0:51:8.70 --> 0:51:23.20

Joseph Howard
He then shows back upon sight when he finds out there's a new owner and he interacts over a period of six months with them. I'm talking to them about their ownership of the property and whether or not they need to address environmental issues and in.

0:51:24.180 --> 0:51:31.830

Joseph Howard

His initial uh, one of his initial approaches was in August of 2018, and he writes a letter.

0:51:32.540 --> 0:51:33.690

Joseph Howard

To uh.

0:51:35.240 --> 0:51:40.130

Joseph Howard

Mr Saeed and Zara Saeed, who's the site manager for the property.

0:51:40.840 --> 0:51:50.210

Joseph Howard

Uh, and he has a paragraph in here that's well, I'll read it to you and you can you can probably guess what I think of it.

0:51:51.120 --> 0:51:51.450

Joseph Howard

So.

0:51:50.760 --> 0:51:53.700

Lisa, Joseph

Could you, uh, just like the the the exhibit number?

0:51:52.430 --> 0:51:56.660

Joseph Howard

How to identify exactly where I'm coming from? So this is under the?

0:51:57.820 --> 0:52:1.590

Joseph Howard

The fever St Container Superfund site. Uh documents.

0:52:2.350 --> 0:52:5.360

Joseph Howard

This is document attachment 1.18.

0:52:6.220 --> 0:52:12.840

Joseph Howard

It's listed brief e-mail from OSC Kelly 2018 August of 2018.

0:52:16.900 --> 0:52:17.380

Lisa, Joseph

I have it.

0:52:18.800 --> 0:52:48.310

Joseph Howard

So he shows up and instead of saying hey, by the way, I have this credible information that there's a transformer leakage on your property and ohh boy that's gonna be a problem, he says. And I quote, it's

the last paragraph in the first pre printed reprinted page of the e-mail based on the above I can make you an offer. He says desirous. Saeed and my Mahmoud Sayed. I believe that if there is an environmental problem, it is likely below ground.

0:52:48.500 --> 0:53:9.950

Joseph Howard

My speculation is that there isn't one, but some potential exists for past leakage from Transformers to have occurred. That seat below ground, and a lesser chance for some materials to have been buried. To investigate this, I could arrange for Weston, which is his preferred environmental group. Obviously these folks then hired RT.

0:53:30.950 --> 0:53:31.510

Lisa, Joseph

Yes.

0:53:11.650 --> 0:53:40.920

Joseph Howard

To do some boreholes in various locations. This will this will likely take less than one day's work time and important results are immediately observed. Samples can be collected if oil staining is observed, so the the issue for us and and I want to be very clear where we're at. We get the five criteria, we understand where we're at, but the issue here is that this is a disingenuous process.

0:53:41.270 --> 0:53:53.820

Joseph Howard

That discovers and hears about contamination on a contaminated site. Remember, he's there in 2009, cleaning contaminated, you know, buckets of stuff off the property.

0:53:54.530 --> 0:54:12.740

Joseph Howard

Uh, and he hears credible as he listened information and then he shows back up when there's a new owner nine years later and writes to them and says I sure don't think that there's gonna be any problems, but I would like it if you'd let me on site to go do some testing which was permitted which they allowed.

0:54:13.440 --> 0:54:14.810

Joseph Howard

Uh, which they cooperated with?

0:54:15.480 --> 0:54:18.760

Joseph Howard

Uh, I I I think the.

0:54:19.720 --> 0:54:33.340

Joseph Howard

The issue here is whether or not these folks could have been apprised of this process, and I understand that there's a environmental review process that's delineated, but it doesn't contemplate.

0:54:35.870 --> 0:54:45.130

Joseph Howard

Clear dangers known that are either not communicated or miscommunicated to a degree as done here.

0:54:46.40 --> 0:54:48.300

Joseph Howard

Uh, I think the second aspect.

0:54:49.30 --> 0:55:2.920

Joseph Howard

Uh, that is disingenuous from our perspective. Is that once the lien, once the process of cleaning the property was done, there was the decision to impose the lien.

0:55:3.880 --> 0:55:12.530

Joseph Howard

And that was done according to the EPA, based on the imminent sale of the property to another party.

0:55:13.430 --> 0:55:32.880

Joseph Howard

On they rushed to to get their lean placed in order to capture this potentially responsible party. In their eyes, I think the issue there is that Moss in fact was in the middle of a development process, never signed a contract for sale of real estate.

0:55:33.380 --> 0:55:34.570

Joseph Howard

A.

0:55:35.670 --> 0:56:5.510

Joseph Howard

A speculator was out looking at different pieces of land and then sent an inquiry to the EPA, not backed up by a contract for sale, not constant backed up by a letter of interest, not backed up in an offer, and in fact a simple search. The MLS would show that the property had never been advertised for sale, and so there's two aspects here. One, we believe that the information.

0:56:5.840 --> 0:56:8.520

Joseph Howard

Was a assiduously.

0:56:9.400 --> 0:56:28.400

Joseph Howard

Uh hidden from view the second these piece of information that we believe needs to be considered is after the cleaning is done and the costs are determined and we've got this \$850,000 bill that the waitresses walking around the restaurant with looking for someone to put it on.

0:56:30.680 --> 0:56:31.230

Joseph Howard

Is it?

0:56:31.990 --> 0:56:33.10

Joseph Howard
Appropriate.

0:56:33.950 --> 0:57:2.50

Joseph Howard
That the lien was then perfected ohm and against the property. I was there another process by which someone could say well, interestingly enough, the Joyce family held this property for 50 years. Let's let's jointly look to them for some compensation on this. Let's let's take other actions which are within the EPA's purview to satisfy this \$850,000 bill that they have.

0:57:2.910 --> 0:57:3.620

Joseph Howard
Uh.

0:57:4.870 --> 0:57:29.450

Joseph Howard
Where this this idea that the perfection of the lien is justified because Moss is trying to sell when there is in fact no listing for sale, there's no contract for sale and the party that's supposedly asked for information was not in contact with the owner regarding a sale. So I think that there's two aspects that we find to be.

