



STINSON
MORRISON
HECKER LLP

Brian D. Williams
(816) 691-3414
bwilliams@stinson.com
www.stinson.com

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

Tel (816) 842-8600
Fax (816) 412-9370

October 19, 2010

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ENVR. APPEALS BOARD

Clerk of the Board
Environmental Appeals Board
(Mail Code 1103B)
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460-0001

Via Certified Mail
#7160 3901 9849 0046 5958

Re Southern Iowa Mechanical Site, Ottumwa, Iowa,
Titan Tire Corporation and Dico, Inc.;
Petition No. CERCLA § 106(b) 10-01
Docket No. CERCLA-07-2009-0006

Dear Clerk:

Enclosed please find the original and six copies of the Petitioners Titan Tire Corporation and Dico, Inc.'s Second Motion to Correct and/or Amend the Administrative Record to Include Documents Previously Withheld By EPA, for filing in the above-referenced case. Attached to this Motion are Exhibits A through P.

Please return a file-stamped copy of the enclosed Second Motion and Exhibits to me in the self-addressed, stamped, enclosed envelope.

Thank you for your assistance with this matter.

Very truly yours,

STINSON MORRISON HECKER LLP

Brian D. Williams

Enclosures

KANSAS CITY
OVERLAND PARK
WICHITA
WASHINGTON, D.C.
PHOENIX
ST. LOUIS
OMAHA
JEFFERSON CITY

cc: Mary Peterson (w/enclosures)
Daniel Shiel (w/enclosures)
Scott Pemberton (w/enclosures)

Christina Skaar (w/enclosures)
Lee Tyner (w/enclosures)

DB01/758803.0032/7158166.1

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

IN THE MATTER OF)
)
)
 Southern Iowa Mechanical Site)
 Ottumwa, Iowa)
)
 Titan Tire Corporation)
 and)
 Dico, Inc.)
)
 Petitioners.)
)
)
 Second Petition for Reimbursement under)
 CERCLA § 106(b)(2), 42 USC § 9606(b)(2))
)

Petition No. CERCLA § 106(b) 10-01
 Docket No. CERCLA-07-2009-0006

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**PETITIONERS TITAN TIRE CORPORATION AND DICO, INC.'S SECOND MOTION
 TO SUPPLEMENT, CORRECT AND/OR AMEND THE ADMINISTRATIVE RECORD
 TO INCLUDE DOCUMENTS PREVIOUSLY WITHHELD BY EPA**

Petitioners Titan Tire Corporation and Dico, Inc. (“Petitioners”) hereby move the Environmental Appeals Board (“EAB”) to supplement, correct and/or amend the administrative record in this case to include each of the previously-withheld EPA documents described in this motion (the “Previously-Withheld EPA Documents”). Petitioners filed an unopposed Motion to Correct and/or Supplement the Administrative Record in this case on January 19, 2010, and respectfully request that the EAB enter an order granting that unopposed Motion. The present motion concerns additional, relevant documents which Region VII of the Environmental Protection Agency (“EPA”) had withheld from Petitioners until a few weeks ago.

Each of the Previously-Withheld EPA Documents were in EPA’s possession and before EPA at the time it made the decision to issue the Unilateral Administrative Order which is the subject of the Second Petition (the “UAO”). Petitioners were not aware of the existence of these Previously-Withheld EPA Documents until they were produced by EPA in the past two

months. Each of Previously-Withheld EPA Documents are itemized and described in Section A below. The facts and legal arguments supporting this motion are set forth in Section B below. In support of this motion, Petitioners state as follows:

A. The Previously-Withheld EPA Documents

1. On August 19, 2010, Kathleen Montalte, Freedom of Information Officer for EPA Region 7, mailed a cover letter to Petitioners' counsel, Mark Johnson, enclosing approximately 230 pages of documents and a DVD containing several dozen files of electronic data which could not be opened or read without a proprietary software program. Ms. Montalte's letter stated that the documents and electronic data were responsive to Petitioners' October 6, 2008 FOIA request regarding the Southern Iowa Mechanical ("SIM") Site, and had not been previously provided to Petitioners. *See* Ms. Montalte's August 19 letter, attached as Exhibit A.

