may include damages of up to three times the costs incurred by the EPA and fines up to \$37,500 per day. 42 U.S.C. § 9607(c)(3); 42 U.S.C. § 9606(b)(1); 73 Fed.Reg. 75,340–46 (Dec. 11, 2008). To avoid the risks associated with non-compliance, a PRP may comply with the UAO and then seek reimbursement of the costs associated with compliance under CERCLA § 106(b)(2)(A) and (C) (42 U.S.C. § 9606(b)(2)(A) and (C)).

CERCLA § 106(b)(2)(A) provides:

Any person who receives and complies with the terms of any order issued under subsection (a) of this section may, within 60 days after completion of the required action, petition the President for reimbursement from the Fund for the reasonable costs of such action, plus interest. Any interest payable under this paragraph shall accrue on the amounts expended from the date of expenditure at the same rate as specified for interest on investments of the Hazardous Substance Superfund established under subchapter A of chapter 98 of title 26.

Reimbursement is available to a party who receives and complies with the terms of an administrative order. *Employers Insurance of Wausau v. Browner*, 52 F.3d 656, 662 (7th Cir. 1995) (right of petition ripens after completion of the required action, the required action being those actions required by the order). Petitioner complied with the AO and completed the required action on April 6, 2012 when the EPA issued its Notice of Completion. *In re Glidden Co.*, 10 EAD 738, 747 n.7 (EAB 2002) (citing In re Solutia, Inc., 10 E.A.D. 193 (EAB 2001) (region issued Notice of Completion); *In re ASARCO, Inc.*, 6 E.A.D. 410, 419 (EAB 1996) (region sent letter stating that work required by UAO had been complete)). Compliance with the AO requires the EPA's confirmation that the required actions have been completed. Petitioner complied with each of the terms of the AO as follows.

1. Petitioner Complied with AO Section 1: Notice of Intent to Comply

Pursuant to the AO, Respondents were required to submit an Intent to Comply. Pursuant to a conference call on August 11, 2010, the EPA made the deadline for the Intent to Comply

August 23, 2010. On August 20, 2010, the EPA extended Respondents' deadline for the Intent to Comply to September 20, 2010. (Ex. 44.) On September 21, 2010, the EPA extended Respondents' deadline for the Intent to Comply to October 21, 2010. (Ex. 45.) On October 21, 2010, Petitioner submitted its Intent to Comply. On November 26, 2011, the EPA found Petitioner's Work Plan and Contractor Designation to be deficient and not in compliance with the AO but did not inform Petitioner that its Intent to Comply was not in compliance. The EPA advised that it would consider its options in order to enforce the AO. In March 2011, the EPA advised Petitioner that the result of the Richland County action may determine the EPA's enforcement actions. In June 2011, the EPA informed Petitioner that it would consider an Intent to Comply from Petitioner commensurate only with cleanup of friable asbestos at the Site. As a result of these discussions, on June 30, 2011, the EPA extended Petitioner's deadline for the Intent to Comply to July 8, 2011, based on EPA's requirements that Petitioner would only be responsible for asbestos remediation and removal (Exs. 58, 59 and 62.) On July 8, 2011, Petitioner submitted its Intent to Comply based on a Work Plan that addressed the removal and remediation of asbestos contamination at the Site. (Ex. 62.) On July 8, 2011, the EPA accepted Petitioner's Intent to Comply. Accordingly, Petitioner completed the requirement of Section 1 of the AO on July 8, 2011.

2. Petitioner Complied with AO Section 2: Designation of Contractor, Project Coordinator and On-Scene Coordinator

Petitioner contracted with Precision Environmental to perform the removal actions under the AO. Through Precision Environmental, Petitioner provided the EPA with qualifications of Precision Environmental and Precision Environmental's single sub-contractor for air sampling and monitoring, RCS (See Ex. 75.) Petitioner also provided qualifications of Precision Environmental and RCS to EPA, all of which were approved on August 5, 2011. Accordingly,

Petitioner completed the requirements of Section 2 of the AO on August 5, 2011 when all qualifications were formally approved.

3. Petitioner Complied with AO Section 3: Work to be Performed

Pursuant to the Work Plan and Health and Safety Plans, and the approved Intent to Comply with the AO in which petitioner only had to address asbestos removal and remediation, Petitioner performed all removal and remediation activities required under the AO, including:

- (1) Development and implementation of a Site Health and Safety Plan, Contingency Plan, and Air Monitoring/Sampling Plan;
- (2) Removal and disposal of asbestos-contaminated building debris; and
- (3) Taking necessary response action to address any release or threatened release of a hazardous substance, pollutant, or contaminant that the EPA determines may pose an imminent and substantial endangerment to the public health or the environment.

As the requirements for Petitioner were modified, Petitioner was not required to remove and dispose of PCB-contaminated transformers and PCB-contaminated surfaces, remove and dispose of any drums and other containers of hazardous materials, contaminants, or pollutants; transport and dispose of all hazardous material or contaminants at an EPA-approved disposal facility; render any large storage tanks unusable at the Site; or investigate for and remove contaminated surface soil due to leaking containers. The EPA extended the completion date to November 14, 2011 (Ex. 73.) Precision Environmental provided Petitioner with Waste Manifests and Air Monitoring Reports by November 17, 2011. The EPA required Petitioner to attend a Site inspection on November 23, 2011, at which time the EPA confirmed that cleanup requirements had been met. (Ex. 77.) Accordingly, Petitioner completed the requirements of Section 3 of the AO on November 23, 2011.

4. Petitioner Complied with AO Section 3.1: Work Plan and Implementation

Pursuant to Section 3.1 of the AO, Respondents were required to submit a Work Plan for performance of removal activities. Pursuant to a conference call on August 11, 2010, the EPA made the deadline for the Work Plan August 23, 2010. On August 20, 2010, the EPA extended Respondent's deadline for the Work Plan September 20, 2010. (Ex. 44.) On September 21, 2010, the EPA extended Respondents' deadline for the Work Plan to October 21, 2010. (Ex. 45.) On October 21, 2010, Petitioner submitted its Work Plan. On June 30, 2011, EPA extended Petitioner's deadline for the Work Plan to July 8, 2011, and advised Petitioner that the EPA would accept a Work Plan for purposes of providing guidance prior to the July 8, 2011 deadline. (Ex. 58.) On July 1, 2011, Petitioner submitted a Work Plan for review by the EPA. (Ex. 60.) On July 5, 2011, the EPA advised that it was in the process of reviewing the Work Plan. On July 8, 2011, with prior approval from the EPA, Petitioner submitted its Notice of Intent to Comply acknowledging the EPA's approval that a Work Plan would follow in a reasonable amount of time. On July 13, 2011, Petitioner submitted its Work Plan. On July 27, 2011, as a result of the EPA's collaboration with Precision Environmental, Petitioner submitted a revised Work Plan. On August 1, 2011, as a result of the additional EPA collaboration with Precision Environmental, Petitioner submitted a revised Work Plan, which was formally accepted by the EPA on August 5, 2011 and became fully enforceable under the AO. (Ex. 67.) Petitioner notified the EPA on August 10, 2011, that Precision Environmental and RCS would commence the Work Plan on August 22, 2011, which was at least forty-eight hours prior to commencement as required under the AO. The Work Plan was implemented on August 22, 2011. Work was concluded on November 14, 2011. Accordingly, Petitioner completed the requirements of Section 3.1 of the AO on November 14, 2011.