0:57:31.90 --> 0:57:54.630

Joseph Howard
You know a bit disingenuous, and that, as you can see at the end of our filing is where we rest the ambiguity both around the activity at the site. It's sudden awareness, everybody's sudden awareness as soon as Moss buys it that there's potential contamination there. And then this rush to perfect, which is based on.

0:57:55.480 --> 0:57:55.950

Joseph Howard
Nothing.

0:57:56.990 --> 0:58:1.460

Joseph Howard
Ah, no, no formal document of either sale or even potential sale.

0:58:1.900 --> 0:58:11.310

Joseph Howard
Uh led to the perfection of it. Those are the two aspects that we feel are most egregiously disputed by us.

0:58:14.80 --> 0:58:14.250

Lisa, Joseph
I.

0:58:13.560 --> 0:58:14.490

Joseph Howard

But no, this is.

0:58:15.610 --> 0:58:18.90

Joseph Howard

Yeah, before I before I see the floor.

0:58:18.600 --> 0:58:18.860

Lisa, Joseph

OK.

0:58:23.130 --> 0:58:23.690

Lisa, Joseph

Yes, please.

0:58:18.790 --> 0:58:33.80

Joseph Howard

But I'll I'll just ask if Mr Saeed has anything to add. Yeah, I yeah. I just want to highlight, you know, I'm not a lawyer. I don't know technicalities. But, you know, I just want to.

0:58:34.130 --> 0:58:39.950

Joseph Howard

Keep you guys my perspective and my misery over the last five for five years now.

0:58:40.600 --> 0:58:40.810

Lisa, Joseph

Yes.

0:58:41.690 --> 0:58:52.10

Joseph Howard

So regarding that, you know all the information was being communicated to us, Mr Jack Kelly was told that, you know, in 2018 I was going for a.

0:58:52.710 --> 0:58:57.620

Joseph Howard

A stage four cancer treatment and I was totally you know.

0:58:58.640 --> 0:59:0.860

Joseph Howard

You know, my health conditions were not.

0:59:1.520 --> 0:59:3.780

Joseph Howard

100% I I I used to go.

0:59:4.710 --> 0:59:7.900

Joseph Howard

Almost every week to the hospital and Mr Jack Kelly was told.

0:59:8.630 --> 0:59:30.150

Joseph Howard

So I might have omitted some of the information on the link which he provided and some of the e-mail because Mr I totally trusted Mr Jack Kelly because he told us and in one of the e-mail, he very clearly said that, you know, he he cleared the site in 2009.

0:59:31.310 --> 0:59:32.620

Joseph Howard

So the previous so.

0:59:33.560 --> 0:59:35.110

Joseph Howard

So my position is.

0:59:36.100 --> 0:59:40.310

Joseph Howard

OK, I didn't involve the environmental specialist.

0:59:41.250 --> 1:0:5.220

Joseph Howard

But EPA made a mistake in 2009. They missed it. The previous owner disclosed that you know, the site is cleared. The site was declared residential. There was a development project approved on the site. They were none red flags in the city record. The title company never highlighted even a single thing.

1:0:6.370 --> 1:0:16.830

Joseph Howard

Yes, I was going through a serious health issues those time. You know, I I might have omitted all those procedures which I should have done legally.

1:0:17.480 --> 1:0:17.800

Joseph Howard

But.

1:0:19.540 --> 1:0:24.660

Joseph Howard

The fault lies either with EPA or with the previous owner.

1:0:25.410 --> 1:0:33.110

Joseph Howard

But you know I'm being penalized. You know, I I borrowed money, you know, I've got all the record, you know.

1:0:34.140 --> 1:0:46.190

Joseph Howard

I borrowed money to buy this land. The whole idea was that I will develop it and, you know, sell it off. And now you know, I'm totally at the verge of, you know.

1:0:47.300 --> 1:0:50.160

Joseph Howard

Bankruptcy because, you know I can't pay back to my.

1:0:50.970 --> 1:0:53.500

Joseph Howard

Creditors. I can't develop this site.

1:0:54.520 --> 1:0:57.150

Joseph Howard

EP is not allowing me to move forward.

1:0:57.750 --> 1:1:3.700

Joseph Howard

I I don't know what the law says, but there is something which I don't see that.

1:1:5.120 --> 1:1:12.20

Joseph Howard

My fault is not that big for which I'm being punished and penalized for the last four years.

1:1:12.960 --> 1:1:27.350

Joseph Howard

So you know, if I could clarify, I believe the site purchase was \$180,000 for one 9995 thousand, \$195,000, the lien that was perfected I believe is 860 and counting.

1:1:28.310 --> 1:1:28.850

Joseph Howard

So.

1:1:31.300 --> 1:1:38.570

Joseph Howard

So to give you a sense of the economic magnitude of the of the damage to the to the EPA missed it in 2009.

1:1:39.370 --> 1:1:45.360

Joseph Howard

Mr Joyce was responsible for everything, but only I'm being punished.

1:1:46.270 --> 1:1:51.10

Joseph Howard

Nothing is happening to EPA. No one is questioning Mr Joyce.

1:1:51.970 --> 1:2:1.450

Joseph Howard

And EP and never put a lien when Mr Joyce advertised this land, he was selling the land no red flag ever.

1:2:2.120 --> 1:2:11.670

Joseph Howard

But you know, I was not even selling the land because I can't sell the land because I have lot of loan on that and my agreement states that I have to develop that land.

1:2:12.380 --> 1:2:25.430

Joseph Howard

People do come and ask if I'm interested in selling and whenever someone approaches me, I always tell there is an EPA issue. There is an EPA issue. We never advertise. Mr Joyce advertised.

1:2:27.490 --> 1:2:37.320

Joseph Howard

At that time, no need was perfected by EPA. They knew it. In 2009, there was an issue. The property was advertised. My fault is yes.

1:2:38.590 --> 1:2:44.820

Joseph Howard

I was going through a health issues and I omitted involving I should have involved environmental.

1:2:45.530 --> 1:2:46.70

Joseph Howard

Person.

