



**BEFORE THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 ARCH STREET  
PHILADELPHIA, PENNSYLVANIA 19103-2029**



**IN THE MATTER OF:**

|                             |   |                             |
|-----------------------------|---|-----------------------------|
| Bollinger Steel Site        | : | CERCLA LIEN PROCEEDING      |
| Borough of Ambridge         | : | Docket No. CERC-III-98-010L |
| Beaver County, Pennsylvania | : |                             |

**RECOMMENDED DECISION**

Section 107(l) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. §9607(l), provides that all costs and damages for which a person is liable to the United States in a cost recovery action under CERCLA shall constitute a lien in favor of the United States upon all real property and rights to such property which (1) belong to such person and (2) are subject to or affected by a removal or remedial action. This proceeding involves the question of whether the United States Environmental Protection Agency (EPA) has a reasonable basis to perfect a lien pursuant to Section 107(l) of CERCLA on the “Bollinger Steel Site” (or “Bollinger Site”), a Superfund Site in the Borough of Ambridge, Beaver County Pennsylvania. The Site owner is a partnership, Economy Industrial Properties (EIP), and the only issue in dispute is whether EPA has a reasonable basis in the Lien Filing Record (LFR) to name the spouses of the original two EIP partners in EPA’s Lien Notice.<sup>1</sup> EIP, the original partners and the spouses all oppose EPA’s naming of the spouses in the Lien Notice. In this Recommended Decision I conclude that EPA has a reasonable basis to believe that the statutory elements to perfect the lien naming EIP, the original partners and their spouses as owners of the Bollinger Site have been met.

This proceeding is being conducted in accordance with EPA’s *Supplemental Guidance on Federal Superfund Liens*, OSWER Directive No. 9832.12-1a, issued July 29, 1993. The Acting

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<sup>1</sup> The parties in this proceeding are EPA, EIP, Mr. Thomas R. Allen, Jr., Mr. Morton J. Greene (Mr. Allen and Mr. Green are the original two EIP partners), Mrs. Carol M. Allen and Mrs. Anne S. Greene (spouses of the two original EIP partners). For convenience, EIP, the Allens and the Greens collectively will be referred to as the “property owners,” the term used in the EPA’s *Supplemental Guidance on Federal Superfund Liens* to describe the party challenging EPA’s proposed perfection of a lien. Their counsel prefer the term “alleged property owners.”

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Regional Counsel of EPA-Region III designated me as the neutral EPA official to conduct this proceeding and to make a recommendation as to whether EPA has a reasonable basis to perfect the lien. I held a meeting by telephone with the parties' representatives on October 23, 1998. The meeting notes have been transcribed and added to the LFR as required by the *Supplemental Guidance*. I have also added to the LFR several pre-meeting and post-meeting submissions, and descriptions of these submissions have been incorporated into a revised Lien Filing Record Index, which I transmitted to the parties on December 17, 1998. I have solicited counsel's comments on a draft of this Recommended Decision, and I have taken comments submitted on behalf of the property owners (counsel for EPA did not submit any comments), as well as the entire LFR, into consideration in writing this Recommended Decision.

### The Bollinger Steel Site

The Site consists of two irregularly-shaped parcels of land on Eleventh Street, between Duss and Melrose Avenues, in the Borough of Ambridge, Beaver County, Pennsylvania. There is a northern parcel, more or less rectangular in shape, consisting of approximately 1.8 acres, and a second parcel, to the south of Eleventh Street, of about 0.9 acres in size and more or less triangular in shape. The northern parcel had eight above-ground storage tanks and a 90,000 square foot industrial structure, the southern parcel had three small brick structures and one partially underground brick structure housing three storage tanks.

In April of 1990, EPA-Region III began assessing the Site and its environmental condition. After examination of the Site and sampling some of the storage tanks, EPA's On-Scene-Coordinator sought and obtained authorization to commence cleanup activities under Superfund. Although several potentially responsible parties were contacted and offered the opportunity to conduct the cleanup, all declined. EPA contractors completed the cleanup and the Site was declared closed by the On-Scene-Coordinator in April of 1991. LFR Documents ## 10-14. EPA incurred over \$2,000,000 in costs in connection with the cleanup of the Bollinger Site. LFR Document # 5.

