UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

In the Matter of:	:	
	:	
Turog Properties, Ltd.	:	CERCLA LIEN PROCEEDING
	:	Docket No. CERCLA-03-2019-0111LL
Chem Fab Superfund Site	:	
Doylestown, Bucks County, Pennsylvania	:	

RECOMMENDED DECISION

I. INTRODUCTION

This proceeding pertains to whether the United States Environmental Protection Agency ("EPA" or "Agency") has a reasonable basis in law and fact upon which to perfect a lien pursuant to Section 107(l) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") on certain property that currently is owned by Turog Properties, Ltd. ("Turog") and is located at 300-360 N. Broad Street in Doylestown, Bucks County, Pennsylvania (otherwise known as the "Site"). The proceeding has been conducted in accordance with the requirements of EPA's *Supplemental Guidance on Federal Superfund Liens,* OSWER Directive No. 9832.12-1a, issued by the Agency on July 29, 1993 ("*Supplemental Guidance"*).

Section 107(l) of CERCLA, 42 U.S.C. § 107(l), provides that all costs and damages for which a person is liable to the United States in a cost recovery action under CERCLA shall constitute a lien in favor of the United States upon all real property and rights to such property which: (1) belong to such person; and (2) are subject to or affected by a removal or remedial action. The lien arises as a matter of law at the time costs are first incurred by the United States with respect to a response action under CERCLA or at the time the landowner is provided a written notice of potential liability, whichever is later. CERCLA Section 107(l)(2), 42 U.S.C. § 9607(l)(2). The lien also applies to all future costs incurred at a site and continues until the liability for the costs or a judgment against the person arising out of such liability is satisfied or becomes unenforceable through operation of the applicable statute of limitations. (Id.).

By letter dated July 1, 2019, EPA notified Turog of its potential liability under CERCLA and the Agency's intent to perfect a CERCLA Section 107(l) lien for costs incurred by the United States in connection with response actions undertaken by the Agency at the Site. (Lien Filing Administrative Record ("LFAR") Exhibit 1). The letter also advised Turog of its opportunity to request a meeting

before an EPA neutral to contest the perfection of the lien. (Id.). By letter dated July 17, 2019, Turog requested a meeting before an EPA neutral to contest perfection of the lien. (LFAR Exhibit 4). On September 17, 2019, I was designated to serve as the EPA neutral[1] for purposes of this CERCLA lien proceeding. (Id.).[2]

An on-line meeting with the parties was held on March 25, 2021. The following persons participated in the meeting:

- Joseph J. Lisa – Regional Judicial and Presiding Officer, EPA Region 3;
- Ronald L. Clever, Esq., legal counsel for Turog;
- Heywood Becker, authorized representative of Turog;
- Andrew S. Goldman, Senior Assistant Regional Counsel, EPA Region 3 Office of Regional Counsel and legal counsel for EPA;
- Bevin Esposito, EPA Region 3 Regional Hearing Clerk (RHC); and
- Court reporter.

A transcript of the March 2021 meeting was served on the parties.

Having reviewed the arguments raised by the parties, the LFAR and the transcript of the March 2021 meeting, and for the reasons set forth, *infra*, I find that EPA has a reasonable basis in law and fact to conclude that the statutory elements under CERCLA Section 107(l) have been satisfied for purposes of perfecting a CERCLA lien on the Site.

II. STANDARD OF REVIEW

Pursuant to the *Supplemental Guidance*, an EPA neutral in a contested lien proceeding is required to consider the following five (5) factors in determining whether EPA has a reasonable basis in law and fact upon which to conclude that the statutory elements for perfecting a lien under Section 107(l) of CERCLA have been satisfied:

1) *Notice* - Was the property owner sent notice by certified mail of its potential liability under CERCLA for payment of response costs;

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[1] According to the *Supplemental Guidance*, the neutral official selected to conduct a CERCLA lien meeting must be an Agency attorney who has not performed any prosecutorial, investigative, or supervisory functions in connection with the case or site involved. (*Supplemental Guidance* at 7). An EPA Regional Judicial and Presiding Officer can serve as the neutral. (Id.) I am an Agency attorney and currently serve as EPA Region 3's Regional Judicial and Presiding Officer. I have not performed any prosecutorial, investigative, or supervisory functions in connection with this case or the Site. (See also Rule 22.4(b) of EPA's *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (CROP)*, 40 C.F.R. Part 22, concerning the impartiality and neutrality requirements for Regional Judicial and Presiding Officers. (40 C.F.R. § 22.4(b) and (c)).

[2] This proceeding occurred during the COVID pandemic which resulted in the filing of a number of requests for extension of time, delays due to other developments and the need to hold the lien meeting remotely. EPA Region 3's office in Philadelphia, Pennsylvania was closed for a significant portion of the time of this proceeding, with the majority of Agency employees working remotely continuing through the issuance of this Recommended Decision.

2) *Removal/Remedial Action* - Is the property at issue subject to or has it been affected by a removal or remedial action (i.e., a response action);

3) *Response Costs Incurred* - Has the United States incurred costs with respect to a response action performed under CERCLA with regard to the property;

4) *Potentially Liable Party* - Is the property owned by a person who is potentially liable for response costs under CERCLA; and

5) *Other Information Considered* - Does the record contain any other information which is sufficient to show that the lien should not be perfected.

(*Supplemental Guidance* at 7). The aforementioned factors are based upon the statutory requirements set forth in CERCLA Section 107, 42 U.S.C. § 9607. Additionally, the *Supplemental Guidance* requires that an EPA neutral, for purposes of rendering a Recommended Decision, must "consider all facts in the Lien Filing Record established for the perfection of a lien and all presentations made at the meeting, which will be made part of the Lien Filing Record." (Id. at 8).

