



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

U.S. EPA-REGION 3-RHC
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Office of Regional Counsel

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November 21, 2019

VIA UPS OVERNIGHT

Turog Properties, Limited
c/o Heywood Becker
5382 Wismer Road
Pipersville, PA 18947

**Re: Chem Fab Superfund Site, Doylestown, Bucks County,
Pennsylvania: Lien Proceeding CERC 03-2019-0111LL**

Dear Mr. Becker:

During this morning's conference call with the Regional Judicial Officer ("RJO") in connection with this matter you expressed interest in documents relating to response work performed by EPA at Turog's property prior to 1998. During the call, the RJO directed me to work with you to identify those actions to permit Turog to submit a Freedom of Information Act request for such material. By this letter I identify the response actions in this category and identify or attach some of the relevant documentation.

***EPA's 1994-1995 Removal Assessment &
Removal Response Action***

As described in EPA's October 2, 2019 *Rebuttal* in this matter, EPA performed a removal response action at the former Chem-Fab facility in 1994-1995 (see *Rebuttal*, at pp. 23-25). The response action was selected by EPA on March 24, 1995 in a document entitled "Approval of a Request for Funds for a Removal

Action—Chem Fab Corporation Drum Site” (“1995 Action Memorandum”). The document states:

“On September 2, 1994, OSC George English met with Bucks County officials to collect information on Chem Fab Corporation, [sic] Reports of illegal dumping at the facility date back to 1973. The most recent report, dated June 1994, indicated the presence of abandoned drums and containers. A recent assessment conducted by the Pennsylvania Department of Environmental Resources (PADER) indicated the presence of hexavalent chromium in the soil at the Site.”

The 1995 Action Memorandum further states that EPA performed a removal assessment at the property on September 13, 1994, apparently at the same time that EPA’s Criminal Investigations Division and the FBI executed a search warrant on the property. The results of this removal assessment informed EPA’s selection of a response action in the 1995 Action Memorandum. The 1995 Action Memorandum was provided to you as Document # 003 in the Lien Filing Record (“LFR”) served on Turog by letter dated September 17, 2019. I have nonetheless attached a copy of the 1995 Action Memorandum to this letter as “Attachment 1.”

During performance of this response action on the property, EPA produced “Pollution Reports” or “POLREPs” documenting activities performed during the reporting period for which each document was generated. EPA produced 23 POLREPs during the response action. These POLREPs were provided to you as Document # 7 of EPA’s *Rebuttal* served on Turog by letter dated October 2, 2019. I have nonetheless attached a copy of the POLREPs to this letter as “Attachment 2.”

After the response action was completed on the property, EPA produced an “On Scene Coordinator’s After Action Report” (“OSC Report”) describing the activities associated with the response. The OSC Report was provided to you as Document # 004 of the LFR served on Turog by letter dated September 17, 2019. I have nonetheless attached a copy of the OSC Report to this letter as “Attachment 3.”

The Action Memorandum, POLREPs, and OSC Report document the presence of, among other things, drums and an underground tank containing “hazardous substances” (as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14)) on the property and would have been in EPA’s files prior to 1998. However, as stated in EPA’s *Rebuttal*:

“This list [the Action Memorandum, POLREPs, and OSC Report] is by no means comprehensive as EPA’s files would have also contained other operational, legal, and financial documents pertaining to that activity. That action itself was no small project as on-Site activities spanned almost two months and resulted in the removal and off-Site disposal of ‘117 drums, approximately 8400 gallons of pumped liquid waste, approximately 250 gallons of fuel oil, 6 cubic yard boxes of solid waste, [and] 3 cylinders’ containing “[i]norganic acidic liquids and solids, caustic liquids and solids, poisonous solids, liquids, and gases, flammable liquids, radioactive material, [and] poly chlorinated biphenyls.” LFR 004, at ii. EPA contends that that information regarding EPA’s work during this time would also have been available from the Pennsylvania Department of Environmental Resources (now the Pennsylvania Department of Environmental Protection), the Bucks County Department of Health, and the Bucks County Emergency Management Agency as each of these offices were specifically mentioned as coordinating agencies in EPA’s summary report of the cleanup action. LFR 004.”

Rebuttal, at 25. In addition to documents pertaining to EPA’s 1994-1995 response, EPA’s files contain documentation of environmental issues at the property going back to the late 1960s. This documentation would include, among other things, the “Preliminary Assessment for the Chem-Fab Corporation” attached to this letter as “Attachment 4.” This package refers to instances of spills and releases of various hazardous substances associated with operations occurring at the property over time.

In light of the above, and per my argument in EPA’s *Rebuttal*, I believe that EPA has a reasonable basis to believe that Turog would not be able to show that at the time it acquired the property it “did not know and had no reason to know that any hazardous substance which is the subject of the release or threatened release was disposed of on, in, or at the facility” within the meaning of Section 101(35) of CERCLA, 42 U.S.C. § 9601(35). Furthermore, assuming for the sake of argument that Turog can make such a showing, EPA contends that it has a reasonable basis to believe that Turog cannot carry its other evidentiary burdens under the “innocent landowner defense” for the reasons explained on pages 26-38 of the *Rebuttal*.

I have provided you with this information and the enclosed documents to explain why EPA has a reasonable basis to believe Turog will not be able to carry

its evidentiary burden under the “innocent landowner” defense. I have not searched EPA’s files for all documents relating to response activities occurring at the property prior to 1998 as I believe these documents are dispositive. Should you wish to discuss these documents, request additional documents, or discuss any other issue concerning this letter, please do not hesitate to contact me at (215) 814-2487 or goldman.andrew@epa.gov. Note that I will be out of the office beginning Friday, November 22 and will return on Tuesday, November 26.

Respectfully,

A handwritten signature in black ink, appearing to be 'A. Goldman', with a horizontal line extending to the right from the end of the signature.

ANDREW S. GOLDMAN
Sr. Assistant Regional Counsel

Enclosures

Docket No. CERCLA 03-2019-0120LL

CERTIFICATE OF SERVICE

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


By Certified Mail (Return Receipt Requested) and Email:

Turog Properties, Limited
c/o Heywood Becker
5382 Wismer Road
Pipersville, PA 18947

By Hand Delivery:

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

Documents Provided	
1.	Letter from Andrew Goldman to Turog Properties, Limited, re: "Chem Fab Superfund Site, Doylestown, Bucks County, Pennsylvania: Lien Proceeding CERC 03-2019-0111LL (November 21, 2019).



Andrew S. Goldman, Esquire
Sr. Assistant Regional Counsel

11/21/19
Date

