

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

IN THE MATTER OF:	)	
	)	
Beaver Wood Products, Inc.	)	Proceedings Under Section 107,
PO Box 369 Highway 2 East	)	42 U.S.C. § 9607, of the Comprehensive
Columbia Falls, Montana 59912	)	Environmental Response and
	)	Compensation Act (CERCLA)
Respondents:	)	
Richard and Loretta Grosswiler	)	
_____	)	

**RECOMMENDED DECISION**

**I. INTRODUCTION**

On December 9, 2004, the undersigned conducted an informal administrative hearing<sup>1</sup>, via telephone, to determine if the United States Environmental Protection Agency, Region 8 Office (“U.S. EPA”, “EPA”, “the Agency”, “United States”, or “Complainant”), has reasonable basis to perfect a lien, pursuant to sections 107(a) and (l) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Re-authorization Act of 1986, Pub. L. No. 99-499 (1986), (“CERCLA”, “the Act”, or “Superfund”), 42 U.S.C. §§ 9607(a) and (l), on property<sup>2</sup> owned by Loretta and Richard Grosswiler (“Grosswilers”, or “Respondents”). Participants included:

Alfred C. Smith	Regional Judicial Officer	303-312-6574
Tina Artemis	Regional Hearing Clerk	303-312-6765

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<sup>1</sup> Hearing conducted pursuant to: (1) Guidance on Superfund Liens”, MEMO: From Thomas Adams dated Sept. 22, 1987. (2) “Supplemental Guidance on Federal Superfund Liens”, OSWER DIRECTIVE NO. 9832.12-1A.

<sup>2</sup> “Beaver Wood Products”, Columbia Falls, Flathead County, MT.

Mia Wood	EPA's Attorney	303-312-6554
Mike Rudy	EPA Enforcement Specialist	303-312-6332
Richard Grosswiler	Co-property owner	406-752-0567
Loretta Grosswiler	Co-property owner	“
Scott Grosswiler	Property owners' son	“
Brian Grosswiler	Property owners' son	“

Based on information presented at this hearing, and the entire administrative record, I find that the EPA has established a reasonable basis to believe that it has satisfied the statutory elements for perfecting a lien, as set forth in section 107 of CERCLA, 42 U.S.C. § 9607, as explained below:

**II. STATUTORY/REGULATORY FRAMEWORK**

**(1) Section 107(a) of CERCLA, 42 U.S.C. § 9507(a), provides that:**

“the owner and operator of . . . a facility . . . , from which there is a release or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for- . . . (A) all costs of removal or remedial action incurred by the United States Government, or a State, or an Indian tribe not inconsistent with the national contingency plan; (B) any other necessary costs of response incurred by any other person consistent with the national contingency plan; (C) damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a release and; (D) the costs of any health assessment or health effects study carried out under section 9604(i) of the [Act].”

**(2) Section 107(l) of the CERCLA, 42 U.S.C. § 107(l), provides that:**

“All costs and damages for which a person is liable to the United States under subsection (a) of this section (other than the owner or operator of a vessel under paragraph (1) of subsection (a) of this section) shall constitute a lien in favor of the United States upon all real property which- (A) belongs to such person and; (B) are subject to or affected by a removal or remedial action.”

**(3) Guidance.**

- MEMO: "Guidance on Federal Superfund Liens", September 22, 1987.
- MEMO: "Supplemental Guidance on Federal Superfund Liens", OSWER DIRECTIVE NUMBER 9832.12-1a, July 29, 1993.

**III. ISSUE**

The only issue to be decided in this matter is whether the EPA has a reasonable basis to believe that it has satisfied the statutory elements for perfection of a lien? The Agency satisfies the statutory elements if it establishes that: (1) Respondents have been provided written notice of potential liability under section 107(a) of CERCLA, 42 U.S.C. §9607(a); (2) Respondents own a facility from which there is a release or threatened release of a hazardous substance and is thereby subject to CERCLA; (3) the property is subject to a removal/remedial action and; (4) the United States has incurred costs with respect to a response action under CERCLA.

**IV. DISCUSSION**

Wood treatment operations began at the subject facility in 1961 with the operation of a post and pole treatment plant, called Turner Posts. This facility produced chemically treated wood poles with a solution of approximately 5% pentachlorophenol (PCP) and 95% penetrating oil (P9), which was used to preserve the wood products.

