

**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

IN THE MATTER OF)	
)	
Southern Iowa Mechanical Site,)	
Ottumwa, Iowa)	Petition No.
)	CERCLA 106(b) 09-01
Titan Tire Corporation and Dico, Inc.,)	
Petitioners.)	
)	
Petition for Reimbursement Under)	
Section 106(b)(2) of the Comprehensive)	
Environmental Response, Compensation, and)	
Liability Act of 1980, as amended (“CERCLA”),)	
42 U.S.C. § 9606(b)(2))	

EXHIBIT B

**TO PETITIONERS’ BRIEF IN OPPOSITION TO
RESPONDENT’S MOTION TO DISMISS THE PETITION
ON THE BASIS OF “RIPENESS”**

**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

IN THE MATTER OF)	
)	
Southern Iowa Mechanical Site,)	
Ottumwa, Iowa)	
)	
Titan Tire Corporation)	Docket No. CERCLA-07-2009-0006
)	
and)	Petition No.
)	CERCLA 106(b) 09-01
Dico, Inc.,)	
)	
Petitioners.)	
)	
Petition for Reimbursement Under)	
Section 106(b)(2) of the Comprehensive)	
Environmental Response, Compensation, and)	
Liability Act of 1980, as amended (“CERCLA”),)	
42 U.S.C. § 9606(b)(2))	

AFFIDAVIT OF JEFFREY T. BROWN

Affiant, Jeffrey T. Brown, being first duly sworn on his oath, states as follows:

1. I am a principal of Greenleaf Environmental Services, LLC (“GES”), and the Project Coordinator for the removal activities performed on behalf of Titan Tire Corporation and Dico, Inc. (“Petitioners”) at the Southern Iowa Mechanical Site in Ottumwa, Iowa (the “Site”) pursuant to the Order for Removal Response Activities, Docket No. CERCLA-07-2009-0006 (the “Order”), issued pursuant to CERCLA § 106(a). I have personal knowledge of the matters stated in this Affidavit, and each of the facts stated herein is true to the best of my knowledge, information and belief.

2. Waste debris collected during the clean-up of the Site was placed into four (4) drums and was transported from the Site for disposal in accordance with the applicable regulations in compliance with paragraph 29 of the Order. The contents of these drums were sampled and analyzed to determine that they did not exceed any regulatory limits under TSCA.

3. However, before it would accept these drums, the disposal facility approved by EPA, Metro Waste Authority of Mitchellville, Iowa, required additional sampling and analysis to verify that the drums did not contain any lead-based paint chips exceeding regulatory limits.

4. For security reasons, these four drums of non-hazardous waste material were transported to Des Moines, Iowa, on August 27, 2009, for temporary storage in a secured area while the contents of the drums were analyzed in compliance with the disposal facility's request. Samples were collected on August 26, 2009, and the results were reported by Fibertec Environmental Services on September 8, 2009. Laboratory results confirmed that the contents of the drums did not exceed any regulatory limits for PCBs and RCRA-regulated metals.

5. The non-hazardous waste manifest, dated August 27, 2009, and the Fibertec analytical laboratory report, dated September 8, 2009, are included in Appendix H to the Final Project Report submitted to EPA on October 12, 2009. True and accurate copies of these documents are attached hereto as Exhibits 1 and 2.

6. The additional analysis of the drum contents required by the disposal facility caused additional delays for the Iowa Department of Natural Resources ("IDNR") to issue its special waste authorization. This special waste authorization was issued by IDNR on October 29, 2009. A true and accurate copy of the authorization is attached hereto as Exhibit 3.

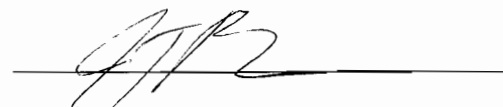
7. On October 30, 2009, Metro Waste Authority issued a Memorandum providing formal notice of its intent to accept the four drums of non-hazardous waste material at the Metro

Park East Landfill, pursuant to special waste permit number 905. True and accurate copies of Metro Waste Authority's memorandum and special waste permit number 905 are attached hereto as Exhibits 4 and 5.