### CERCLA Lien Factors

Under the *Supplemental Guidance* I am to consider all facts relating to whether EPA has a reasonable basis to believe that the statutory elements for perfecting a lien under Section 107(l) of CERCLA have been satisfied. The specific factors for my consideration under the *Supplemental Guidance* are:

- (1) Was the property owner sent notice by certified mail of potential liability?
- (2) Is the property owned by a person who is potentially liable under CERCLA?
- (3) Is the property subject to or affected by a removal or remedial action?

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- (4) Has the United States incurred costs with respect to a response action under CERCLA?  
(5) Does the record contain any other information which is sufficient to show that the lien should not be filed?

Undisputed Matters

(1) It is undisputed that the property owners were sent notices of potential liability by certified mail. The LFR contains copies of April 27, 1990 letters to Mr. Thomas R. Allen, Economy Industrial Properties, and to Mr. Morton Greene, Economy Industrial Properties, from Thomas C. Voltaggio, Director of EPA-Region III's Superfund Office. These letters bear a clear heading, "NOTICE OF POTENTIAL LIABILITY" and they explain very clearly the basis for the addressees' potential CERCLA liability for response actions to be taken at the Bollinger Steel Site. The letter to Mr. Allen is Document # 6 in the LFR; the letter to Mr. Greene is Document # 7. "Economy Industrial Properties, c/o Thomas R. Allen, Jr.," Mr. Allen and Mr. Greene also received letters dated June 23, 1998, from William C. Early, EPA-Region III's Acting Regional Counsel, again asserting their potential CERCLA liability and informing them of EPA's intention to file a Notice of Federal Lien, based upon their ownership of the Site. These letters are Documents # 17, 18 and 19 in the LFR.

Mrs. Allen and Mrs. Green were also mailed letters dated June 23, 1998, from William C. Early, EPA-Region III's Acting Regional Counsel, asserting that they, along with EIP and their husbands were potentially liable for all costs of removal or remedial actions conducted at the Site under Superfund. These letters also notified Mrs. Allen and Mrs. Greene of EPA's intention to file a Notice of Federal Lien, based upon their ownership of the Site. The letter to Mrs. Allen is document # 8 in the LFR; the letter to Mrs. Greene is Document # 9.

(2) It is undisputed that "Economy Industrial Properties, a Partnership consisting of Morton J. Greene of Allegheny County, Pennsylvania, and Thomas R. Allen, Jr, of Allegheny County, Pennsylvania," became the owner of the Bollinger Steel Site by Indenture Deed dated December 15, 1972. The Seller was International Fastener Research Corporation. A copy of this Indenture is Document # 1 in the LFR. It is undisputed that on February 9, 1976, "ECONOMY INDUSTRIAL PROPERTIES, a Partnership consisting of THOMAS R. ALLEN, JR. and CAROL M. ALLEN, his wife, and MORTON J. GREENE and ANNE S. GREENE, his wife" became the mortgagor to the United States of America, the mortgagee, of the Site. This document, signed by Mr. and Mrs. Allen and Mr. and Mrs. Allen as ECONOMY INDUSTRIAL PROPERTIES is Document # 3 in the LFR. EIP, the Allens and the Greens contend that this document was drafted in error and that Mrs. Allen and Mrs. Greene have never been partners in EIP. This issue is discussed in detail in the analysis of factor (5) below.

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(3) It is undisputed that the Bollinger Steel Site is subject to or affected by a removal or a remedial action under CERCLA. Document # 10 in the LFR is the Federal On-Scene Coordinator's Report for a CERCLA removal action from April 9, 1990 through April 3, 1991.

(4) It is undisputed that the United States incurred costs with respect to the removal action at the Bollinger Steel Site. Document # 5 in the LFR is updated cost report dated May 28, 1998, consisting of a cost summary report, a cost recovery collections report and an interest cost report.