III. FACTUAL BACKGROUND

The Site is located at 300-360 N. Broad Street in Doylestown, Bucks County, Pennsylvania. From in or about 1967 through on or about June 3, 1999, the Site was owned by Chem Fab, Inc. (LFAR Exhibit 2, Attachment 002). During its period of ownership and operation of the Site, Chem Fab operated an electroplating and metal etching facility on the property which resulted in the storage and disposal of chemicals (i.e., hazardous substances). (LFAR Exhibit 2, Attachment 015). Contamination, including, but not limited to, soil and groundwater contamination (i.e., the release of hazardous substances into the environment) has been discovered at the Site. (Id.).

On June 3, 1999, 300 N. Broad Street, Ltd. acquired title to the Site in connection with a Bucks County Upset Tax Sale. (LFAR Exhibit 2, Attachment 002 and LFAR Exhibit 30 at 2). The deed for the Upset Tax Sale was recorded by the Bucks County Recorder of Deeds on July 16, 1999. (LFAR Exhibit 2, Attachment 002). Subsequently, pursuant to a Deed in Lieu of Execution dated October 21, 2005 and recorded on February 2, 2006, title to the Site was transferred from 300 N. Broad Street, Ltd. to Turog. (LFAR Exhibit 2, Attachment 001). [3]

[3] The record of this matter indicates that 300 N. Broad Street, Ltd. and Turog Properties, Ltd. are related, closely-held entities sharing the same ownership and management. (LFAR Exhibit 31 at 3 ("300 N. Broad Street, Ltd. and Turog Properties, Ltd. [are] considered by us to be alter ego entities, having the same close ownership, and the same management.") and LFAR Exhibit 48 at 17).[3] Turog has not sought to distinguish between the two entities for purposes of addressing ownership of the Site, the issue of the perfection of a CERCLA lien or the application of the CERCLA Innocent Landowner Defense. Rather, Turog has maintained that there has been a continuity of ownership of the Site by these two related entities from in or about 1999 to at least the date of the meeting in March 2021. In its Post-Meeting Brief, Turog indicated that

As of March 2021 meeting, Turog maintained legal title to the Site and had entered into leases with third parties for commercial operations in three building located on the property.

The Site was added to the CERLCA National Priorities List ("NPL") in 2008. As of the March 2021 meeting, the Site still was listed on the NPL. (LFAR Exhibit 2, Attachment 005). To date, the EPA has conducted a number of response actions (i.e., removal and remedial actions at the Site) including, but are not limited to:

1) 1994-95 - EPA conducted a removal action at the Site concerning hazardous substances in, among other things, drums, tanks and cylinders (LFAR Exhibit 2, Attachment 004);
2) 2014 - EPA removed over 2,400 tons of soils contaminated with hazardous substances from the Site (LFAR Exhibit 2, Attachment 011);
3) 2015-2016 - EPA installed a vapor mitigation system to prevent the migration of organic vapors into one of the commercial buildings at the Site (Id.); and
4) 2017 - EPA selected an interim remedial action which involved the installation of a pump and treat system to remediate contaminated groundwater. (LFAR Exhibit 2, Attachment 015).

The Agency has indicated that it intends to conduct future response actions at the Site to address on-going contamination of the property.

As of June 4, 2019, EPA had incurred $11,836,885.34 in response costs in connection with CERCLA response actions performed at the Site. (LFAR Exhibit 2, Attachment 016).

IV. ANALYSIS OF *SUPPLEMENTAL GUIDANCE* FACTORS

A. Notice of Potential Liability/Intent to Perfect Lien

For purposes of this proceeding, Turog does not dispute that it was served notice of its potential liability and the Agency's intent to perfect a CERCLA lien on the Site. (Transcript 131:8-15 and 131:19 – 132:8). As addressed in Section III, *supra*, on July 1, 2019 via U.S. Postal Service Certified Mail, EPA provided Turog with written notice of its potential liability under CERCLA with respect to

"Turog Properties, Ltd. is an alter ego having the same family ownership and the same management as 300 N. Broad Street, Ltd. The two entities should be considered as one and the same for the purposes of answering the legal question of whether there was a contractual relationship with Chem Fab, Inc. the owner of the site prior to the Tax Sale." (LFAR Exhibit 48 at 17-18). Additionally, at the March 2021 meeting, Mr. Heywood Becker, an authorized representative of both companies, stated that "…in my view the ownership [of the Site] has never changed although the title of the ownership has changed your Honor." (Transcript 175: 12-17). Therefore, for purposes of rendering this Recommended decision, I will accept Turog's position that these two entities are "alter egos" and closely held entities related in ownership and management, and that there has been a continuity of ownership of the Site from 1999 to the date of the issuance of this Recommended Decision.

the Site and of the Agency's intent to perfect a CERCLA lien for costs incurred in connection with response actions performed at the Site.

B. <u>Property is subject to or affected by a removal or remedial action</u>

For purposes of this proceeding, Turog does not dispute that the Site has been subject to or affected by a removal or remedial action. (T 131:19 to 132:8).

Section 104(a) of CERCLA, 42 U.S.C. § 9604(a), provides, in pertinent part, that:

> (1) Whenever
> (A) any hazardous substance is released or there is a substantial threat of such a release into the environment, or
> (B) there is a release or substantial threat of release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to public health or welfare, the President is authorized to act, consistent with the national contingency plan, to removal or arrange for the removal of, and provide for remedial action relating to such hazardous substance, pollutant or contaminant at any time (including its removal from any contaminated natural resource) or take any other response measure consistent with the national contingency plan which the President deems necessary to protect the public health or welfare or the environment."

Response actions under CERCLA Section 104(a) can take the form of either a removal action[4] or a remedial action. "Removal actions are generally immediate or interim responses, and remedial actions generally are permanent responses." *In the Matter of Bell Petroleum Services, Inc.*, 3 F.3d 889, 894 (5th Cir. 1993). (See also *New York State Elec. & Gas Corp. v. First Energy Corp.*, 766 F.3d 212, 230 and 233 (2d Cir. 2014) ("Removal actions are generally clean-up measures taken in response to immediate threats to public health and safety.")).