1:2:46.940 --> 1:2:49.620

Joseph Howard

But you know, is this such a big crime?

1:2:50.580 --> 1:2:50.890

Joseph Howard

Wait.

1:2:51.800 --> 1:2:52.240

Joseph Howard

Is it?

1:2:53.120 --> 1:3:1.600

Joseph Howard

Bigger than what EPA rated best in 2009? Is it bigger than what Mr Joyce said to me? But I'm being penalized.

1:3:2.650 --> 1:3:6.180

Joseph Howard

You know, this is all I want to say. Thank you.

1:3:8.410 --> 1:3:9.510

Joseph Howard

Thank you for your statement.

1:3:7.950 --> 1:3:9.760

Lisa, Joseph

Thank you for your statement, Mr Saeed.

1:3:10.880 --> 1:3:13.840

Lisa, Joseph

The First off, I'm sorry you had to go through that health.

1:3:14.530 --> 1:3:16.300

Lisa, Joseph

Issue I hope you're feeling better now.

1:3:18.40 --> 1:3:48.270

Lisa, Joseph

And I will say sincerely, I understand the frustration that you have with the Superfund process. It is, as we noted before, this creature of statute, creature of regulation that Congress created. It's it's a strict liability statute, and Congress made certain decisions as to who's responsible, who's not responsible with regard to cleaning up problems on the site. But I appreciate sincerely, you know, the frustration.

1:3:48.590 --> 1:3:50.500

Lisa, Joseph

That you you have expressed.

1:3:52.820 --> 1:4:24.150

Lisa, Joseph

I'm sorry, Mr Hasson. I'm gonna turn the floor over to you, and I would just ask if you could maybe start your presentation addressing the whole issue of Epas decision to perfect the lien, the exceptional circumstances. I will just note for Mr Saeed and Mr Howard, the decision of the Agency to move forward and perfect the lien prior to alien notice that basically that really rests within the discretion of the Regional Council.

1:4:25.70 --> 1:4:46.460

Lisa, Joseph

For purposes of my analysis though, it really doesn't impact per se the analysis that I'm doing under the supplemental guidance, it it changes it just a little bit. So the analysis will still be the same, but I think it's important that the agency, I know that Mister Hassan, you've explained this in your briefs. I think it's important to.

1:4:47.60 --> 1:4:49.220

Lisa, Joseph

Uh. Also, maybe explain it now.

1:4:51.150 --> 1:4:51.910

R3-PHL Maple Room 4301

Thank you. Yeah.

1:4:57.240 --> 1:4:59.890

R3-PHL Maple Room 4301

Likeness proceeding we are.

1:5:0.620 --> 1:5:2.470

R3-PHL Maple Room 4301

Guided by EPA's.

1:5:4.20 --> 1:5:7.540

R3-PHL Maple Room 4301

1993 supplemental Lean guidance and.

1:5:9.950 --> 1:5:21.540

R3-PHL Maple Room 4301

That guidance provides that EPA can perfect a lien before notice and a meeting in exceptional circumstances. And one of those circumstances is.

1:5:22.220 --> 1:5:31.790

R3-PHL Maple Room 4301

When we learned that the sale of a property is about to take place, so the facts are that in.

1:5:32.410 --> 1:5:40.940

R3-PHL Maple Room 4301

July late July, early August of last year, EPA received a request for a comfort letter from.

1:5:41.640 --> 1:5:44.90

R3-PHL Maple Room 4301

A representative of a realtor.

1:5:44.800 --> 1:5:52.80

R3-PHL Maple Room 4301

Who was interested or who was representing a party who wanted to purchase the site property?

1:5:53.360 --> 1:5:57.510

R3-PHL Maple Room 4301

Comfort letters are documents that are frequently.

1:5:58.400 --> 1:5:59.300

R3-PHL Maple Room 4301

Requested.

1:6:0.480 --> 1:6:6.550

R3-PHL Maple Room 4301

By prospective purchasers as part of their environmental due diligence.

1:6:7.150 --> 1:6:9.600

R3-PHL Maple Room 4301

Uh, when they're looking at a property?

1:6:12.130 --> 1:6:13.800

R3-PHL Maple Room 4301

Throughout the process.

1:6:15.560 --> 1:6:16.310

R3-PHL Maple Room 4301

We.

1:6:17.70 --> 1:6:40.370

R3-PHL Maple Room 4301

Continue to communicate with them about a draft comfort letter they provided us with, answers to a questionnaire, and we were informed that timing wise that the sale was imminent. So it was on that basis that the Regional Council determined that it was appropriate to perfect the lien prior to.

1:6:41.390 --> 1:6:43.550

R3-PHL Maple Room 4301

Notice and the meeting such as this.

1:6:45.10 --> 1:6:45.740

R3-PHL Maple Room 4301

Uh, I think.

1:6:47.600 --> 1:6:53.430

R3-PHL Maple Room 4301

In in the government's both briefs we talk about.

1:6:54.580 --> 1:6:57.930

R3-PHL Maple Room 4301

This matter and there are exhibits there, I don't have them.

1:6:59.750 --> 1:7:7.120

R3-PHL Maple Room 4301

On my fingertips, but I can send them to you. One is the questionnaire the the answers to the questionnaire from.

1:7:10.210 --> 1:7:11.880

R3-PHL Maple Room 4301

Actually I do have it. I'm sorry.

1:7:15.130 --> 1:7:15.990

R3-PHL Maple Room 4301

Exhibit.

1:7:18.890 --> 1:7:24.630

R3-PHL Maple Room 4301

Each in lean filing record document 1.15.

1:7:26.880 --> 1:7:32.380

R3-PHL Maple Room 4301

Is I believe, the answer to the questionnaire from the perspective purchaser.

1:7:33.470 --> 1:7:36.0

R3-PHL Maple Room 4301
And exhibit 1.

1:7:37.160 --> 1:7:38.980

R3-PHL Maple Room 4301
In lean filing record.

1:7:40.430 --> 1:7:44.660

R3-PHL Maple Room 4301
Document 1.20 is the e-mail in which.