### The Disputed Issue

(5) The parties do dispute whether other information in the LFR is sufficient to show that the lien notice, as prepared showing the names of Mrs. Allen and Mrs. Green, should not be filed. The sole issue raised in response to EPA's notice of intent to perfect the lien was whether Mrs. Allen and Mrs. Greene are partners in EIP, and the materials submitted for the record in the course of the proceeding by counsel for EIP, the Allens and the Greenes are intended to show that only Mr. Allen and Mr. Greene are partners in EIP are voluminous. EPA asserts that a small number of documents in the LFR provide a reasonable basis for EPA to conclude that Mrs. Allen and Mrs. Greene are EIP partners.

### The Standard to be Applied

The "reasonable basis" standard applied here is that used in the *Supplemental Guidance*: "The neutral Agency official should consider all facts relating to whether EPA has a reasonable basis to believe that the statutory elements have been satisfied for the perfection of a lien." *Supplemental Guidance* at p. 7.(emphasis added) "...the property owner may present information or submit documents purporting to establish that EPA has erred in believing that it has a reasonable basis to perfect a lien..."*Id.* (emphasis added).<sup>2</sup>

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<sup>2</sup> Counsel for the property owners assert that I declared a "preponderance of the evidence" standard of proof during a preliminary conference call, and that this is reflected in their notes of the call. I have no reason to doubt counsel, but my notes of the call do not show anything regarding the standard of proof. When counsel for the property owners suggested at the on-the-record meeting of October 23, 1998, that the "preponderance test" applied (Transcript, p. 41) and later that the "motion to dismiss" standard was much different from the "reasonable basis test" applied here (Transcript, p. 58), I stated: "I think that the basis of reason to believe is much closer to that standard" (the "motion to dismiss" standard) "than it is to the preponderance of the evidence standard." (Transcript, p. 59). I certainly would not recommend perfection of the lien if the LFR showed that it was more likely than not that EPA erred in believing that it has a reasonable basis to believe that the statutory basis for perfecting the lien as proposed.

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EPA's Position

EPA has made it clear that it believes Mrs. Allen and Mrs. Greene are partners in EIP. First, in a CERCLA § 107 cost-recovery lawsuit<sup>3</sup> initiated against EIP, Mr. Morton, Mr. Greene and others, the United States filed a motion seeking leave to amend the complaint to include Mrs. Allen and Mrs. Greene as defendants on May 1, 1998.<sup>4</sup> EPA bases its belief that Mrs. Allen and Mrs. Greene are partners in EIP on several documents in the LFR that list them as partners. Of those documents, a couple were signed by Mrs. Allen and by Mrs. Greene as partners in EIP or as somehow authorized to execute important documents on behalf of EIP.

Chronologically, Document 3 in the LFR,<sup>5</sup> described in paragraph 2, above, is the first of the documents upon which the United States relied in its motion to amend the complaint in the cost-recovery action, and it is the strongest basis for the proposition that Mrs. Allen and Mrs. Greene were partners in EIP at the time the document was executed, February 9, 1976. This document both names them plainly among the partners in the caption,<sup>6</sup> and bears their signatures in form identical to their husbands'. The document is a mortgage between EIP and the federal government, and it is in the amount of \$250,000. Counsel for the property owners state that Mrs. Allen and Mrs. Greene signed

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<sup>3</sup> United States of America v H.K. Porter et al., Civil Action No. 96-579 in the U.S. District Court for the Western District of Pennsylvania, filed March 29, 1996.

<sup>4</sup> The United States' motion was granted by order of U.S. District Judge William A. Standish of the District Court for the Western District of Pennsylvania on November 6, 1998. Judge Standish adopted U.S. Judge Magistrate Kenneth J. Benson's October 6, 1998 Report and Recommendation, in which he wrote: "The documents relied upon by the United States for its position that Mrs. Allen and Mrs. Greene are partners in EIP are sufficient grounds upon which to file the proposed amendment. It may be, as defendants suggest, that they can establish that these documents erroneously listed Mrs. Allen and Mrs. Greene as partners. That, however, does not make the plaintiff's reliance upon these documents misplaced. Indeed the court believes those documents, prepared by counsel on defendants' behalf, will be difficult to explain away.." Report, at pp. 9-10.

<sup>5</sup> The document is also LFR 23, # 14.