On or about April 1991, EPA was alerted of a contamination problem at Beaver Wood Products, Columbia Falls, Montana, involving the threatened release of a hazardous material, pentachlorophenol, into the environment. The potentially responsible parties ("PRPs"), erected a fence around the contaminated area and placed six inches of gravel over and around a stained area to contain the contamination<sup>3</sup>.

On or about July 17, 2000, EPA was alerted that the fence was no longer in place and that conditions existing at the Site presented an imminent and substantial endangerment to human

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<sup>3</sup> See, Grosswiler 1991, 104e Informational Request, Lien Filing Record (LFR), Exhibit # 1.

health and the environment. An assessment determined that the conditions at the Site met the criteria for initiating a removal action under the National Contingency Plan (“NCP”), 40 C.F.R., § 300.415(b)(2)<sup>4</sup>. Subsequently, removal actions were initiated at the site to abate the hazard.

On October 13, 2004, EPA sent the owners of Beaver Wood Products, Inc., Richard and Loretta Grosswiler, Notice of its Intent to Perfect a Lien, on property allegedly owned by the Grosswiler’s known as, Beaver Wood Products, in or near the City of Columbia Falls, in Flathead County, Montana, pursuant to Section 107(D) of the CERCLA, 42 U.S.C. § 9607(D). On October 18, 2004, the Respondents filed their request for a hearing in this matter. This matter was subsequently submitted to the undersigned, pursuant to EPA guidance (Supplemental Guidance on Federal Superfund Liens, OSWER Directive Number 9832.12-1a, July 29, 1993, at 7, hereinafter “Supplemental Guidance”), as the regional official designated to conduct an informal hearing and issue a recommended decision, in this matter.

On November 18, 2004, EPA sent the Respondents Notice of Potential Liability Pursuant to CERCLA Sections 106 and 107<sup>5</sup>.

On November 26, 2004, the undersigned sent the Respondents a letter scheduling an informal hearing in this matter for 10:00 A. M., December 9, 2004<sup>6</sup>. The letter stated that the sole issue to be determined at the hearing is whether EPA has a reasonable basis to believe that the statutory elements for perfecting a lien were satisfied. It further identified the following as factors to be considered in determining this issue:

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<sup>4</sup> See, Action Memorandum (Initiated and Amendment), LFR - Exhibit # 3

<sup>5</sup> See - Letter dated November 18, 2004, LFR - Exhibit # 6.

<sup>6</sup> See, Letter from RJO dated November 26, 2004, LFR - Exhibit # 13.

- Whether the property owner was sent notice of potential liability by certified mail;
- Whether the property is owned by a person who is potentially liable under CERCLA;
- Whether the property is subject to or affected by a removal or remedial action;
- Whether the United States has incurred costs with respect to a response action under CERCLA; and
- Whether the record contains any other information which is sufficient to show that the lien notice should not be filed.

The December 9, 2004 informal hearing was transcribed by a Court Reporter. The transcript of the hearing is included in the lien filing record<sup>7</sup> (“LFR”), in this matter, and incorporated herein by reference.

At the December 9, 2004, informal hearing EPA presented evidence to support its claim that it has a reasonable basis to believe that it satisfied all of the statutory elements for perfecting a lien, on property owned by the Respondents. The Respondents were offered the opportunity to rebut EPA’s claims and to produce other information sufficient to show that the lien notice should not be filed. The evidence presented at the hearing along with the Respondent’s are considered below along with the Lien Filing Record, which is herein incorporated by reference.

1) **Property Owner was Notified of Potential Liability.**

The first statutory element to consider is whether EPA provided the property owner with written notice of potential liability. An examination of the lien filing record reveals that on November 18, 2004, EPA provided the Respondent with Notice of Potential Liability with Respect to Sections 106 and 107 of CERCLA, Certified Mail Return Receipt Requested<sup>8</sup>. Further, at the hearing Mr. Richard Grosswiler admitted that he received notice of potential

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<sup>7</sup> See, Transcript of December 9, 2004, Hearing, LFR # 14.

<sup>8</sup> See Notice of Potential Liability letter - LFR, Exhibit #6.

liability by certified mail<sup>9</sup>. I therefore find that the Respondent's, received written notice of potential liability from the EPA.