8. On November 4, 2009, the four drums were shipped from the secured location in Des Moines, Iowa, to Metro Waste Authority in Mitchellville, Iowa, for disposal. A true and accurate copy of the non-hazardous waste manifest signed by the transporter and the disposal facility on November 4, 2009, is attached hereto as Exhibit 6. A true and accurate copy of the Metro Waste Authority invoice for drums received on November 4, 2009, is attached hereto as Exhibit 7.

9. It is my understanding and belief that copies of Exhibits 3 through 7, including IDNR's special waste authorization, Metro Waste Authority's memorandum, special waste permit, and invoice, and the non-hazardous waste manifest, were each delivered to EPA on or about November 6, 2009, as additional documentation for the Final Report.

Further Affiant sayeth naught.

A handwritten signature in black ink, appearing to read 'JTB', is written over a horizontal line.

Jeffrey T. Brown

STATE OF GEORGIA)
) ss.
COUNTY OF GWINNETT)

Subscribed and sworn to before me, a Notary Public in and for said County and State, this
9th day of December 2009.

Veronica F. Dujinski
Notary Public

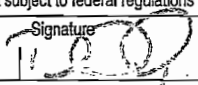
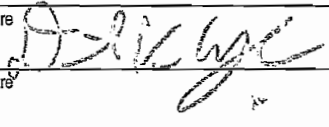
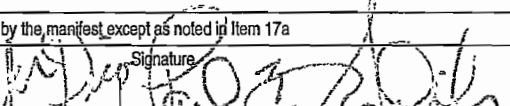
Veronica F. Dujinski
Notary Public, Gwinnett County, Georgia
My Commission Expires May 17, 2011

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42 U.S.C. § 9606(b)(2))	

EXHIBIT 1

TO AFFIDAVIT OF JEFFREY T. BROWN

NON-HAZARDOUS WASTE MANIFEST	1. Generator ID Number AH00527A274	2. Page 1 of 1	3. Emergency Response Phone 800-361-5500	4. Waste Tracking Number 82709	
5. Generator's Name and Mailing Address DICO, Inc. 2701 Spruce St Quincy, IL 62301		Generator's Site Address (if different than mailing address) DICO, Inc 3043 Pawnee Dr Ottumwa, IA 52501			
Generator's Phone: 515-710-9654		U.S. EPA ID Number IA0000678060			
6. Transporter 1 Company Name Seneca Companies		U.S. EPA ID Number			
7. Transporter 2 Company Name		U.S. EPA ID Number			
8. Designated Facility Name and Site Address DICO, Inc 300 SW 14th St Dum, IA 50309		U.S. EPA ID Number			
Facility's Phone: 515-262-0510					
GENERATOR	9. Waste Shipping Name and Description	10. Containers		11. Total Quantity	12. Unit Wt./Vol.
		No.	Type		
	1. Clean-up debris - solid non-hazardous non-USEPA regulated material	034	DR	500	P
	2.				
	3.				
4.					
14. SPECIAL HANDLING INSTRUCTIONS AND ADDITIONAL INFORMATION					
14. GENERATOR'S CERTIFICATION: I certify the materials described above on this manifest are not subject to federal regulations for reporting proper disposal of Hazardous Waste.					
Generator's/Officer's Printed/Typed Name Don Shuman		Signature 		Month 08	Day 27
				Year 07	
INT'L	15. International Shipments <input type="checkbox"/> Import to U.S. <input type="checkbox"/> Export from U.S.		Port of entry/exit:		
	Transporter Signature (for exports only):		Date leaving U.S.:		
TRANSPORTER	16. Transporter Acknowledgment of Receipt of Materials				
	Transporter 1 Printed/Typed Name David Van Wert	Signature 	Month 8	Day 27	Year 07
	Transporter 2 Printed/Typed Name	Signature	Month	Day	Year
DESIGNATED FACILITY	17. Discrepancy				
	17a. Discrepancy Indication Space <input type="checkbox"/> Quantity <input type="checkbox"/> Type <input type="checkbox"/> Residue <input type="checkbox"/> Partial Rejection <input type="checkbox"/> Full Rejection				
	17b. Alternate Facility (or Generator)		U.S. EPA ID Number		
	Facility's Phone:				
17c. Signature of Alternate Facility (or Generator)		Month	Day	Year	
18. Designated Facility Owner or Operator: Certification of receipt of materials covered by the manifest except as noted in Item 17a					
Printed/Typed Name Paul E. Sanlifer		Signature 		Month 8	Day 27
				Year 07	

