



UNITED STATES  
 ENVIRONMENTAL PROTECTION AGENCY  
 REGION I



) ) IN THE MATTER OF ) ) Eastland Woolen Mill Site ) ) Corrina, Maine ) ) ) ) Estate of Ralph A. Berg ) ) Property Owner ) )	CERCLA Lien  Recommended Decision #251
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**I. Background**

This matter was commenced by the United States Environmental Protection Agency (EPA) on February 13, 2001 by issuance of a notice of lien filing and opportunity for a meeting, pursuant to Section 107(1) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, (CERCLA) 42 U.S.C. 9607(1). By letter dated March 1, 2001, Heather Berg, on behalf of Ralph Berg, Personal Representative of the Estate of Ralph A. Berg (Property Owner) filed a request for a meeting. The undersigned was designated by the Regional Administrator as the neutral to conduct an informal lien meeting and issue a recommended decision pursuant to EPA Supplemental Guidance on Federal Superfund Liens, OSWER Directive Number 9832.12-1a, dated July 29, 1993,(EPA’s Supplemental Guidance).

The Lien Filing record (LFR) in this matter, which contains the documents on which the EPA relied in filing the notice of lien was filed on March 20, 2001. A lien meeting was scheduled to occur via conference call on April 30, 2001, but was rescheduled and held on May 15, 2001. A supplement to the LFR was filed by EPA on May 11, 2001, and June 13, 2001. A verbatim transcript of the meeting was provided to each of the parties and made part of the LFR. All documents filed by the parties have been added to the LFR and constitute the record on which this recommended decision is based.

**II. Applicable Statutory Elements and Scope of Review**

The statutory criteria for filing a notice of federal lien are stated in Section 107(I) of CERCLA. Section 107(I)(1) provides as the first element that “all costs and damages for which a person is liable to the United States under [CERCLA 107(a)] . . . shall constitute a lien in favor of the United States . . . .” provided that the following requirements of Sections 107(I)(1) and (2) are met:

1. The property belongs to the person who is liable for the costs and damages.
- 2) The property upon which the lien arises is subject to a removal or remedial action.
- 3) The person has been provided written notice of potential liability.
- 4) The United States has incurred costs with respect to a response action under CERCLA.

EPA's Supplemental Guidance (page 7) provides that "the neutral EPA official should consider all facts relating to whether EPA has a reasonable basis to believe that the statutory elements have been satisfied for perfection of the lien." The Supplemental Guidance then sets forth five factors that the EPA neutral official should consider. The first four factors are the statutory elements set forth above, and the fifth factor is whether:

the record contains any other information which is sufficient to show that the lien notice should not be filed.

Id.

The scope of the review is discussed in Reardon v. United States, 947 F.2d 1509, 1522-23(1st Cir. 1991) and in EPA's Supplemental Guidance. EPA's Supplemental Guidance specifically states that the scope of the neutral official's review is as follows:

The sole issue at the meeting is whether the EPA has . . . a reasonable basis to believe that the statutory elements for perfecting a lien were satisfied.

Id. at 8.

The review cannot focus on the selection of the remedy or other matters which are only reviewable in a cost recovery action under Section 107 or are not subject to review. See Section 113(h), 42 U.S.C. 9613(h).

### **III. Factual Background**

The following facts are uncontested. The property that is the subject of this proceeding is located on Center Street, Corrina, Maine and identified more specifically by the Corrina Town Assessor's Office as Map 18, Lot 056 (property). This property is part of the Eastland Woolen Mill Superfund Site (Site). The LFR contains a deed dated July 31, 1997, showing that the property was conveyed to Ralph A. Berg. Mr. Berg purchased the property at auction from the Financial Authority of Maine, the primary creditor of the Eastland Woolen Mill Company, which operated in Corrina from approximately

1909 to 1971. Ralph A. Berg died on July 17, 2000. The Estate of Ralph A. Berg is the current owner of this property.

The background relating to EPA's removal action is discussed in detail in three Action Memoranda, dated July 22, 1999, June 20, 2000, and September 21, 2000. (Action Memoranda). The property is within the bounds of the Site. See also EPA Exhibit 2. In accordance with CERCLA and other authorities, EPA undertook certain actions and incurred certain costs on the property in response to conditions at the Site. See Action Memoranda. As of December 29, 2000, EPA has incurred \$15,713,141.17 in costs as a response action at the Site.

On January 2, 2001, EPA notified the Estate, via certified mail, of its potential responsibility under CERCLA for EPA's costs in responding to the release or threat of a release at the Site. See Exhibit 1.

#### **IV. Discussion**

The issue to be decided in this proceeding is whether the LFR shows that EPA has a reasonable basis to believe that the statutory elements for perfecting the lien have been satisfied. EPA's Supplemental Guidance at 8. Based on my review of the entire record, including the lien meeting, and supplemental memoranda of the parties, I conclude that EPA has such a reasonable basis for believing that the statutory elements for perfecting the lien have been satisfied.