2. The electronic files on the DVD were unreadable without access to a proprietary software program which was not provided by EPA. On September 1, 2010, Petitioners' counsel requested that EPA either provide the programs necessary to open and read the electronic files or provide paper printouts of each electronic file on the DVD. *See* September 1, 2010 letter to Ms. Montalte, attached as Exhibit B.

3. On September 22, 2010, EPA mailed to Petitioners' counsel more than 1,000 pages of documents which EPA printed from the DVD. *See* September 22, 2010 email from Daniel Shiel to Brian Williams, attached as Exhibit C. These documents contain analytical results for the samples taken from the SIM Site in May 2008. Due to the volume of these documents, Petitioners will not attach them to this motion. However, EPA's failure to include these documents in the administrative record for this matter, and EPA's refusal to produce these documents for more nearly two years after they were requested by Petitioners, demonstrates the arbitrary and capricious nature of EPA's decision to issue its administrative order without regard

for the evidence or Petitioners' rights to obtain and review the data upon which EPA purported to base its decision.

4. Copies of the most pertinent Previously-Withheld EPA Documents are attached in the following exhibits and reveal the following information:

- a. Record Maintenance Log: EAQ13, Varian 3800 GC, the gas chromatograph ("GC") used to analyze the SIM samples (attached as Exhibit D). This log contains numerous entries by lab analyst Lorraine E. Iverson (sometimes identified by the initials, LEI) which demonstrate persistent equipment malfunctions.¹ Ms. Iverson could not correct these malfunctions in spite of numerous efforts to replace or adjust various components of the GC. These malfunctions made the analytical results generated by the GC inherently unreliable. In fact, on June 2, 2008, shortly after she completed her analysis of the SIM samples, Ms. Iverson discovered that the GC columns had not been inserted correctly when they were replaced during the analysis of the SIM samples. Ms. Iverson noted: "Columns not inserted correctly. I had inserted 3.7 cm rather than 7.5 cm." Ex. D at p. 3. This Maintenance Log also contains the following entries which demonstrate persistent problems with the functionality and reliability of the GC equipment:

- 3/19/08 "LEI Clipped ~ 1 foot off front end of each col.; new ferrule & col. nut."
- 3/21/08 "LEI New septum & liner"

¹ In the Fall of 2008, Petitioners' counsel requested an opportunity to interview Ms. Iverson in order to attempt to understand the basis for EPA's manipulation of the data reported from its analysis of the samples collected at the SIM Site and to inquire about laboratory equipment malfunctions mentioned in a handful of Ms. Iverson's email messages which EPA had produced in response to Petitioners' FOIA requests. EPA refused to permit the requested interview. Curiously, EPA relies extensively upon an affidavit from Ms. Iverson, dated September 15, 2010, in support of its Response to Petitioners' Second Petition. Ms. Iverson's September 2010 affidavit (EPA Exhibit 33) is not part of the administrative record in this matter, and should not be considered in determining whether, based on the administrative record, EPA's decision to issue the UAO was arbitrary, capricious or contrary to law.

- 5/9/08 “LEI Auto sampler stopped on line 11 of 23. No clear reason given.”
- 5/21/08 “LEI Power outage in middle of run. Caught it before I left for the day. Restarted sequence & next line.”
- 5/23/08 “LEI Nasty ASR 3867 samples made curve blown.”
 - “Replaced syringe needle, septum, liner & graphite ferrule.”
 - “Baked col. & inj. port @ 250° C.”
 - **“Didn’t completely fix baseline rise problem.”**
 - “Clipped ~ 1 ft. off front of columns.”
 - “New ferrule.”
 - “Reran from beginning of day 3.”
 - “Had trouble with Varian ferrule not fitting right.”
 - **“Clipping col. didn’t help.”**
- 5/27/08 “LEI **Helped some but not enough.**”

“Replaced columns DB 5 SN US5265746H
 DB1701 SN US5232827H”
- 6/2/08 “LEI -- curves run over weekend gave poor chromatography/sensitivity.”
 - **“Columns not inserted correctly. I had inserted 3.7 cm rather than 7.5 cm.”**
 - “Replaced inj. nut, septum, liner, graphite ferrule, aluminum washer, 2 hole ferrule. Clipped few inches off front of each column & re-inserted to proper depth.”