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EXHIBIT 2

TO AFFIDAVIT OF JEFFREY T. BROWN

Analytical Laboratory Report

Client Identification:	Stinson Morrison Hecker LLP	Sample Matrix:	Other (Solid)
Fibertec Project Number:	35643	Sample Number:	35643-001

Client Sample Information

Project Identification:	SIM-Ottumwa PCB Site	Client Sample Description:	Clean up Debris- Solids
Project Number:	NA	Client Sample Number:	1-4
Sample Date:	8/26/2009	Chain of Custody Number:	89266

Comments:

Definitions/Qualifiers:

A: Spike recovery or precision unusable due to dilution.	J: The concentration is an estimated value.	X: Matrix Interference has resulted in a raised reporting limit or distorted result.
B: The analyte was detected in the associated method blank.	U: The analyte was not detected at or above the reporting limit.	W: Results reported on a wet-weight basis.
E: The analyte was detected at a concentration greater than the calibration range, therefore the result is estimated.		*: Value reported is outside QA limits

Analyte	Result	Units	Report Limit	Dilution Factor	Prep Batch	Prep Date/Time	Analysis Date/Time	Analyst
Polychlorinated Biphenyls (PCBs) (EPA 3550B/EPA 8082) (Dilution made in prep lab-sample would not concentrate)								
Aroclor-1016	U	µg/kg	660	2	PS09I03E	9/3/2009	9/4/2009	BDA
Aroclor-1221	U	µg/kg	660	2	PS09I03E	9/3/2009	9/4/2009	BDA
Aroclor-1232	U	µg/kg	660	2	PS09I03E	9/3/2009	9/4/2009	BDA
Aroclor-1242	U	µg/kg	660	2	PS09I03E	9/3/2009	9/4/2009	BDA
Aroclor-1248	U	µg/kg	660	2	PS09I03E	9/3/2009	9/4/2009	BDA
Aroclor-1254	1200	µg/kg	660	2	PS09I03E	9/3/2009	9/4/2009	BDA
Aroclor-1260	U	µg/kg	660	2	PS09I03E	9/3/2009	9/4/2009	BDA
Aroclor-1262	U	µg/kg	660	2	PS09I03E	9/3/2009	9/4/2009	BDA
Aroclor-1268	U	µg/kg	660	2	PS09I03E	9/3/2009	9/4/2009	BDA

Analytical Laboratory Report

Client Identification:	Stinson Morrison Hecker LLP	Sample Matrix:	TCLP Extract
Fibertec Project Number:	35643	Sample Number:	35643-001A

Client Sample Information

Project Identification:	SIM-Ottumwa PCB Site	Client Sample Description:	Clean up Debris- Solids
Project Number:	NA	Client Sample Number:	1-4
Sample Date:	8/26/2009	Chain of Custody Number:	89266

Comments:

Definitions/ Qualifiers:	A: Spike recovery or precision unusable due to dilution. B: The analyte was detected in the associated method blank. E: The analyte was detected at a concentration greater than the calibration range, therefore the result is estimated.	J: The concentration is an estimated value. U: The analyte was not detected at or above the reporting limit.	X: Matrix Interference has resulted in a raised reporting limit or distorted result. W: Results reported on a wet-weight basis. * : Value reported is outside QA limits
-------------------------------------	---	---	--

