Exhibit 6

Clyne, Gaye

From: Johnson, Mark
Sent: Thursday, October 02, 2008 5:40 PM
To: 'Shiel.Daniel@epamail.epa.gov'
Cc: Peterson.Mary@epamail.epa.gov; FRANK M. GRENARD; Johnson, Mark; Williams, Brian
Subject: Southern Iowa Mechanical Site--Response to E-Mails from Mr. Shiel
Attachments: Letter to Daniel J. Shiel 10-02-08.PDF; 20081001115123941.pdf; 08.10.02 ExecutedAff.pdf; 08.07.28 EPA 2nd InformationRequest-ExhB Annotated.pdf

Dan, attached are our letter of today's date, the affidavit of William Campbell and the affidavit of James Hughes (and Attachment B to the affidavit of Mr. Hughes). I also will send them to you by U.S. Mail. Please let me know if you have any questions.

Mark

Mark E. Johnson | mjohnson@stinson.com
816.691.2724 | www.stinson.com

STINSON
MORRISON
HECKER LLP

STINSON
MORRISON
HECKER LLP

Mark E. Johnson
(816) 691-2724
mjohnson@stinson.com
www.stinson.com

1201 Walnut, Suite 2900
Kansas City, MO 64106-2150

Tel (816) 842-8600
Fax (816) 412-1208

October 2, 2008

Daniel J. Shiel
Office of Regional Counsel
US EPA Region VII
901 North 5th Street
Kansas City, KS 66101

Re: Southern Iowa Mechanical Site in Ottumwa, Iowa

Dear Dan:

I am writing this letter in response to the e-mails you sent to Frank Grenard, counsel for Southern Iowa Mechanical, and to me on September 30, and October 1, 2008, and to re-confirm the matters we discussed and agreed upon during our conference call last Thursday. My clients, Dico, Inc. ("Dico") and Titan Tire Corporation ("Titan Tire"), remain fully willing to cooperate with the EPA in negotiations relating to the Southern Iowa Mechanical Site.

However, I am concerned that the EPA appears to be backing away from the matters we discussed and agreed upon during our call last Thursday, and attempting to rush my clients into an agreement before they have had any opportunity to investigate the factual basis for the EPA's claims, the scope or extent of the alleged contamination on the Southern Iowa Mechanical property, or the nature and extent of any remediation which may be necessary to address the alleged contamination.

In the event the EPA is contemplating unilateral administrative action before my clients have an opportunity to visit the Southern Iowa Mechanical property and conduct the reasonable investigation we agreed to last week, and before we have an opportunity to complete the ongoing negotiations based upon the information and facts we intend to learn from the agreed investigation, we are writing this letter for the purpose of explaining our understanding of the current status of this matter, and our position at this time, based upon the facts currently known to us.

We formally request that this letter, each of the affidavits and exhibits submitted with this letter, and the authorities cited in this letter, be included in the administrative record for this matter and be considered by the EPA before taking any administrative action. We also request that all of Dico's responses to the EPA's Section 104 requests with respect to this matter, including the documents produced with the responses, and all of the written correspondence and e-mail you and I have exchanged with respect to

this matter, be included in the administrative record and be considered by the EPA before taking any administrative action in connection with this matter.

Dico's Understanding of the Current Status of the Investigation and the Flawed Data and Report Currently Being Relied Upon By EPA

Based on the representations of the EPA, it is our understanding that, on or about May 16, 2008, the EPA, or its designee, entered onto the property of Southern Iowa Mechanical ("SIM") in Ottumwa, Iowa, and took samples from certain structural steel components or in the surrounding area. An 11-page laboratory report on these various samples, dated May 30, 2008, was sent from Daksha Datal, to Mary Peterson under Project ID: MP072504, ASR number 3867. The report indicates that PCBs were detected above action levels in certain of these samples. My clients object to the sampling procedures utilized, and dispute the validity of the resulting report, for a number of reasons outlined below.

Before entering onto the SIM property and taking the samples, the EPA did not provide any notice to my clients concerning the planned sampling. Hence my clients were given no opportunity to review the sampling plan and protocols, to observe the sampling process, to request split samples for their own testing, or to conduct their own sampling. Nor were my clients afforded an opportunity to evaluate the site in order to establish a detailed scope of work and develop a clear idea about the work involved to properly address EPA concerns.