<sup>6</sup> "ECONOMY INDUSTRIAL PROPERTIES, a Partnership consisting of THOMAS R. ALLEN, JR. And CAROL M. ALLEN, his wife, and MORTON J. GREENE and ANNE S. GREENE, his wife."

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the mortgage and a related note,<sup>7</sup> discussed below, and that they were listed as partners in EIP in both documents. LFR Document 23, at p. 4. The assertion of the property owners' counsel that drafting errors by legal counsel in 1976, compounded by the "innocent" signatures of Mrs. Allen and Mrs. Greene, provide adequate explanation for this clear evidence of partnership, lacks adequate support in the LFR and is rejected. Even with the ambiguous support of the affidavit of the lawyer who prepared these documents,<sup>8</sup> it is quite unlikely that in 1976 a quarter-million dollar transaction with the federal government would be documented with a "drafting error" of this nature, and even less believable that two astute businesswomen would sign such an important document simply because their names had been mistakenly included. This document provides a very reasonable basis to believe that Mrs. Allen and Mrs. Greene were partners in EIP in 1976.

Mrs. Allen and Mrs. Greene signed other documents on behalf of EIP, although their status as partners is less clear than in the 1976 mortgage and note.

In 1995, they signed an Agreement of Sale with the Borough of Ambridge, in which "Seller" was defined as:

"ECONOMY INDUSTRIAL PROPERTIES, a partnership organized under the laws of the Commonwealth of Pennsylvania, consisting of THOMAS R. ALLEN, JR. and MORTON J. GREENE, having its principal office in the Borough of Ambridge, County of Beaver, Commonwealth of Pennsylvania, and  
THOMAS R. ALLEN, JR., residing at Scaife Road, Sewickley, Allegheny County, Pennsylvania and  
CAROL M. ALLEN, residing at Scaife Road, Sewickley, Allegheny County, Pennsylvania, and  
MORTON J. GREENE, residing at 8611 Northwest Street, Tamarac, Broward County, Florida, and  
ANNE S. GREENE, residing at 8611 Northwest Street, Tamarac, Broward County, Florida." LFR Document 23 # 61.

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<sup>7</sup> Mrs. Greene signed the Mortgage Note as Bollinger Corporate Secretary; Mrs. Allen did not sign the Note.

<sup>8</sup> LFR Document 23, Enclosure B, is a July 23, 1997 affidavit signed by Charles E. Wittlin. Mr. Wittlin has no file on this matter and no clear recollection of his preparation of these documents. After he had been advised that Mr. Allen and Mr. Greene were the original partners in EIP and that they contended they remained the sole partners, he had no recollection of why he included the spouses as partners. This document proves only that Mr. Wittlin has little memory of events that transpired more than twenty years ago.

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An Addendum to the agreement of sale defined “Sellers” as “ECONOMY INDUSTRIAL PROPERTIES, a partnership organized and existing under the laws of the Commonwealth of Pennsylvania, consisting of Thomas R. Allen, Jr. and Morton J. Greene; Thomas R. Allen, Jr. and Carol M. Allen, husband and wife; and Morton J. Greene and Anne S. Greene, husband and wife.” LFR Document 23, # 66.

In 1996, the Borough of Ambridge paid \$395,000.00 to the owners of the Bollinger Site in order to acquire portions of the Site for municipal purposes. The deed, LFR Document 2, is between:

“GRANTORS: ECONOMY INDUSTRIAL PROPERTIES, a partnership organized under the laws of the Commonwealth of Pennsylvania, consisting of THOMAS R. ALLEN, JR. and MORTON J. GREENE, having its principal office in the Borough of Ambridge, County of Beaver, Commonwealth of Pennsylvania, and THOMAS R. ALLEN, JR. and CAROL M. ALLEN, husband and wife, of the Borough of Sewickley, County of Allegheny, Commonwealth of Pennsylvania, and MORTON J. GREENE and ANNE S. GREENE, husband and wife, of the Municipality of Tamarac, County of Broward, State of Florida, and

AND (sic)

“GRANTEE: BOROUGH OF AMBRIDGE...”

