

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

IN THE MATTER OF)	
)	
)	
Southern Iowa Mechanical Site)	Petition No. CERCLA § 106(b) 09-01
Ottumwa, Iowa)	Docket No. CERCLA-07-2009-0006
)	
Titan Tire Corporation)	
and)	
Dico, Inc.)	
)	
Petitioners.)	
)	
Petition for Reimbursement under CERCLA)	
§ 106(b)(2), 42 U.S.C. § 9606(b)(2))	

**PETITIONERS TITAN TIRE CORPORATION AND DICO, INC.'S MOTION TO
CORRECT AND/OR SUPPLEMENT THE ADMINISTRATIVE RECORD**

Petitioners Titan Tire Corporation and Dico, Inc. ("Petitioners") hereby move that the Environmental Appeals Board ("EAB") deem **Exhibits 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, and 25** ("Omitted Exhibits") to Petitioners' Petition for Reimbursement ("Petition") to be part of the administrative record in this case. Attachment A is the Declaration of Mark E. Johnson. The specific Exhibits are identified in the attached List of Exhibits (Addendum A to Attachment A), which are pages 56-57 of the Petition, and such Exhibits were submitted to the EAB with the Petition. Petitioners so move for the following reasons:

1. Region VII of the Environmental Protection Agency ("EPA") omitted the above-referenced Exhibits, or parts of them, from the administrative record. Attachment A. Each of the Omitted Exhibits was before the EPA. Attachment A. Petitioners requested in writing that EPA consider the Omitted Exhibits and include them in the administrative record. Attachment

A. When EPA purported to submit the administrative record with its letter of November 24, 2009, Petitioners brought the Omitted Exhibits to the attention of EPA, but EPA failed to correct or supplement the administrative record. Attachment A. Petitioners request that the Environmental Appeals Board ("EAB") deem the Omitted Exhibits to be part of the administrative record in order to have the full administrative record before the EAB and to prevent EPA from withholding evidence unfavorable to its case.

2. Section 706 of the Administrative Procedure Act directs that a reviewing body evaluating an agency action to "review the whole record or those parts of it cited by a party." 5 U.S.C. § 706. *Kent County v. US Environmental Protection Agency*, 963 F.2d 391, 395-96 (U.S. App.D.C. 1992); *Maritel, Inc. v. Collins*, 422 F.Supp.2d 188, 195-97 (D.C. 2006). "The agency may not skew the record in its favor by excluding pertinent but unfavorable information. [citation omitted] Nor may the agency exclude information on the grounds that it did not 'rely' on the excluded information in its final decision." Correction or supplementation of the administrative record is justified here because: (a) EPA deliberately or negligently excluded the 23 Omitted Exhibits that were before the EPA; and/or (b) the Omitted Exhibits are necessary background information in order to determine whether EPA considered all of the relevant factors. *Id.*

3. In Section I of the Petition filed on October 23, 2009, Petitioners presented for resolution the following issues: (a) whether Petitioners are liable for response costs under Section 107(a) of CERCLA; and (b) whether the EPA acted arbitrarily and capriciously in ordering Petitioners to clean up the Site.

4. Petitioners repeatedly requested EPA to include certain materials in the administrative record. For example, Petitioners' letter to EPA of January 16, 2009 stated:

In order to make certain that the administrative record for this matter is complete, I reiterate my previous requests, and formally request that you place into the administrative record for this matter each of the following documents:

- All of Dico's and Titan Tire's responses to EPA's section 104 requests with respect to this matter;
- All written correspondence and e-mail exchanged between EPA and Cheri Holley, on behalf of Dico, with respect to this matter, including but not limited to Ms. Holley's letters dated May 20, 2008, addressed to Cecila Tapia, together with all documents and materials enclosed or submitted with each of those letters;
- All Freedom of Information Act ("FOIA") requests my firm has made to EPA with respect to this matter, including but not limited to my letters dated October 6 and October 17, 2008, and January 9, 2009;
- All written correspondence and e-mail exchanged between EPA and me with respect to this matter, including but not limited to my letters dated October 2, 2008, October 17, 2008, November 10, 2008, and this letter, together with all documents and materials enclosed or submitted with each of these letters.

I respectfully request that EPA consider this letter and each of the documents submitted with this letter, as well as each of the above-referenced documents.

Exhibit 11 to the Petition. Similar requests were made to the EPA in Exhibits 6, 8, 9, 13 and 22 to the Petition.

5. The Omitted Exhibits are included within the materials that Petitioners requested to be included in the administrative record. Attachment A.

6. In the attached EPA letter of November 24, 2009 (Addendum B to Attachment A), EPA submitted the certified copy of the Administrative Record for the Southern Iowa Mechanical Site. EPA did not submit the Omitted Exhibits, or parts of them, in the purported administrative record. Attachment A.

7. In the attached Petitioners letter of December 22, 2009 (Addendum C to Attachment A), Petitioners requested that EPA submit an amended or corrected administrative record to EAB within 10 days. Petitioners specifically identified the Omitted Exhibits. Attachment A.

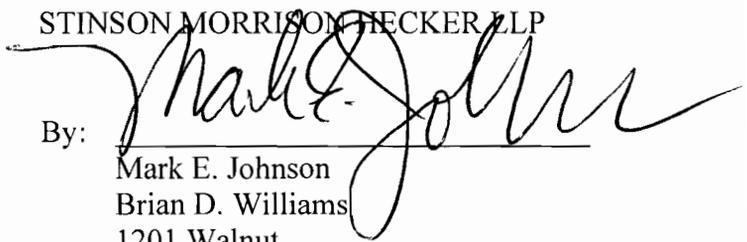
8. In the attached e-mails of December 31, 2009 and January 4, 2010 (Addendum D to Attachment A), EPA advised in the December 31 e-mail that EPA will be able to complete its review next week [the week ending on Friday, January 8] "or the following week at the latest" [the week ending on Friday, January 15]. Attachment A. Petitioners advised in the January 4 e-mail that the Omitted Exhibits were attached as Exhibits to the Petition, which was delivered to EPA on October 23, and should not be hard to locate. If EPA had any difficulty in locating them, Petitioners offered to electronically send PDFs of the Omitted Exhibits to EPA. Petitioners requested EPA to advise "asap" whether EPA agreed to include the Omitted Exhibits in the administrative record. Attachment A. Petitioners have heard nothing since their January 4 e-mail and are not aware of any EPA action to correct or supplement the administrative record before the EAB. Attachment A.