Ex. D, pages 2 – 3 (emphasis added).

b. Record Maintenance Log: EAQ028, Varian GC 04078, another gas chromatograph (“GC”) in the EPA lab which may have been used to analyze some of the SIM samples (attached as Exhibit E). This log also contains entries which demonstrate persistent equipment malfunctions that could not be corrected and which made any

analytical results generated by the equipment inherently unreliable. These entries include the following:

- 3/11/08 ... “Last December finished ’06 fisk late. Just few weeks later injected first ’07 fisk & **curves were high 30 – 50 % high. Can think of no reason.**”
- **“Checked curves today & they’re low 60 – 75%.”**
- “Checked detector & injector nuts – injector was a little loose – But R.T.s were not later.”
- **“Checked again & now it’s high! ~ 20% high.”**
- “So here’s a case where r.t. were the same but a leak at the injector nut lowered the area counts. Reset curves.”
- 4/17/08 **“LEI Computer locked up. Rebooted. Scan disk & defrag.”**
- 5/7/08 “SR Herb std peaks have been tailing a lot in last month”
- **“So changed septum & liner to see if helps. Didn’t.”**
- 5 - -08 **“Cut 6 in. from front of column”**
- 7/22/08 “SR Run scan disk & defrag”
- 11/4/08 “SR “ “ Again.”

Ex. E, page 2 (emphasis added).

- c. Two separate iterations of the US EPA Region 7 Analytical Services Request (“ASR”) for the SIM Site, number 3867 (attached as Exhibits F and G). The following relevant information is reflected on these exhibits:

- Exhibit F is dated May 7, 2008 and appears to have been initial with various approvals. The “Projected Delivery Date” on Exhibit F is May 15, 2008. However, Exhibit F appears to have been replace or superseded, without any explanation or approvals, by Exhibit G. Exhibit G is dated May 20, 2008, but

indicates that the “Projected Delivery Date” was May 19, 2008. *Compare* Ex F, p. 1, *with* Ex. G, p. 1.

- Exhibit F states that the samples were to be collected on May 14 and 15, 2008, and hand-delivered by the field sampler on May 15. Ex. F, p. 1.
- Exhibit G states that the samples were to be collected on May 16, 2008, and hand-delivered by the field sampler on Monday, May 19.² Ex. G. p. 1.
- Exhibit G includes a “Sample Receipt Notice”, dated May 19, 2008, which indicates that the samples were received on that date. Ex. G, p. 3.
- Both Exhibit F and Exhibit G state that the “Concentration of Interest” for PCBs in the soil at the sampling site is 25 ppm, which is the “low occupancy” standard. *See* Ex. F, p. 1; Ex G., p. 1. However, after the sampling results were analyzed, and it was determined that no results came close to exceeding that concentration level, EPA arbitrarily decided to change the “concentration of interest” to the “high occupancy” standard of 1 mg/kg. *See* Second Petition, at pp. 58 – 61, and referenced exhibits.
- Exhibit F includes a section which describes the “Sampling Supplies and QC/PE Samples” provided to the field sampler. This section itemizes each of the supplies, containers, and pieces of equipment, and the applicable quantity of each such supply, container, and piece of equipment, which was provided for use by the field sampler in collecting the samples specified in the ASR. Ex. F, p. 2.