5. Petitioner Complied with AO Section 3.2: Health and Safety Plan

Pursuant to Section 3.2 of the AO, Respondents were required to submit a Health and Safety Plan to ensure health and safety during performance under the Wok Plan. Pursuant to a conference call on August 11, 2010, the EPA made the deadline for the Health and Safety Plan August 23, 2010. On August 20, 2010, the EPA extended Respondent's deadline for the Health and Safety Plan to September 20, 2010. (Ex. 44.) On September 21, 2010, the EPA extended Respondents' deadline for the Health and Safety Plan to October 21, 2010. (Ex. 45.) On October 21, 2010, Petitioner submitted its Health and Safety Plan. On June 30, 2011, EPA extended Petitioner's deadline for the Health and Safety Plan to July 8, 2011. On July 1, 2011, Petitioner submitted a Health and Safety Plan for review by the EPA. (Ex. 60.) On July 5, 2011, the EPA advised that it was in the process of reviewing the Work Plan and Health and Safety Plan. On July 13, 2011, Petitioner formally submitted its Health and Safety Plan. On July 27, 2011, as a result of the EPA's collaboration with Precision Environmental, Petitioner submitted a revised Health and Safety Plan. On August 1, 2011, as a result of the additional EPA collaboration with Precision Environmental, Petitioner submitted its Health and Safety Plan, which was formally accepted by the EPA on August 5, 2011 and became fully enforceable under the AO (See Ex. 67.) Accordingly, Petitioner completed the requirements of Section 3.2 of the AO on August 1, 2011.

6. Petitioner Complied with AO Section 3.4: Reporting

The EPA suspended requirements of monthly reporting under Section 3.4 of the AO. (Ex. 83.)

7. Petitioner Complied with AO Section 3.5: Final Report

Pursuant to Section 3.5 of the AO, Petitioner was required to submit a Final Report for EPA review within sixty days of after completion of all removal actions required under the AO.

Final removal actions were completed on November 14, 2011 and confirmed by the EPA on November 23, 2011. Petitioner timely submitted its Final report on December 15, 2011, which was within sixty days of all removal actions required under the AO. (Ex. 77.) On January 9, 2012, the EPA informed Petitioner that its Final Report was deficient and requested additional specificity regarding action performed under the Work Plan. Petitioner and the EPA disagreed as to whether the EPA's approval of the Final Report is a "required action" under the AO. Concerned that EPA approval of the Final Report was not a required action, Petitioner sought to avoid being barred by the sixty-day statute of limitations and filed its Petition on February 13, 2012. Petitioner submitted a revised Final Report to the EPA on March 2, 2012. In response to the EPA's request for additional revisions, Petitioner submitted a second revised Final Report to the EPA on March 12, 2012. On April 6, 2012, the EPA Issued a Notice of Completion and approved Petitioner's Final Report. Accordingly, Petitioner completed the requirements of Section 3.5 of the AO on April 6, 2012.

8. Petitioner Complied with AO Section 4: Access to Property and Information

Pursuant to Section 4 of the AO, Respondents were to obtain and provide access to the Site and all records and documentation related to the conditions at the Site and activities conducted at the Site. On October 20, and November 11 and 18, 2010, Petitioner provided the EPA with all known documentation it had relating to the Site and activities performed by Thomas, Piscazzi, Nationwide, Asbestek, Euclid, and ODH and Ohio EPA. (See Exhibits 46, 51, 52.) On August 10, 2011, Petitioner provided the EPA with executed access agreements from all Site owners. (Ex. 69.) On December 15, 2011, Petitioner provided the EPA with Waste Manifests and Air Monitoring Samples. (Ex. 75.) Accordingly, Petitioner timely completed the requirements of Section 4 of the AO by December 15, 2011.

9. Petitioner Complied with AO Section 5: Record Retention, Documentation, Availability of Information

Petitioner is required to preserve all original documents relating to work under the AO for six years. Petitioner has stored all original documents, which are in the possession of its Attorneys. Petitioner has also made arrangements to advise the EPA at least sixty days prior to December 15, 2017, the required six-year period, or at any time thereafter, if such documents are to be destroyed, to give the EPA an opportunity to inspect such documents. Accordingly, Petitioner is in compliance with the requirements of Section 5.

10. Petitioner Complied with AO Section 6: Off-Site Shipments

Pursuant to Section 6 of the AO, Respondents were required to treat, store and/or dispose asbestos contaminated material at a facility of compliance as determined by the EPA. As identified in the Work Plan and approved by the EPA, all asbestos waste was transported for disposal and storage at Minerva. Waste manifests are included in Ex. 75. Accordingly, Petitioner has complied with the requirements of Section 6.

11. Petitioner Complied with AO Section 7: Compliance with other Laws

Pursuant to Section 7 of the AO, Respondents were required to perform all cleanup actions in accordance with all applicable local, state and federal laws and regulations. As identified in the Work Plan approved by the EPA, Petitioner complied with Section 7 requirements.

12. Petitioner Complied with AO Section 8: Emergency Response and Notification Form of Releases

Pursuant to Section 8 of the AO, Respondents were required to comply with certain requirements in the event that hazardous substances were released from the Site or posed a

danger to public health, welfare or the environment. The Work Plan and Safety Plan provided for these requirements. During cleanup, no such circumstances arose.

For the foregoing reasons, Petition complied with all actions under the AO, having completed each required action by April 6, 2012. CERCLA § 106(b)(2)(A) authorizes a PRP to submit its petition for reimbursement of costs sixty days after the completion of the required action. City of Rialto v. West Coast Loading Corp., 581 F.3d 865, 879 (9th Cir. 2009) (Once a PRP claims to have completed to the required action, he has a claim for reimbursement as the EPA's certification is not a prerequisite to bringing suit). The sixty day period commences on the date that the EPA confirms that the required actions have been completed. In re Glidden Co., 10 EAD 738, 747 n.7 (EAB 2002) (citing In re Solutia, Inc., 10 E.A.D. 193 (EAB 2001).