As noted in Section III, *supra*, EPA has performed a number of removal and remedial actions to address contamination at the Site and has indicated that it intends to perform future response actions as needed at the Site.

[4] The term "removal action" is defined under CERCLA to mean "the cleanup or removal of released hazardous substances from the environment, such actions as may be necessary taken in the event of the threat of release of hazardous substances into the environment, such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances, the disposal of removed material, or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the environment, which may otherwise result from a release or threat or release. The term includes, in addition, without being limited to, security fencing or other measures to limit access, provision of alternative water supplies, temporary evacuation and housing of threatened individuals not otherwise provided for, action taken under section 9604(b) of this title, and any emergency assistance which may be provided under the Disaster Relief and Emergency Assistance Act [42 U.S.C. Section 5121 et seq.]." Section 101(23) of CERCLA, 42 U.S.C. § 9601(23).

C. United States incurred costs with respect to a response action under CERCLA

For purposes of this proceeding, Turog does not dispute that the United States has incurred costs with regard to response actions performed at the Site.[5] As provided in Section III, *supra*, according to an EPA Cost Recovery Report filed by the Agency in this matter, as of June 4, 2019, the United States had incurred $11,836,885.34 pursuant to CERCLA in connection with response costs performed at the Site. (LFAR Exhibit 2, Attachment 016).

D. Turog's Potential Liability under CERCLA Section 107

For purposes of this proceeding, Turog does not dispute that it is the current holder of title and is the current owner of the Site. (Transcript 131:19-132:8). However, Turog asserts that it is not a potentially liable party under CERCLA Section 107, 42 U.S.C. § 9607, because it qualifies for CERCLA's Innocent Landowner Defense to liability.

Having reviewed the LFAR and the arguments of the parties, and for the reasons set forth, *infra*, I conclude that the EPA has a reasonable basis in law and fact from which to conclude that Turog: qualifies as a Current Owner PRP under CERCLA Section 107(a)(1), 42 U.S.C. § 9607(a)(1), will not be able to satisfy its burden to prove that it qualifies for the CERCLA Innocent Landowner Defense; and, therefore, is a potentially liable party under CERCLA Section 107(a), 42 U.S.C. § 9607(a).

CERCLA Section 107(a), 42 U.S.C. § 9607(a), provides in pertinent part that, "(1) the owner and operator of a … facility… shall be liable for:

> (A) all costs of removal or remedial action incurred by the United States Government or a State or an Indian Tribe not inconsistent with the national contingency plan;
> (B) any other necessary costs of response incurred by any other person consistent with the national contingency plan;
> (C) damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a release; and
> (D) the costs of any health assessment or health effects study carried out under Section 9604(i) of this title."

This category of potential responsible party ("PRP") is commonly referred to as the Current Owner or Operator PRP. [6]

[5] Turog has not indicated its agreement with the exact amount of response costs incurred by EPA at the Site, only that for purposes of this proceeding, it does not dispute that EPA has incurred response costs. The exact amount of response costs incurred by EPA for the Site is not at issue in this proceeding and does not need to be addressed for purposes of issuance of this Recommended Decision.

[6] The term "owner or operator" means …(ii) in the case of an onshore facility… any person owning or operating such facility. CERCLA Section 101(20)(A), 42 U.S.C. § 9601(20)(A).

In light of Turog's representation that it currently holds title to the Site and based on the information in the LHAR, I find that EPA clearly has a reasonable basis in law and fact from which to reasonably conclude that, absent a statutory defense to liability under CERCLA applying to this case, Turog is a Current Owner PRP of the Site and a liable party under CERCLA Section 107(a), 42 U.S.C. § 9607(a).[7]

Turog has asserted that it qualifies for the Innocent Landowner Defense under CERCLA Sections 101(35)(A) and 107(b)(3), 42 U.S.C. §§ 9601(35)(A) and 9607(b)(3) and, therefore, is not a liable party under CERCLA Section 107(a)(1), 42 U.S.C. § 9607(a). (LFAR Exhibit 48 at 5).

In enacting CERCLA, Congress made responsible parties covered by Section 107(a) strictly liable (i.e., not requiring a showing of fault) for response costs incurred in connection with the clean-up of contaminated properties and provided only a limited number of affirmative defenses to liability set forth in CERCLA Section 107(b), 42 U.S.C. § 9607(b). See *State of N.Y. v. Shore Realty*, 759 F.2d 1032, 1042 (2d Cir. 1985) (citing 126 Cong. Rec. 30,932 (statement of Sen. Randolph)).
With CERCLA's basic remedial purposes in mind, federal courts have narrowly construed the scope and applicability of these affirmative defenses. *Shore Realty*, 759 F.2d at 1048-49; *Kelley v. Thomas Solvent Co.*, 727 F. Supp. 1532, 1540 n. 2 (W.D. Mich. 1989); and *Pinhole Point Properties, Inc. v. Bethlehem Steel Corp.*, 596 F. Supp. 283, 286 (N.D.Cal.1984) (contrasting "extremely limited" defenses under CERCLA Section 107(b) with "extremely broad" scope of liability under CERCLA Section 107(a)).