WHEREFORE, Petitioners request the EAB to deem **Exhibits 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24 and 25** to be part of the administrative record in this proceeding.

Respectfully submitted,

STINSON MORRISON HECKER LLP

By:



Mark E. Johnson
Brian D. Williams
1201 Walnut
Suite 2900
Kansas City, Missouri 64106
816-691-2724
Fax 816-412-1208
mjohnson@stinson.com
bwilliams@stinson.com
Attorneys for Petitioners Titan Tire
Corporation and Dico, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original of this Motion to Correct and/or Supplement the Administrative Record has been mailed, postage prepaid, via certified mail, return receipt requested, this 19th day of January, 2010, to the following:

Clerk of the Environmental Appeals Board
MC 1103B
U.S. EPA
Ariel Rios Building
1200 Pennsylvania Avenue, N.W
Washington, D.C. 20460-0001

In addition, on this same date true copies of this Motion were sent by e-mail and by U.S. mail to the following:

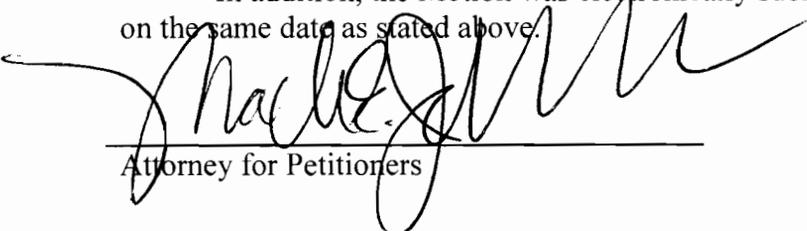
Mary Peterson
USEPA, Region VII
Remedial Project Manager
Iowa/Nebraska Remedial Branch
Superfund Division
901 North Fifth Street
Kansas City, KS 66101

Daniel Shiel, Esq.
Scott Pemberton
Regional Counsel
USEPA, Region VII
901 North 5th Street
Kansas City, KS 66101

Christina Skaar
Office of Enforcement and Compliance Assurance
U.S. EPA, Headquarters, (2272A)
1200 Pennsylvania Ave., NW
Washington, D.C. 20460

Lee R. Tyner
Office of General Counsel
U.S. EPA, Headquarters, (2366A)
1200 Pennsylvania Ave., NW
Washington, D.C. 20460

In addition, the Motion was electronically submitted to the Environmental Appeals Board on the same date as stated above.



Attorney for Petitioners

Attachment A

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

IN THE MATTER OF)

Southern Iowa Mechanical Site)
Ottumwa, Iowa)

) Petition No. CERCLA § 106(b) 09-01
) Docket No. CERCLA-07-2009-0006

Titan Tire Corporation)
and)
Dico, Inc.)

Petitioners.)

Petition for Reimbursement under CERCLA)
§ 106(b)(2), 42 U.S.C. § 9606(b)(2))

DECLARATION OF MARK E. JOHNSON

I, Mark E. Johnson, make this declaration based on my information and belief:

1. I am an attorney and a partner at Stinson Morrison Hecker LLP ("Stinson"), Kansas City, Missouri. From approximately May 2008 until the present, I have been counsel for Titan Tire Corporation and Dico, Inc. ("Petitioners") in connection with the Southern Iowa Mechanical Site. I have personal knowledge of the matters stated in this Declaration. I could and would testify to the matters stated herein if called to do so.

2. On or about October 23, 2009, Petitioners filed their Petition for Reimbursement ("Petition") before the Environmental Appeals Board ("EAB") and the accompanying Exhibits. The Exhibits are identified in the attached List of Exhibits (Addendum A), which are pages 56-57 of the Petition.

3. Region VII of the Environmental Protection Agency ("EPA") omitted Exhibits 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 22, 23, 24 and 25, or parts of them,

("Omitted Exhibits") from the purported administrative record submitted by EPA to EAB on or about November 24, 2009 (Addendum B). Each of the Omitted Exhibits was before the EPA. Petitioners requested in writing, either electronically and/or by hard copy, that EPA consider the Omitted Exhibits and include them in the administrative record

4. When EPA purported to submit the administrative record with Addendum B, Petitioners brought the Omitted Exhibits to the attention of EPA by sending Petitioners letter of December 22, 2009 (Addendum C), and requested that EPA submit an amended or corrected administrative record to EAB within 10 days. Petitioners specifically identified the Omitted Exhibits.

5. In the attached e-mails of December 31, 2009 and January 4, 2010 (Addendum D), EPA advised in its December 31 e-mail that EPA will be able to complete its review "next week" [the week ending on Friday, January 8] "or the following week at the latest" [the week ending on Friday, January 15]. Petitioners advised in their January 4 e-mail that the Omitted Exhibits were attached as Exhibits to the Petition, which was delivered to EPA on October 23, and should not be hard to locate. If EPA had any difficulty in locating them, Petitioners offered to electronically send PDFs of the Omitted Exhibits to EPA. Petitioners requested EPA to advise "asap" whether EPA agreed to include the Omitted Exhibits in the administrative record. Petitioners have heard nothing since their January 4 e-mail and are not aware of any EPA action to correct or supplement the administrative record before the EAB.

Based on my information and belief, I declare under penalty of perjury that the foregoing is true and correct.

Dated: January 19, 2010.