B. Petitioner is Not Liable for Responsive Action or Costs under CERCLA § 107(a)

Petitioner is required to establish by a preponderance of the evidence that it is not liable for response costs under CERCLA § 107(a) and that costs for which it seeks reimbursement are reasonable in light of the action required by the AO. CERCLA § 106(b)(2)(C), *In re Grand Pier Center, LLC Petition No. 04-01, In re Chem-Nuclear Sys., Inc.*, 6 E.A.D. 445, 454 (EAB 1996). CERCLA § 106(b)(2)(C) provides:

Except as provided in [CERCLA § 106(B)(2)(D)], to obtain reimbursement, the petitioner shall establish by a preponderance of the evidence that it is not liable for response costs under section 9607 (a) of this title and that costs for which it seeks reimbursement are reasonable in light of the action required by the relevant order.

CERCLA § 107(a)(1) lists four categories of responsible parties who are liable for the costs associated with an administrative order under CERCLA § 106(a), 42 U.S.C. § 9606(a):

- (1) the owner and operator of a vessel or a facility,
- (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,

- (3) 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, and
- (4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance * * *.

Petitioner does meet the criteria for any subsection under CERCLA § 107(a). Petitioner is and was not the owner of the Site; Petitioner did not contract, agree or otherwise arrange for disposal or treatment of hazardous materials, including asbestos, at the Site; Petitioner does not and did not own or possess any hazardous materials identified at the Site; and Petitioner did not transport any hazardous materials to, at or from the Site.

In the Amended AO, issued on July 27, 2010, the EPA made no specific findings of fact with respect to Petitioner. Instead the Agency merely amended the June 21, 2010 AO by adding the following language:

U.S. EPA herewith determines that Safe Environment [sic] Corporation is a "liable party" as defined in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is subject to this Order under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

* * *

Nationwide contracted with Asbestek, Inc. and Safe Environment [sic] Corporation for asbestos abatement work.

* * *

Respondents Nationwide Demolition Services, LLC, Asbestek, Inc., and Safe Environment[al] Corporation [of Indiana] are persons who at the time of disposal of any hazardous substances operated the Site, or who arranged for disposal or transport for disposal of hazardous substances at the Site.

The EPA's determination that Petitioner is a liable party under 42 U.S.C. § 9606(a) results from the single, uncorroborated (and subsequently denied) statement of Amaya that

Petitioner gave Asbestek "full permission and authority to use" Petitioner's Ohio License for its performance at the Site. Petitioner denies that any permission or authority was given. No independent evidence exists by which the EPA determined Petitioner to be a liable party under the AO. Subsequent to his Affidavit, Amaya testified in a deposition that he is unable to confirm whether his "request" to use Petitioner's Ohio License was ever actually received by Petitioner's then president, Paganelli, and that it is quite possible that Paganelli never gave any such authority. Amaya has not disputed that Petitioner was not a contractor at the Site, that Asbestek and Petitioner had no contract, that neither Petitioner nor its employers were present at anytime at the Site, that Petitioner received no benefit, financially or otherwise from work performed at the Site, that Petitioner did not inspect, assess, or authorize any work at the Site, and that Petitioner did not communicate with Piscazzi, Thomas, Aydin, Nationwide, Asbestek, Amaya, Vadas, the Ohio EPA, or ODH regarding any work to be performed or performed by Asbestek at the Site at any time prior to Asbestek's conclusion of its abatement efforts. Petitioner has no liability under 42 U.S.C. § 9607(a). In addition, substantial evidence shows that Amaya and Vadas deceptively and fraudulently used Petitioner's Ohio License without authorization.

- 1. Petitioner Did Not Authorize or Participate in Removal, Remediation or Transportation of Hazardous Materials at the Site
 - a. Petitioner Did Not Authorize Use of Its Ohio License to Asbestek or Tomas Amaya

Petitioner did not authorize use of its Ohio License by Amaya, Vadas or Asbestek for work at the Site. At their first meeting, Amaya and Vadas were aware that an Ohio License would be necessary to perform the abatement work at the Site. (Ex. 12, 75: 1-14.) Amaya testified that Vadas informed him that Nationwide had an Ohio License under which Asbestek would work (Ex. 12, 77:20 – 81:20.) Amaya testified that either Vadas or Collins was lying, but Amaya found out later that Nationwide did not have an Ohio License. (Ex. 12, 87:2 – 88:24.) In

late August 2007, Asbestek performed non-friable asbestos abatement at the Site while Amaya and Vadas "worked on the license" (Ex. 12, 89:19-21) application for Asbestek (Ex. 12, 97:17-24.) In order to accomplish this, Amaya gave Vadas the template to fill out the application to ODH (Ex. 12, 104:14-20) and claimed that Vadas filled it out and Amaya signed it (Ex. 12, 106:8-10.) Amaya was also aware that in order to perform asbestos abatement work in Ohio that a Supervisor License was necessary. Amaya initially testified that he had a Supervisor License which he obtained around the time that plans to work with Nationwide were being developed. (Ex. 12, 80:1-24.)

Amaya testified that because the price of metal increased and Collins wanted to remove the metal from structures on the Site without further delay, the pressure was high and "we didn't have time to get the license because it takes six weeks." (Ex. 12, 96:3-16.) Amaya testified that this left him with two choices: (1) either submit Asbestek's own application for the Ohio License to ODH (even though he testified this had already been done) or (2) ask his "friend to let me use his license." (Ex. 12, 144:3-6.) He allegedly chose the latter option, and claims to have called Paganelli by phone and requested permission to use the Ohio License. (Ex. 12, 117:10-15.) Amaya testified that he expected Paganelli to give him the Ohio License because Amaya had been a responsible and faithful laborer for Petitioner. (Ex. 12, 148: 12-20.) But he admitted that he has never experienced a situation where a company just "gives" its License for use in a job. (Ex. 12, 150:3-15.)