One of the statutory defenses set forth in CERCLA is the Third Party Defense, which provides in pertinent part:

> There shall be no liability under subsection (a) of this section for a person otherwise liable who can establish by a preponderance of the evidence that the release or threat of a release of a hazardous substance and the damages resulting therefrom were caused solely by -- (3) an act or omission of a third party other than an employee or agent of the

[7] CERCLA Section 107(a)(1), 42 U.S.C. § 9607(a)(1), provides, in pertinent part, "the owner and operator of a vessel or a facility . . . from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for . . .all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan." The term "owner or operator" is defined under CERCLA as "any person owning or operating a facility." CERCLA Section 101(20)(A), 42 U.S.C. § 9601(20)(A). The term "person" is defined to include, among other things, a "firm", "association" or a "commercial entity." CERCLA Section 101(21), 42 U.S.C. § 9601(21). For purposes of liability under CERCLA Section 107(a)(1), federal courts have held that a person need only qualify as either an "owner" or an "operator." See *United States v. Fleet Factors Corp.*, 901 F.2d 1550, 1554 n.3 (11th Cir. 1990), *cert. denied*, 498 U.S. 1046 (1991); *United States v. Kayser-Roth Corp. Inc.*, 910 F.2d 24, 26 (1st Cir. 1990), *cert. denied*, 498 U.S. 1084 (1991); *State of N.Y. v. Shore Realty Corp.*, 759 F.2d 1032, 1043-44 (2d. Cir. 1985) (Section 9607(a)(1) unequivocally imposes strict liability on the current owner of a facility from which there is a release or threat of release, without regard to causation); *State of N.Y. v. Solvent Chemical Co., Inc.*, 875 F. Supp. 1015, 1019 (W.D.N.Y. 1995) ("It is generally agreed that 'owner' liability and 'operator' liability are two distinct concepts."); and *United States v. Maryland Bank & Trust Co.*, 632 F. Supp. 573 (D.Md. 1986).

> defendant, or *than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the defendant* . . . if the defendant establishes by a preponderance of the evidence that (a) he exercised due care wth respect to the hazardous substances concerned, taking into consideration the characteristics of such hazardous substances, in light of all relevant facts and circumstances, and (b) he took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions. . .” (emphasis added).

CERCLA Section 107(b)(3), 42 U.S.C. § 9607(b)(3). The 1986 amendments to CERCLA statute (Superfund Amendments and Reauthorization Act of 1986) sought to clarify and define the term “contractual relationship” as used in connection with the Third Party Defense and, in effect, created what is now referred to as the Innocent Landowner Defense, a subset of the Third Party Defense.

> The term “contractual relationship”, for the purpose of Section 9607(b)(3) of this title, includes, but is not limited to, land contracts, deeds, easements, leases, or other instruments transferring title or possession, unless the real property on which the facility concerned is located was acquired by the defendant after the disposal or placement of the hazardous substance on, in, or at the facility, and one or more of the circumstances described in clause (i), (ii), or (iii) is also established by the defendant by a preponderance of the evidence:
>
> (i) At the time the defendant acquired the facility the defendant did not know and had no reason to know that any hazardous substance which is the subject of the release or threatened release was disposed of on, in, or at the facility. …..
>
> In addition to establishing the foregoing, the defendant must establish that the defendant has satisfied the requirements of Section 9607(b)(3)(a) and (b) of this title, provides full cooperation, assistance, and facility access to the that are authorized to conduct response actions at the facility (including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response action at the facility), is in compliance with any land use restrictions established or relied on in connection with the response action at a facility, and does not impede the effectiveness or integrity of any institutional control employed at the facility in connection with a response action.

CERCLA Section 101(35)(A), 42 U.S.C. § 9601(35)(A). The Innocent Landowner Defense is a subset of one of the CERCLA Third Party Defense to liability set forth in CERCLA Section 107(b)(3), 42 U.S.C. § 9607(b)(3).

Thereby, a party seeking to assert the Innocent Landowner Defense (in this matter Turog) has the burden of establishing by a preponderance of the evidence that it has complied with the applicable

requirements set forth in CERCLA Sections 101(35)(A) and 107(b)(3), 42 U.S.C. § 9601(35)(A) and 9607(b)(3).

After having reviewed the LHAR and for the reasons set forth, *infra*, I find that EPA has a reasonable basis in law and fact from which to reasonably conclude that Turog is a potentially liable under CERCLA for the payment of response costs in connection with the Site.

1. Turog's argument that it is not a liable party because the contamination of the Site was caused by Chem Fab with which it had no "contractual relationship" for purposes of CERCLA

Relying upon CERCLA Section 107(b)(3), 42 U.S.C. § 9607(b)(3), Turog has argued that it does not qualify as a CERCLA PRP because the release of hazardous substances at the Site was caused by Chem Fab, the prior owner of the property, and no "contractual relationship" existed between Turog and Chem Fab because the 1999 transfer of title to the Site was accomplished via a Tax Upset Sale. In making this argument, Turog relies upon the application of state law (i.e., the law of the Commonwealth of Pennsylvania). (LFAR Exhibit 30 at 5 and Exhibit 48 at 5). More specifically, Turog argues that, under Pennsylvania law, a tax upset sale is not "contractual" in nature because such a "tax sale is a [state/commonwealth] statutory creation, and the Tax Claim Bureau issues the deed, under [state/commonwealth] statutory powers." (Id.). To date, Turog has not provided any legal authority (e.g., court decisions, statutory/regulatory citations or other legal references) in support of its assertions about the operation of Tax Upset Sales in Commonwealth of Pennsylvania, or the application of state law in the context of CERCLA lien hearings.

A review of applicable caselaw indicates that two federal courts have issued decisions directly addressing this issue. The courts, however, have reached conflicting holdings.

In *California Department of Toxic Substances vs. Westside Delivery, LLC*, 888 F.3d 1085 (9th Cir. 2018), the U.S. Court of Appeals for the Ninth Circuit held that a transfer of property via a state tax sale does not nullify the "contractual relationship" of such a transfer of title for purposes of CERCLA liability. The Court's holding was based upon its conclusion that federal law, and not state law, controls in determining the existence of "contractual relationship" for purposes of CERCLA. (Id. at 1994 ("… but whether the occurrences or transactions that created and destroyed those interests constitute a 'contractual relationship' between Defendant and Davis does not turn on state law.")). Additionally, the Court noted that "[b]oth the plain text of the definition of 'contractual relationship' and its place in the statutory scheme convince us that a tax-sale buyer such as Defendant has a 'contractual relationship' with the pre-tax-sale owner of that property." (Id. at 1098.) The Court of Appeals also noted that, the defendant's argument and reliance on state law would create a "loophole" greatly expanding the scope and application of the Innocent Landowner Defense much broader than that originally intended by Congress.

