

In the Matter of: Turog Properties, Ltd.

U.S. EPA Docket No. CERCLA-03-2019-0111LL

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**REGION III**

In the Matter of: :
Turog Properties, Ltd. : **Lien Hearing Docket No.:**
: **CERCLA-03-2019-0111LL**

SECOND REVISED POST-HEARING BRIEF SCHEDULING ORDER

Revised Schedule – The schedule for the submission of Post-Hearing Briefs by the parties is revised as follows:

Turog Brief Due Date – File with Regional Hearing Clerk by 5:00 pm EST, Friday, July 9, 2021;

EPA Brief Due Date - File with Regional Hearing Clerk by 5:00 pm EST, Friday, July 9, 2021.

The parties are reminded that they are required to serve upon the opposing party a copy of any and all documents that have been filed with the Regional Hearing Clerk.

Electronic Filing/Service Authorized - Please be advised that, in light of the current situation, electronic filing (i.e., by email) with the Regional Hearing Clerk and electronic service between the parties is authorized in this matter. The email address for the Regional Hearing Clerk is R3_Hearing_Clerk@epa.gov. The parties are requested to utilize the electronic filing method unless a circumstance arises that will prevent the party from filing its Post-Hearing Brief in a timely manner. If a party elects not to file its Post-Hearing Brief electronically, the party is required to file an Original and one copy of its Post-Hearing Brief and any attachments with the Regional Hearing Clerk.

Questions to be Addressed by the Parties: During the March 25, 2021 hearing, I posed a series of questions to the parties and indicated that I wanted the parties to address those questions as part of their Post-Hearing Briefs. The following summarizes the questions that I would like addressed by the parties as part of their Post-Hearing Briefs:

- 1) The parties are asked to address the significance of the fact that two separate companies/partnerships, 300 N. Broad Street, Ltd. and Turog Properties, Ltd., were involved in two separate deed transfers for the Site. What is the significance of this for purposes of the Innocent Landowner Defense?
- 2) Turog has challenged the existence of a “contractual relationship” for purposes of the Innocent Landowner Defense concerning 300 N. Broad Street, Ltd. due to the fact that 300 N. Broad Street Ltd. took title to the property in connection with a tax sale. The parties are asked to address this issue and any applicable case law, including, but not limited to: *Calif. Dept. of Toxic Substances Control v. Westside Delivery, LLC*, 888 F.3d

1085 (9th Cir. 2018) and *Continental Tire Co. v. The People's Gas, Light and Coke Co.*, 199 Westlaw 753933 (N.D. Ill. 1999) (Senior Judge decision) and 199 WL 1250666 (Magistrate Report and Recommendation).

- 3) Turog has argued that the requirements of the Innocent Landowner Defense were satisfied because, prior to taking title to the Site, it believed that the contamination (i.e., release of hazardous substances) at the Site had been cleaned-up. The parties are asked to address the legal standard under CERCLA with regard to due diligence and the Innocent Landowner Defense. The parties are requested to cite applicable caselaw and to address specifically the following decision: *American National Bank and Trust Co. of Chicago v. Harcros Chemicals, Inc.*, 1997 WL 281295 (N.D. Ill, 1997).
- 4) Turog indicated on page 4 of its letter brief of August 17, 2020 that 300 N. Broad Street, Ltd. signed and entered into an agreement with the Pennsylvania Department of Environmental Protection (PADEP) to participate in the Department's Brownfields program with regard to the Site. Turog is requested to provide more information concerning this agreement and to attach to its Post-Hearing Brief any documents entered into between Turog and PADEP, and any other documents addressing the existence and scope of such an agreement.

Errata Sheets: Although the Federal Rules of Civil Procedure are not applicable to this matter, as part of its Post-Hearing Brief, each party may elect to include Errata Sheets noting any corrections or clarifications the party believes are necessary with regard to the transcript of the hearing.

Additional Briefing: No additional briefing will be permitted in this matter absent leave of the Presiding Official upon prior written request

Date: June 14, 2021

Joseph J. Lisa
EPA Region 3 – Regional Judicial and Presiding Officer