Mark E. Johnson

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original of this Declaration has been mailed, postage prepaid, via certified mail, return receipt requested, this 19th day of January, 2010, to the following:

Clerk of the Environmental Appeals Board
MC 1103B
U.S. EPA
Ariel Rios Building
1200 Pennsylvania Avenue, N.W
Washington, D.C. 20460-0001

In addition, on this same date true copies of this Declaration were sent by e-mail and by U.S. mail to the following:

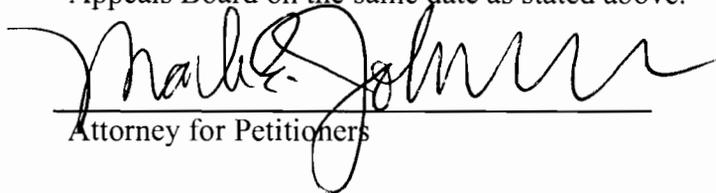
Mary Peterson
USEPA, Region VII
Remedial Project Manager
Iowa/Nebraska Remedial Branch
Superfund Division
901 North Fifth Street
Kansas City, KS 66101

Daniel Shiel, Esq.
Scott Pemberton
Regional Counsel
USEPA, Region VII
901 North 5th Street
Kansas City, KS 66101

Christina Skaar
Office of Enforcement and Compliance Assurance
U.S. EPA, Headquarters, (2272A)
1200 Pennsylvania Ave., NW
Washington, D.C. 20460

Lee R. Tyner
Office of General Counsel
U.S. EPA, Headquarters, (2366A)
1200 Pennsylvania Ave., NW
Washington, D.C. 20460

In addition, the Declaration was electronically submitted to the Environmental Appeals Board on the same date as stated above.



Attorney for Petitioners

Addendum A

VI. List of Exhibits

EXHIBIT NUMBER	DESCRIPTION
1	12/30/2008 — CERCLA § 106(a) Order
2	6/9/2008---Southern Iowa Mechanical Response to EPA's 104(e) request for information
3	Photographs that Southern produced of the Site and the approximately 2300 steel beams stored in open field in Ottumwa, Iowa
4	6/26/2007---Purchase Agreement referenced in paragraph 12 of the Order
5	8/7/2008---Letter from Cecilia Tapia, Director of Region VII Superfund Division, Titan Tire Corporation
6	10/2/2008---Letter from Titan Tire and Dico to EPA, which enclosed sworn affidavits from Bill Campbell and Jim Hughes
7	5/20/2008---Letter and enclosures from Dico to EPA
8	10/17/2008---Letter from Titan Tire and Dico wrote to EPA
9	11/10/2008---Letter from Titan Tire and Dico to EPA
10	1/9/2009---E-Mail from Tire and Dico requesting a telephone conference with EPA
11	1/16/2009---Written Response and Attachments A-I from Titan Tire and Dico to the Order pursuant to the deadline for written comments
12	1/27/2009---Letter from Titan Tire and Dico to EPA
13	5/4/2009---E-mail and <i>BNSF</i> case from Titan Tire and Dico to EPA
14	3/18/2009---Access Agreement between Titan Tire and Dico and Southern Iowa Mechanical
15	6/3/2009---Letter from EPA approving the submitted Quality Assurance Project Plan, Work Plan and affiliated documents

16	6/3/2009---EPA-approved Work Plan
17	6/3/2009---EPA approved Quality Assurance Project Plan ("QAPP")
18	10/6/2008---FOIA request
19	10/17/2008 FOIA request
20	1/9/2009---FOIA request
21	8/14/2009---Progress Report from Contractor to EPA
22	8/20/2009---Titan Tire and Dico Letter to EPA regarding biased sampling
23	8/21/2009--Letter to Dan Shiel and DeAndre Singletary from Mark Johnson regarding status
24	9/2/2009--Report PCB Sampling Activities at Ottumwa, Iowa by contractor 21 st Century Resources, Inc.
25	10/12/2009--Final Report by contractor Greenleaf Environmental Services, LLC
26	2007—Exponent, Environmental Forensics, Volume 2, <i>Polychlorinated Biphenyls (PCBs)—When you need to know: Whose contamination is it? What is my share? When did it happen?</i>
27	4/28/2008 Letter from Tom Wuehr of Iowa DNR; and 5/22/2008 Letter from Cheri Holley on behalf of Dico, regarding the Dico Des Moines site

Addendum B



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

NOV 24 2009

U.S. Environmental Protection Agency
Clerk of the Board
Environmental Appeals Board
1341 G Street, N.W., Suite 600
Washington, D.C. 20005

RE: Southern Iowa Mechanical Site
Titan Tire Corporation and Dico, Inc. Petitioners
Petition No. CERCLA 106(b) 09-01

Dear Ms. Durr:

In accordance with your letter dated October 27, 2009, to Cecilia Tapia, Director, Superfund Division, U.S. Environmental Protection Agency Region 7, I have enclosed for filing in this matter the original and one copy of a Motion to Dismiss the Petition of Titan Tire Corporation and Dico, Inc., with an Exhibit, a copy of the Environmental Appeal Board's Order Dismissing Petition In the Matter of Cyprus Amax Mineral Co., Docket No. CERCLA 106(b) Petition 95-4, and a certified copy of the Administrative Record for the Southern Iowa Mechanical Site. In addition, I am making an Electronic Submission of the referenced documents using the link on the Board's website.

Please file the original and stamp and return the copy to me as follows:

Daniel J. Shiel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
901 North 5th Street
Kansas City, Kansas 66101.

Thank you for your assistance in this matter.

A handwritten signature in black ink that reads "Daniel J. Shiel".