> Given the breadth of the definition of "contractual relationship" and the stringent requirements that Congress set out for ensuring that only "truly 'innocent'" purchasers would be able to avoid liability, we think it likely that Congress intended for the innocent-landowner defense to be the sole defense available to a private purchaser of land contaminated by a previous owner or possessor. At the very least, we are confident that

> Congress did not mean to treat tax-sale purchasers differently from typical purchasers, which is why it defined "contractual relationship" broadly enough to include the relationship between a tax-sale purchaser and the pre-tax sale owner of tax-defaulted property.

(Id. at 1098.)

In *Continental Title Company v. The Peoples Gas Light and Coke Company*, 1999 W.L. 753933 (September 15, 1999 N.D. Ill. (decision of District Court judge)) and (1999 W.L. 1250666 (March 18, 1999 (magistrate's recommendation)), the Court relying on Illinois state law, held that a tax sale creates a "new and independent title, free and clear from all previous titles and claims of every kind," and, therefore, does not create a "contractual relationship" between the holder of an encumbered title and a tax purchaser. (1999 W.L. 1250666, at 8.) In reaching its holding, the Court (both Magistrate and U.S. District Court Judge) adopted a narrow view as to the scope and applicability of CERCLA.

> … there is no indication that Congress intended to employ a similarly broad definition of transfer in relationship to CERCLA. In fact, based on the environmental statute's specific use of the phrase "contractual relationship," it seems more probably that Congress intended to include only voluntary and direct transactions rather than the broad range of transactions envisioned by the Bankruptcy Code.

(1999 W.L. 753933 at *2).

The issue for this proceeding is not which of the two aforementioned court rulings should be deemed to be legally controlling, but rather whether EPA has a reasonable basis in law and fact upon which to reasonably conclude whether a "contractual relationship" existed with regard to Turog's acquisition of title to the Site. I find that EPA's legal analysis, as summarized below, is reasonable because it is consistent with norms of statutory construction, the underlying remedial purpose of the Act, applicable caselaw from a U.S. Court of Appeals, and provides a nationally consistent manner in which to implement the CERCLA statutory scheme. In its legal analysis, EPA has argued that:

1) A decision issued by a U.S. Court of Appeals (as in *Westside Delivery*) normally is accorded more "deference" or "weight" than a U.S. District Court decision for purposes of interpreting provisions of federal statutes;

2) The Ninth Circuit's decision in *Westside Delivery* is well-grounded in the legislative history of CERCLA and a reasonable interpretation of the Act's provisions;

3) The Ninth Circuit's analysis as the limited applicability of State law for purposes of interpreting the scope and application of a federal statute, like CERCLA, results in greater national consistency as to the application of such a statute; and

4) The Ninth Circuit's decision in *Westside Delivery* more clearly fulfills Congressional intent about the broad scope of liability and limited application of defenses set forth in the CERCLA statute.

Therefore, I hold that EPA's position that a "contractual relationship" exists in the matter at bar for purposes of CERCLA liability is reasonable.

2. Turog's argument that it had no reason to know that hazardous substances had been disposed of at the Site because it believed that the contamination of the Site had been cleaned up prior to it taking title

In order to successfully assert the Innocent Landowner Defense, a defendant must, *inter alia*, first establish by a preponderance of the evidence that, at the time of its acquisition of title it "did not know and had no reason to know that any hazardous substance which is the subject of the release or threatened release was disposed of on, in or at the facility." CERCLA Section 101(35)(A)(i), 42 U.S.C. § 9601(35)(A)(i). *See also Westside Delivery* 888 F.3d at 1092 ("Note that the innocent-landowner defense is available to a private purchaser of land only if that purchaser did not have actual or construction knowledge of contamination at the time of purchase.")

A point of contention exists between the parties as to the meaning of this "knowledge" requirement.

Turog has argued that it satisfied this knowledge requirement because it believed that, prior to its acquisition of the Site, all hazardous substances that had been previously released at the Site had been cleaned up. (LFAR Exhibit 30, at 4).

In response, EPA has argued that Turog is incorrect as a matter of both law and fact about the knowledge requirement of CERCLA and the condition of the Site at the time of the transfer of title in 1999. More specifically, with regard to the legal standard under CERCLA, EPA asserts

> Turog appears to misconstrue the knowledge requirement of the Innocent Landowner Defense. The statute does not say that a landowner raising the defense must have no actual or constructive knowledge of contamination *present on the property at the time of acquisition*, but rather that "[a]t the time the defendant acquired the facility the defendant did not know and had no reason to know that any hazardous substance which is the subject of the release or threatened release was disposed of on, in, or at the facility." 42 U.S.C. § 9601(35)(A)(i). Stated another way, if Turog knew or should have known that a hazardous substance was disposed of at the property at any time in the past it cannot carry its burden under this factor. That Turog believed the property was free of contamination as a result of EPA's cleanup efforts is not relevant.

(LFAR Exhibit 31 at 20-21).

In support of its position, EPA has cited *American National Bank and Trust Co. of Chicago as Trustee for Illinois Land Trust No. 120658-01 v. Harcros Chemicals, Inc.*, 1997 WL 281295 (N.D. Ill. May 20 1997) in which the District Court, in a case factually similar to this proceeding, held that "[CERCLA] does not provide an exception for one who knows that contamination existed on the property, but believes that it has been cleaned up." (Id. at 14.) More succinctly, the Court noted that a person's knowledge of the disposal of hazardous substances at a property prior to their purchase of the property "forecloses their use of the Innocent Landowner Defense." (Id. at 13-14.) (See also *City of Bangor v. Citizens Communication Company*, 2004 WL 483201 (D. Me. 2004) (argument that a state had certified a clean-up of property bears little resemblance to the CERCLA test concerning a purchaser's knowledge of the past disposal of hazardous substances at the property)).