Such an opportunity to observe and participate in the sampling relied upon by EPA in this matter is particularly significant because of serious flaws in the sampling procedures and the report of the sampling results. In the phone conference last Thursday, information was requested about the sampling conducted on the SIM property and where and how the sampling was conducted. The EPA advised us that no map, sketch, or permanent markings were prepared identifying the locations where the samples were obtained or identifying specifically which beams were sampled, and the EPA does not presently know exactly where the samples were taken. The EPA failed to prepare a sampling plan, or any written sampling protocol (such as that described in USEPA-SW-846) before the samples were taken. There are no QA/QC data associated with any of the data points.[1] The EPA also failed to conduct any statistical random sampling and/or area sampling techniques at the Site in order to reduce sampling errors.[2] It also does not appear that any field blanks and replicates

[1] "Once advised of the objectives and sampling procedures, the sampler must either prepare or obtain the **sampling plan** and sampling materials. **The sampler must know the exact sampling sites or know the exact procedure for selecting those sites. . . .** Provisions should also be made for quality assurance samples. . . . The sampler arrives at a sampling site and determines the exact location where the 100 square centimeters (cm^2) sample will be taken. The sample location may be marked or framed by a template." Dr. John H. Smith, Chief, PCB Disposal Section, Chemical Regulation Branch, United States Environmental Protection Agency, "Wipe Sampling and Double Wash/Rinse Cleanup as Recommended by the Environmental Protection Agency PCB Spill Cleanup Policy," at pp. 8, 10 (June 23, 1987, revised and clarified on April 18, 1991) (emphasis added).

[2] "Wipe sampling is best used in conjunction with statistical random sampling and/or area sampling techniques. Reduction in sampling errors for all kinds of sampling procedures can be accomplished by

were collected or tested as required by 40 C.F.R § 123. Thus this sampling event had major inconsistencies regarding sampling results and the resultant skewed interpretation.

There are also a number of critical errors or flaws in the report of the sampling data which appear to undermine the validity of any results above EPA action levels.

First, the report represents that seven soil samples were taken somewhere on the SIM property. The report indicates that only one soil sample, number 9, generated results above the action level for PCBs. However, in a telephone conversation with Dr. Gazi George several weeks ago, Mary Peterson admitted that this sample no. 9 was erroneously labeled, and that it actually represents a test of a piece of tape that was attached to a beam. If this is true, then the tape should have been distinguished as a porous surface, its area excluded from the wipe test and the volume of tape identified to check for statistical relevance. Without more information, we do not know where the tape was located, when or how it was placed there, whether the Aroclor 1254 detected on the tape was part of the adhesive on the tape, or whether it was transferred from another source. Obviously, we would have known the answers to these questions if we had been given notice of the sampling and an opportunity to participate. These are questions we need to investigate before we can enter into any agreement with the EPA, assuming any other similar pieces of tape can be found on the beams.

Second, there is a critical discrepancy between the sample information summary on page 3 of the report, the analysis results for the wipe samples reflected on pages 8 through 11, and the comments about the results for this analysis, contained on page 4. The sample information summary indicates that each of the wipe samples were taken from a standard 100 centimeter area that represents the norm in standard wipe sampling techniques implemented in certified laboratory procedures and mandated by 40 C.F.R. § 761.123. However, the analysis results for the wipe samples, on pages 8 through 11, are reported in units of micrograms per square centimeter. Then, someone has multiplied each of those results by 100, and reported the adjusted results in units of micrograms per 100 square centimeters in the summary comments on page 4.

We need to see the technician's raw data and calculations for each of these sample analyses to determine the validity and accuracy of the tabulated results (including whether the data was reported in units of micrograms per square centimeter, or micrograms per 100 square centimeters). Please consider this a formal request, pursuant to the Freedom of Information Act, for the technician's raw data and calculations relating to each of the samples, blanks, and replicates supporting the May 30, 2008 report, any sampling plan or protocols, sampling map or sketch identifying where samples were taken, and QA/QC protocols or data used or obtained in connection with the sampling of the Southern Iowa Mechanical Site.

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statistical selection of the smaller sampling sites selected to represent a larger area. Non-sampling errors may be reduced by maintaining consistency within the sampling activities; use of comprehensive quality control procedures and samples; and wherever possible, establishing a reference point for comparison." *Id.*, at p.5 (emphasis added).

It is our understanding of the industry norm that gas chromatography/electron capture ("GC/EC") measures a total value extracted, and does not calibrate nor measure units per area, but instead unit per corresponding volume or mass (quantitatively, since all extracted phase is eluted or injected into the GC column to represent the total from 100 square centimeters). Under the EPA-required standard for a wipe test, "[a] standard-size template (10 centimeters (cm) x 10 cm) will be used to delineate the area of cleanup...." 40 C.F.R. §761.123. Wipe sample analyses therefore are reported in micrograms per 100 square centimeters (10 cm x 10 cm). It appears that the preparer of the analysis results reported on pages 8 through 11 erroneously stated the results in micrograms per square centimeter, and then the author of the report compounded the error by multiplying the results by 100. Assuming the results are overstated on page 4 by a power of 100, then the actual results are all below the EPA, TSCA action levels.

