



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1600 John F. Kennedy Blvd
Four Penn Center
Philadelphia, Pennsylvania 19103-2029

Via Email (bkish@jjcinvest.com) and Certified Mail Return Receipt Requested

West Virginia Land Management Ltd.
Edward Ahlswede, Manager
c/o Brian P. Kish, Esquire
JJC Investment Trust, LLC
6874 Strimbu Drive
Brookfield, Ohio 44403

**Re: West Virginia Tire Disposal, Inc. Site,
Summersville, Nicolas County, West Virginia**

Notice of Intent to Perfect Federal Superfund Lien and Opportunity To Be Heard

Dear Mr. Kish:

This letter informs West Virginia Land Management Ltd. (“WV Land” or “you”) that the U. S. Environmental Protection Agency (“EPA” or “Agency”) intends to perfect a Superfund lien in favor of the United States on real property owned by WV Land at or near 26 Bryant Branch Road, Summersville, Nicholas County, West Virginia (“the Property”). Legal descriptions of the Property are contained in Attachment 1 to this letter, and a map of the Property is contained in Attachment 2. The West Virginia Tire Disposal, Inc. Superfund Site (“Site”) is located on the Property. EPA has performed response actions at the Site and on the Property under Section 104(a) of the federal Superfund law, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”).¹ The land records of Nicolas County, West Virginia, indicate that WV Land currently owns the Property. The lien that EPA intends to perfect against the Property arises under Section 107(l) of CERCLA.² The lien is intended to secure payment, to the United States, of costs and damages for which WV Land, as an owner of the Site, is potentially liable to the United States under Section 107(a) of CERCLA.³

Under Sections 107(a) and 101(9) of CERCLA, a person that currently owns any *facility*, including a site or area where a hazardous substance has been deposited, stored, disposed of, placed, or otherwise come to be located, may be liable for all costs of removal or remedial action incurred by the United States at the facility.⁴ EPA has determined that a release or threat of release of hazardous substances from and at the Site into the environment has occurred within the meaning of Sections 101(8), (14), and (22) of CERCLA,⁵ and, because of these releases or

¹ 42 U.S.C. § 9604(a).

² 42 U.S.C. § 9607(l).

³ 42 U.S.C. § 9607(a).

⁴ 42 U.S.C. §§ 9607(a) and 9601(9).

⁵ 42 U.S.C. §§ 9601(8), (14), and (22).

threatened releases, EPA has incurred costs in performing a *response action* within the meaning of Section 101(25) of CERCLA.⁶

EPA has a reasonable basis to believe that the statutory conditions for perfecting a Superfund lien CERCLA § 107(l) are satisfied. For one, the Property is a *facility* within the meaning of Section 101(9) of CERCLA. In addition, EPA has reason to believe that WV Land currently owns the Property and is, therefore, a potentially liable person under Section 107(a) of CERCLA. The Property is also subject to or affected by a removal or remedial action; and costs have been incurred by the United States for response actions performed by EPA at the Property.

A Superfund lien arises upon the later of two events, namely (i) the time that costs of response actions are first incurred by the United States with respect to a Site, or (ii) the time that the owner is provided with written notice of potential liability. The Superfund lien continues until the liability for the response costs is satisfied, or until the liability for the costs becomes unenforceable through operation of the statute of limitations in Section 113(g)(2) of CERCLA.⁷ In this case, EPA first incurred response costs at the Site on or around February 10, 2022. EPA issued a Notice of Potential Liability (“GNL”) to WV Land by certified letter on March 10, 2022. The GNL was delivered to WV Land on March 21, 2022. In accordance with CERCLA § 107(l)(2), a lien on the Property in favor of the United States would then have arisen on March 21, 2022. WV Land may avoid the perfection of a lien upon the Property by paying all costs and damages associated with the Site. EPA has incurred \$527,807.60 in Site-related response costs through July 26, 2022.