Daniel J. Shiel
Assistant Regional Counsel

Enclosures

cc (w/encl.): Mark Johnson
Stinson Morrison Hecker LLP
1201 Walnut, Suite 2900
Kansas City, Missouri 64106-2150



**Certified Copy of Southern
Iowa Mechanical Site
Administrative Record**

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

IN RE:)
)
)

Southern Iowa Mechanical)
Superfund Site)
Ottumwa, Iowa)

Petition No.)
CERCLA 106(b) 09-01)

Titan Tire Corporation)
)

and)
)

Dico, Inc.,)
)

Petitioners)
)

Petition for Reimbursement Under)
Section 106(b)(2) of the Comprehensive)
Environmental Response, Compensation,)
and Liability Act of 1980, as amended)
42 U.S.C § 9606(b)(2))
)

CERTIFIED INDEX TO THE ADMINISTRATIVE RECORD

AFFIDAVIT

The affiant, Jolleen Werst, states as follows:

1. That I am the Superfund Records Center Manager, Superfund Division, of the United States Environmental Protection Agency, Region 7, and have personal knowledge of the facts set forth in this affidavit.

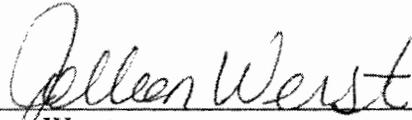
2. That I have reviewed the attached Index to the Southern Iowa Mechanical Site, Ottumwa, Iowa Administrative Record numbered AR-0000001 through AR-0000010, against the original Administrative Record Index located in the Region 7 Records Center.

3. That the attached Index to the Administrative Record is a true and accurate copy of the original Administrative Record Index located in the Region 7 Records Center.

4. That further this affiant sayeth not.

Pursuant to 28 U.S.C. § 1746:

I declare, under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on the 24 day of November, 2009.

A handwritten signature in cursive script that reads "Jolleen Werst". The signature is written in black ink and is positioned above a horizontal line.

Jolleen Werst
Superfund Records Center Manager
Superfund Division
U.S. Environmental Protection Agency, Region 7

Southern Iowa Mechanical Site
Administrative Record
Ottumwa, IA

Introduction

This index of documents for the Removal Administrative Record #60818 lists documents considered by the United States Environmental Protection Agency with respect to response actions at the Southern Iowa Mechanical Site.

The Administrative Record file index lists documents chronologically in date order, system default for undated documents is 01/01/1111. This sorting scheme corresponds with the arrangement of the documents in the Administrative Record itself. In cases where documents contain only partial dates, the index defaults to the first day of the month.

Original sampling and testing data, quality control and quality assurance documentation, and similar documents are not located with the other Administrative Record documentation. These records can be made available by contacting DeAndre Singletary, Remedial Project Manager, EPA Region 7, 901 North 5th Street, Kansas City, Kansas 66101, telephone 913-551-7373.

All documents included in the Compendium of CERCLA Response Selection Guidance Documents revised in March 1991, are hereby included in the Administrative Record file by reference. All previous Administrative Records files are also included by reference.

The Administrative Record is available for public review at:

The United States Environmental Protection Agency
Region 7 Record Center
901 N. 5th Street
Kansas City, Kansas 66101

Ottumwa Public Library
102 West 4th Street
Ottumwa, IA 52501

30022666



Superfund

ADMINISTRATIVE RECORD INDEX REPORT

Displaying Records With All Access Code Types

Document Date: 01/01/1111 DOC ID 30022666 Records 60818 Site ID IAN000705908
 Author(s): Company/Agency:

Recipient(s): Company/Agency:

Document Type: INDEX
 Document Title: Introduction and Index for AR#60818
 Reference:
 Category: Pages 10
 Sheet|Frame|Roll|Frame

Document Date: 01/01/1111 DOC ID 30022137 Records 60818 Site ID IAN000705908
 Author(s): Company/Agency:

Recipient(s): Company/Agency:

Document Type: FEDERAL REGISTER
 Document Title: Excerpt from 40 CFR Chapter 1 Part 761
 Reference:
 Category: 02.00 Pages 129
 Sheet|Frame|Roll|Frame

Document Date: 02/01/2001 DOC ID 30022160 Records 60818 Site ID IAN000705908
 Author(s): Company/Agency:

Recipient(s): Company/Agency:

Document Type: FACT SHEETS
 Document Title: ATSRD fact sheet regarding Polychlorinated Biphenyls
 Reference:
 Category: 01.00 Pages 2
 Sheet|Frame|Roll|Frame

Document Date: 11/01/2005 DOC ID 30022136 Records 60818 Site ID IAN000705908
 Author(s): Company/Agency:

Recipient(s): Company/Agency:

Document Type: GUIDANCE
 Document Title: Polychlorinated Biphenyl (PCB) Site Revitalization Guidance Under Toxic
 Substance Control Act (TSCA)
 Reference:
 Category: 02.00 Pages 87
 Sheet|Frame|Roll|Frame

ADMINISTRATIVE RECORD INDEX REPORT

Displaying Records With All Access Code Types

Document Date: 05/01/2008	DOC ID 40301649	Records 60818	Site ID IAN000705908
Author(s): GLENN CURTIS		Company/Agency: EPA	
Recipient(s): JAMES HUGHES		Company/Agency: NONE	
Document Type:	104(E) LETTER		
Document Title:	104(e) Information Request to James R. Hughes (DICO)		
Reference:			
Category:	02.00	Pages	11
Sheet Frame Roll Frame			
Document Date: 05/08/2008	DOC ID 40301710	Records 60818	Site ID IAN000705908
Author(s): DIANE HARRIS		Company/Agency: EPA	
Recipient(s): MARY PETERSON		Company/Agency: EPA	
Document Type:	QUALITY ASSURANCE PLAN		
Document Title:	Memorandum containing the Approval of the Quality Assurance Project plan (QAPP) for the PCB Soil and Wipe Sampling		
Reference:			
Category:	01.00	Pages	12
Sheet Frame Roll Frame			
Document Date: 05/08/2008	DOC ID 30022676	Records 60818	Site ID IAN000705908
Author(s): MARY PETERSON		Company/Agency: EPA	
Recipient(s):		Company/Agency: NONE	
Document Type:	MEMORANDA		
Document Title:	Memorandum regarding Trip Report for Dico Building Demolition Follow-up (Attachment 5 removed - Privacy Act Information)		
Reference:			
Category:	09.00	Pages	28
Sheet Frame Roll Frame			
Document Date: 05/12/2008	DOC ID 40301646	Records 60818	Site ID IAN000705908
Author(s): GLENN CURTIS		Company/Agency: EPA	
Recipient(s):		Company/Agency: WASTE MANAGEMENT OF IOWA	
Document Type:	104(E) LETTER		
Document Title:	104(e) Information Request to Waste Management of Iowa		
Reference:			
Category:	02.00	Pages	11
Sheet Frame Roll Frame			