Once again, these are issues which could have easily been resolved or avoided if our clients had been given the opportunity to obtain split samples or to conduct their own sampling last May when the EPA conducted its sampling without notice to my clients. These are issues we plan to investigate when we get access to the Site, assuming we can identify the areas where the EPA wipe samples were taken.

Third, there is a discrepancy between the specific Aroclors identified in the May 30, 2008, report, and those Aroclors identified in EPA's 1993 findings with respect to the buildings on the Dico property. Because each Aroclor has its own unique chemical fingerprint which can be forensically traced to a particular source, this discrepancy either indicates another error in the sampling results or that the PCBs detected this past May came from a source other than Dico.[3]

Because my clients do not own the SIM property where these samples were taken, do not have access to the SIM property, and were not given notice and afforded an opportunity to observe and participate in the EPA's sampling last May, we have requested an opportunity to inspect the property and conduct our own sampling before we negotiate any agreements with respect to the proposed remediation. Given the serious errors or flaws we have detected thus far in the May 2008 report, and given the fact that, but for these errors, it appears that there may not be any sample results above action levels, it would be arbitrary and capricious for the EPA to take any unilateral administrative action against my clients before they have an opportunity to investigate the Site and to take their own samples.

During our conference call last Thursday between counsel for SIM, the EPA, and my clients, we all agreed upon a reasonably prompt schedule to allow Dico's contractor access to inspect the property and to conduct its own sampling. The date we have

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[3] We are also surprised that the EPA has not discussed the option of implementing PCB cleanup standards known as the "Mega Rule." 40 CRF Part 761. The EPA failed to discuss or qualify the alleged PCB contaminated waste under these regulations. The list of qualified waste includes bulk product waste, which is defined as waste derived from manufactured products containing PCBs in a non-liquid state including a concentration greater than 50 ppm PCBs. *See* 40 CFR § 761.62. EPA's failure to consider this alternative remedial option is arbitrary and capricious and contrary to the law.

agreed upon was the earliest date that the EPA, our contractor, and counsel were available to travel to Ottumwa, and is now only a few days away. We also agreed to continue our negotiations on October 16, two weeks from today.

We plan to proceed with this agreed-upon schedule despite EPA's abrupt and unilateral attempt in your September 30, 2008, e-mail to renounce our agreed schedule and to impose new deadlines which are unreasonable and infeasible. Specifically, your insistence that we submit written comments to your proposed September 18 administrative settlement agreement by next Monday – before we are able to visit the Site and to conduct any meaningful sampling in lieu of relying on a report of dubious validity – is not reasonable.

Although you state in your October 1 e-mail that "we already have information that tells us the work needs to be done," we assume that you would agree that promptly verifying the accuracy or validity of that information – and the scope or extent of any work that may need to be done once reliable data is collected – should be the first order of business. Unless there are other issues or agendas of which we are unaware, we cannot see how it would be in the best interests of any of the parties to rush negotiations on an administrative agreement before we have any opportunity to investigate and evaluate the site. Proceeding on the basis of flawed, erroneous or invalid data, collected in contravention of EPA requirements and mandatory procedures, would certainly be arbitrary and capricious.

Similarly, your concerns about the weather conditions in November affecting the proposed remediation are premature and unfounded. First, we do not know whether the proposed remediation is appropriate until we get access to the site, evaluate the scope of work, and possibly conduct our own sampling (since we were given no notice and no opportunity to participate in the EPA's sampling last May). Second, we know of no reason why the proposed remediation cannot be conducted during the Fall and Winter, if we agree that the proposed remediation is appropriate after we are afforded an opportunity to inspect the site and conduct our sampling.

In the meantime, over the past few months the EPA has sent various information requests to Dico regarding this matter, and Dico has responded to each of these requests in good faith. We have also requested information from the EPA about its investigation. I received some of the requested information late yesterday afternoon, but you advised that additional requested information is still forthcoming. I have not yet had an opportunity to review and evaluate all of the material you sent to me yesterday, and I cannot complete my analysis of the requested documents until we receive all of them. The information I have requested is essential to our evaluation and understanding of this matter.