1:7:45.730 --> 1:7:49.980

R3-PHL Maple Room 4301
The representative of the prospective purchaser told us that the sale was imminent.

1:7:54.570 --> 1:8:1.460

R3-PHL Maple Room 4301
And I'm I I would just say that, you know, just using a reasonable basis standard I I think those are.

1:8:2.120 --> 1:8:9.60

R3-PHL Maple Room 4301
Facts that a reasonable person could conclude that the site was about to be sold.

1:8:10.710 --> 1:8:11.70

R3-PHL Maple Room 4301
Thank you.

1:8:15.780 --> 1:8:17.570

Lisa, Joseph
OK, Mr Hassan, I.

1:8:19.450 --> 1:8:23.510

Lisa, Joseph
Turn the floor over to you in terms of any type of statement that EPA.

1:8:24.530 --> 1:8:31.910

Lisa, Joseph
Would want to make if there's anything else that you would like to highlight from your briefs or anything that you would like to address.

1:8:34.180 --> 1:8:37.10

R3-PHL Maple Room 4301
Sure, just very briefly.

1:8:38.640 --> 1:8:39.440

R3-PHL Maple Room 4301
Thank you, your honor.

1:8:39.520 --> 1:8:39.910

R3-PHL Maple Room 4301

Umm.

1:8:41.350 --> 1:8:43.760

R3-PHL Maple Room 4301

Mr Saeed, I too AM.

1:8:44.770 --> 1:8:46.830

R3-PHL Maple Room 4301

I'm sorry that you went through.

1:8:47.880 --> 1:8:51.850

R3-PHL Maple Room 4301

Uh cancer and other difficulties during this whole process.

1:8:54.950 --> 1:9:0.140

R3-PHL Maple Room 4301

When EPA sent a general notice letter and it's.

1:9:2.160 --> 1:9:4.840

R3-PHL Maple Room 4301

Document 1.02.

1:9:6.620 --> 1:9:9.210

R3-PHL Maple Room 4301

In the lean filing record.

1:9:10.660 --> 1:9:12.210

R3-PHL Maple Room 4301

There would have been.

1:9:13.420 --> 1:9:15.870

R3-PHL Maple Room 4301

Information in there about.

1:9:18.740 --> 1:9:33.690

R3-PHL Maple Room 4301

Considerations of limited ability to pay, particularly for small businesses, so I would encourage you to take a look at that and maybe follow through on that issue.

1:9:36.170 --> 1:9:36.640

R3-PHL Maple Room 4301

Umm.

1:9:40.710 --> 1:9:48.740

R3-PHL Maple Room 4301

Just a couple of things and I and I'm I I don't really want to nitpick, but I just wanna set the record straight. I do believe that.

1:9:50.960 --> 1:10:8.970

R3-PHL Maple Room 4301

Our response in the second brief that we submitted in January addresses a lot of these disagreements we have about EPA's process. You know, at times it seems like borderline accusations of malfeasance and.

1:10:9.880 --> 1:10:18.150

R3-PHL Maple Room 4301

You know, we strongly disagree. Anyone who knows Jack Kelly knows that he's a good person and.

1:10:19.350 --> 1:10:25.580

R3-PHL Maple Room 4301

Would not intentionally try to deceive anyone, and I think that the record shows.

1:10:27.20 --> 1:10:28.700

R3-PHL Maple Room 4301

Including those emails that.

1:10:29.360 --> 1:10:39.250

R3-PHL Maple Room 4301

E His initial emails to Miss Saeed in early July of 2018.

1:10:40.510 --> 1:10:47.790

R3-PHL Maple Room 4301

Which you know, I'll. I'll just point out where several weeks before the August 2018 e-mail where that.

1:10:48.920 --> 1:10:54.650

R3-PHL Maple Room 4301

Mr Howard mentioned I I think that he was straightforward. He was honestly trying to help.

1:10:55.890 --> 1:11:21.940

R3-PHL Maple Room 4301

He mentioned Weston. There's no connection between Weston and RT. Weston is EPA start contractor. Start is an acronym and I you'll have to forgive me because I don't know what it stands for. Super fun technical Assistance, response team or something like that. But we're anyway, they're our contractor. Who does?

1:11:23.870 --> 1:11:26.480

R3-PHL Maple Room 4301

Removal, site assessment and evaluation.

1:11:29.510 --> 1:11:30.60

R3-PHL Maple Room 4301

The.

1:11:30.950 --> 1:11:33.220

R3-PHL Maple Room 4301

And I think you'll see an exhibit.

1:11:33.860 --> 1:11:34.480

R3-PHL Maple Room 4301

Umm.

1:11:35.420 --> 1:11:42.170

R3-PHL Maple Room 4301

Or it's document #1.06 of the lean filing record that EPA's.

1:11:44.410 --> 1:12:2.810

R3-PHL Maple Room 4301

Cost claim currently is in the neighborhood of 762,000. I know that's, you know, small comfort to someone. And Mr Saeed's position, but it isn't 850 or 860,000, which are two numbers that Mister Howard mentioned.

1:12:28.620 --> 1:12:29.500

R3-PHL Maple Room 4301

And that's exactly.

1:12:3.900 --> 1:12:32.970

Lisa, Joseph

And just I guess what Eric, just to to clarify too that under under the guidance at least for purposes of my analysis and and the it's the exact amount of the I know obviously it's significant and it's important to Mr Saeed and Maas. But for purposes of this proceeding, it's the exact number is not really at issue with the question is have response costs been incurred so that that's the determination that I'm going to be making.

1:12:34.70 --> 1:12:34.400

R3-PHL Maple Room 4301

So.

1:12:35.470 --> 1:12:36.20

R3-PHL Maple Room 4301

I'm sorry.

1:12:36.650 --> 1:12:38.860

Lisa, Joseph

Look, guys, I'm sorry to interrupt. I just want to clarify that.

1:12:37.510 --> 1:12:42.240

R3-PHL Maple Room 4301

Not only on the issue of Mr Joyce, we agree, Mr Saeed.