Displaying Records With All Access Code Types

ADMINISTRATIVE RECORD INDEX REPORT

Displaying Records With All Access Code Types

Document Date: 05/16/2008 DOC ID 30022132 Records 60818 Site ID IAN000705908
 Author(s): Company/Agency:

Recipient(s): Company/Agency:

Document Type: ACCESS AGREEMENT
 Document Title: Access Agreement for 3043 Pawnee Drive
 Reference:
 Category: 10.03 Pages 1
 Sheet|Frame|Roll|Frame

Document Date: 05/20/2008 DOC ID 40301638 Records 60818 Site ID IAN000705908
 Author(s): Company/Agency:
 CHEFJ T HOLLEY DICO, INC.

Recipient(s): Company/Agency:
 GLENN CURTIS EPA

Document Type: 104(E) LETTER RESPONSES
 Document Title: 104(e) response from Cheri Holley (DICO)
 Reference:
 Category: 02.00 Pages 379
 Sheet Frame|Roll|Frame

Document Date: 05/30/2008 DOC ID 40301711 Records 60818 Site ID IAN000705908
 Author(s): Company/Agency:
 DAKSHA DALAL EPA

Recipient(s): Company/Agency:
 MARY PETERSON EPA

Document Type: ANALYTICAL RESULT&FIELD SHEETS
 Document Title: Memorandum transmitting Sample Analysis Results for ASR#: 3867
 Reference:
 Category: 01.00 Pages 36
 Sheet|Frame|Roll|Frame

Document Date: 06/05/2008 DOC ID 40301733 Records 60818 Site ID IAN000705908
 Author(s): Company/Agency:
 WILLIAM JEFFRY WASTE MANAGEMENT

Recipient(s): Company/Agency:
 MARY PETERSON EPA

Document Type: 104(E) LETTER RESPONSES
 Document Title: 104(e) Response from Waste Management
 Reference:
 Category: 02.00 Pages 172
 Sheet|Frame|Roll|Frame

ADMINISTRATIVE RECORD INDEX REPORT

Displaying Records With All Access Code Types

Document Date: 06/06/2008	DOC ID 40301713	Records 60818	Site ID IAN000705908
Author(s): MARY PETERSON		Company/Agency: EPA	
Recipient(s): JAMES HUGHES		Company/Agency: SOUTHERN IOWA MECHANICAL	
Document Type:	SAMPLE RESULTS		
Document Title:	Letter transmitting data results for samples collected from Steel Beams (w/o attachment)		
Reference:			
Category:	01.00	Pages	2
Sheet Frame Roll Frame			
Document Date: 06/06/2008	DOC ID 40301652	Records 60818	Site ID IAN000705908
Author(s): CECILIA TAPIA		Company/Agency: EPA	
Recipient(s): CHERJ T HOLLEY		Company/Agency: DICO, INC.	
Document Type:	104(E) LETTER		
Document Title:	104(e) Information request to Cheri Holley (DICO)		
Reference:			
Category:	02.00	Pages	12
Sheet Frame Roll Frame			
Document Date: 06/09/2008	DOC ID 30022678	Records 60818	Site ID IAN000705908
Author(s): FRANK GRENARD		Company/Agency: WHITFIELD & EDDY	
Recipient(s): DANIEL SHIEL		Company/Agency: EPA	
Document Type:	104(E) LETTER RESPONSES		
Document Title:	104(e) Response from Jim Hughes (Frank Grenard) (Privacy Information Redacted)		
Reference:			
Category:	02.00	Pages	37
Sheet Frame Roll Frame			
Document Date: 07/11/2008	DOC ID 40301642	Records 60818	Site ID IAN000705908
Author(s): CHERJ T HOLLEY		Company/Agency: DICO, INC.	
Recipient(s): CECILIA TAPIA		Company/Agency: EPA	
Document Type:	104(E) LETTER RESPONSES		
Document Title:	104(e) response from Cheri Holley		
Reference:			
Category:	02.00	Pages	9
Sheet Frame Roll Frame			

ADMINISTRATIVE RECORD INDEX REPORT

Displaying Records With All Access Code Types

Document Date: 07/24/2008 **DOC ID** 40301655 **Records** 60818 **Site ID** IAN000705908
Author(s):
 GLENN CURTIS **Company/Agency:**
 EPA
Recipient(s):
 JAMES HUGHES **Company/Agency:**
 SOUTHERN IOWA MECHANICAL
Document Type: 104(E) LETTER
Document Title: 104(e) Information Request to Jim Hughes (DICO)
Reference:
Category: 02.00 **Pages** 15
Sheet|Frame|Roll|Frame

Document Date: 07/25/2008 **DOC ID** 40301657 **Records** 60818 **Site ID** IAN000705908
Author(s):
 CECILIA TAPLA **Company/Agency:**
 EPA
Recipient(s):
 CHERI T HOLLEY **Company/Agency:**
 DICO, INC.
Document Type: 104(E) LETTER
Document Title: 104(e) Information Request to Cheri Holley (DICO)
Reference:
Category: 02.00 **Pages** 20
Sheet|Frame|Roll|Frame

Document Date: 07/25/2008 **DOC ID** 40301716 **Records** 60818 **Site ID** IAN000705908
Author(s):
 GLENN CURTIS **Company/Agency:**
 EPA
Recipient(s):
 CARL LUNDBERG **Company/Agency:**
 IOWA DEPARTMENT OF NATURAL RESOURCES
Document Type: LETTERS
Document Title: Letter requesting that the state identify any potential ARARs for the Site
Reference:
Category: 02.00 **Pages** 6
Sheet|Frame|Roll|Frame