Amaya had a poor recollection¹¹ of when he made the request to Paganelli, but claimed to have done it after the non-friable asbestos abatement phase of the project and after he had been to the Site (Ex. 12, 151:1 – 152:11.) Amaya stated that he called Paganelli on the phone and

¹¹ In his Affidavit, Amaya stated that he obtained permission from Paganelli "on or about August 31, 2007." When Petitioner provided the EPA phone records to show that this was not possible, Amaya, who was given a copy of the phone records to review before responding, told the EPA that he could not recall when the call was made.

said, "I have a small job in Ohio which I need to get done but I don't – it going to take me too long to get the license. Can you let me use your license?" (Ex. 12, 156:4-7.) Amaya claims that Paganelli said "Yes, no problem" (Ex. 12, 158:7.) But he admitted that Paganelli may not have understood his request (Ex. 12, 158:7-19.) He testified:

- Q: But you think that maybe [Paganelli] didn't understand what you were talking about [your request to use Safe Environmental's Ohio License]?
- A: I'm not sure. I'm not sure he understand [sic] or he didn't understand. I'm...
- Q: Okay. Well, you bring that up.
- A: Because -yeah. Because maybe, maybe understand, maybe not. I don't know." (Ex. 12, 162:23-163:5.)
- Q. And you say you got that authority from a two-minute phone call with Anthony Paganelli, correct?
- A. Yes.
- Q: And you say it's possible Anthony Paganelli didn't understand you?
- A: It's possible, yes.

(Ex. 12, 205:19-24)

And not only is it possible that Paganelli did not <u>understand</u> the request, Amaya admitted that it is possible that Paganelli didn't even <u>hear</u> the request:

- Q: But it's possible [Paganelli] didn't hear what you said to him?
- A: It's possible. (Ex 12, 177:2-4)

Amaya testified that Paganelli is the only person who can answer the question of whether Paganelli "understood" or "heard" Amaya:

- Q. [Asbestek's contract at the Site is] a small job?
- A. That's like -- yes.
- Q. That's what you call a small job?
- A. Yes.
- Q. And so you told [Paganelli] I have a small job in Ohio?
- A. Yes.
- Q. And you said what, can I use your license?
- A. Yes
- Q. Okay. And you said that with no prior experience of you or anyone you know making such a request, right?
- A. Yes.

- Q. Okay. And what did Anthony [Paganelli] say when you said that?
- A. Yes.
- Q. Okay. He just said yes?
- A. Yes, no problem.
- Q. Okay. And he understood you, didn't he?
- A. That's the point.
- O. Tell us?
- A. I don't know because when I told him, yes. When I ask him to use his license, he said yes.
- Q. Okay.
- A. But he's the only one can answer that question if he understand -- he understood or not.
- Q. There's a chance he didn't understand?
- A. Maybe.
- Q. Okay. And why do you think there's a chance that he didn't understand what you were asking for?
- A. One thing maybe because it was wasn't face to face. It was by phone.
- Q. Okay.
- A. And second thing, you know, you see my English now. Two years ago, four years ago, it was worse. (Ex. 12, 157:13 159:4.)

Paganelli has been available for his own deposition in the Richland County action, but none of the parties have requested to depose him. Petitioner offered to have the EPA interview Paganelli to address Amaya's claims and versions of events, yet the EPA declined to interview him. As Petitioner is unable to depose its own client, Petitioner has obtained two sworn affidavits from Paganelli to address Amaya's statements. Paganelli testified in one affidavit that while he was aware that Amaya was forming his own company to do side jobs, Amaya never made any request of Paganelli to "use" Petitioner's Ohio License. He further testified that Amaya never made any request nor did he ever authorize Amaya or Asbestek to use Petitioner's Ohio License. (Ex. 84.)

Amaya's claim is not corroborated by any other person. Vadas admitted that he has no personal knowledge about Amaya having authority to use Petitioner's Ohio License and that it is possible that Amaya never obtained authority.

- Q. With respect to the Cleveland Trencher project that Asbestek had with Nationwide Demolition, do you agree with me that Tomas Amaya did not have authority from Tony Paganelli?
- A. I don't know that. No, I don't because I don't. I don't know that.
- Q. Is that a possibility?
- A. Sure.

(Ex. 11, 172:22 – 173:5.)

Not only is Amaya's claim not corroborated by any other individual, but when confronted by the EPA, Amaya changed the circumstances surrounding his obtaining Petitioner's Ohio License that he previously described under oath. In his August 23, 2010 deposition, Amaya testified that Paganelli instructed him to obtain Petitioner's Ohio License from Petitioner's office. First, he testified that he is confident that Paganelli was not in the office because he called him in the office "for something else," but Paganelli did not answer:

- Q. What did you do?
- A. I went to the office and I asked the I told the secretary [Paganelli] let me use his Ohio contractor license. Can I have a copy, please, and he gave it to me.
- Q. What's his name?
- A. I don't know what his name. Some people call him Matt and some people call him Chris.
- Q. Did you tell Matt or Chris -- we'll call him Matt, Okay? Did you tell Matt about your conversation with [Paganelli]?
- A. Yes.
- Q. And what did you tell him?
- A. I just talked to [Paganelli], I asked him to use -- if he can let me use his Ohio license. He told me yes. And can I have a copy, please, and he gave it to me.
- Q. Okay. Did you tell [Paganelli] about any details about the Cleveland Trencher job?
- A. No.
- Q. Why not?
- A. Because I was secure, I was 100 percent sure the job going to be done with no problems.
- Q. You're saying that you were sure there would be no problems?
- A. Yes.
- Q. And so that was sufficient for you not to tell him anything about the job?
- A. He don't ask me.

- Q. So you went to the office and you spoke with Matt and you said [Paganelli] said I can have the license for Ohio, please give it to me. What did he do?
- A. Who?
- O. Matt.
- A. He make a copy and gave it to me.
- Q. And how did that happen? What did he do? Did he go to a filing cabinet? Did he go and talk to [Paganelli]? How did that happen?
- A. Well, he -- I don't know -- I don't know where the license was. He make a copy and gave it to me.
- Q. Did he do that in front of you or did he do it in a back room, what?
- A. I remember he was making copy but I don't know -- he gave it to me but I don't know.
- Q. Do you know where he got the license from?
- A. No.
- Q. Had you ever been in the office before?
- A. So many times.
- Q. You know that there's a board in there with the licenses all over the board, right?
- A. Yes.
- Q. Okay. Is that where Chris went to get the license?
- A. I don't know.
- O. You didn't watch?
- A. No. I didn't see it.
- Q. What were you doing that you couldn't see that?
- A. Maybe I was talking with the other secretary or I don't know.

- Q. So you didn't even -- you didn't when you went to the office, you could have asked for [Paganelli] who would have been there?
- A. No, he wasn't there.
- Q. How do you know that?
- A. Because I call him -- I call -- I was calling him for something else right at that moment. Oh, I think it was for -- calling him to tell him Chris, something like that but I was calling him and his call was for voicemail or something. (Ex. 12, 159:22 167:14.)