Dico's Current Understanding of the Facts

While we have not yet been able to complete our investigation and evaluation of the facts relating to potential liability in this matter, the following is our current understanding of the facts. Each of the following facts is supported by the sworn affidavits of James R. Hughes, president of Southern Iowa Mechanical, L.L.C. ("SIM") and/or William E. Campbell, president of Titan Tire Corporation ("Titan

Tire"). These affidavits, and the referenced attachments, are submitted with this letter.

Between 2004 and 2007, SIM, purchased certain buildings located on the Dico property in Des Moines, Iowa. It was the understanding and belief of Titan Tire, on behalf of Dico, based upon conversations with Mr. Hughes, that SIM intended to re-assemble each of the buildings it purchased on its property in Ottumwa, Iowa, and to use those buildings in its business operations.

Titan Tire, on behalf of Dico, entered into purchase agreements with SIM for the sale of the buildings. The total purchase price paid by SIM for these buildings was in excess of $150,000.

Titan Tire, on behalf of Dico, had solicited bids for the purchase of these buildings from several other potentially-interested buyers. Titan Tire, on behalf of Dico, received oral bids from one or two other parties, and SIM's bid was the highest.

After entering into various purchase agreements for the buildings, SIM disassembled the buildings it had purchased and removed the building components from the Dico property. Neither Titan Tire nor Dico had any involvement in disassembling the buildings, loading the building components on SIM's trucks, or shipping the building components to SIM's property for re-assembly.

At the time of the sale of the buildings to SIM, and at all times since then, Titan Tire believed that Titan Tire was selling, on behalf of Dico, a commercially useful product or material for a reasonable value inasmuch as it was the understanding of Titan Tire, on behalf of Dico, that SIM intended to reassemble the buildings on its property in Ottumwa, Iowa, for use in its business operations.

At no time during the sale of any of the buildings to SIM was Mr. Campbell of Titan Tire, on behalf of Dico, aware of any hazardous substances located on or in any of the building components.

Dico's Current Position Based on Its Understanding of the Facts

While we have not yet been able to complete our investigation and evaluation of the facts relating to this matter, the following is our position based upon the facts known to us at this time.

EPA Allegations

In your September 18, 2008, proposed administrative settlement agreement, the EPA alleges that Titan Tire, on behalf of Dico, arranged with Southern Iowa Mechanical to dismantle certain buildings on Dico's property at 200 SW 16th Street, Des Moines, Iowa, and that Titan Tire and Dico arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment of hazardous substances at the Southern Iowa Mechanical facility, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

However, any decision of the EPA based on these allegations of arranger or transporter liability under CERCLA would be arbitrary and capricious, and otherwise not in accordance with law. EPA's allegation that Titan Tire and/or Dico were arrangers under CERCLA is not supported by either the facts or the law. Liability only attaches under Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3), to parties that have taken an affirmative act to dispose of a hazardous substance as opposed to convey a useful substance or material for a useful purpose. Neither Titan Tire nor Dico undertook any such affirmative act – in fact, all they did was sell a commercially useful product. Accordingly, neither Titan Tire nor Dico is liable for any response costs under 42 U.S.C. § 9607(a).

Law

To establish a prima facie case of liability under CERCLA, the EPA must establish that: (1) the Site is a "facility;" (2) the defendants are "covered persons" under 42 U.S.C. § 9607(a); (3) there has been a "release" or "threatened release" of a "hazardous substance" at the Site; and (4) such release or threatened release caused the plaintiff to incur response costs. United States v. Aceto Agr. Chems. Corp., 872 F.2d 1373, 1379 (8th Cir. 1989).

The only issue addressed here is whether EPA can prove that Titan Tire and/or Dico fall into one of the four categories of "covered persons" under § 107(a) of CERCLA. EPA claims that they qualify as what is commonly referred to as an "arranger," one of the CERCLA categories of covered persons, which is defined as:

> any person who by contract, agreement, or otherwise **arranged for disposal** or treatment, or arranged with a transporter for transport for disposal or treatment, **of hazardous substances** owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances . . .(emphasis added).

42 U.S.C. § 9607(a)(3). EPA also alleged that Southern Iowa Mechanical was a transporter for disposal or treatment of a hazardous substance.