**2) Respondents are the Owners of the Property**

The second statutory element to consider is whether, Richard Grosswiler and Loretta Grosswiler, the Respondents, are the owners of Beaver Wood Products, Columbia Falls, Montana. A title search conducted May 11, 2004, identified Richard and Loretta Grosswiler, whose home address is 445 W. Colorado Street, Kalispell, MT 59901-3515, as the owners of the property upon which Beaver Wood Products has its operations<sup>10</sup>. The Respondent's have not challenged this title determination. I therefore find that Richard and Loretta Grosswiler, the Respondents, are the owners of the Beaver Wood Products Site, Columbia Falls, Montana.

**3) The Property is Subject to a Removal/Remedial Action**

The third statutory element to consider is whether the property is subject to a removal/remedial action under CERCLA and the National Contingency Plan. A July 17, 2000, Action Memorandum from Duc Nguyen, EPA On-scene Coordinator, to Max H. Dodson, Assistant Regional Administrator, Office of Ecosystems Protection and Remediation<sup>11</sup>, identifies the site of Beaver Wood Products, located on U. S. Highway 2 E, approximately two miles east of Columbia Falls in Section 15, T.30N., R.20W., in Flathead County, Montana as the subject of an EPA removal action. Also at the hearing, Mr. Grosswiler admitted he owned the property that is the subject of the removal/remedial action. Based on the entire administrative record, I find

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<sup>9</sup> See, pp. 8-9 of the Transcript.

<sup>10</sup> See, LFR, Exhibit # 10.

<sup>11</sup> See, LFR, Exhibit # 3.

that the property owned by the Grosswiler's, known as the Beaver Wood Products Site, is the subject of a removal/remedial action under CERCLA.

4) **United States Incurred Costs with Respect to a Response Action Under CERCLA.**

The final statutory factor to be consider is whether the United States incurred costs, at the subject facility, involving a response action under CERCLA.. The Lien Filing Record contains an "Itemized Cost Summary, dated February 2004", which documents unreconciled removal costs, incurred by the United States at the Beaver Wood Products, MT Site from 10/01/80 through 02/18/04 at **\$4,569,026.68**. Although, I herein specifically decline to make a determination as specific costs in this matter, I find that the United States has expended substantial funds in conducting removal/remedial action at the Beaver Wood Products Site. The expenditure of these funds satisfies a statutory factor for perfecting a lien.

5) **Other Information Contained in the Administrative Record**

Mr. Grosswiler asked several questions which were not appropriate for consideration , at the hearing. Some where so basic (such as . . . "what exactly is a lien") that we questioned their sincerity. Notwithstanding, Mr. Grosswiler was advised that a lien is a cloud upon the title to property. He was further advised that he should consult his attorney, as it would be inappropriate for either EPA or the Hearing Officer to answer any legal questions<sup>12</sup>. Mr. Grosswiler continued to ask questions pertaining to the legal status of his property, which were transcribed by the Court Reporter, but were not considered in deciding this matter, as they were not relevant to the issues before this tribunal.

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<sup>12</sup> See, Transcript - p. 21.

Upon closing the Hearing, the parties were given until Friday, January 14, to submit any additional information as to whether the lien should be perfected in this matter.

**V. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

- 1) Pursuant to Section 107 of CERCLA, 42 U.S.C. § 9507 (a)(1)-(4), “the owner or operator of . . . a facility . . . , from which there is a release or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for: (A) all costs of removal or remedial action incurred by the United States Government or a State or an Indian tribe not inconsistent with the national contingency plan; (B) any other necessary costs of response incurred by any other person consistent with the national contingency plan; (C) damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction or loss resulting from such a release; and; (D) the costs of any health assessment or health effects study carried out under section 9604(i) of the [Act].”
- 2) Section 107(*l*) of CERCLA, 42 U.S.C. §9607(*l*), further provides that “ All costs and damages for which a person is liable to the United States under subsection (a) of this section (other than the owner or operator of a vessel under paragraph (1) of subsection (a) of this section) shall constitute a lien in favor of the United States upon all real property which - (A) belongs to such person; and (B) are subject to or affected by a removal or remedial action.
- 3) On or about July 17, 2000, the United States initiated a Removal Action under 40 C.F.R., § 300.415 (b)(2) of the National Contingency Plan (“NCP”), to control and contain the release, or threat of release of hazardous materials, including but not limited to, pentachlorophenols, at the Beaver Woods Products Inc. Site, Columbia Falls, Montana, into the environment.
- 4) The Beaver Wood Products Site is a “facility” within the meaning of Section 107(9) of CERCLA, 42 U.S.C. § 9607(9),
- 5) Pursuant to Section 101(20)(A) of CERCLA, 42 U.S.C. § 9601(20)(A), “the term “owner or operator” means . . . in the case of an onshore facility . . . , any person owning or operating such facility, . . . . The Grosswiler’s are owners and operators of the facility, within the meaning of the CERCLA. See Lien Filing Record - “Title Search”, Ex. # 9 and Internet Records Check of Ownership, Ex. # 10.