Document Date: 07/31/2008 **DOC ID** 40301715 **Records** 60818 **Site ID** IAN000705908
Author(s):
 BOB DRUSTRUP **Company/Agency:**
 IOWA DEPARTMENT OF NATURAL RESOURCES
Recipient(s):
 GLENN CURTIS **Company/Agency:**
 EPA
Document Type: LETTERS
Document Title: Letter responding to request for the state to identify any potential ARARs for the Site
Reference:
Category: 02.00 **Pages** 2
Sheet|Frame|Roll|Frame

ADMINISTRATIVE RECORD INDEX REPORT

Displaying Records With All Access Code Types

Document Date: 08/07/2008 **DOC ID** 40301726 **Records** 60818 **Site ID** IAN000705908
Author(s):
 CECILIA TAPIA **Company/Agency:**
 EPA
Recipient(s):
 JAMES HUGHES **Company/Agency:**
 SOUTHERN IOWA MECHANICAL
Document Type: GENERAL NOTICE LETTER
Document Title: General Notice letter to Southern Iowa Mechanical
Reference:
Category: 10.00 **Pages** 6
Sheet|Frame|Roll|Frame

Document Date: 08/07/2008 **DOC ID** 40301724 **Records** 60818 **Site ID** IAN000705908
Author(s):
 CECILIA TAPIA **Company/Agency:**
 EPA
Recipient(s):
 CHERI T HOLLEY **Company/Agency:**
 TITAN INTERNATIONAL INC
Document Type: GENERAL NOTICE LETTER
Document Title: General Notice letter to Titan Tire Corporation
Reference:
Category: 10.00 **Pages** 6
Sheet|Frame|Roll|Frame

Document Date: 08/14/2008 **DOC ID** 30022677 **Records** 60818 **Site ID** IAN000705908
Author(s):
 JAMES HUGHES **Company/Agency:**
 SOUTHERN IOWA MECHANICAL
Recipient(s):
 DANIEL SHIEL **Company/Agency:**
 EPA
Document Type: 104(E) LETTER RESPONSES
Document Title: Second 104(e) response received from Jim Hughes
Reference:
Category: 02.00 **Pages** 6
Sheet|Frame|Roll|Frame

Document Date: 08/18/2008 **DOC ID** 40301644 **Records** 60818 **Site ID** IAN000705908
Author(s):
 MARK JOHNSON **Company/Agency:**
 STINSON, MORRISON, HECKER LLP
Recipient(s):
 DANIEL SHIEL **Company/Agency:**
 EPA
Document Type: 104(E) LETTER RESPONSES
Document Title: 104(e) response received from Dico, Inc
Reference:
Category: 02.00 **Pages** 36
Sheet|Frame|Roll|Frame

ADMINISTRATIVE RECORD INDEX REPORT

Displaying Records With All Access Code Types

Document Date: 08/22/2008 **DOC ID** 40301721 **Records** 60818 **Site ID** IAN000705908
Author(s):
 FRANK GRECARD **Company/Agency:**
 WHITFIELD & EDDY
Recipient(s):
 DANIEL SHIEL **Company/Agency:**
 EPA
Document Type: RESPONSE
Document Title: Response to General Notice Letter from Frank Grenard
Reference:
Category: 10.00 **Pages** 2
Sheet Frame|Roll|Frame

Document Date: 10/02/2008 **DOC ID** 40301720 **Records** 60818 **Site ID** IAN000705908
Author(s):
 MARK JOHNSON **Company/Agency:**
 STINSON, MORRISON, HECKER LLP
Recipient(s):
 DANIEL SHIEL **Company/Agency:**
 EPA
Document Type: LETTERS
Document Title: Letter regarding alleged errors in data analysis and other issues
Reference:
Category: 10.00 **Pages** 17
Sheet Frame|Roll|Frame

Document Date: 10/06/2008 **DOC ID** 40301718 **Records** 60818 **Site ID** IAN000705908
Author(s):
 FRANK GRECARD **Company/Agency:**
 WHITFIELD & EDDY
Recipient(s):
 DANIEL SHIEL **Company/Agency:**
 EPA
Document Type: LETTERS
Document Title: Letter responding to email requesting immediate response to proposed draft settlement
Reference:
Category: 10.00 **Pages** 2
Sheet Frame|Roll|Frame

Document Date: 10/17/2008 **DOC ID** 40301717 **Records** 60818 **Site ID** IAN000705908
Author(s):
 MARK JOHNSON **Company/Agency:**
 STINSON, MORRISON, HECKER LLP
Recipient(s):
 DANIEL SHIEL **Company/Agency:**
 EPA
Document Type: LETTERS
Document Title: Letter regarding October 16, 2008 conference call
Reference:
Category: 10.00 **Pages** 2
Sheet Frame|Roll|Frame

ADMINISTRATIVE RECORD INDEX REPORT

Displaying Records With All Access Code Types

Document Date: 11/10/2008 **DOC ID** 40301719 **Records** 60818 **Site ID** IAN000705908
Author(s):
 MARK JOHNSON **Company/Agency:**
 STINSON, MORRISON, HECKER LLP
Recipient(s):
 DANIEL SHIEL **Company/Agency:**
 EPA
Document Type: LETTERS
Document Title: Letter regarding alleged errors in data analysis and other issues
Reference:
Category: 10.00 **Pages** 5
Sheet ~~Frame~~ ~~Roll~~ ~~Frame~~

Document Date: 12/12/2008 **DOC ID** 40302255 **Records** 60818 **Site ID** IAN000705908
Author(s):
 TODD CAMPBELL **Company/Agency:**
 EPA
Recipient(s):
 MARY PETERSON **Company/Agency:**
 EPA
Document Type: TRIP REPORT
Document Title: Memorandum containing Trip Report
Reference:
Category: 01.00 **Pages** 21
Sheet ~~Frame~~ ~~Roll~~ ~~Frame~~