He then testified a second time that Paganelli was not in the office because he would have been able to see Paganelli if he were there.

- Q. Okay. So when you went in to talk to Chris about getting the Ohio contractor's license from [Paganelli], you also talked to him about getting [Paganelli] Carlos Bonilla's documents?
- A. Yes.
- Q. And Chris gave you all that stuff?
- A. Yes.
- Q. No questions asked?

- A. Nope.
- Q. Did he go back and talk to [Paganelli] and say that --
- A. I don't know.
- Q. -- Tomas Amaya is out front?
- A. I don't know.
- Q. Well, did he go in the back room?
- A. Well, [Paganelli] wasn't there.
- Q. And you know that because you tried to call him on his cell phone and he didn't answer?
- A. No, he wasn't there. The office is small. You can see it (Ex. 12, 259:14 260:10.)

On or about November 16, 2010, Chow interviewed Tomas Amaya as a result of phone records Petitioner submitted to the EPA in support of its position that it was not a liable party to the AO. Chow related to Petitioner's attorney that Amaya now claimed that when he went to Petitioner's office to obtain Petitioner's Ohio License, Paganelli was **present** at the office. Because Amaya has either lied under oath or lied to the EPA, absent any independent evidence of Petitioner's liability, which there is none, Petitioner cannot be found to be liable under CERCLA § 107(a).

b. Petitioner Did Not Contract, Agree, Arrange for or Engage in the Transport, Disposal or Treatment of Hazardous Substances at the Site.

Beyond Amaya's refuted claim that Petitioner authorized its Ohio License to Asbestek, it is undisputed that Petitioner had no involvement at the site. As Amaya testified, Petitioner did, "nothing else, [j]ust authorize the license" (Ex. 12, 324:9-19.) Amaya admitted that Petitioner was not related to any activity at the Site.

- Q: [Regarding Ex. 22], if it's true that Anthony Paganelli offered his license for free to you to use, this [Ex. 22] would have been more accurate [to submit to the Ohio Department of Health], right?
- A: Yes.
- O: Because the contact person is Anthony Paganelli?
- A: Not really because, see, the inspector call, okay, I'm the -- at the job sight right now, who they going -- who they going to call Tony or they going to call John Vadas? Who we want the inspector call?
- Q: And who do you -- who did you want the inspector to call?
- A: Either me or John Vadas.

- Q: And why would it not have been a good idea for the inspector to call Anthony Paganelli?
- A: Because he's not a he's not related with the job.
- Q: At all, is he?
- A: No. (Ex. 12, 200:17-201:12.)

In fact, is undisputed that Petitioner did none of the following with respect to the Site:

- 1. Execute a written or verbal contract with Asbestek, Amaya or Vadas for services;
- 2. Execute a written or verbal contract with Nationwide for services;
- 3. Provide laborers;¹²
- 4. Pay or agree to pay Amaya or Vadas for any service;
- 5. Pay or agree to pay any laborer for work done;
- 6. Provide equipment; or
- 7. Provide paychecks.

As Amaya testified,

- Q. Did [Petitioner] show up in this case?
- A. No.
- Q. Okay.
- A. They didn't show up.
- Q. Did you ask them to show up?
- A. No.
- Q. Did you use their equipment?
- A. No.
- Q. Did you use their paychecks?
- A. No.
- Q. Did they pay anyone for this job?
- A. No.
- Q. Did they pay you?
- A. No.
- Q. So if the job had worked out well, they would never have to have done anything for this project, right?
- A. No. (Ex. 12, 321:13 322:6].

In his efforts to procure insurance for abatement at the Site, Amaya added Nationwide to

Asbestek's insurance certificate but did not include Petitioner. (Ex. 12, 218:9-15.) He testified

Amaya tried to connect the laborers he hired at low wage (Ex. 11, 215:4-12; 216:19-24) with Petitioner simply because they worked for Petitioner in the past. (Ex. 12, 123:21-124:2). He ultimately admitted that he was able to obtain laborers who formerly worked at Safe Environmental but were out of work at the time he employed them for work at the Site, and therefore their labor at the Site was unrelated to any work by or through Petitioner (Ex. 12, 124:7-125:14). Amaya admitted that he had no authority from Petitioner to use Safe Environmental laborers (Ex. 12, 206: 14-17): "The workers did not belong to Safe [Environmental]." (Ex. 12, 170:8-13, 170:19-22).

that he did not obtain insurance for Petitioner because Petitioner had nothing to do with the abatement project as far as work:

- Q: So who do you name as additional insured in your policy which company?
- A: Nationalwide [sic] Demolition
- Q: Okay, where on that certificate did you identify Safe Environment?
- A: Nowhere.
- Q: Okay. Why not?
- A: Just -- I didn't do any work for Safe Environmental.
- Q: So Safe Environmental had nothing to do with Cleveland Trencher, did it?
- A: As far as work, no.
- Q: Well, as far as what?
- A: Just the license notification.

- Q: So other than the license which you claim to have received from Paganelli in a two-minute call and you're not sure if he truly understood you--
- A: Yes.
- Q: -- what responsibility did Safe Environment have at Cleveland Trencher
- A: They have never been there. They never do any work over there (Ex. 12, 216:7 217:18.)

As Amaya testified, Petitioner had no involvement with any arrangements related to the Site. (Ex. 12, 216:7 -217:18, 324:9-19.) Additionally, Petitioner had no contract or agreement with Amaya, Vadas, Asbestek, Nationwide, Thomas, Piscazzi, Ayden, or any entity related to the abatement efforts or the Site. Under Ohio law, a contract is defined as a promise, or a set of promises, which are actionable upon breach. Essential elements of a contract include an "offer, acceptance, contractual capacity, consideration (the bargained for legal benefit and/or detriment), a manifestation of mutual assent and legality of object and of consideration." *Kostelnik v. Helper*, 96 Ohio St.3d 1, 3, 770 N.E.2d 58, 63 (2002), *quoting Perlmuter Printing Co. v. Strome, Inc.*, 436 F.Supp. 409, 414 (N.D.Ohio 1976) (a meeting of the minds as to the essential terms of the contract is a requirement to enforcing the contract." Indiana law is identical with respect to the requirements of a valid contract. *Indiana Bureau of Motor Vehicles v. Ash, Inc.*, 895 N.E.2d 359, 365 (Ind.App. 2008.) (a contract requires an offer, acceptance, consideration, and mutual

assent, with communication between the parties being essential to establish formation.) As Amaya testified, no contract or agreement existed:

- Q. And you had nothing in writing from Safe Environmental with respect to the authority from them?
- A. No.
- Q. No e-mails?
- A. Nope.
- Q. No faxes?
- A. Nope.
- Q. No contracts?
- A. No.
- Q. No U.S. mail?
- A. No.
- Q. Nothing from Safe Environmental?
- A. Nothing. (Ex. 12, 106:14-207:3)

As Amaya also testified, there was no consideration involved in Amaya's original, subsequently self-denied, claim for obtaining full permission and authority to "use" Petitioner's Ohio License:

- Q. Did you -- what, if anything, did you say about paying him for the license?
- A. Can -- do you want me charge me anything? He said no but like I said.
- Q. So did he -- did he say yes, you can have the license before you asked him what you want for it?
- A. Yes.
- Q. And then when he said yes, what were your words? Did you say -- how did you express?
- A. Oh, thank you.
- Q. But how did you express the thing about payment, what were your words?
- A. No. You going to charge me anything for this? He said no.
- Q. Did he say it was a favor?
- A. No, he don't mention it's a favor.
- Q. He just said no?
- A. Yes. (Ex. 12, 292:19-293:13.)

In order to establish that an oral contract was in place, the terms must be established by oral testimony to determine whether the "words, deeds, acts, and silence of the parties disclose[d] the intent to contract and the terms of the agreement." *Gates v. Paul*, 2011 WL 6036397, * 4 (Ohio App. 10th Dist. Dec. 6, 2011) *citing Rutledge v. Hoffman* (1947), 81 Ohio App. 85, 85, 75 N.E.2d 608, 608 (Ohio App. 1st Dist. 1947). As Amaya testified, no contract

existed. Amaya also testified that there was no mutual assent as he has not a shred of evidence to confirm that Paganelli ever heard his request, let alone understood it, to "use" Petitioner's License. (Ex. 12, 157:13 – 159:4, 162:23-163:5, 177:2-4, 205:19-24.) Furthermore, given the fact that Paganelli had no idea about the Site, the work to be performed, the costs, the parties, the location, the timing, and every other potential detail, no reasonable fact finder could conclude that in a brief phone conversation with Amaya, Paganelli had any remote understanding of Amaya's request, assuming such a request was made. Accordingly, no contract or agreement was in place for which liability could or can be determined under CERCLA § 107(a)(3).

Accordingly, Petitioner cannot conceivably be determined to be a liable party under CERCLA § 107(a) and is entitled to reimbursements of costs and attorney fees. While this evidence alone is sufficient to establish any lack of liability, the evidence also shows that Amaya and Vadas engaged in a pattern of deception and fraud such that that Amaya and Vadas knew that no such authority had ever been given Asbestek by Petitioner.

2. Vadas and Amaya Deceptively and Fraudulently Used Petitioner's Ohio License Ohio defines theft by deception, in pertinent part, as follows:

- (A) No person, with purpose to deprive the owner of property or services, shall knowingly obtain or exert control over either the property or services in any of the following ways:
 - (1) Without the consent of the owner or person authorized to give consent;

(3) By deception¹³;

(B) (1) Whoever violates this section is guilty of theft.

¹³ R.C. §2913.01 defines deception as "knowingly deceiving another or causing another to be deceived by any false or misleading representation, by withholding information, by preventing another from acquiring information, or by any other conduct, act, or omission that creates, confirms, or perpetuates a false impression in another, including a false impression as to law, value, state of mind, or other objective or subjective fact."

If the value of the property or services stolen is seven thousand five hundred dollars or more and is less than one hundred fifty thousand dollars, a violation of this section is grand theft, a felony of the fourth degree. (R. C. §2913.02.)

Ohio defines forgery, in pertinent part, as follows:

- (A) No person, with purpose to defraud¹⁴, or knowing that the person is facilitating a fraud, shall do any of the following:
 - (1) Forge any writing of another without the other person's authority;
 - (2) Forge any writing so that it purports to be genuine when it actually is spurious, or to be the act of another who did not authorize that act, [; or]
 - (3) Utter, or possess with purpose to utter, any writing that the person knows to have been forged.

- (C) (1)(a) Whoever violates division (A) of this section is guilty of forgery.
 - (b) Except as otherwise provided in this division or division (C)(1)(c) of this section, forgery is a felony of the fifth degree. If property or services are involved in the offense or the victim suffers a loss, forgery is one of the following:

(ii) If the value of the property or services or the loss to the victim is one hundred fifty thousand dollars or more, a felony of the third degree. (R.C. §2913.31.)

Proof that Amaya and Vadas were engaged in a theft by deception and forgery is demonstrated by the following: (1) Vadas' and Amaya's description of the circumstances of obtaining the Ohio License are wholly inconsistent; (2) the Notification Forms submitted to ODH contained Vadas' name instead of Paganelli's when Vadas knew that Paganelli's name

¹⁴ R.C. §2913.01 defines "defraud" in pertinent part as "to knowingly obtain, by deception, some benefit for oneself or another."

would have been proper if authorization had been granted; (3) Amaya and Vadas deceptively used Bonilla's Supervisor License without Bonilla's authority and when Amaya and Vadas knew Bonilla would not be working at the Site; (4) if Paganelli had actually provided authority for the Ohio License, it would follow that he would also have obtained Paganelli's Supervisor License; (5) Vadas deceptively altered his fax letterhead depending upon the recipient of his documents so as to conceal unauthorized use of the Ohio License; (6) Vadas admittedly created a spurious Safe Environmental return envelope to falsely give ODH the impression that the Notification Form was actually coming from Petitioner when it was not; (7) Vadas obtained an official bank check and fraudulently identified the remitter as Safe Environmental to bolster support of the false information being submitted to ODH when Safe Environmental neither authorized nor paid for any fees related to the Site; and (8) Amaya's purported telephone communication with Paganelli is insufficient to support his original claim that authority was given by phone consent. Each is discussed following.

a. Testimony Regarding "Use" of Ohio License Is Wholly Inconsistent between Amaya and Vadas

Amaya's and Vadas' versions of circumstances and events surrounding Petitioner's Ohio License are substantially dissimilar. Amaya testified that Vadas assured him Asbestek would perform using Nationwide's Ohio License. According to Amaya, it is only when he learned that Nationwide did not have an Ohio License, coupled with pressure to commence the friable asbestos abatement project, that he sought the assistance of Petitioner at the Site. Wholly opposite is the claim of Vadas, who testified that he and Amaya, together, called Collins together at their very first meeting and confirmed that neither Asbestek nor Nationwide had an Ohio License (Ex. 11, 121:18-21.) Vadas and Amaya then discussed the need for an Ohio License for Asbestek as an immediate priority (Ex. 11, 132:1-7.) Consequently, Vadas began downloading

and filling out forms for the Ohio License application and advised Amaya that there may be a delay in getting the job started due to the time it takes to get an Ohio License (Ex. 11, 132:1-7; 133:1-3.) Vadas claimed that at that point, which is as early as August 16, 2007, and fifteen days prior to Amaya's alleged conversation with Paganelli, Amaya stated, "Don't worry about it. I can get Tony Paganelli's license if we need to." (Ex. 11, 132:20-24.)