The courts have held that liability only attaches under CERCLA to parties that have taken an affirmative act to dispose of a hazardous substance or material as opposed to convey a useful substance or material for a useful purpose. For instance, see the following cases:

- U.S. v. B & D Electric, Inc., 2007 WL 1395468 (E.D. Mo. May 9, 2007) (holding that sellers of used transformers for a useful purpose were not arrangers);

- Yellow Freight Sys. v. ACF Indus., 909 F.Supp. 1290 (E.D. Mo. 1995) (holding that seller of tract of land with building containing asbestos and transformers sold a useable parcel of industrial land it could no longer use

without any intent to dispose of any hazardous substance; both seller and buyer knew the building contained asbestos and transformers);

- Ashland Oil, Inc. v. Sonford Prod., 810 F.Supp. 1057 (D. Minn. 1993) (holding that a lender which foreclosed on a debtor's assets and sold them to a third party, and was not an arranger because the lender took no affirmative action regarding disposal);

- G.J. Leasing Co., Inc. v. Union Elec. Co., 854 F.Supp. 539 (S.D. Ill. 1994), aff'd, 54 F.3d 379 (7th Cir. 1995) (holding that the seller of a power plant on a tract of land that had commercial value and was not an arranger because it sold a useful product without any intent to dispose of hazardous substances);

- Jersey City Redevelopment Auth. v. PPG Indus., 655 F. Supp. 1257 (D. N.J. 1987) (holding that the seller of Garfield plant on a tract of land was not an arranger because seller did not affirmatively act to dispose of the waste itself);

- Kelley v. ARCO Indus. Corp., 739 F. Supp. 854 (W.D. Mich. 1990) (holding that sellers-suppliers of neoprene compounds, which contained the hazardous substance toluene, for use in plaintiff's manufacture of rubber goods and products, were not arrangers because they took no affirmative act to dispose of a hazardous substance as opposed to convey a useful substance for a useful purpose); and

- Prudential Ins. Co. v. U.S. Gypsum, 711 F. Supp. 1244 (D. N.J. 1989) (holding that the seller of asbestos-containing materials that were used in the construction and maintenance of various buildings was not an arranger because it took no affirmative act to dispose of a hazardous substance as opposed to convey a useful substance for a useful purpose).

In Ashland, the Court declared:

> Several cases with analogous facts have held that the mere sale of property containing hazardous substances is insufficient to impose arranger liability on the seller. . . .
>
> In the present case, IFC [lender-seller] did not make any crucial decisions regarding disposal of hazardous substances or take any other affirmative action regarding disposal. Rather, IFC merely sold the former Sonford [debtor] assets to Park Penta [buyer] in order to maintain the value of its security interest. Neither the language of CERCLA nor the cases cited by the parties provide for "arranger" liability in this situation. Therefore, the court finds IFC is not liable for cleanup costs as an arranger under CERLA.

810 F. Supp. at 1061 (citations omitted). In G.J. Leasing Co., Inc., the Court explained:

> The mere sale of property containing hazardous substances is insufficient to impose arranger liability on the seller. . . .
>
> The sale of a useful product even though the product contains a hazardous substance, does not constitute a "disposal" subjecting the seller to CERCLA liability. . . .
>
> There is absolutely no evidence that U.E. [seller] intended to dispose of hazardous substances by selling the Cahokia Power Plant. Every single U.E. witness, whether called by plaintiffs or defendant, credibly testified that U.E. was motivated by economic considerations relating to the cost of producing power at the plant and that the presence of asbestos or other alleged hazardous substances was not a factor at all in the decision either to decommission or sell the plant. U.E. believed that the property and attached equipment had commercial value and use in the commercial resale market. Indeed, the evidence established that U.E. was correct in its view that the property, building and attached equipment had commercial value.

854 F. Supp. at 560 (citations omitted). The Seventh Circuit Court of Appeals affirmed the district court's analysis in G.J. Leasing Co., and further reasoned:

> There are many routes to this conclusion, but the simplest is that the sale of a product which contains a hazardous substance cannot be equated to the disposal of the substance itself or even the making of arrangements for its subsequent disposal. . . .
>
> These distinctions are necessary because otherwise the sale of an automobile would be the disposal of a hazardous substance, since an automobile contains a battery, and a battery contains lead, which is a hazardous substance. (For that matter, the equipment sold along with the power plant in this case contained hundreds of tons of lead, but G.J. Leasing [buyer] makes nothing of that.) And the sale of any building that contained asbestos insulation (and we are told that more than 700,000 commercial buildings in the United States fit this description) would be the disposal of a hazardous substance, because while the asbestos is harmless as long as the asbestos fibers are not allowed to leak out of the walls or other building components in which the insulation was placed, asbestos is, like lead, a hazardous substance.

54 F.3d at 384. In Prudential, the Court stated:

> Looking at the term disposal in the context of the statute, however, it is clear that liability attaches to a party who has taken an affirmative act

to dispose of a hazardous substance, that is, "in some manner the defendant must have *dumped* his waste on the site at issue," as opposed to convey a useful substance for a useful purpose. . . .