1:12:43.500 --> 1:12:49.50

R3-PHL Maple Room 4301

And and as has been mentioned in our briefs, Mr.

1:12:49.750 --> 1:12:56.80

R3-PHL Maple Room 4301

Joyce has also been noticed of his potential liability and he will get a demand.

1:12:57.230 --> 1:12:59.60

R3-PHL Maple Room 4301

About the government's claim here.

1:13:0.420 --> 1:13:16.600

R3-PHL Maple Room 4301

Liability under Cercla is not only strict liability, but it's joint and several, which means that all potentially responsible parties are potentially liable for all of the government's cost.

1:13:17.430 --> 1:13:18.140

R3-PHL Maple Room 4301

So.

1:13:20.220 --> 1:13:26.230

R3-PHL Maple Room 4301

There, there's no intention to be picking on Moss. We are also.

1:13:28.790 --> 1:13:31.750

R3-PHL Maple Room 4301

Pursuing, we will also be pursuing Mr Joyce.

1:13:35.550 --> 1:13:40.950

R3-PHL Maple Room 4301

One another issue has to do with RT environmental and.

1:13:42.290 --> 1:13:47.280

R3-PHL Maple Room 4301

Mr Howard, I know that you haven't been involved with this matter.

1:13:48.370 --> 1:13:49.700

R3-PHL Maple Room 4301

For a long time, but.

1:13:51.970 --> 1:13:58.380

R3-PHL Maple Room 4301

Just to be clear, RT environmental, as far as we know was.

1:13:59.60 --> 1:14:1.210

R3-PHL Maple Room 4301

A consultant that was hired.

1:14:2.30 --> 1:14:2.870

R3-PHL Maple Room 4301

By.

1:14:3.310 --> 1:14:10.320

R3-PHL Maple Room 4301

Umm. By mass of maybe at the suggestion of attorney Steve Miana in.

1:14:11.70 --> 1:14:15.380
R3-PHL Maple Room 4301
Of inner after January 2021 so.

1:14:17.50 --> 1:14:18.480
R3-PHL Maple Room 4301
To the extent that.

1:14:18.750 --> 1:14:23.300
R3-PHL Maple Room 4301
Umm, you were suggesting that RT environmental was there?

1:14:25.400 --> 1:14:28.410
R3-PHL Maple Room 4301
Advising Moss from.

1:14:29.110 --> 1:14:37.260
R3-PHL Maple Room 4301
202018 the fall 2018 throughout the whole process, I don't think there's any evidence of that. And if you have some that would be.

1:14:37.980 --> 1:14:40.650
R3-PHL Maple Room 4301
That would be useful just to set the record straight.

1:14:41.830 --> 1:14:45.560
R3-PHL Maple Room 4301
There was a well, I guess my last point on this and.

1:14:47.590 --> 1:14:59.280
R3-PHL Maple Room 4301
And it's really a a question of clarity from Mr Howard, if if I may, because both Mr Howard and Mr Saeed alluded to something like this.

1:15:1.800 --> 1:15:3.670
R3-PHL Maple Room 4301
In in Mr Howard's.

1:15:4.920 --> 1:15:18.670
R3-PHL Maple Room 4301
Uh. Earlier remarks he mentioned the 2009 clean up, which we understand to be the 2009 emergency removal action, in which EPA went to the site and removed the.

1:15:19.470 --> 1:15:25.340
R3-PHL Maple Room 4301
The toads and the drums that contain PCB's at the cities request.

1:15:30.320 --> 1:15:33.930

R3-PHL Maple Room 4301

I had the impression that Mister Howard was saying that.

1:15:35.510 --> 1:15:38.120

R3-PHL Maple Room 4301

Moss was aware of that at that time.

1:15:39.240 --> 1:15:40.50

R3-PHL Maple Room 4301

Later.

1:15:40.960 --> 1:15:42.430

R3-PHL Maple Room 4301

Mr Saeed said that.

1:15:43.90 --> 1:15:45.910

R3-PHL Maple Room 4301

The former site owner, Mr Joyce, told him that the site.

1:15:46.750 --> 1:15:47.800

R3-PHL Maple Room 4301

Was clear.

1:15:49.180 --> 1:15:50.10

R3-PHL Maple Room 4301

I was in.

1:15:51.240 --> 1:15:52.290

R3-PHL Maple Room 4301

I had the impression.

1:15:53.260 --> 1:16:2.670

R3-PHL Maple Room 4301

From then, and also from other records I've seen related to the site that there were conversations between the owner.

1:16:3.340 --> 1:16:4.290

R3-PHL Maple Room 4301

The former owner.

1:16:5.360 --> 1:16:5.800

R3-PHL Maple Room 4301

Uh.

1:16:7.420 --> 1:16:8.750

R3-PHL Maple Room 4301

And Moss?

1:16:9.780 --> 1:16:17.220

R3-PHL Maple Room 4301

Around the time of the purchase of the property that concerned EPA's 2009 cleanup, and so my question is.

1:16:17.970 --> 1:16:18.430

R3-PHL Maple Room 4301

That.

1:16:19.530 --> 1:16:21.500

R3-PHL Maple Room 4301

If you want to avail yourself.

1:16:22.760 --> 1:16:26.710

R3-PHL Maple Room 4301

Of the innocent landowner defense.

1:16:27.750 --> 1:16:29.140

R3-PHL Maple Room 4301

Want the key?

1:16:30.120 --> 1:16:45.170

R3-PHL Maple Room 4301

Thing is that you did not know and had no reason to know that the property had been subject to a release of hazardous substances or a threat of release, and so.

1:16:45.880 --> 1:16:55.510

R3-PHL Maple Room 4301

Unless I misheard folks, it just seems to me that in fact based on the conversations that mass had with.

1:16:56.210 --> 1:17:1.750

R3-PHL Maple Room 4301

Mr Joyce and also the review of its city documents that.

1:17:2.460 --> 1:17:12.130

R3-PHL Maple Room 4301

Mr Howard mentioned that mass did know and had a reason to know that there may have been a release of hazardous substances at the site, so.

