



On May 14, 2018, EPA recorded and perfected a lien on behalf of the United States on the real property at the Site under Section 107(l) of CERCLA, 42 U.S.C. § 9607(l). On May 17, 2018, Mr. Joyce requested an opportunity for a hearing on this lien before a neutral agency official, as provided for in EPA's *Supplemental Guidance on Federal Superfund Liens* (July 29, 1993). On June 4, 2018, former Regional Counsel Mary Coe designated Regional Judicial Officer Joseph Lisa as the neutral agency official who would preside over the requested hearing, which was originally scheduled for November 15, 2018. The hearing was subsequently continued on five occasions, upon the request of the parties,<sup>2</sup> to allow them additional time to negotiate an ability-to-pay settlement of the United States' claims against Mr. Joyce under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). An important part of these settlement talks has been the negotiation of an environmental covenant under the Pennsylvania Uniform Environmental Covenants Act, Act No. 68 of 2007, 27 Pa. C.S. §§ 6501 et seq.

Mr. Joyce has requested a settlement of the United States' claims under EPA's *Policy on Superfund Ability-to-Pay Determinations* ("ATP Policy"). Such a settlement would include a release of the Superfund lien in this case. EPA has informed Mr. Joyce that he must provide additional financial information for EPA to complete its ability-to-pay analysis as required by the *ATP Policy*. For instance, Mr. Joyce must provide EPA with several unfiled tax returns with which Mr. Joyce's accountant is still assisting him. Once Mr. Joyce provides EPA with this required financial information, EPA will be able to propose a settlement, consistent with the *ATP Policy*, based on Mr. Joyce's ability to pay. Without the missing financial information, EPA cannot abide by the requirements of the *ATP Policy* and would not be able to make a settlement

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<sup>2</sup> In addition, the United States filed its own Status Report and Motion for a Continuance on February 28, 2020. Mr. Joyce did not oppose that filing.

offer that would be approved by Agency senior management and the Department of Justice.<sup>3</sup>

Mr. Joyce has pledged to provide EPA with the missing financial information with the assistance of an accountant, as well as his recent 2019 tax return. The COVID-19 pandemic has affected the progress of Mr. Joyce and his accountant's efforts to provide EPA with the missing information. Mr. Joyce and his accountant must review eight years of financial records and reconstruct Mr. Joyce's income and losses for each of these years.

Notwithstanding these issues with the progress of a potential ability-to-pay settlement, the parties successfully negotiated an environmental covenant for the Site property ("the Environmental Covenant"). Mr. Joyce signed the Environmental Covenant on March 12, 2020, and EPA approved and signed it on September 10, 2020. EPA anticipates that the recording of the Environmental Covenant by Mr. Joyce is imminent. EPA views the Environmental Covenant as an important milestone in the Parties' settlement of this matter and in the long-term protectiveness of the Site. The Environmental Covenant will provide notice to a prospective purchaser or future owner that the Site has been used for PCB waste disposal and that, in its current condition, the Site can only be used for low-occupancy purposes under federal regulations<sup>4</sup> promulgated pursuant to the Toxic Substances Control Act of 1976, 15 U.S.C. §2601 et seq. *See, e.g.*, 40 C.F.R. § 761.61(a)(4). The notice provided by the Environmental Covenant is consistent with the requirements of 40 C.F.R. § 761.61(a)(8), which EPA identified as an applicable or relevant and appropriate requirement ("ARAR") in its March 5, 2018 Action Memorandum for the Site. In addition, the Environmental Covenant will provide for several activity-and-use limitations required at the Site, including, among others, some disposal and

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<sup>3</sup> Section 122(h) of CERCLA, 42 U.S.C. § 9622(h), requires the Attorney General's approval for settlement of any claim for which total site costs exceed \$500,000. In this case, EPA's total Site costs are approximately \$1.6 million.

<sup>4</sup> 40 C.F.R. Part 761.

upkeep requirements set forth in 40 C.F.R. Part 761.

In light of the parties' intention to continue working toward a good faith settlement of the United States' CERCLA claims for the Site, the parties respectfully propose a continuance of 120 additional days to resolve the outstanding issues related to Mr. Joyce's ability-to-pay submissions and to negotiate a settlement based on EPA's ability-to-pay determination.

Respectfully submitted,

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