Conspicuously missing from the itemization of supplies, containers and equipment is any reference to a 10cm x 10cm template, or any other measuring

² As noted in Petitioners’ Second Petition for Reimbursement, the field notes of the field sampler, Todd Campbell, report that the samples were left unattended in a cooler outside the EPA lab at 8:39pm on Friday, May 16, and were not “received” by EPA until the following Monday morning. Second Petition at pp. 43-44 and Ex. 11, p. D0408-82.

instrument, to identify a 100 square centimeter area for taking wipe samples. Because the field sampler did not mark the areas from which he took wipe samples, and he was not provided a template to insure that his wipe samples were taken precisely within a 100 square centimeter area, there is no basis for determining whether concentrations detected in the wipe samples were from 100 square centimeter areas, or from larger areas of unidentified size.³

d. Data Quality Assessment Record (“DQAR”), Sample Analysis Results (“SAR”), and Matrix Spike (MS/MSD) Bias Report (“BR”) for the solid, wipe, and soil samples collected at the SIM Site. The solid sample reports are attached as Exhibit H; the wipe sample reports are attached as Exhibit I; and the soil sample reports are attached as Exhibit J. These documents disclose the following relevant information:

- The DQAR for the solid and wipe samples report that EPA (the “customer”) did not request any specific reporting limits from the lab, and thus there is no basis for the lab to determine whether the requested reporting limits were met. Ex. H, p. 1; Ex. I, p. 1.
- The DQAR for the solid and wipe samples report that not all of the initial, continuing, and final CCVs (Continuing Calibration Values) were maintained within a range of plus or minus 15% (i.e., a 30% range). Ex. H, p. 1; Ex. I, p. 1. There is no indication on either report as to which calibration values failed to remain within that 30% range. A failure to maintain calibration values within a

³ In its Response to Petitioners’ Second Petition, EPA relies upon a memorandum purportedly prepared by Todd Campbell on December 12, 2008. This memorandum was not part of the Administrative Record, and was never produced or provided to Petitioners before EPA filed its Response on September 15, 2010. This memorandum should not be considered in reviewing EPA’s conduct or decisions in this matter or in ruling on Petitioners’ Second Petition.

30% range demonstrates that the analytical results for the samples taken at the SIM Site were unreliable and did not support EPA's decision to issue the UAO.

- The DQAR for the solid and wipe samples report that certain results were not within the LIMS QC ("Quality Control") limits. Ex. H, p.1; Ex. I, p.1.
- The DQAR for the wipe samples reports that the data was reported with qualifications. Ex. I, p. 2.
- The Additional Comments to the DQAR for the wipe samples explains that the results for 11 samples were manipulated by a factor of 100 in response to the request of the EPA project manager. Ex. I, p. 2.⁴
- The Additional Comments to the DQAR for the wipe samples explains that the results for sample 115 was reported with a specific quantification value (which was then improperly multiplied by 100), even though the "quantification is an **estimate** (J-coded) due to the reported value exceeding the calibrated range of the instrument." Ex. I, p. 2.
- The Additional Comments to the DQAR for the wipe samples reports that **Aroclor 1254 contamination was found in the "method blank"**. Ex. I, p. 2

⁴ As explained in the Second Petition, EPA's multiplication of reported values by 100 was arbitrary and capricious, and contrary to law. During the process of taking a "wipe sample", a piece of sampling gauze is wiped over a defined area of the surface being sampled. The entire piece of gauze is then analyzed, and the substance collected by the gauze is extracted. A gas chromatograph ("GC") reports the amount (or mass) of the substance extracted from that gauze. It is not relevant to the operation of the GC whether the gauze was wiped over an area of 100 square centimeters, 50 square centimeters, 200 square centimeters, or any other size area. The amount of substance reported by the GC is the amount (or mass) of the substance extracted from the gauze, regardless of the area over which the gauze was wiped. If the GC reports a mass of 1 microgram, and the gauze was wiped over 50 square centimeters, the analytical result is 1 microgram/50 sq. cm. If the same gauze had been wiped over 200 square centimeters, the analytical result is 1 microgram/200 sq. cm. If the same gauze had been wiped over 100 square centimeters, the analytical result is 1 microgram/100 sq. cm. The formula which EPA cites in its Response to the Second Petition does not support its arbitrary and capricious manipulation of data to support a predetermined outcome. But for EPA's erroneous decision to multiply the analytical results by a factor of 100, none of the samples collected at the SIM Site would have exceeded action levels, and there would have been no evidence to support EPA's decision to issue the UAO.