This is so because the use of the phrase disposal:

> clearly circumscribes the types of transactions in hazardous substances to which liability attached, narrowing liability to transactions in the disposal or treatment of such substances. . . . [Thus,] liability for . . . damage under § 9607(a)(3) attaches only to parties who transact in a hazardous substance in order to dispose of or treat the substance.

* * *

Hence, the sale of a hazardous substance for a purpose other than its disposal does not expose defendant to CERCLA liability. . . .

Thus, while CERCLA holds violators strictly liable for violations, *Jersey City, supra,* 28 ERC at 1880, and hence the court need not examine the intent or knowledge with which the transaction occurred, *see [U.S. v. A & F Materials Co.,* 582 F. Supp. 842, 845 (S.D. Ill. 1984)]; *Jersey City [Redevelopment Auth. v. PPG Indus.,* 655 F. Supp. 1257, 1261 (D.N.J. 1987), *aff'd,* 866 F.2d 1411 (3rd Cir. 1988)]; *but see [Edward Hines Lumber Co. v. Vulcan Materials Co.*, 685 F. Supp. 651, 655 (N.D. Ill. 1988)], the court must examine the character of the transaction to determine whether or not a statutorily defined disposal has occurred. . . .

Applying this analysis to the facts as plead it appears that plaintiffs claim that defendants manufactured processed, marketed, distributed, supplied and sold asbestos-containing products for use in a variety of building materials, including fire-proofing and insulation. Although in the portions of their complaint related specifically to their CERCLA claim plaintiffs purport that defendants engaged in disposal, the factual allegations reveal that the transfer of the asbestos-containing products was indeed a sale of a substance for the use in the construction of a building. Hence, as there was no affirmative act to get rid of the asbestos beyond the sale of it as part of a complete, useful product, for use in a building structure, the plaintiffs' allegations fail to reveal that there has been an arrangement for the disposal of hazardous substances, even though such substances may have come to eventually flake off and potentially pose a health risk. Plaintiffs' factual allegations even taken as true, therefore, do not reveal that the transfer of the asbestos-containing products was tantamount to a disposal of same, but rather reveal that there had been a conveyance of a useful,

> albeit dangerous product, to serve a particular, intended purpose. To say that such a transaction constitutes a CERCLA-type disposal "would require too strained an interpretation of the statutory definition of [the] terms. "*Corporation of Mercer University v. National Gypsum, Co.*, No. 85-126-3 (MAC) slip op. at 20 (M.D.Ga. March 9, 1986) (unpublished). *See also 3550 Stevens Creek [Assoc. v. Barclays Bank,*, No. C-87-20672, slip op. at 3 (N.D. Cal. Filed Sept. 28, 1988) (unpublished), *appeal docketed* No. 88-15503 (9th Cir. 1988)], in which the court held that CERCLA does not provide for the recovery costs incurred in the removal of asbestos from buildings.
>
> Thus, even assuming that the other elements of § 9607(a)(3) liability have been met, the absence of factual allegations which support a conclusion that there has been a "disposal" as defined under CERCLA, fails to state a viable CERCLA claim. As there has been no "disposal" under the factual scenario alleged in plaintiffs complaint, plaintiffs fail to state a claim under CERCLA upon which relief may be granted and therefore this cause of action must be dismissed and defendants request that I do so is hereby granted. In light of this disposition, and for all of the reasons set forth above, plaintiffs' cross-motions are denied.

711 F.Supp. at 1253 – 55 (citations omitted)(footnote omitted).

Conclusion

Following the statutory analyses and reasoning of these cases, it is clear that neither Titan Tire nor Dico undertook any affirmative acts to "arrange" for the disposal of any hazardous substances. Titan Tire, on behalf of Dico, intended to, and believed that it was, selling commercially useful products when it sold the various buildings to SIM. It was the understanding of my clients that SIM intended to dismantle the building on Dico's property, ship the building components to SIM's property in Ottumwa, and re-assemble the building for use in SIM's business operations on SIM's property. In fact, SIM paid in excess of $150,000 for these buildings – it is inconceivable that anyone would pay that much money for something they merely intended to dispose of. After selling the buildings to SIM, my clients had no involvement in the dismantling, loading, shipping, off-loading, staging, or re-assembling of the buildings on SIM's property.

The facts and the law establish that EPA cannot prove that Titan Tire and/or Dico are arrangers under CERCLA. Any decision by EPA to the contrary would be without basis, and certainly would be arbitrary and capricious.

