

On May 14, 2018, EPA recorded and perfected a lien on behalf of the United States on the real property at the Site under Section 107(l) of CERCLA, 42 U.S.C. § 9607(l). On May 17, 2018, Mr. Joyce requested an opportunity for a hearing on this lien before a neutral agency official, as provided for in EPA's *Supplemental Guidance on Federal Superfund Liens* (July 29, 1993). On June 4, 2018, former EPA Region 3 Regional Counsel Mary Coe designated Regional Judicial Officer Joseph Lisa as the neutral agency official who would preside over the requested hearing, which was originally scheduled for November 15, 2018. The hearing was subsequently continued on several occasions, upon the request of the parties,¹ to allow them additional time to negotiate an ability-to-pay settlement of the United States' claims against Mr. Joyce under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). An important part of these settlement talks was the negotiation of an environmental covenant under the Pennsylvania Uniform Environmental Covenants Act (PA UECA), Act No. 68 of 2007, 27 Pa. C.S. §§ 6501 et seq.

Mr. Joyce has requested a settlement of the United States' claims under EPA's *Policy on Superfund Ability-to-Pay Determinations* ("ATP Policy"). Such a settlement would include a release of the Superfund lien in this case. EPA has informed Mr. Joyce that he must provide additional financial information for EPA to complete its ability-to-pay analysis as required by the *ATP Policy*. Specifically, Mr. Joyce must provide EPA with several unfiled tax returns with which Mr. Joyce's accountant continues to assist him. These tax returns and other financial information will be used by EPA to determine Mr. Joyce's ability to pay and to propose an equitable settlement of the government's claims. Without the missing financial information, EPA

¹ In addition, the United States filed its own Status Report and Motion for a Continuance on February 28, 2020. Mr. Joyce did not oppose that filing.

cannot abide by the requirements of the *ATP Policy* and would not be able to make a settlement offer that would be approved by Agency senior management and the Department of Justice.²

Mr. Joyce has pledged to provide EPA with the missing financial information with the assistance of an accountant, as well as his more recent tax returns for tax year 2019, 2020, and 2021.

EPA acknowledges that Mr. Joyce cooperated with the Site cleanup, including compliance with EPA's requirement that a deed notice be placed on the Site property. On March 12, 2020, Mr. Joyce signed a negotiated environmental covenant, which EPA approved and signed on September 10, 2020. Mr. Joyce recorded the environmental covenant with the City of Philadelphia Department of Records on May 3, 2021. The environmental covenant, which conforms with the PA UECA, provides notice to a prospective purchaser or future owner that the Site has been used for PCB waste disposal and that, in its current condition, the Site can only be used for low-occupancy purposes in accordance with federal regulations³ promulgated under the Toxic Substances Control Act of 1976, 15 U.S.C. § 2601 et seq. *See, e.g.*, 40 C.F.R. § 761.61(a)(4). The notice provided by the environmental covenant is consistent with the requirements of 40 C.F.R. § 761.61(a)(8), which EPA identified as an applicable or relevant and appropriate requirement (ARAR) in its March 5, 2018 Action Memorandum for the Site. In addition, the environmental covenant provides for several activity- and use-limitations (AULs) required at the Site, including, among others, some disposal and upkeep requirements set forth in 40 C.F.R. Part 761.

On April 6, 2022, the Court of Common Pleas, Philadelphia County (PA), held a status conference on the City of Philadelphia's July 2019 Petition to sell the Site property free and clear

² Section 122(h) of CERCLA, 42 U.S.C. § 9622(h), requires the Attorney General's approval for settlement of any claim for which total site costs exceed \$500,000. In this case, EPA's total Site costs are approximately \$1.6 million.

³ 40 C.F.R. Part 761.

of all encumbrances, including the United States' Superfund lien, due to unpaid City property taxes. At the status conference, the Court ordered that the Site "be sold by the Sheriff, free and clear of all claims, liens, mortgages, judgments, ground rents, charges, and estates, to the highest bidder at a Sheriff's sale . . ." Notwithstanding the Court's order, the City's Law Department has informed EPA that the hearing on the City's Petition has been continued and that all tax sales of real property with delinquent taxes in the City are currently on hold. EPA has informed the City that any judicial sale of the Site property should include full disclosure to a prospective purchaser about the Site's environmental conditions and the AULs under the environmental covenant, including the prohibition on development of the Site for high-occupancy (or residential) use without further remediation in accordance with TSCA.^{4,5} Under CERCLA's liability scheme, an unwitting purchaser may find themselves as a potentially responsible party for the Site.⁶ For its part, the City has stated that it would prefer not to sell a Superfund site at tax sale and would continue to work with Mr. Joyce to settle his unpaid tax bill. In addition to its tax lien, the City alleges that it has a lien of approximately \$239,000 for its costs for demolition of the condemned building the Site. Upon information and belief, EPA understands that Mr. Joyce has challenged the City's demolition costs.

⁴ The Site is located in a residential neighborhood, and residential development seems a likely goal for any future purchaser. *See also* 40 C.F.R. § 761.61(a)(4).

⁵ Under 28 U.S.C. § 2410, the United States may be named as a party to a civil action in State court to foreclose on a lien upon real property on which the United States also has a lien, such as the one in this case. A judgment or decree in such action or suit would have the same effect relating to the discharge of the property from the United States' lien as would be provided with respect to other liens under the law of the State where the court is situated. A sale to satisfy a lien inferior to the United States' lien would be made subject to, and without disturbing the lien of, the United States, unless the United States consents that the property may be sold free of its lien and the proceeds divided as the parties may be entitled. Where a sale of real estate is made to satisfy a lien prior to that of the United States' lien, the United States would have one year from the date of sale within which to redeem. This statute also requires proper service of process to the United States. EPA has made no determination whether the City of Philadelphia has met the requirements of this statute or whether the City's tax lien is inferior to the United States' Superfund lien.

⁶ *See* 42 U.S.C. §§ 9607(a)(1), 9607(r), and 9601(40); *see also* 40 C.F.R. Part 312 (Innocent Landowners, Standards for Conducting All Appropriate Inquiries).

The parties intend to continue their work toward a good-faith settlement of the United States' CERCLA claims for the Site and, for the reasons stated herein, respectfully request that a continuance of 180 additional days be granted to resolve the outstanding issues related to Mr. Joyce's missing tax returns, as well as the City's liens, and to negotiate a settlement based on EPA's ability-to-pay determination.

Respectfully submitted,

**ROBERT
HASSON**

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