1:17:13.450 --> 1:17:17.930

R3-PHL Maple Room 4301

I I it's just for a point of clarity. I I I wanted to know.

1:17:19.130 --> 1:17:23.190

R3-PHL Maple Room 4301

If I misheard something or misinterpreted something, thank you.

1:17:24.200 --> 1:17:24.810

Lisa, Joseph
Mr Howard.

1:17:25.710 --> 1:17:42.550

Joseph Howard

Well, thanks for the opportunity to address that point. The extent of their knowledge was information included with the title report, which were action item letters from the city. There was at the time the the city whether.

1:17:43.350 --> 1:17:48.360

Joseph Howard

I'm not sure the genesis of it because the city started with.

1:17:49.200 --> 1:18:12.330

Joseph Howard

The friendly demolition by the fire department of a structure on the site, so I don't know if there had been a fire or if it had just rotted and collapsed, but the fire department, for whatever reason, undertook to remove debris from a collapsed storage property on the site.

1:18:13.300 --> 1:18:16.620

Joseph Howard

Uh, in the paperwork from the city.

1:18:17.310 --> 1:18:47.180

Joseph Howard

It's described that during the process of removing the debris, they noticed that there are containers and then the containers are removed so it it's a little bit unclear. I understand your question. I I don't believe from the five documents that are available regarding the fire departments 2009 investigation, debris removal and subsequent removal.

1:18:47.340 --> 1:19:17.230

Joseph Howard

Of containers, there's no indication of the possibility of spill or or downward contamination. It's it's not, it's the it's it's literally there's a there is a disconnect here. Attorney, his son and I recognize what you're asking. But the interesting thing is that while there may have been an EPA per view, and in fact there was with the document.

1:19:17.390 --> 1:19:47.0

Joseph Howard

You know that I later find that says hey, by the way, there might be a problem, but the city's documents are, hey, we were doing this demolition. And by the way, we saw that there were some containers and so we alerted all the appropriate folks. Right. So there are there's Department of Law. There's Department of fire, there's higher Ashkelon folks from Department of fire. The property is then the the is demolished or the piece of the piece of.

1:19:47.420 --> 1:19:51.850

Joseph Howard

The building is demolished and there are containers that are removed.

1:19:53.90 --> 1:20:13.630

Joseph Howard

There is no follow up and let's agree that the follow up that we were able to see through the city documentation is an immediate application by the Joyce family for construction permits and design design authorization. So there's I I agree with you.

1:20:14.810 --> 1:20:36.500

Joseph Howard

That there's an appropriate question of when did you know and what did you know, the issue being that there's an entirely separate set of documents published by the city regarding a demolition that just happened to find some containers that were then appropriately removed according to their paperwork. So it's a little.

1:20:38.320 --> 1:20:50.690

Joseph Howard

At best, the cities documentation would be misleading as to whether or not follow up was needed, and in fact the fact that they immediately thereafter.

1:20:51.210 --> 1:21:21.80

Joseph Howard

Ohh approved a they proved 2 things just for clarification. They immediately thereafter approved a conversion of the designation of the property from. I think R3 to R5S or three is light industrial which can exist within a neighborhood like it does in bridesburg over 2 residential. So the City made two changes one.

1:21:21.180 --> 1:21:45.510

Joseph Howard

Was they? They modified the site from industrial to residential according to their classifications of the property. The second modification that they made was an approval of plans for the building. The erection of multifamily housing. So there, there, there were documents that they relied on, but they were city documents.

1:21:46.950 --> 1:21:49.250

Joseph Howard

Again leading to.

1:21:50.20 --> 1:22:0.90

Joseph Howard

The cities making this a residential piece of property and then allowing or or understanding that a permit isn't the start of construction.

1:22:0.710 --> 1:22:5.940

Joseph Howard

But they allowed the permit for multifamily housing to to come into being.

1:22:7.290 --> 1:22:24.630

Joseph Howard

So I hope that that clarifies your point as to whether or not newer should have known would have been triggered when you saw the city documents and my argument is if you saw the city documents, everything marches. They the city is literally ready to put people.

1:22:25.340 --> 1:22:38.210

Joseph Howard

Like families on this piece of property after the demolition and removal. So no, I I don't think Newars would have known newer should have known, would have been triggered. In fact the opposite.

1:22:39.600 --> 1:22:46.470

Joseph Howard

What you would take away from the city documents is that the site is ready for children to live on.

1:22:48.670 --> 1:22:50.210

Joseph Howard

Per their permitting process.

1:22:51.480 --> 1:22:51.920

Joseph Howard

Thank you.

1:22:51.770 --> 1:22:52.630

Lisa, Joseph

Thank you, Mr Howard.

1:22:54.110 --> 1:22:54.610

Lisa, Joseph

I'm.

1:22:55.930 --> 1:22:56.300

Lisa, Joseph

OK.

1:22:58.120 --> 1:23:2.30

R3-PHL Maple Room 4301

I I just had that other question, Your Honor, which was?

1:23:3.980 --> 1:23:13.770

R3-PHL Maple Room 4301

Did was there a conversation prior to the sale of between Moss and Mr Joyce about the EPA cleanup in 2009?

1:23:16.330 --> 1:23:24.530

Joseph Howard

So I I think we can answer that pretty distinctly. When you say in the EPA cleanup in 2009.

1:23:25.190 --> 1:23:29.450

Joseph Howard

That was not addressed until Jack Kelly showed up on site after the purchase.

1:23:30.470 --> 1:23:38.920

Joseph Howard

So let's let's agree that there's a Philadelphia fire demolition that leads to the removal of some containers.

1:23:39.560 --> 1:23:41.590

Joseph Howard

The conversation that was had.

1:23:42.210 --> 1:23:57.320

Joseph Howard

With Mr Joyce and there are documents to back this up where Joyce fills out an owners disclosure and says, hey, by the way, the city came in, did some demolition and 09, and then thereafter the city.