The Property Owner raised the following issues in the informal meeting which form the basis for its opposition to EPA's action.

##### **A. Third Party Defense**

###### **1. Innocent Landowner Defense**

Under CERCLA § 107(b)(3), a person cannot be held liable under CERCLA Section 107(a) if that person can establish by a preponderance of the evidence that the release or threat of a release of a hazardous substance and the damages resulting therefrom were caused solely by: (1) an act or omission of a third party; (2) the third party's act or omission did not occur in connection with a contractual relationship with the defendant;<sup>1</sup>(3) the defendant exercised due care with respect to the hazardous

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<sup>1</sup>Pursuant to CERCLA § 101(35)(A), the term contractual relationship includes, but is not limited to deeds or other instruments transferring title or possession. However, this provision also contains exceptions, including one for defendants who acquire the property after the disposal or placement of the hazardous substances on the property who establish by a preponderance of the evidence that at the time of acquisition the defendant did not know and had no reason to know that the hazardous substance which is the subject of the release or threatened release was disposed of on, in, or

substance; and (4) the defendant took precautions against the third party's foreseeable acts or omissions and the foreseeable consequences thereof.

During the meeting, the Property Owner argued that the lien should not be placed upon the property because Eastland Woolen Mill and the former owners of Eastland are responsible. As such, the Estate should not be held responsible for something they did not put into the ground and did not buy. The estate, they argue inherited the property, and are innocent. <sup>2</sup> Tr. at 8.

The Agency, argues that the Estate can not successfully raise a Third Party/ Innocent Landowner defense. In support, the Agency argues that:

[t]he relevant transfer of the property occurred on July 31, 1997, when Ralph A. Berg purchased the Berg Parcel at auction from the Financial Authority of Maine ("FAME"). FAME was the primary creditor of the Eastland Woolen Mill Company, which operated in Corinna from approximately 1909 to 1971. FAME placed approximately nine mill parcels on the auction block in July 1997. At the time of the purchase, it was well known in Corinna that the mill property was contaminated.

Agency Post-Hearing Response, dated June 13, 2001(Post-Hearing Response) at 6 and 7. See also Post Hearing Response Attachments 1-9. The Agency concludes that because the contamination associated with the mill area was so well-known at the time of the purchase, Ralph Berg knew or should have known that hazardous substances were present at the Site.

The Agency also argues that Ralph A. Berg did not undertake appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. There is no evidence in the LFR which supports any contrary view. In addition, the CERCLA Information Request response from Ralph A. Berg indicates that he undertook no investigation of the property prior to purchase. See Agency Post-Hearing Response, Attachment 11.

Based upon the LFR, I conclude that the Property Owner's arguments that it is entitled to the Third Party/Innocent landowner defense is unpersuasive. Furthermore, the Agency has a reasonable basis for its belief that the Estate is not entitled to this defense. However, this finding does not preclude the Property Owner from raising this defense in the future in the appropriate forum.

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at the facility. See CERCLA § 101(35)(A)(i).

<sup>2</sup> The Property Owner also questioned whether the Agency was proposing to place a lien on all of the property that is part of the Estate or the three-quarters of an acre that is the one in question. Tr. at 10. Agency counsel clarified for the Property Owner that the only parcel on which EPA is seeking to perfect a lien is the three-quarters of an acre parcel that was identified in the notice. Id.

## **2. Third Party Inheritance Defense**

Related to the innocent landowner defense discussed in Section 1 above is the third party inheritance defense also raised by the Property Owner.<sup>3</sup> The Agency contends that in this instance the property remains with the Estate, and has not yet passed to the heirs. Therefore, the Inheritance Defense of CERCLA § 101(35)(A)(iii) does not yet apply. Post-Hearing Response at 11. I agree.

## **V. Conclusion and Recommendation**

For the reasons stated above, and having considered all issues raised by the parties in this matter, and the LFR, I conclude that the Agency has a reasonable basis to believe that the statutory elements for perfecting a lien pursuant to Section 107(I) of CERCLA on the property located at Center Street, (Map 18, Lot 056), Corrina, Maine were satisfied. All conclusions and supporting arguments of the parties have been considered. To the extent that findings, and conclusions submitted by the parties and the arguments made by them are in accordance with the findings, conclusions, and views stated herein, they have been accepted. To the extent that any proposed findings, conclusions submitted by the parties, and the arguments made by them are inconsistent with the conclusions and views stated here, they have been rejected. I recommend that the Regional Administrator of EPA Region I issue a final decision adopting this recommendation. A proposed final decision is attached.

This recommended decision is not a binding determination of liability or nonliability and no preclusive effect attaches to this determination.

August 10, 2001

Date

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/s/

Sharon T. Wells  
Regional Judicial Officer

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<sup>3</sup> CERCLA §101(35)(iii) also includes an exception under the “contractual relationship” definition for innocent landowners who acquired the property or facility by inheritance or bequest.