The headings in these real estate transfer documents clearly distinguished Mr. Allen and Mr. Greene as partners in EIP, and under their signatures, their names were followed by the word “Partner.” They also signed again, just above their wives’ signatures. But in all of three documents, all six signatures lie under the heading “ECONOMY INDUSTRIAL PROPERTIES.”<sup>9</sup> All the signatures in the deed are notarized, and Mr. Allen and Mr. Greene each have two notarizations, one as “Partner” and one jointly with his wife. Counsel for the property owner explains the signatures of Mrs. Allen and Mrs. Greene as intended to “eliminate any potential for future marital claims against the Borough as spouses of partners.” LFR Document 23 at p. 7. This argument is stronger than the “1976 drafting error” argument advanced with respect to the \$250,000 mortgage with the federal government, but fails

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<sup>9</sup> In another 1995 document in the LFR the signature lines for Mr. Allen and Mr. Greene as partners in EIP are placed separate from the “husband and wife” signature lines. LFR Document 23, # 65.

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to address the association of the spouses' signatures with EIP. If the potential claims would lie through their husbands, a separate recitation and signatures not associated with EIP would have been more logical. The spouses were listed in the document as sellers and grantors of EIP property, not as potential marital claimants. It was reasonable for EPA to believe these documents bolster the appearance that Mrs. Allen and Mrs. Greene were partners in EIP.

Similarly, Mrs. Allen's and Mrs. Greene's signatures appear along with their husbands' directly above ECONOMY INDUSTRIAL PROPERTIES on a loan agreement with Beaver Trust Company, dated December 14, 1972. LFR Document 23 # 9. The caption makes a clear distinction between EIP and partners Mr. Allen and Mr. Greene on the one hand, and the two couples, "individually," on the other. The signature lines do not distinguish between partners and non-partners, and they all appear to be on behalf of EIP. This document also bolsters the appearance that Mrs. Allen and Mrs. Greene were acting on behalf of EIP a week before the Partnership Agreement was signed.<sup>10</sup>

On June 9, 1978, Mrs. Allen and Mrs. Greene again signed an important financial document along with their husbands, apparently on behalf of EIP. They accepted the terms and conditions of a \$240,000.00 mortgage commitment from Citizens National Bank of Evans City, with the husbands signing as partners and as individuals along with their wives. LFR Document 23, # 46. The body of this document contains the following language:

"5. That the partners, being Thomas R. Allen, Jr. and Morton J. Greene, and their respective spouses guarantee and act as surety for the mortgage...

6...a demand note signed by Economy Industrial Properties, Thomas R. Allen, Jr. and Morton J. Greene and their spouses..."

Both couples signed the associated mortgage note, LFR Document 23 # 51, apparently as "guarantors," while only Mr. Allen and Mr. Greene signed the mortgage note and the mortgage, LFR Document 23, # 52, as EIP partners.<sup>11</sup>

These documents enhance the appearance that Mrs. Allen and Mrs. Greene were acting on behalf of EIP, but not necessarily as partners.

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<sup>10</sup> LFR Document 23, # 1, the Partnership Agreement, was dated December 20, 1972.

<sup>11</sup> Both the mortgage note and the mortgage recite that the arrangement is between "ECONOMY INDUSTRIAL PROPERTIES, a partnership comprised of THOMAS R. ALLEN, JR. and MORTON J. GREENE" and CITIZENS NATIONAL BANK OF EVANS CITY.



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On the same day that EIP executed the mortgage with the United States (LFR Document 3), the Bollinger Corporation, a business entity in which the Allens and the Greens were involved, executed a mortgage<sup>12</sup> and a mortgage note,<sup>13</sup> promising to pay \$250,000 to “ECONOMY INDUSTRIAL PROPERTIES, a Partnership consisting of THOMAS R. ALLEN, JR. and CAROL M. ALLEN, his wife, and MORTON J GREENE and ANNE S. GREENE, his wife.” Mr. Allen signed as Bollinger Corporation President; Mrs. Greene attested to his signature as Bollinger Corporation Secretary. While no signatures for Economy Industrial Properties appear on these documents, the recitation of the partners including Mrs. Allen and Mrs. Greene is very strong evidence that the Allens and the Greens considered all four to be partners in EIP, because these documents were prepared for a transaction between two entities they controlled, presumably by competent counsel<sup>14</sup> with full knowledge of the arrangements among the parties. These documents enhance the reasonableness of EPA’s belief that Mrs. Allen and Mrs. Greene were partners in EIP.