- 6) The term "person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States government, State, municipality, commission, political subdivision of a State, or any interstate body. See Section 101(21) of CERCLA, 42 U.S.C. §9601(21). The Grosswiler's are persons within the meaning of the Act.
- 7) On October 13, 2004, EPA sent Richard and Loretta Grosswiler Notice of Intent to Perfect a Superfund Lien, under Section 107(*l*) of CERCLA, 42 U.S.C. § 9607(*l*), on the Beaver Wood Products Site, Columbia Falls, Flathead County, MT. See, "Lien Filing Record", Ex. # 7.
- 8) On November 18, 2004, EPA sent Mr. & Mrs. Grosswiler a Notice of Potential Liability Pursuant to CERCLA Sections 106 and 107 for removal and remedial actions taken at the Beaver Wood Products Site, Columbia Falls, Flathead County, MT. See, "Lien Filing Record", Ex. # 6.
- 9) The United States has incurred costs estimated at **\$4,569,026.86**, in conducting removal/remedial actions, under CERCLA, at the Beaver Wood Products Site. See "Lien Filing Record", Exhibit # 12.

Considering the above and the entire administrative record, including but not limited to, the Lien Filing Record and transcript of the December 9, 2004, hearing, I find that the EPA has established that the Respondents, Loretta and Richard Grosswiler, own the property known as Beaver Wood Products, located in Columbia Falls, Flathead County, MT.; that said property was contaminated by chlorophenols and other hazardous materials, and subject to removal/remedial action under section 107 of CERCLA, 42 U.S.C. § 9607 and; the United States has incurred costs with respect to a response action under CERCLA and; the Respondents presented no information at the December 9, 2004, hearing and there is no other information in the administrative record to rebut case established by the Complainant.

## **VI. SCOPE OF REVIEW**

The scope of review of an EPA proposal to file a notice of lien is necessarily limited. The review is to determine whether the administrative record shows that the EPA has a reasonable

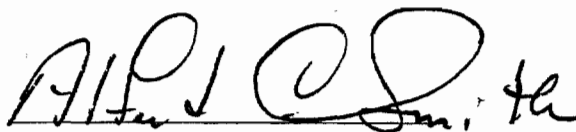
basis to believe that the statutory prerequisites to filing a lien have been met. The scope of the review is discussed in Reardon v. United States, 947 F.2d 1509m 1522-23 (1<sup>st</sup> Cir. 1991) and in EPA's Supplemental Guidance. The review cannot focus on the selection of the remedy or other matters which are only review able in a cost recovery action under Section 107, or are not subject to review. See, Section 113(h), 42 U.S.C. § 9613(h).

## VII. CONCLUSION

Upon review of the Lien Filing Record, including supplemental documents and the hearing transcript, as discussed above, I find that EPA has a reasonable basis to perfect its lien.

This recommended decision does not bar EPA or the property owner from raising any claims or defenses in further proceedings. It has no preclusive effect, or shall it be given deference or otherwise constitute evidence in any subsequent proceeding; nor shall it be a binding determination of liability or nonliability.

Issued this 10<sup>th</sup> Day of February, 2005.

  
Alfred C. Smith  
Regional Judicial Officer

## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **RECOMMENDED DECISION** in the matter of **BEAVER WOOD PRODUCTS, INC.**, was signed on February 10, 2005.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Mia Wood, Enforcement Attorney, Sharon L. Kercher, Program Director RCRA/CERCLA Technical Enforcement Program, and Michael Risner, Director of Legal Enforcement Program, U. S. EPA – Region 8, 999 18<sup>th</sup> Street, Suite 300, Denver, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt requested on February 10, 2005, to:

Mr. & Mrs. Richard & Loretta Grosswiler  
Beaver Wood Products, Inc.  
P. O. Box 369 Highway 2 East  
Columbia Falls, MT 59912

And 445 West Colorado Street  
Kalispell, Montana 59901

Telefaxed to:

Brian Grossweiler  
(406) 751-4301

February 10, 2005



Tina Artemis  
Regional Hearing Clerk