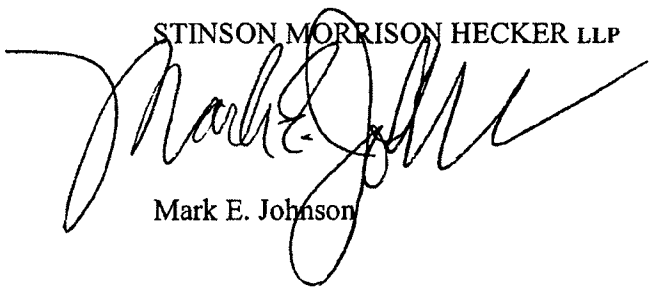
Furthermore, because of the significant issues regarding the validity of the sampling and sampling results EPA is relying upon, which were taken without notice to my clients, and without affording them an opportunity to observe and to take their own

samples, we have serious questions as to whether any remediation is necessary or if so, the nature and extent of any such remediation, until we are afforded an opportunity to inspect the Site and conduct our own sampling. Any precipitous action taken by EPA before we are given these opportunities would be arbitrary and capricious.

Nonetheless, we remain committed to cooperating with the EPA and attempting to negotiate a resolution of this matter, and we are fully prepared to move forward with the Site investigation agreed upon last week.

Sincerely,

STINSON MORRISON HECKER LLP



Mark E. Johnson

AFFIDAVIT

STATE OF IOWA)
) ss.
COUNTY OF POLK)

William E. Campbell, being of lawful age and first duly sworn, states as follows:

1. I am the President of Titan Tire Corporation ("Titan Tire") and each of the facts stated herein are based upon my own personal knowledge or information reported to me in the ordinary course of my duties and responsibilities as President of Titan Tire by persons with personal knowledge.

2. Between 2004 and 2007, Southern Iowa Mechanical, L.L.C. ("SIM"), purchased certain buildings located on the Dico, Inc. ("Dico") property in Des Moines, Iowa. It was my understanding and belief, based upon conversations with the president of SIM, Jim Hughes, that SIM intended to re-assemble each of the buildings it purchased on its property in Ottumwa, Iowa, and to use those buildings in its business operations.

3. Titan Tire, on behalf of Dico, entered into purchase agreements with SIM for the sale of the buildings. The total purchase price paid by SIM for these buildings was in excess of $150,000.

4. Titan Tire, on behalf of Dico, had solicited bids for the purchase of these buildings from several other potentially-interested buyers. Titan Tire received oral bids from one or two other parties, and SIM's bid was the highest.

5. After entering into the purchase agreement for each building, SIM disassembled the buildings it had purchased and removed the building components from the Dico property. Neither Titan Tire nor Dico had any involvement in disassembling the buildings, loading the

building components on SIM's trucks, or shipping the building components to SIM's property for re-assembly.

6. At the time of the sale of the buildings to SIM, and at all times since then, I believed that Titan Tire, on behalf of Dico, was selling a commercially useful product or material for a reasonable value inasmuch as it was my understanding that SIM intended to reassemble the buildings on its property in Ottumwa, Iowa, for use in its business operations.

7. At no time during the sale of any of the buildings to SIM was I was aware of any hazardous substances located on or in any of the building components.

8. Each of the facts stated herein are true to the best of my information, knowledge and belief.

William E. Campbell 9/30/08

William E. Campbell Campbell, President
Titan Tire Corporation

Subscribed to before me, a Notary Public, on this 30th day of September, 2008.

AFFIDAVIT

STATE OF IOWA)
) ss.
COUNTY OF WAPELLO)

James R. Hughes, being of lawful age and first duly sworn, states as follows:

1. I am the President of Southern Iowa Mechanical, L.L.C. ("SIM ") and each of the facts stated herein are based upon my own personal knowledge and are true and correct to my best knowledge, information and belief.

2. In 2004 and in 2007, SIM purchased several buildings located on the Dico, Inc. ("Dico") property in Des Moines, Iowa, as indicated on the attached map marked as "Attachment B" which has been previously provided to the United States Environmental Protection Agency ("USEPA") as required by USEPA information requests. The total purchase price paid by SIM for the buildings was in excess of $150,000.

3. SIM also paid its employees for the disassembly and paid for the shipping of the building steel structures to SIM's property in Ottumwa, Iowa.

4. SIM purchased the buildings for the purpose of re-assembling them as buildings on SIM's property in Ottumwa, Iowa, for use in connection with SIM's business activities.

5. SIM purchased the buildings for a useful purpose in SIM's business.

6. At the time of the purchase of the buildings and until contacted by the USEPA, SIM was not aware of any hazardous substances located on or in any of the buildings or their components and no one had informed SIM of the presence of any such substances or of any USEPA involvement with the property where the buildings were located.