Analyte	Result	Units	Report Limit	Dilution Factor	Prep Batch	Prep Date/Time	Analysis Date/Time	Analyst
TCLP RCRA-8 Elements by ICP-MS (EPA 3010A/EPA 6020) (TCLP(1311)Extraction date: 9/2/2009; Tumbler temperature was high.)								
Arsenic	U	mg/L	1.0	1	PT09104B	9/4/2009	9/4/2009	JLH
Barium	1.7	mg/L	1.0	1	PT09104B	9/4/2009	9/4/2009	JLH
Cadmium	U	mg/L	0.20	1	PT09104B	9/4/2009	9/4/2009	JLH
Chromium	U	mg/L	1.0	1	PT09104B	9/4/2009	9/4/2009	JLH
Lead	U	mg/L	1.0	1	PT09104B	9/4/2009	9/4/2009	JLH
Scandium	U	mg/L	0.20	1	PT09104B	9/4/2009	9/4/2009	JLH
Silver	U	mg/L	1.0	1	PT09104B	9/4/2009	9/4/2009	JLH
TCLP Mercury (EPA 7470A) (TCLP(1311)Extraction date: 9/2/2009; Tumbler temperature was high.)								
Mercury	U	mg/L	0.050	1	PM09104B	9/4/2009	9/4/2009	JLH

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EXHIBIT 3

TO AFFIDAVIT OF JEFFREY T. BROWN



STATE OF IOWA

CHESTER J. CULVER, GOVERNOR
PATTY JUDGE, LT. GOVERNOR

DEPARTMENT OF NATURAL RESOURCES
RICHARD A. LEOPOLD, DIRECTOR

October 29, 2009

To: DAN CLINGAN, PROJECT MGR.
DICO, INC.
C/O GREENLEAF ENV. GROUP
4943 AUSTIN PARK AVE.
BUFORD, GA 30518

BECKY WEHRMAN
METRO WASTE AUTHORITY
1105 PRAIRIE DRIVE SW
BONDURANT, IA 50035

Re: New Special Waste Authorization #77-SWA-79-09

The following special waste authorization (SWA) applies ONLY to the waste generator addressed above. This authorization allows the waste generator to dispose of the special waste referenced in accordance with the instructions, conditions and limitations contained in this SWA. A copy of this SWA must accompany the hauler to the landfill. The waste generator shall notify the department and landfill, prior to disposal, of any change in the characteristics of the special waste being disposed.

The issuance of an SWA does not obligate any waste disposal facility to accept the waste nor does it preclude the facility from imposing restrictions other than those listed in the SWA. The landfill has the final decision whether to accept the special waste. The issuance of an SWA does not exempt the waste generator from any local, state or federal laws or regulations. The department may revoke an SWA for cause at any time.

WASTE & VOLUME: One time disposal of 20,000 pounds of drummed PCB contaminated paint chips. This waste was generated by Dico in Ottumwa, and managed for disposal by Titan Tire in Des Moines.

GENERATOR: Dico, Inc.
Dan Clingan, 317-407-3248

ISSUE DATE: October 29, 2009

EXPIRATION DATE: January 29, 2010

DISPOSAL SITE: Metro Park East Sanitary Landfill, #77-SDP-01-72

SWA CONTACT: Becky Wehrman, 515-333-4432

Authorized by:



Iowa Department of Natural Resources

If you have questions regarding this authorization, please contact Sue Johnson at (515) 281-7982.

Cc: Iowa DNR Field Office #5, Des Moines, IA
Iowa DNR Field Office #6, Washington, IA

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EXHIBIT 4

TO AFFIDAVIT OF JEFFREY T. BROWN

METRO WASTE AUTHORITY

Metro Park East Landfill

12181 NE University Avenue, Mitchellville, Iowa 50169 Phone: 515-967-2076

MEMORANDUM

DATE: 10/30/09

TO: Brian Mills / Titan Tire
Nick Wylie / Pettiford

FROM: Susan Cutler

SUBJECT: Special Waste Permit Approval

Metro Park East Landfill hereby provides formal notice of its intention to accept the following material for disposal:

PCB Contaminated Debris

This is under permit # 905

Included please find the approved permit. If you have any questions on this matter, please feel free to contact Miko Fairchild, Operations Manager, at 515-333-4447.

Thank you.

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EXHIBIT 5

TO AFFIDAVIT OF JEFFREY T. BROWN

Metro Waste Authority Special Waste Permit

905 MPE Permit Number

In process DNR Permit Number

Basic Job Information

Customer # MWA Contact Person

General Material Description:

Job # Out of Service Area?