Document Date: 12/30/2008 **DOC ID** 30022134 **Records** 60818 **Site ID** IAN000705908
Author(s):
 MARY P PETERSON **Company/Agency:**
 EPA
Recipient(s):
 CECILIA TAPIA **Company/Agency:**
 EPA
Document Type: ACTION MEMORANDUM
Document Title: Action Memorandum for Time Critical Removal
Reference:
Category: 02.00 **Pages** 27
Sheet ~~Frame~~ ~~Roll~~ ~~Frame~~

Document Date: 12/30/2008 **DOC ID** 30022135 **Records** 60818 **Site ID** IAN000705908
Author(s):
 CECILIA TAPIA **Company/Agency:**
 EPA
Recipient(s):
 MARK JOHNSON **Company/Agency:**
 STINSON, MORRISON, HECKER LLP
Document Type: LETTERS
Document Title: Letter transmitting Administrative Settlement Agreement and Order on Consent for Removal Action
Reference:
Category: 02.00 **Pages** 61
Sheet ~~Frame~~ ~~Roll~~ ~~Frame~~

Displaying Records With All Access Code Types

Addendum C

Johnson, Mark

From: Johnson, Mark
Sent: Tuesday, December 22, 2009 4:21 PM
To: Shiel.Daniel@epamail.epa.gov; DeAndré Singletary (singletary.deandre@epa.gov); Cheryle Micinshi (Micinski.Cheryle@epamail.epa.gov)
Cc: Johnson, Mark; Williams, Brian; inmann@adams.net; Gazi George
Subject: Titan Tire/Dico/Southern Iowa Mechanical Site
Attachments: Ltr. to Dan Shiel, DeAndre Singletary & Cherlye Micinski.PDF

Please see the attached letter about the administrative record. Thank you.

Mark



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MORRISON
HECKER LLP

Mark E. Johnson
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1201 Walnut Street, Suite 2900
Kansas City, MO 64106-2150

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

December 22, 2009

VIA E-MAIL AND UNITED STATES MAIL

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

Cherlye Micinski, Esq.
Chief, Superfund Branch
Office of Regional Counsel
USEPA, Region VII
901 North 5th Street
Kansas City, KS 66101

DeAndré Singletary
USEPA, Region VII
Remedial Project Manager
Iowa/Nebraska Remedial Branch
Superfund Division
901 North Fifth Street
Kansas City, KS 66101

Re: Southern Iowa Mechanical Site
Titan Tire Corp. and Dico, Inc. Petitioners
Petition No. CERCLA 106(b) 09-01

Dear Dan, Cherlye, and DeAndré:

The Administrative Record EPA Region VII filed last month with the Environmental Appeals Board (the "EAB") in connection with the above-referenced matter is incomplete. In particular, it does not contain a number of documents which we specifically requested that you include in the administrative record, and which we requested that EPA consider in connection with the unilateral administrative order ("UAO") issued to Titan Tire and Dico in this matter. We request that, within the next ten (10) business days, EPA submit to the EAB an amended or corrected Administrative Record which includes each of the following items:

1. My November 10, 2008 letter to Dan Shiel, together with exhibits 1 through 14 to the letter and the transmittal email. The Administrative Record you submitted to the EAB includes the November 10, 2008 letter, but none of the exhibits or the transmittal email. The first paragraph of the letter states: "I formally request that you include this letter **and each of the attached exhibits** in the administrative record for this matter, and that EPA consider this letter **and each of its attached**

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exhibits before taking any administrative action with regard to this matter.”
(Emphasis added).

2. My January 9, 2009 email to Dan Shiel, requesting a telephone conference with EPA pursuant to paragraphs 78 and 79 of Section XXVII of the proposed unilateral administrative order (“UAO”).

3. My January 9, 2009 Freedom of Information Act (“FOIA”) request to EPA with respect to this matter, attaching a copy of his previous October 6, 2008 FOIA request to EPA.

4. My January 16, 2009 letter to Dan Shiel, together with exhibits A through I to the letter and the transmittal email, all submitted in response to paragraph 79 of the proposed UAO and in response to the December 30, 2008 letter from Cecilia Tapia, inviting Titan Tire and Dico to negotiate a settlement with EPA before the proposed UAO became effective on January 23, 2009. The first paragraph of the letter states: “I formally request that you include this letter and each of the attached exhibits in the administrative record for this matter.” The second paragraph of the letter continues:

In order to make certain that the administrative record for this matter is complete, I reiterate my previous requests, and formally request that you place into the administrative record for this matter each of the following documents:

. . .

- All Freedom of Information Act (“FOIA”) requests my firm has made to EPA with respect to this matter, including but not limited to letters dated October 6 and October 17, 2008, and January 9, 2009;
- All written correspondence and e-mail exchanged between EPA and me with respect to this matter, including but not limited to my letters dated October 2, 2008, October 17, 2008, November 10, 2008, and this letter, together with all documents and materials enclosed or submitted with each of these letters.

5. My January 27, 2009 letter to DeAndré Singletary regarding Titan Tire and Dico’s intent to comply with the UAO while reserving all rights to challenge EPA’s administrative actions and to seek restitution and/or reimbursement of monies expended in response to the UAO.

6. My May 4, 2009 email to Dan Shiel and DeAndré Singletary, attaching a copy of the United States Supreme Court’s May 4, 2009 decision in *Burlington Northern and Santa Fe Railway Co. v. United States*, and requesting that EPA dismiss all claims against Titan Tire and Dico, Inc. regarding the Southern Iowa

Mechanical (“SIM”) Site, and dismiss and withdraw the UAO, in light of the Supreme Court’s opinion in *Burlington Northern*. The first paragraph of the email also states: “We request that you place this email and the attached case in the administrative record.”