EPA has established a Lien-Filing Record consisting of documents related to its decision to perfect a lien. An index of the Lien-Filing Record is included as Attachment 3 to this letter. The Lien-Filing Record is kept at the EPA Region III offices and may be reviewed and copied by arrangement with:

Robert Hasson (3RC10)
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency - Region 3
1600 John F. Kennedy Blvd
Philadelphia, PA 19103-2029
(215) 814-2672
hasson.robert@epa.gov

After 30 calendar days from the date you receive this letter, EPA intends to file a notice of lien with the Office of the Recorder of Deeds in Nicolas County, West Virginia. The effect of this filing will be to establish a priority for the encumbrance on the Property.

You may, within 30 calendar days from the date you receive this letter, (1) notify EPA in writing if you believe that EPA’s information is in error, (2) submit any information or documents relevant to the issues raised by this letter, and (3) request in writing to meet with a neutral EPA official to present any information that shows that EPA does not have a reasonable basis to perfect a lien on the Property based on the statutory requirements discussed above. You should describe in your written request your reasons for believing that EPA does not have a

⁶ 42 U.S.C. § 9601(25); *see also* 42 U.S.C. §§ 9601(23) and (24) (definitions of *removal* and *remedial* actions).

⁷ 42 U.S.C. § 107(l)(2); *see also* 42 U.S.C. § 9613(g)(2) (applicable SOL for recovery of costs).

reasonable basis to perfect a lien. Any written submission or request for a meeting should reference the West Virginia Tire Disposal, Inc. Site, should be emailed to Assistant Regional Counsel Robert Hasson at hasson.robert@epa.gov, and may include documents or other information that you believe support(s) your contentions.

If EPA receives a written submission or a request for a meeting within 30 calendar days of your receipt of this letter, EPA will review your submission or request for a meeting. If EPA agrees, based on your submission, that it does not have a reasonable basis to perfect a lien on the Property, EPA will not perfect its lien and will notify you of its decision. If EPA disagrees, the written submission or request, together with the Lien-Filing Record, will be referred to a neutral EPA official who will be selected for the purpose of reviewing the submission or for conducting the meeting.

If you have requested an opportunity to meet, a meeting will be scheduled. You may choose to attend this meeting via a telephone conference. EPA will be represented by its enforcement staff, including a representative from the Office of Regional Counsel. You may be represented by counsel at this meeting. The meeting will be held before a neutral EPA official. This will be an informal meeting in which you may provide EPA with information as to why EPA's position requires reconsideration. The meeting will not be conducted using rules of evidence or formal administrative or judicial procedures. The sole issue at the meeting will be whether EPA has a reasonable basis to perfect a lien based upon Section 107(l) of CERCLA.

After reviewing your written submission, or conducting a meeting if one is requested, the neutral EPA official will issue a recommended decision based upon the Lien-Filing Record, any written submission, and any information provided at the meeting. The recommended decision will state whether EPA has a reasonable basis to perfect a lien and will be forwarded to an EPA official authorized to perfect liens. You will be furnished with a copy of the recommended decision and notified of the Agency's action.

Neither WV Land nor EPA waives or is prohibited from asserting any claims or defenses in any subsequent legal or administrative proceeding by the submission of information, a request for or participation at a meeting, or by a recommended decision by a neutral EPA official that EPA has a reasonable basis to perfect a lien.

If you have any question about this letter, please contact EPA Assistant Regional Counsel Robert Hasson at (215) 814-2672, or Hasson.Robert@epa.gov.

Sincerely,

Cecil Rodrigues
Regional Counsel

Attachments

cc: Robert Hasson (3RC10)
Carlyn Prisk (3SD41)

ATTACHMENT 1

**Land Subject to this Notice of Federal Lien
Parcel No. 34-07-0018-0065-0000**

ATTACHMENT 2

(Parcel Map)

ATTACHMENT 3
(Lien-Filing Record Index)