(emphasis added). The contamination of a “blank” sample with the chemical of concern demonstrates that the analytical results are biased and unreliable.

- The Additional Comments to the DQAR for the wipe samples reports that, even though the “matrix spike recovery was high, probably due to innate Aroclor 1248”, but the analyst “did not qualify any data due to this high matrix spike recovery.” Ex. I, p. 2. The high matrix spike recovery is another indication that the instrument must have been contaminated with PCBs before the samples were analyzed. This information also demonstrates that the data is unreliable.
- The Analysis Results for wipe sample numbers 115 and 116 contain hand-written notes, dated May 30, 2008, which indicate that the reported value for Aroclor 1254 in sample 115 was changed to a J-code (estimated value) and that the reported value for Aroclor 1248 in sample 116 was changed to a U-code (undetected value). Ex. I, p. 6. This manual manipulation of data results suggests that the reported values are arbitrary and unreliable.
- The Analysis Results reports for the solid and wipe samples reflect a percent recovery (bias) of the Laboratory Control Sample (indicated by “% Rec”) for the various samples ranging from 52% to 384%. Ex. H, pp. 4-6, 8; Ex. I, pp. 5-8, 10. Properly calibrated equipment should produce results with percent recovery of 100%. The wide variances from 100% in these reported results demonstrates that the equipment was not properly calibrated, and/or that it was not functioning properly. These wide variances demonstrate that the reported data was unreliable.

- e. Quantitation Report attached as Exhibit K. This report contains the following relevant information:
- The report states that the “Multiplier” is 1, and the “Divisor” is 1.0. Ex. K, pp. 1-2, 4. This information is consistently repeated on several of the Previously-Withheld EPA Documents. This information confirms that the software used to analyze the data generated by the Lab’s equipment did not multiply or divide any data by 100, which required or justified EPA’s arbitrary decision to multiply the reported values by 100. EPA’s manipulation of the data to justify its decision to issue the UAO in this action was arbitrary and capricious, and contrary to law.
 - Handwritten notes next to some of the data reflected in this report indicates that the reported values were erroneous. The reported values reflect problems with the calibration of the equipment, which made the data unreliable. Ex. K, pp. 1, 3, 4.
- f. Petitioners are continuing to review the balance of the Previously-Withheld EPA Documents to determine the extent to which EPA withheld from the administrative record, and from Petitioners, any additional information or data in its possession which demonstrated that the decision to issue the UAO was arbitrary, capricious, and contrary to law. Petitioners reserve the right to further supplement this motion with any other relevant information contained in the Previously-Withheld EPA Documents after that review is completed.

B. The Previously-Withheld EPA Documents Were Available to, and In the Possession of, EPA At the Time It Made Its Decision to Enter the UAO In This Action and Should Be Part of the Administrative Record

5. Each of the Previously-Withheld EPA Documents relates to the unreliability of the analytical results and data upon which EPA based its decision to issue the UAO in this case, and the arbitrary and capricious nature of that decision.

6. Each of the Previously-Withheld EPA Documents was part of EPA's records relating to its investigation of the Southern Iowa Mechanical ("SIM") Site in 2008, and was in EPA's possession and control at the time EPA made its decision to issue the UAO in this case.

7. Each of these Previously-Withheld EPA Documents was responsive to Petitioners' written FOIA requests, dated October 2 and 6, 2008, for information and documents pertaining to EPA's investigation of the SIM Site, including: "all field and lab notes, records, data, electronically stored information, printouts and documents of any kind reflecting or regarding the EPA sampling and/or lab work in connection with the [SIM] Site," and "the technician's raw data and calculations for each of these sample analyses to determine the validity and accuracy of the tabulated results (including whether the data was reported in units of micrograms per square centimeter, or micrograms per 100 square centimeters)." See October 6, 2008 letter to Kathleen Montalte, EPA Region 7's FOIA Officer, attached as Exhibit L.