Yet Vadas admitted that both he and Amaya were aware that Paganelli had no idea about the job they were discussing at this first meeting (Ex. 11, 126:9-10.) Vadas testified that he prepared the application for the Ohio License which he gave, along with a prepared certified envelope, to Amaya for mailing (Ex. 11, 166:18-23; 186:23.) Vadas never inquired of Amaya whether or not Asbestek's Ohio License application was in fact submitted to the State of Ohio. (Ex. 11, 130:19 – 131:4.) Vadas testified:

- Q: So you filled out the asbestos contractor's license for Asbestek --
- A. Right.
- Q. -- and gave it to Tomas --
- A. Right.
- Q. -- and told him to mail it?
- A. Yes.
- Q. And you saw the green certified [mail] piece?
- A. Right.
- Q. And you assumed he mailed it?
- A. Right.
- Q. And he never told you he didn't?
- A. Right.
- Q. And he never told you he didn't receive that license?
- A. Right.
- Q. At any time?
- A. No.
- O. Never told you that?
- A. Never told me that. (Ex. 11, 187:11-188:6)

When asked about the period of time he first learned from Amaya that Petitioner's Ohio License would be used, Vadas took no effort to either inquire about the status of Asbestek's

supposed Ohio License application nor did he inquire as to the validity of Petitioner's apparent authority:

- A. No. No. Again, you're asking me when he gave me that license, [Petitioner's] license?
- Q. Yes. Safe Environmental's license.
- A. Okay. He gave me Safe Environmental's license in Hammond at his office. 15
- Q. During the summer meeting, correct?
- A. No. I went to his office more than that.
- Q. Okay. Did he give you Safe Environmental's license during phase one or before phase one or after phase one?
- A. During.
- Q. Okay. And what did he say to you when he gave it to you?
- A. That we can't -- you know, we're going to have to use [Paganelli's] license. We can't wait for -- forever to get the [Ohio] license in the mail, something to that effect.
- Q. Okay. Did you ask him if -- about the status of the [Ohio] contractor's license that you filled out earlier for him?
- A. No.
- Q. Did you suggest that he call the Department of Health to see what the status of that was?
- A. No.
- Q. Did he make any indication to you that he did not submit or did submit that form that you filled out at that time?
- A. No, he didn't tell me whether or not he did.
- Q. Did you care?
- A. As long as he had a foreman there.
- Q. Okay. So as long as he had a foreman, you didn't care whose license he used?
- A. Right, even during the friable. I mean, as long as he had a foreman, he could still be on site and as long as he wasn't working, he could still give directions to the foreman just like I could over the phone.
- O. Did you ever call Safe Environment?
- A. Never.¹⁷ (Ex. 11, 207:11-209:7.)

¹⁵ The License was not given in person, but was faxed by Amaya to Vadas so that Vadas could prepare the ODH Notification Form. See Exhibit 25, which bears the August 31, 2007 3:42 p.m. facsimile stamp from Amaya's fax machine and the August 31, 2007 5:40 p.m. facsimile stamp of Vadas' fax machine.

¹⁶ Consistent with Amaya's approach to using Bonilla's Specialist License, Vadas was unconcerned about whether the License was being used validly. As long as the data was acceptable to ODH, then according to Vadas, the Notification was legitimate.

¹⁷ As discussed in Section V.B.2.c, *infra*, Vadas submitted numerous documents to ODH using Petitioner's Ohio License and contact information, and arbitrarily changed the contact person without any authority from or contact with Safe Environmental.

When asked directly whether he made an inquiry on the status of the Asbestek Ohio License, Vadas denied that he ever inquired:

- Q. When -- on August 31st when Tomas was sending you a copy of Bonilla's stuff and Safe Environment's stuff, did you ever ask him what the status of his application was for Asbestek?
- A. His -- his personal license?
- Q. No. Asbestek's contractor abatement license.
- A. No. The only thing I could figure is he either was denied or he never got it out.
- Q. Did you ask him?
- A. No.
- Q. Did he tell you?
- A. No. (Ex. 11, 280:3 15.)

Because Amaya and Vadas knew that the Ohio License was the single most critical part of the contract and because their entire ability to perform rested on it, their totally inconsistent versions of when, how, and why Petitioner's Ohio License was obtained can only be construed as attempts to conceal their deceptive efforts. Amaya knew he could rely on the issue of his poor English language skills if the deceptive efforts were uncovered; Vadas would rely on Amaya's representations regarding the Ohio License and assert ignorance as to the purpose for particular Notification Form requirements.

b. Vadas Purposely Prepared Improper ODH Notification Forms

Vadas testified that he was in charge of preparing Notification Forms for friable asbestos work for the Site. The first Notification Form submitted by Vadas was postmarked on August 31, 2007, and received by ODH on September 4, 2007 (Ex. 23.) Vadas identified the Abatement Contractor as "Safe 'Environment Corporation of Indiana" [sic] with Petitioner's Ohio License Number "AC1922" and Petitioner's correct address, but listed Petitioner's contact person as himself, "John P. Vadas," and Petitioner's contact number as Vadas' cell phone number of (219) 808-1882. Vadas did this to purposely provide false information to ODH as evidenced by the following.