In September of 1996, the U.S. Internal Revenue Service (IRS) executed as “Satisfaction of Mortgage” document, acknowledging payment in full of the principal and debt owed under the 1976 EIP mortgage. This document, prepared by the IRS, does not have any EIP signatures at all, but the heading describes the mortgagor as: “Economy Industrial Properties, a partnership Consisting of Thomas R. Allen and Carol M. Allen, his wife and Morton J. Greene and Anne S. Greene, his wife.” LFR Document 4. This document was in all likelihood prepared with the mortgage in hand, and the caption on it was probably derived from the caption on the mortgage. This document adds little, if any, reason to believe that Mrs. Allen and Mrs. Greene were partners in EIP.

### Property Owners’ Position

Counsel for the property owners have made clear the position that Mrs. Allen and Mrs. Greene are not and never have been partners in EIP both in this proceeding and in their vigorous opposition to the United States’ motion to amend the complaint to name Mrs. Allen and Mrs. Green as defendants in the cost-recovery action pending in the District Court, U.S. v H.K. Porter Company, Inc., et al., Civil Action 96-579 (W.D. Pa).

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<sup>12</sup>LFR Document 23, # 16

<sup>13</sup> A copy of the mortgage note was included in the property owners’ response, LFR Document 23, as enclosure 15, and also in EPA’s Reply, LFR Document 23A, Exhibit A.

<sup>14</sup> Mr. Wittlin stated in his July 23, 1997 affidavit that he did not prepare the mortgage note. LFR Document 23, Enclosure B. Hence, if the inclusion of the wives as partners was a drafting error, the same error appears to have been made by two different lawyers.

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The first document included in the response to EPA's notice of intent to perfect the lien is the December 20, 1972 Partnership Agreement LFR Document 23, #1. MORTON J. GREENE and THOMAS R. ALLEN, JR. are the only partners mentioned anywhere in this document. Paragraph 9(b) of the Partnership Agreement provided for the transfer of a partner's interest, in whole or in part, to "... any relative or spouse of a Partner, other than a minor." (Emphasis added). Thus it was clearly possible to make Mrs. Allen and Mrs. Greene partners in EIP, although the Partnership Agreement did not describe a specific procedure for doing so.

The property owners' response to EPA's June 23, 1998 letter notifying them of EPA's intent to perfect the Federal lien against the Bollinger Site consisted of a seven-page narrative and over eighty-five documents, all relating to EIP and the Bollinger Site. LFR Document 23. This submission was supplemented on October 13, 1998, by addition of EIP's 1997 Federal Income Tax Return,<sup>15</sup> an October 22, 1998 Memorandum of Law on the subject of Partnership by Estoppel,<sup>16</sup> and an affidavit from a New York banker regarding the detrimental effect on their ability to borrow and obtain credit that can be expected if Mrs. Allen and Mrs. Greene are named on the Federal lien notice.<sup>17</sup> Finally, a second memorandum of law was submitted on November 30, 1998.<sup>18</sup>

There is no document in the LFR that indicates when, how or where Mrs. Allen and Mrs. Greene became partners in EIP. The Allens and the Greens have each signed affidavits denying that Mrs. Allen and Mrs. Greene were ever partners in EIP. LFR Document # 23, Exhibits E, F, G and H. These documents were filed in federal District Court in connection with the United States motion for leave to amend the complaint.

The majority of the documents submitted on behalf of the property owners make no mention at all of Mrs. Allen or Mrs. Greene, and virtually all of them show Mr. Allen, Mr. Greene or both acting as EIP. A host of documents directed to Mr. Allen and Mr. Greene as partners in EIP from the Internal Revenue Service (other than those relating to the 1976 mortgage) indicate clearly that the IRS believed it was dealing with EIP when dealing with the two original partners. There are also documents from civil litigation in the U.S. District Court for the Western District of Pennsylvania captioned "LURIA BROTHERS & COMPANY, INC., Plaintiff v. THOMAS R. ALLEN, JR., and MORTON

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<sup>15</sup> LFR Document 23, Enclosure 45A

<sup>16</sup> LFR Document 27A

<sup>17</sup> LFR Document 33

<sup>18</sup> LFR Document 34

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J. GREENE, trading as ECONOMY INDUSTRIAL PROPERTIES a partnership, Defendants.” LFR Document 23, ##68-81.