7. March 18, 2009 Access Agreement between Titan Tire and Dico, Inc. and Southern Iowa Mechanical.

8. DeAndré Singletary’s June 3, 2009 letter to Jeffrey Brown at Greenleaf Environmental, approving the Quality Assurance Project Plan, Work Plan and affiliated documents for the SIM Site.

9. The June 3, 2009 EPA-approved Work Plan for the SIM Site (the “Work Plan”).

10. The June 3, 2009 EPA-approved Quality Assurance Project Plan for the SIM Site (the “QAPP”).

11. My August 18, 2009 email to Dan Shiel and DeAndré Singletary, attaching a copy of the August 14, 2009 SIM Site Progress Report.

12. My August 20, 2009 letter to Dan Shiel and DeAndré Singletary, objecting to the “biased sampling” EPA ordered at the SIM Site in violation of the express terms of the EPA-approved Work Plan and QAPP.

13. My August 21, 2009 letter to Dan Shiel and DeAndré Singletary, reporting on the status of the SIM Site and requesting authorization to demobilize equipment and staff at the Site.

14. My September 2, 2009 transmittal email and cover letter to Dan Shiel and DeAndré Singletary, together with the September 2, 2009 Report by 21st Century Resources, Inc. on PCB Sampling Activities at the SIM Site in Ottumwa, Iowa.

15. Greenleaf Environmental’s Final Project Report on PCB Decontamination Activities at the SIM Site, dated October 12, 2009, including Appendices A through J to the Final Report.

16. The 2007 article from Exponent, Environmental Forensics Notes, Volume 2, entitled: *Polychlorinated Biphenyls (PCBs) – When you need to know: Whose contamination is it? What is my share? When did it happen?*

17. April 28, 2008 letter from Tom Wuehr, Iowa DNR, to Titan Tire Corporation, and Cheri Holley’s May 22, 2008 response on behalf of Dico, Inc., regarding the Dico Des Moines site.

18. Jeffrey Brown’s December 9, 2009 Affidavit, together with exhibits 1 through 7, regarding the disposal of four drums of non-hazardous waste debris from the SIM Site.

Additionally, it is not clear from your index to the Administrative Record whether each of the following items are included in the Administrative Record, although they should be among the documents submitted in response to EPA's 104(e) letters either by Southern Iowa Mechanical on June 9, 2008 or by Dico, Inc. on July 11, 2008:

19. Photographs that Southern Iowa Mechanical submitted to EPA of the SIM Site and the approximately 2,300 steel beams stored on its property in Ottumwa, Iowa; and

20. June 26, 2007 Purchase Agreement referred to in paragraph 12 of the UAO.

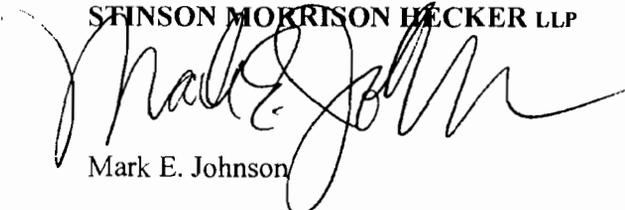
Please let me know if you have lost, misplaced, or otherwise cannot locate any of these documents. Copies of each of these documents were submitted as exhibits to the Petition for Reimbursement which Titan Tire and Dico made to the EAB on October 23, 2009. Service copies of these documents were mailed to you on that same date, and courtesy copies were emailed to you as well.

If EPA does not submit an amended or corrected Administrative Record to the EAB within the next ten (10) business days, we will file a motion for leave to supplement the Administrative Record with each of these items. We will also cite EPA's refusal, both to include these items in the administrative record and to consider each of them, as further evidence of EPA's abuse of discretion and the arbitrary and capricious nature of EPA's actions.

Please let me know if you have any questions or need copies of any of the documents itemized in this letter.

Sincerely,

STINSON MORRISON HECKER LLP



Mark E. Johnson

MEJ:SMH

Addendum D

Johnson, Mark

From: Johnson, Mark
Sent: Monday, January 04, 2010 12:28 PM
To: 'Pemberton.Scott@epamail.epa.gov'
Cc: Williams, Brian; Skaar.Christina@epamail.epa.gov; Shiel.Daniel@epamail.epa.gov; tyner.lee@epamail.epa.gov
Subject: RE: In Re: Southern Iowa Mechanical Site, Titan Tire Corporation and Dico, Inc. - Petition for Reimbursement, Petition No. CERCLA 106(b) 09-01

Scott, the specific records identified in the December 22 letter were all exhibits to Titan Tire/Dico's Petition for Reimbursement. These were delivered to Dan and DeAndre on October 23. These should not be hard for you to find. If you continue to have difficulty, please tell us which ones you cannot find and we will send you PDFs of them.

We will hold off filing a motion to amend/correct the administrative record until after this week. Please advise asap.

Mark

-----Original Message-----

From: Pemberton.Scott@epamail.epa.gov [mailto:Pemberton.Scott@epamail.epa.gov]
Sent: Thursday, December 31, 2009 9:21 AM
To: Johnson, Mark
Cc: Williams, Brian; Skaar.Christina@epamail.epa.gov; Shiel.Daniel@epamail.epa.gov; tyner.lee@epamail.epa.gov; Johnson, Mark
Subject: RE: In Re: Southern Iowa Mechanical Site, Titan Tire Corporation and Dico, Inc. - Petition for Reimbursement, Petition No. CERCLA 106(b) 09-01

Mark:

This is to acknowledge receipt of your letter of December 22, 2009, which requested amending/correcting the Administrative Record to include specific records identified in your December 22 letter.

Due to Dan Shiel's absence from the office and the holidays, we have not been able to locate all the identified documents. Once we have located and reviewed the records, EPA will determine the appropriateness of adding the documents to the Administrative Record. Hopefully, we will be able to complete our review next week or the following week at the latest.

Thanks for your patience in this matter.

Scott P.

Office of Regional Counsel
U.S. EPA, Region VII
913-551-7276