7. SIM did not purchase the buildings for the purpose of disposing, treating, or transporting any hazardous substances.

James R. Hughes

James R. Hughes, President
Southern Iowa Mechanical, L.L.C.

Subscribed to before me, a Notary Public, on this 2 day of October, 2008.

David Grandon

DAVID GRANDON
Commission Number 746385
My Commission Expires
April 13, 20[illegible]

Attachment B

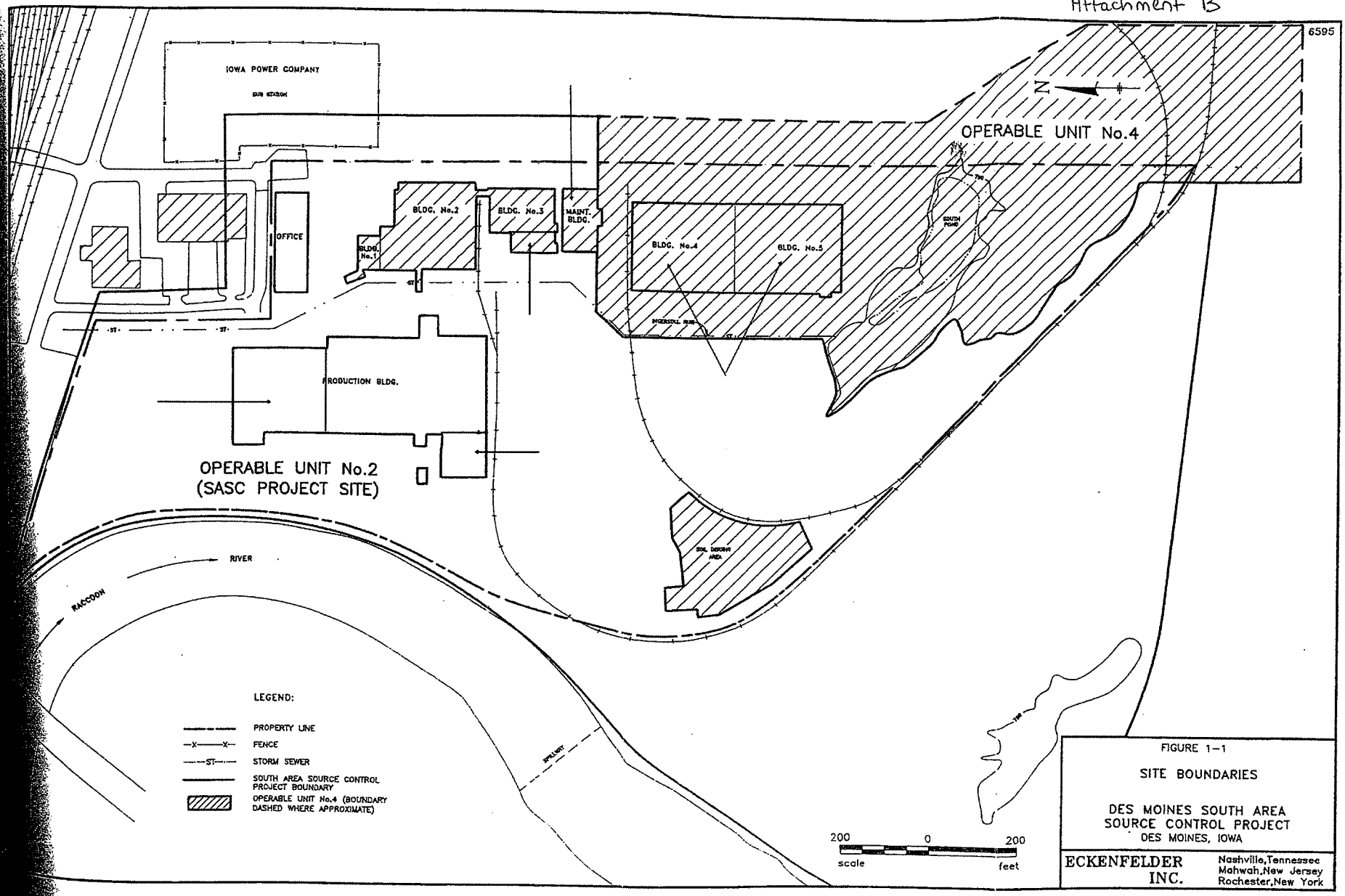


FIGURE 1-1

SITE BOUNDARIES

DES MOINES SOUTH AREA SOURCE CONTROL PROJECT
DES MOINES, IOWA

ECKENFELDER INC.
Nashville, Tennessee
Mahwah, New Jersey
Rochester, New York

D0068