Thus the vast majority of documents in the LFR lend absolutely no support to EPA’s belief that Mrs. Allens and Mrs. Greene are or were partners in EIP, which has title to the property involved in this matter. The vast majority of documents in the LFR show that Mr. Allen and Mr. Greene are and were from the beginning, partners in EIP.

### Discussion

Taking the last statement a step farther, virtually all of the documents in the LFR show Mr. Allen and Mr. Green are and were partners in EIP from the beginning. There is no dispute as to their partnership. But proving the partnership of the husbands does not in any way undermine the reasons EPA has to believe that the wives should be named in the lien notice. There are a number of documents supportive of this belief, discussed under the heading, EPA’s Position, page 4, above. The only documents asserting the Mrs. Allen and Mrs. Greene were never partners in EIP are the self-serving affidavits filed in connection with the United States’ motion to amend the complaint in the District Court cost-recovery action. LFR Document 23 E,F,G and H. The fact that only the husbands were named as partners in many of the documents submitted by counsel for the property owners does not necessarily preclude the possibility of the wives also being partners, as a partnership may act through even one of its several partners. 15 Pa. C.S. § 8321. Not all partners’ names need appear on a document executed on the partnership’s behalf. For example, only Mr. Greene signed the EIP Income Tax Returns (which indicate there are only two partners in EIP). LFR Document 23 ## 26-45a. These documents do not mean that Mr. Allen was not a partner in EIP. Only Mr. Allen signed an October 11, 1995 Demolition Contract with Integrated Waste Special Services on EIP’s behalf. LFR Document 23 # 62. This contract does not prove that Mr. Greene was not a partner in EIP.

As stated above at page 4, the question to be addressed in this proceeding is whether EPA has a reasonable basis to believe that the statutory elements have been satisfied for the perfection of a lien. I find that the documents discussed under EPA’s Position, p. 4, above provide that basis. That being the case, only a showing by the property owners of information or documents purporting to establish that EPA has erred in believing that it has a reasonable basis to perfect a lien could justify a Recommended Decision against including the wives in the lien notice. While the preponderance of the evidence in the LFR show that Mr. Allen and Mr. Green were from the beginning EIP partners, the issue in dispute is not a quantitative issue, as counsel for EPA pointed out.<sup>19</sup> The property owners have not shown that EPA has erred in reaching its belief that the wives should be included in the lien notice.

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<sup>19</sup> Transcript, p. 57.

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The documents and arguments presented by the property owners are not “other information which is sufficient to show that the lien notice should not be filed.”

I am not here concluding that Mrs. Allen and Mrs. Green are partners in EIP. I am not including any analysis of Pennsylvania partnership law to support such a conclusion. The only conclusions I make are that EPA has a reasonable basis for its belief that Mrs. Allen and Mrs. Greene should be included in the lien notice, and that the property owners have not shown that EPA erred in forming this belief. To paraphrase Magistrate Judge Benson’s observation in footnote 3, pages 4-5 above, EPA’s reliance on the documents that show Mrs. Allen and Mrs. Greene as partners was not misplaced. Accordingly, my recommendation is that the lien may be perfected with them included.

The scope of this proceeding is narrowly limited to the issue of whether or not EPA has a reasonable basis to perfect its lien. This Recommended Decision does not compel the filing of the lien; it merely clears the way for such a filing by confirming the existence of a reasonable basis for doing so. This recommended decision does not bar EPA or the property owners from raising any claims or defenses in later proceedings; it is not a binding determination of liability. The recommendation has no preclusive effect and shall not be given any deference or otherwise constitute evidence in subsequent proceedings.

DATE: January 29, 1999

/S/  
BENJAMIN KALKSTEIN  
Regional Judicial and Presiding Officer  
U.S. EPA-Region III