8. Petitioners repeated their request for this same information in a January 9, 2009 letter to Ms. Montalte, and requested confirmation that EPA had produced all documents responsive to its October 6 request. See January 9, 2009 letter to Ms. Montalte, attached as Exhibit M. None of the Previously-Withheld EPA Documents were produced.

9. EPA produced to Petitioners the Previously-Withheld EPA Documents, for the first time, on August 19, 2010 – three days after EPA stipulated to the entry of a Preliminary Injunction concerning Region 7's unlawful FOIA practices in *Union Pacific Railroad Co. v.*

United States Environmental Protection Agency, et al., case no. 8:10cv235 (D. Neb.) (the “UP Action”).⁵ As noted in the cover letter accompanying the Previously-Withheld EPA Documents, EPA acknowledged that the documents were responsive to Petitioners’ October 6, 2008, FOIA request regarding the SIM Site. *See* August 19, 2010 letter from EPA Region 7’s FOIA Officer, attached as Exhibit A.

10. EPA improperly excluded the Previously-Withheld EPA Documents, including the specific documents identified as Exhibits D to K, above, from the administrative record. Each of the Previously-Withheld EPA Documents was before the EPA at the time it made its decision to issue the UAO in this case. Petitioners request that the Environmental Appeals Board (“EAB”) deem the Previously-Withheld EPA Documents described in this Motion 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.

11. 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

⁵ Copies of the parties’ Joint Motion to Approve Stipulation for Entry of Preliminary Injunction (doc. no. 34), filed in the UP Action on August 16, 2010, and Union Pacific’s Supplemental Memorandum Brief in Support of Plaintiff’s Motion for Preliminary Injunction (doc. no. 37) (“UP’s Supplemental Brief”) filed in the UP Action on August 18, 2010, are attached as Exhibits N and O to this Motion. The Court’s Memorandum and Order granting the Preliminary Injunction in favor of Union Pacific, entered on August 26, 2010, is attached as Exhibit P to this Motion. The UP Action revealed “a long history of [EPA] Region 7’s disregard for FOIA,” including egregious and widespread directives to destroy documents which would potentially be responsive to FOIA requests and would have been part of the administrative record relevant to EPA enforcement actions. *See* Ex. O, UP’s Supplemental Brief, at pp. 6-7. The Preliminary Injunction replaced a Temporary Restraining Order issued against EPA by the Court following a hearing in the UP Action on June 23, 2010. *Id.* at p.1.

administrative record is justified here because: (a) EPA deliberately or negligently excluded the Previously-Withheld EPA Documents that were before the EPA at the time of its decision (even though withheld from Petitioners); and/or (b) the Previously-Withheld EPA Documents are necessary background information in order to determine whether EPA considered all of the relevant factors. *Id.*

12. In Section I of the Second Petition filed on or about May 24, 2010, 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.

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

14. EPA has failed and refused to include each of the Previously-Withheld EPA Documents in the Administrative Record for the Southern Iowa Mechanical Site. Such willful exclusion of relevant documents in its possession from the Administrative Record demonstrates that EPA's decision to issue the UAO was arbitrary, capricious and contrary to law.

WHEREFORE, Petitioners request the EAB to deem each of the Previously-Withheld EPA Documents described in this Motion, specifically including the documents marked as Exhibits D to K, to be part of the administrative record in this proceeding. Petitioners also request that the EAB consider the Previously-Withheld EPA Documents in ruling on the merits of Petitioners' Second Petition. Additionally, Petitioners request that the EAB enter an order granting Petitioners' earlier, unopposed Motion to Correct and/or Supplement the Administrative Record filed in this action on January 19, 2010.

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 Second Motion to Correct and/or Supplement the Administrative Record has been mailed, postage prepaid, via certified mail, return receipt requested, this 19th day of October, 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 Second 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



Attorney for Petitioners