1:23:58.470 --> 1:24:27.990

Joseph Howard

Turn this into residential property and then by the way, they gave me a permit to build multifamily housing. So we have an owner's disclosure that talks about the, the, the City, Fire Department demolition and I understand from my research that the City Fire Department as they demolished and found containers involved, the EPA brought Jack Kelly and Jack Kelly produced a memo, the 2009.

1:24:28.60 --> 1:24:30.250

Joseph Howard

Closeout memo, but again.

1:24:31.40 --> 1:24:31.230

Joseph Howard

The.

1:24:32.250 --> 1:24:53.290

Joseph Howard

Calling it an EPA action or saying, weren't you aware of the EPA action? The answer is no. There was no awareness that this was an EPA action. And let's agree that there's another piece of information that helps you helps me support that argument. The other piece of information is, is that the EPA shows up on site.

1:24:53.970 --> 1:25:5.80

Joseph Howard

The fire department removes the building the Fire department supervises the the the removal of drums, containers, totes, gallon buckets, whatever. And then.

1:25:6.220 --> 1:25:15.330

Joseph Howard

The EPA writes a memo that says, by the way, while I was there, a guy who worked for the city and is credible showed up and said that there's contamination on that site.

1:25:16.220 --> 1:25:19.380

Joseph Howard

And then the EPA didn't do any follow up.

1:25:20.360 --> 1:25:22.0

Joseph Howard

So if there was a rumor.

1:25:22.720 --> 1:25:26.260

Joseph Howard

That was listed in the EPA memo, which there was.

1:25:27.460 --> 1:25:58.190

Joseph Howard

Umm, there was zero follow up by the EPA on that. What this action was characterized as was the city of Philadelphia through the fire department making effort to clean up the property. And I don't understand the reason. And I'll be candid with you. If my client owned a piece of property and a building fell down and I just went through this and Williamstown, NJ with a client that owned commercial property, it was more abundant. It caught on fire.

1:25:58.310 --> 1:26:5.450

Joseph Howard

And he just spent \$125,000 demolishing it and removing it. I don't understand why the Joyce family.

1:26:6.180 --> 1:26:35.630

Joseph Howard

Was somehow the beneficiary of all these free workers that show up to clean your property? Because the fire department shows up and cleans the demolished building, even though it's on private property. It's an odd it's an odd thing to me, because that's not the normal course of business. The normal course of business is that the city of Philadelphia sues the landowner and forces them to clean the property themselves. That didn't happen, and they didn't pursue them for costs.

1:26:36.130 --> 1:26:48.10

Joseph Howard

Afterward, either there's no legal action taken, so for us we have an owner's disclosure that talks about only the city of Philadelphia activity and then.

1:26:48.650 --> 1:27:3.170

Joseph Howard

Because he's trying to make a sale, talks about the subsequent city of Philadelphia, very positive activity for a developer which is residential conversion and then multifamily approval so that I.

1:27:3.930 --> 1:27:7.940

Joseph Howard

That's probably the longest answer you could have hoped for, but I I hope that that nails that down.

1:27:8.890 --> 1:27:10.630

Lisa, Joseph

That clarifies it for me. Thank you.

1:27:10.910 --> 1:27:11.540

Lisa, Joseph

Umm.

1:27:13.190 --> 1:27:17.660

Lisa, Joseph

OK, because either side, anything else that you would?

1:27:19.40 --> 1:27:19.480

Lisa, Joseph

Alright.

1:27:21.600 --> 1:27:22.250

Lisa, Joseph

Mr Hassan.

1:27:24.0 --> 1:27:27.240

R3-PHL Maple Room 4301

Joanne, is there anything that you would like to say?

1:27:28.360 --> 1:27:28.700

R3-PHL Maple Room 4301

No.

1:27:30.20 --> 1:27:30.520

R3-PHL Maple Room 4301

Ben.

1:27:36.690 --> 1:27:39.900

Joseph, Ben

So sorry to take him so long to find the Mike. I got no this time.

1:27:42.60 --> 1:27:42.250

Lisa, Joseph

Miss.

1:27:40.800 --> 1:27:42.500

R3-PHL Maple Room 4301

Thank you, Ben. Laura.

1:27:42.390 --> 1:27:42.900

Lisa, Joseph

Mr.

1:27:47.450 --> 1:27:51.900

R3-PHL Maple Room 4301

Is there any? Is there anything that that you think I've missed or that we should cover?

1:27:52.400 --> 1:27:53.500

R3-PHL Maple Room 4301

Ohm ohm was.

1:28:1.170 --> 1:28:4.100

R3-PHL Maple Room 4301

I I I think that I think that we're good, your Honor. Thank you.

1:28:4.130 --> 1:28:7.750

Lisa, Joseph

OK, Mr Howard, Mr said. I'll give you the last word, anything.

1:28:9.170 --> 1:28:10.890

Joseph Howard

I I think we've laid out our uh.

1:28:11.640 --> 1:28:12.570

Joseph Howard

Our case.

1:28:13.980 --> 1:28:20.960

Joseph Howard

That, such as it is, I appreciate the opportunity to go through this informal process. I happen to think.

1:28:21.850 --> 1:28:24.400

Joseph Howard

That one of the serious concerns.

1:28:25.210 --> 1:28:25.720

Joseph Howard

With.

1:28:26.720 --> 1:28:35.270

Joseph Howard

Uh government liens? He is that there really isn't this notice and a hearing opportunity. And so I know that my client.

1:28:36.20 --> 1:28:42.130

Joseph Howard

Umm well, he's a little frustrated that he kept seeing me spend more and more hours on on these.

1:28:42.770 --> 1:29:3.10

Joseph Howard

Ohh filings but but the truth is it's an opportunity to be heard that that other departments and branches

don't necessarily allow for or don't give such credence to. This is a quite a hearing, just the fact of it is positive for my client. So we appreciate it. Thank you very much.

1:29:3.600 --> 1:29:20.780

Lisa, Joseph

That I'm glad to hear that. So First off, I just want to compliment you, Mr Howard, and you, Mr Hassan, as I indicated with your written submissions with your presentations this morning, I think you did a very good job of representing your clients interest and clarifying.

