

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 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, Act No. 68 of 2007, 27 Pa. C.S. §§ 6501 et seq. ("PA UECA").

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 2019 and 2020. The COVID-19 pandemic impacted the progress of Mr. Joyce and his accountant's efforts to provide EPA with the missing information. Mr. Joyce and his accountant must review eight years of financial records and reconstruct Mr. Joyce's income and losses for each of these years. The parties plan to have a virtual meeting in early December 2021 to discuss Mr. Joyce's progress on completion of the tax returns and final resolution of this matter. Other issues affecting resolution include pending actions in Pennsylvania state court between the City of Philadelphia and Mr. Joyce relating to alleged tax liens and compensation for the City's demolition costs.

EPA acknowledges that Mr. Joyce has 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

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.

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 required at the Site, including, among others, some disposal and upkeep requirements set forth in 40 C.F.R. Part 761.

In light of the parties’ ongoing intention to continue working toward a good-faith settlement of the United States’ CERCLA claims for the Site, the parties respectfully propose a continuance of 120 additional days to resolve the outstanding issues related to Mr. Joyce’s ability-to-pay submissions and to negotiate a settlement based on EPA’s ability-to-pay determination.

Respectfully submitted,

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