First Vadas withheld this same information from the Ohio EPA. In the EPA Notification Form to the Ohio EPA also prepared on August 31, 2007, Vadas identified the abatement contractor not as Safe Environmental, but as "Asbestek Incorporated" with the Ohio License Number as "Pending in Ohio." (Ex. 20.) Clearly, Vadas knew at this point that no License was pending in Ohio. (Ex. 11, 280:3-15.) This form was faxed to the Ohio EPA: (1) after both Vadas and Amaya alleged that they had already received permission to use Petitioner's Ohio License (Ex. 11, 207:11-15); (2) on the same day that Amaya provided Vadas by facsimile a copy of Petitioner's Ohio License (Ex. 25); and (3) mere seconds after Vadas informed Nationwide that Asbestek would be "using" Petitioner's Ohio License. When Vadas was questioned about this discrepancy, he gave a host of incongruous answers including the explanations: (1) that the Ohio EPA is "only concerned about waste stream" (Ex. 11, 318:10-18); (2) that he was waiting on Asbestek's Ohio License application (Ex. 11, 319:7-8); (3) that he was tired because he did stuff late at night (Ex. 11, 267:22-268-1); (4) that he "gave as much information as he could if anybody had asked a goddamn question" (Ex. 11, 267:12-14); and that he kept in contact with the Ohio EPA. (Ex. 11, 266:2.) Yet, Vadas would provide no logical reason for why he failed to notify the Ohio EPA, even in a subsequent or revised form, that Petitioner condoned use of its Ohio License when he repeatedly, and with painstaking effort, did so to ODH. The only logical explanation is that the deceptive use of the Ohio License could only (and need only) be presented to ODH (so that the Notification Form would result in an approved application) while the Ohio EPA would likely be present at the abatement and would be immediately alerted that Petitioner's Ohio License was being used without authorization.

Second, Vadas initially prepared an ODH Notification Form that correctly identified Petitioner's contact information but then took steps to conceal it in the filing. Vadas initially prepared a Notification Form identical to the one submitted and dated August 31, 2007, except

that the first draft identified the contact person as "Anthony Paganelli," Petitioner's proper phone number, and the "Name of person filing this notice" as "Anthony Paganelli." (Ex. 22.) This form was not submitted in favor of the fraudulent Notification Form filed and received by ODH (Ex. 23.) A careful inspection of both of Exhibits 22 and 23 (respectively) will clearly reveal that these are the exact same documents with the identically executed entries, except that the contact information for Safe Environmental and the "Name of the person filing the form" was changed from Anthony Paganelli on Exhibit 22 but to John Vadas on Exhibit 23 prior to submission. This was done because Vadas knew Petitioner's Ohio License was not authorized and sought to conceal contact information from ODH.

Third, Vadas adamantly denied, then admitted, that he prepared Exhibit 22. He first testified:

- Q. Have -- had -- have you ever filled out a ten-day notification?
- A. Yes.
- Q. And when did you do that?
- A. I did that for Tomas on the project [at the Site] in Cleveland in Euclid.

(Ex. 11, 96:7-12)

Yet, when he was confronted with the Exhibit 22 (the Notification Form not filed), which he prepared immediately before changing the contact information to avoid detection in the Exhibit 23 (the Notification Form actually filed), he denied that he prepared either of them.

- Q: Take a moment to look at [Ex. 22], please. Okay. Have you had a chance to look at that?
- A. Yes.
- Q. That's the ten-day notification form, right?
- A. Yes.
- Q. Okay. Did you fill that out?
- A. I remember getting a lot of this information, yes.
- Q. Who typed that form up?
- A. I don't know. I didn't.
- Q. You did not type that form up?
- A. Nope.
- Q. We had testimony from Tomas Amaya that he didn't type it up. He said that you must have. Would that be true?

- A: No. I use Word or I use Adobe PDF. This is typed in. I don't have a typewriter.
- Q. So you have no idea who typed that up?
- A. No.
- Q. And it was not you?
- A. No, it was not me.

Vadas then admitted, albeit reluctantly, that he is the person who prepared Exhibit 23, which is typed, and then subsequently admitted to typing his forms:

- Q: I want to hand you [Ex. 23], have you take a look at that. Let me know when you're finished with that. Do you recognize that document?
- A. I recognize the information on the document.
- Q. Okay. This is an -- a prior notification, this is a ten-day form, correct?
- A. Yes.
- Q. It's similar to [Ex. 22] but it differs in terms of the information, correct?
- A. Yes.
- Q. Did you fill out this form in [Ex. 23]?
- A. The one I'm looking at right now?
- Q. Yes.

- Q. Did you fill that out?
- A. No, but it looks like I faxed it.
- Q. Well, let's let's focus on the form itself.
- A. Okay.
- Q. Okay. Who filled that form out?
- A. Again, it's typed so I -- I don't don't know if my -- can I use -- just look at this one again?
- O. Sure can.
- A. The font is even different.
- Q. Do you know who filled out [Ex. 23]?

- A: 8-31-2007. This was faxed to myself. I don't know.
- Q Is it fair to say that you you're very interested in the fax information at the top of this page? You've mentioned it twice. Are you interested in studying that, you want to look at that for a bit and think or are you able to answer questions about the document itself without focusing on that fax information?
- A. That fax is driving me crazy. I'm trying to figure out who I faxed this too.
- Q. Well, can you not do that for a moment and just answer questions about the form itself and then -- then I'll let you look at that and you can think about the fax?
- A. Sure.
- Q. Okay. Who filled out this form?

- A: Well, I put most of the information that I received from various people on this form.
- Q. Did you fill that form out?
- A. Person -- yes, but I don't remember typing it in. I remember doing it by hand. And then I don't remember typing -- I don't have the capability to type it.
- Q. What does that mean, you don't have a typewriter?
- A. No, I don't.

- Q: So I'll ask you again, did you fill this form out?
- A. No.
- Q. Who did?
- A. I don't know. It could have been I don't want to speculate because I don't know.
- Q. Okay. Well, could it have been you?
- A. Could have been, sure.

(Ex. 11, 204:1-231:13)

And, amidst questioning about facsimiles he was sending on August 31 to both Amaya and the Ohio EPA, he made a full admission that he prepared Ex. 23:

- Q: So you did make this form; is that correct, [Ex. 23]?
- A: Well, it looks like you got it, Counselor.
- Q. And you put in your name as the representative for Safe Environment; isn't that correct?
- A. I put in my name as contact. I didn't know I can put contact -- I didn't know I had to put [Paganelli's] name.

(Ex. 11, 274: 16-21.)

And yet Vadas did know that he had to put in Paganelli's name because he prepared Exhibit 22 first with Paganelli's name and then changed it to conceal the contact information when he determined the risk of exposure in identifying the proper contact information was too high.

Vadas then testified that he did prepare all Notification Forms on behalf of Asbestek and submit them to ODH and also prepared forms that were typed (Ex. 11, 322:24-323:7.) He admitted preparing and filing the original as well as all revisions (Ex. 11, 327:7-17; 329:5-20.) In fact, at his second deposition, he testified definitively that he filled out, typed and submitted Ex. 23. (Ex. 11, 326:14-327:9.)