EPA additionally argues that the language of the CERCLA statute is unambiguous and that the holdings in *Harcros* and *Bangor* are supported by and consistent with other language in the statute. EPA asserts that "[h]ad Congress intended this to be the case it would have used different language – e.g., "at the time the defendant acquired the facility the defendant did not know and had no reason to know that any hazardous substance which is the subject of the release or threatened release *was present on, in or at the facility."* (LFAR Exhibit 47 at 86.) More specifically, EPA notes that the phrase "reason to know" as used in CERCLA Section 101(35)(B), 42 U.S.C. § 9601(35)(B),[8] and the resulting standards of practice for conducting "all appropriate inquiry" that were promulgated by the Agency clearly support the reading of the statute that the question to be considered is whether a person seeking to use the Innocent Landowner Defense had knowledge of the prior disposal of hazardous substances at the property, and not whether it believed that, at the time of taking title, the hazardous substances had been cleaned-up.

EPA also has argued that, with regard to the knowledge requirement, Turog failed to satisfy the pre-acquisition inquiry standard for purposes of satisfying the "all appropriate inquiry" requirement of the Innocent Landowner/Purchaser Defense. Under that standard, Turog must demonstrate that, on or before its acquisition of the Property, it carried out "all appropriate inquiries" into the previous ownership and uses of the facility in accordance with generally accepted good commercial and customary standards and practices. CERCLA Section 101(35)(B)(i)(I), 42 U.S.C. § 9601(35)(B)(i)(I). Because the property was acquired after May 31, 1997, and before EPA had promulgated standards and practices defining this subject, Turog has to established that it satisfied the procedures of the American Society for Testing and Materials, including "Standard E1527-97" ("Standard Practice for Environmental Site Assessment: Phase 1 Environmental Site Assessment Process") with regard to its acquisition of the Site.

In arguing that it did satisfy the standard set forth under CERCLA for "all appropriate inquiry", Turog has asserted that, prior to it acquiring the Site, it:

1) Had performed extensive due diligence (LFAR Exhibit 30 at 2)
2) Relied upon public declarations and statements by EPA concerning conditions at the Site (Id.)

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[8] With regard to the issue of whether a defendant had no reason to know that any hazardous substance, which is the subject of the release or threatened release, was disposed of on, in, or at a site, CERCLA provides:

> (B)Reason to know.
> (i)All appropriate inquiries. To establish that the defendant had no reason to know of the matter described in subparagraph (A)(i), the defendant must demonstrate to a court that—
> (I)on or before the date on which the defendant acquired the facility, the defendant carried out all appropriate inquiries, as provided in clauses (ii) and (iv), into the previous ownership and uses of the facility in accordance with generally accepted good commercial and customary standards and practices; and
> (II)the defendant took reasonable steps to—
> (aa) stop any continuing release;
> (bb) prevent any threatened future release; and
> (cc) prevent or limit any human, environmental, or natural resource exposure to any previously released hazardous substance.
> (ii)Standards and practices. Not later than 2 years after January 11, 2002, the Administrator shall by regulation establish standards and practices for the purpose of satisfying the requirement to carry out all appropriate inquiries under clause (i).

3) Could not enter or observe the conditions of the Site because of fencing erected by EPA to limit site accessibility (Id. at 2 and 3)
4) Reviewed public records in Doylestown Borough, where EPA had lodged a set of documents (Id. at 3)
5) Studied reports and statements by EPA and its officials and agents (Id. at 4) and
6) Reviewed statements and reports published in newspapers. (Id).

However, in response, EPA has argued that the aforementioned steps do not satisfy the "all appropriate inquiry" standard set forth in E1527-97. (LFAR Exhibit 47 at 15-17. Furthermore, EPA asserts that a review of available Agency documents concerning the Site would have revealed the release of hazardous substances at the Site prior to acquisition of the property by Turog. For example, EPA notes that "a search of EPA's files prior to Turog's 1998 acquisition of the Property would have revealed documentation regarding EPA's 1994-95 Superfund removal action during which significant quantities of hazardous substances that were disposed of in, among other things, drums, tanks, and cylinders on the Property were removed from the Property and properly disposed of elsewhere." (Id. at 15-16).

Having reviewed the LFAR record for this matter and taking into account the arguments of the parties, I find that EPA's arguments are reasonable in light of the facts and law applicable to this matter and that EPA has a reasonable basis in law and fact upon which to conclude that Turog will not be able to satisfy its burden by a preponderance of the evidence of satisfying "knowledge requirement" requirement of the Innocent Landowner Defense. EPA's argument about the standard concerning the knowledge requirement is reasonable in light of applicable case law and EPA's argument about the information available to the public, including Turog, about the continuing existence of hazardous substance contamination at the Site in 1999 is reasonably supported by the documents identified by the Agency as part of its filing in this matter. To date, Turog has not provided or cited to any document that contradicts the assertions made by the Agency.

3. EPA has argued that Turog failed to cooperate, exercise due care and take precautions with respect to hazardous substances located at the Site

As previously noted, a person seeking to utilize the Third Party Defense also bears the burden of proving by a preponderance of the evidence that the person "exercised due care with respect to the hazardous substances concerned, taking into consideration the characteristics of such hazardous substances, in light of all relevant facts and circumstances" and "took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions." CERCLA Section 107(b)(3), 42 U.S.C. § 9607(b)(3).[9] Additionally, a person seeking to utilize the Innocent Landowner Defense must provide "full cooperation, assistance, and facility access to the persons that are authorized to conduct response actions at the facility (including

[9] The aforementioned "due care" and "precautions" requirements are not defined by the statute. However, courts have consulted CERCLA's legislative history for guidance on how to interpret these terms. "[T]he defendant must demonstrate that he took all precautions with respect to the particular waste that a similarly situated reasonable and prudent person would have taken in light of all relevant facts and circumstances. *State of N.Y. v. Lashins Arcade Co.*, 91 F.3d 353, 361-62 (2d. Cir. 1996) (*quoting*, H. R. Rep. No. 1016, 96th Cong., 2d Sess., pt. 1, at 34 (1980), *reprinted in* 1980 U.S.C.C.A.N. 6119, 6137). "Further, 'due care' would include those steps necessary to protect the public from a health or environmental threat.'" *U.S. v. A & N Cleaners and Launderers, Inc.* 854 F. Supp. 229, 238 (S.D.N.Y. 1994) (*quoting* H.R. Rep. No. 253, 99th Cong., 2d Sess. 187 (1986) U.S. Code Cong. & Admin. News 1986, 2835). See also *Kerr-McGee Chem. Corp. v. Lefton Iron & Metal Co.*, 14 F.3d 321, 325 & n.3 (due care not established when no affirmative measures taken to control site).

the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response action at the facility). CERCLA Section 101(35)(A), 42 U.S.C. § 9601(35)(A).