SWB- PCB contaminated debris

Job Details

Waste Generator Data

MPE Expiration:

Waste Generator Name/Contact

DNR Expiration:

Address/Phone

Material Code

Contractor Name/Contact

Rate

Address/Phone

Quantity/Load

Customer Billed

Total Quant Permitted

Hauler Name/Phone

Current Amount

Site Address if Different

Delivery Instructions

Thank you for your business. This permit allows delivery of the ONLY the identified special waste as described above. Special waste is managed differently than typical refuse and is only accepted as weather conditions allow. Failure to contact the scale house may result in refusal at the gate. Metro Park East Landfill is located at 12181 NE 12th Ave, Mitchellville which is approximately five miles east of Southeast Polk High School on University Ave (Hwy 163). Questions regarding permitting, delivery or other special waste jobs can be directed to Becky Wehrman at 515-333-4432.

DELIVERY DAY PROCEDURE

1. Call the scale house at 515-333-4449 or 515-333-4448
2. Have copy of THIS permit with driver
3. Failure to follow steps 1 and 2 may result in refusal at gate

Instructions/Notes: *Place in hole at working face. Cover with refuse prior to completion.*

APPROVALS: Authorized Signature for Metro Waste Authority

[Signature]
Landfill Manager Signature

Printed Name

10-30-09
Date

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42 U.S.C. § 9606(b)(2))	

EXHIBIT 6

TO AFFIDAVIT OF JEFFREY T. BROWN

NON-HAZARDOUS WASTE MANIFEST

Load Number:	1	Date:	11-4-09
Generator Information:		Generator Information- Send Manifest to:	
DICO Inc. 3043 Pawnee Ottumwa, IA 52501		Legal Dept., Attn: Jennifer Cramm Titan International Inc 2701 Spruce St. Quincy, IL 62301	
Contractor Information, (Emergency Contact)		Hauler Information:	
Greenleaf Environmental 4943 Austin Park Ave. Buford GA 30518 Phone: 678-714-8420		J. Pettiecord Inc. 5043 NE 22 nd Street Des Moines, IA 50131 Phone: 515-263-8900	
Disposal Facility or Staging Area Location:			
Metro Waste Authority 12181 E University Mitchellville, IA			
Waste Shipping Name and Description	Unit Wt./Vol.	Quantity	
Non-Regulated PCB contaminated debris (paint chips, PPE)	55 Gallon drum	4	
Transporter Name	Transporter Signature	Date	
<i>Gary Real</i>	<i>Gary Real</i>	11-4-09	
Disposal Facility Receipt of Materials			
Printed Name	Signature	Date	
Alan Vog	<i>Alan Vog</i>	11-4-09	

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EXHIBIT 7

TO AFFIDAVIT OF JEFFREY T. BROWN



Metro Waste Authority

300 E. Locust St. • STE. 100
Des Moines, IA 50309
www.mwatoday.com

002690 PETTIECORD INC., J.
5043 NE 22ND STREET
DES MOINES IA 50313

03	30024849	PH 2A	Susan	WEIGHMASTER
DATE IN	DATE OUT	TIME IN	TIME OUT	VEHICLE
11/04/09	11/04/09	08:34	08:49	WGH
REFERENCE				ORIGIN
905				

Inbound - Charge ticket

Scale 1 Gross Wt. 10280 LB
Scale 2 Tare Wt. 9540 LB
Net Weight 740 LB

Thank You For Your Business

QTY.	UNIT	DESCRIPTION	RATE	EXTENSION	TAX FEETAX	TOTAL
0.37	TON	SPECIAL - CLASS B	46.350	46.35	1.35	47.70

Please Pay From This Invoice

We are continuously improving the MPE landfill.
The landfill is open 6:30 a.m. - 4:30 p.m. Monday - Friday
and 8:00 a.m. - 1:00 p.m. on Saturday. Closed Sunday and
holidays. Scale House phone: (515)333-4448

HANDLING DICO, INC
COMMENTS 200 SW 16TH ST.
COMMENTS DES MOINES, IA 50309
COMMENTS SW B 464PRH

SIGNATURE

NET AMOUNT	47.70
TENDERED	
CHANGE	
CHECK NO.	