1:29:22.100 --> 1:29:29.670

Lisa, Joseph

The issues in facts were it's a very, very difficult case. It's a it's a difficult statute. So I guess wanna thank you both for your professionalism this morning.

1:29:31.200 --> 1:29:33.300

Lisa, Joseph

So I I'm I'm going to.

1:29:34.370 --> 1:29:36.520

Lisa, Joseph

Inquire of the parties so.

1:29:38.200 --> 1:29:44.30

Lisa, Joseph

The next step would be me issuing my recommended decision, and as I indicated.

1:29:45.380 --> 1:29:53.170

Lisa, Joseph

The supplemental guidance suggests this also, given the fact that the lien had has already been perfected on the property that there is.

1:29:56.170 --> 1:29:56.700

Lisa, Joseph

There's like a.

1:29:57.580 --> 1:30:3.190

Lisa, Joseph

The guidance suggests that I should expedite my issuance of this recommended decision. That's what I'd like to do.

1:30:4.790 --> 1:30:25.970

Lisa, Joseph

I can offer the parties an opportunity to file a very brief post hearing brief if you think it's necessary, I will let you know. I don't necessarily think that it is that once again, you're written submissions are very detailed, they're very clearly written your presentations this morning answered my questions, but.

1:30:27.140 --> 1:30:34.240

Lisa, Joseph

I'll provide that opportunity if either party would like that. So I would start with you, Mr Howard. Do do you see any need for that?

1:30:35.570 --> 1:30:42.930

Joseph Howard

We we don't. Again, I I I think the strength of this process is that my client and I think.

1:30:43.590 --> 1:31:3.480

Joseph Howard

Fairly eloquently, as laid out his concerns with this process in his own words, he also has the written submissions, kind of voluminous filings, and I, and I think that we'll stand on the, you know what? Whatever strength there is in those will stand on it at here at the end.

1:31:4.950 --> 1:31:22.20

Lisa, Joseph

And Mr said, I I am very glad that you did address this proceeding. And I echo Mr Howard in terms of the poise with which you, I know this can be intimidating, the poise with which you you addressed this proceeding. So thank you for your participation today.

1:31:22.660 --> 1:31:23.40

Joseph Howard

Thank you.

1:31:22.680 --> 1:31:23.120

Lisa, Joseph

Uh.

1:31:23.830 --> 1:31:26.520

Joseph Howard

Writing me an opportunity. Thank you so much.

1:31:26.680 --> 1:31:30.330

Lisa, Joseph

Looks like Mr Hassan, do you see any need for?

1:31:31.660 --> 1:31:32.650

Lisa, Joseph

Any additional filing?

1:31:35.520 --> 1:31:35.930

Lisa, Joseph

OK.

1:31:33.930 --> 1:31:38.400

R3-PHL Maple Room 4301

No, no, thank you and my only.

1:31:39.260 --> 1:31:45.570

R3-PHL Maple Room 4301

Other thought, and this is would be a request or it just a question for Mr Howard.

1:31:46.820 --> 1:32:8.140

R3-PHL Maple Room 4301

I think it might have been the first one of the exhibits to the first brief that EPA did. It was a a kind of a voluminous document called City Archives. Is that where the information that you mentioned we mentioned like 5 documents perhaps? Is that information in that archive?

1:32:10.220 --> 1:32:10.850

R3-PHL Maple Room 4301

And Molly?

1:32:11.770 --> 1:32:32.40

Joseph Howard

No, no. You know what you're asking a good question, and that may be something that I would exchange with you afterward. I don't believe that it is in the city or archive. I think it's in a separate registry in and around because it's the remember the five. I can't remember. You can't report, you see somebody papers.

1:32:41.530 --> 1:32:41.800

R3-PHL Maple Room 4301

Yeah.

1:32:33.220 --> 1:33:1.550

Joseph Howard

So I have it in my mind what it is. I can find it and I'll forward it over to you so you can understand what what I was discussing, if it has and if it has been provided, I'll highlight it, but I don't believe I think the City archive was just a God love Philadelphia because you can own the building and not the ground. And so you know, there's a lot of different rights there. The bundle of sticks that we lawyers learn about and property class.

1:33:2.130 --> 1:33:16.340

Joseph Howard

A really lives in Philadelphia cause you can split so many rights so that city archive is voluminous. And I think that's your first exhibit in exhibit A Under 15 exhibit 15, if I remember right.

1:33:16.920 --> 1:33:31.200

Joseph Howard

Ohm. But no, I don't believe it's part of that record. It's a separate record that's that is solely focused on the 2009 cleanup action that took place by the fire department.

1:33:32.450 --> 1:33:42.960

R3-PHL Maple Room 4301

OK, thanks. So if you submit that maybe your Honor, maybe have it be submitted to Miss Esposito as part of our lien filing record?

1:33:48.590 --> 1:33:49.50

R3-PHL Maple Room 4301

No.

1:33:43.530 --> 1:33:51.770

Lisa, Joseph

Yeah, I think that would be very helpful as long as EPA doesn't have an objection, which apparently you don't, to Mr Howard submitting this. So, OK, yeah, I think that would be very helpful.

1:33:55.250 --> 1:33:56.340

Lisa, Joseph

Right, OK, that's fine.

1:33:59.920 --> 1:34:1.460

Lisa, Joseph

That's fine. Yeah, so.

1:33:50.630 --> 1:34:4.140

Joseph Howard

Ohh, there won't be any. Uh, it'll be no 0 editorial from me, which is hard for me to do, but I'll have 0 editorial. I'll just recreate the the city, the city's website paperwork, OK.

1:34:12.800 --> 1:34:13.210

Joseph Howard

Thank you.

1:34:4.860 --> 1:34:35.960

Lisa, Joseph

Yes. So when you submit it to Mr Hassan, just send a copy to Miss Esposito and she will include it as part of the the administrative record for this matter. OK, so this will conclude our lean hearing for this morning. Once again, Miss Esposito will be in contact with you to provide you with information about how to access the video. The audio and the transcript service that teams provides with regard.