EPA has argued that, on numerous occasions, Turog failed to provide cooperation with the EPA and failed to exercise due care with regard to the hazardous substances located on the Site. For purposes of Innocent Landowner Defense, a single incident of failure to cooperate or exercise due care would preclude the availability of the defense. As a result, as part of this Recommended Decision I have not addressed every allegation of lack of cooperation or lack of due care made by EPA. Rather, after a review of the LFAR record of this proceeding, I find that it is reasonable for EPA to conclude that Turog's failure to provide a timely response to a CERCLA Section 104(e) Information Request Letter issued by the EPA can be viewed as a lack of cooperation.

On March 19, 2018, pursuant to its authority under CERCLA Section 104(e), EPA issued to Turog an Information Request Letter seeking financial information relevant to Turog's claim that it was not able financially to perform annual air sampling within a building on the Site as required by a May 31, 2017 Order issued by the Agency. (LFAR Exhibit 47 at 46-48). Pursuant to the statute, Turog was required to respond to the Information Request within 30 calendar days. (Id.). Its response was due on April 23, 2018. (Id.). No response was received by the Agency. (Id.). Between April and October 2018, EPA attempted to secure a response from Turog by sending numerous emails and letters to the company. EPA has not received a response from Turog answering the questions and providing the information requested in the aforementioned letter. (Id.). EPA has argued that "Turog's failure to respond to EPA's information request has impeded EPA's ability to determine if Turog was deprived . . . of substantial funds that could be used by Turog to conduct the indoor sampling needed to confirm the continued effectiveness of the vapor mitigation system installed by EPA at the Property." (Id.).

Failure to comply with an Information Request Letter issued by the Agency pursuant to the authority set forth in CERCLA is a serious matter. The information gathering authority set forth in CERCLA Section 104(e) is a vital tool that EPA relies upon in determining the proper response actions to take for a clean-up of a property. The system only functions if recipients of Information Request Letters respond in a full and timely matter. Given the numerous attempts that EPA made to obtain a response by Turog and the fact that the information being sought was directly related to the proper and efficient functioning of a remedy implemented at the Site to address groundwater contamination, I find that EPA has a reasonable basis in law and fact upon which to reasonably conclude that Turog's failure to respond to the 2018 Information Request Letter can be seen as lack of cooperation for purposes of the Third Party Defense and Innocent Landowner Defense.

As previously noted, this Recommended Decision does not analyze or issue any findings concerning other instances of potential lack of due care and cooperation raised by EPA.

E. Other Potential Reasons not to perfect lien

1. Turog's assertion that it participated in a Brownfield's program with PADEP concerning the Site

In its initial request for a hearing and in subsequent filings, Turog asserted that "[a]fter our purchase of the Site, we entered into a settlement and release agreement with the PADEP for their testing and future remediation of the Site wherein PADEP represented to us that it was in a partnership

with the EPA for all such work to be done by them at the subject Site." (LFAR Exhibit 5 and Exhibit 30 at 4. "After receiving its 1999 Tax Claim Bureau deed …. 300 N. Broad Street, Ltd., participated in the 'Brownfields' program … [and] entered into a settlement and release agreement with [PADEP].”))

To date, Turog has provided no documentation to substantiate its participation in any type of Brownfields program or settlement and release with PADEP. Additionally, Turog has failed to explain how its participation in such a program would be the basis upon which I should recommend that EPA not perform the CERCLA lien on the Site.

V. CONCLUSION

Based upon my review of the information set forth in the LHAR for this matter and for the reasons set forth in this Recommended Decision, I conclude that EPA has a reasonable basis in law and fact from which to conclude that the statutory requirements for perfection of a lien under CERCLA have been satisfied.

The scope of this proceeding is narrowly limited to the issue of whether or not EPA has a reasonable basis to perfect its lien. This Recommended Decision does not compel the perfection of the CERCLA lien on the Site; it merely establishes that there is a reasonable basis in law and fact for doing so. The final decision regarding the perfection of the CERCLA lien on the Site rests with the Regional Counsel for EPA Region III. This Recommended Decision does not preclude EPA or Turog from raising any claims or defenses in any later proceedings. It is not a binding determination of liability. This Recommended Decision has no preclusive effect and shall not be given any deference and shall not otherwise constitute evidence in subsequent proceedings.

Date:_November 9, 2021_____

JOSEPH LISA Digitally signed by JOSEPH LISA Date: 2021.11.09 10:44:15 -05'00'

Joseph J. Lisa
Regional Judicial and Presiding Officer
U.S. EPA Region III

APPENDIX A

CHEM FAB SUPERFUND SITE
TUROG PROPERTIES, LIMITED
DOYLESTOWN, BUCKS COUNTY, PENNSYLVANIA
LIEN FILING ADMINISTRATIVE RECORD INDEX
DOCKET NO. CERCLA-03-2019-0111LL

1. Letter from Cecil Rodrigues, Regional Counsel, EPA Region III, to Turog Properties, Limited, c/o Heywood Becker, re: Chem Fab Superfund Site, Notice of Intent to Perfect Federal Superfund Lien; Opportunity To Be Heard, with attachments (July 1, 2019).

2. Lien Filing Record with Index re: Chem Fab Superfund Site, Lien Proceeding (September 17, 2019).

3. Certificate of Service signed by Andrew Goldman, Senior Assistant Regional Counsel, EPA Region III, certifying that copies of the Lien Filing Record were provided to Turog Properties, Limited, c/o Heywood Becker, and Joseph J. Lisa, Regional Judicial and Presiding Officer, EPA Region III (September 17, 2019).

4. Order of Assignment, signed by Cecil Rodrigues, Regional Counsel, EPA Region III, re: Turog Properties, Limited (September 17, 2019).

5. Letter from Andrew Goldman, Senior Assistant Regional Counsel, EPA Region III, to Turog Properties, Limited, c/o Heywood Becker, re: Chem Fab Superfund Site, Lien Proceeding, EPA's Rebuttal to Arguments presented by Turog Properties, Limited in its July 17, 2019 Objection to EPA's Perfection of a CERCLA 107(l) Lien, with attached Index, EPA's Rebuttal, and Certificate of Service (October 2, 2019).

6. Letter from Joseph J. Lisa, Regional Judicial and Presiding Officer, EPA Region III, to Turog Properties, Limited, c/o Heywood Becker, and Andrew Goldman, Senior Assistant Regional Counsel, EPA Region III, re: Chem Fab Superfund Site, Order of Assignment and Initial Case Status Conference Call – Scheduling Notice, with attached Order of Assignment (November 6, 2019).

7. Letter from Andrew Goldman, Senior Assistant Regional Counsel, EPA Region III, to Turog Properties, Limited, c/o Heywood Becker, re: Chem Fab Superfund Site, Lien Proceeding, with Certificate of Service (November 21, 2019).

8. Letter from Joseph J. Lisa, Regional Judicial and Presiding Officer, EPA Region III, to Turog Properties, Limited, c/o Heywood Becker, and Andrew Goldman, Senior Assistant Regional Counsel, EPA Region III, re: Chem Fab Superfund Site, Status Report Due Date (December 17, 2019).

9. Letter from Andrew Goldman, Senior Assistant Regional Counsel, EPA Region III, to Joseph J. Lisa, Regional Judicial and Presiding Officer, EPA Region III, re: Chem Fab Superfund Site, Status Report by EPA (December 26, 2019).

10. Letter from Heywood Becker, Turog Properties Limited, to Joseph J. Lisa, Regional Judicial and Presiding Officer, EPA Region III, re: Chem Fab Superfund Site/Lien Hearing (Letter dated December 1, 2019, received January 8, 2020).

11. Letter from Andrew Goldman, Senior Assistant Regional Counsel, EPA Region III, to Turog Properties, Limited, c/o Heywood Becker, re: Chem Fab Superfund Site, Lien Proceeding, with Certificate of Service (January 14, 2020).

12. Letter from Joseph J. Lisa, Regional Judicial and Presiding Officer, EPA Region III, to Turog Properties, Limited, c/o Heywood Becker, and Andrew Goldman, Senior Assistant Regional Counsel, EPA Region III, re: Chem Fab Superfund Site, Scheduling Notice for Submission of Briefs and Date of Lien Meeting (February 13, 2020).

13. Email from Heywood Becker, Turog Properties Limited, to Joseph J. Lisa, Regional Judicial and Presiding Officer, EPA Region III, with attached letter, re: Chem Fab Superfund Site/Lien Hearing, Request for Postponement of Hearing (February 26, 2020).

14. Letter from Andrew Goldman, Senior Assistant Regional Counsel, EPA Region III, to Joseph J. Lisa, Regional Judicial and Presiding Officer, EPA Region III, re: Chem Fab Superfund Site/Lien Hearing, Response to Request for Postponement of Hearing (February 26, 2020).

15. Letter from Joseph J. Lisa, Regional Judicial and Presiding Officer, EPA Region III, to Turog Properties, Limited, c/o Heywood Becker, and Andrew Goldman, Senior Assistant Regional Counsel, EPA Region III, re: Chem Fab Superfund Site, Postponement of Hearing – New Scheduling Notice (February 27, 2020).

16. Email from Joseph J. Lisa, Regional Judicial and Presiding Officer, EPA Region III, to Turog Properties, Limited, c/o Heywood Becker, and Andrew Goldman, Senior Assistant Regional Counsel, EPA Region III, re: Chem Fab Site, Lien Hearing Revised Schedule (May 5, 2020).

17. Email from Joseph J. Lisa, Regional Judicial and Presiding Officer, EPA Region III, to Turog Properties, Limited, c/o Heywood Becker, and Andrew Goldman, Senior Assistant Regional Counsel, EPA Region III, re: Chem Fab Site Lien Hearing, in response to email from Turog Properties, Limited, c/o Heywood Becker, re: Request for postponement (May 29, 2020).

18. Email from Andrew Goldman, Senior Assistant Regional Counsel, EPA Region III, to Joseph J. Lisa, Regional Judicial and Presiding Officer, EPA Region III, Turog Properties, Limited, c/o Heywood Becker, and Bevin Esposito, Regional Hearing Clerk, re: Chem Fab Site Lien Hearing - Response to Request for EPA's Position on Turog's Request for Postponement (June 1, 2020).

19. Email from Andrew Goldman, Senior Assistant Regional Counsel, EPA Region III, to Joseph J. Lisa, Regional Judicial and Presiding Officer, EPA Region III, Turog Properties, Limited, c/o Heywood Becker, and Bevin Esposito, Regional Hearing Clerk, re: Chem Fab Site Lien Hearing, Response to Meeting Invitation (June 3, 2020).

20. Email from Joseph J. Lisa, Regional Judicial and Presiding Officer, EPA Region III, to Andrew Goldman, Senior Assistant Regional Counsel, EPA Region III, Turog Properties, Limited, c/o Heywood Becker, and Bevin Esposito, Regional Hearing Clerk, re: Chem Fab Site Lien Hearing, Response to email from Andrew Goldman, Senior Assistant Regional Counsel, EPA Region III, re: Response to Meeting Invitation (June 3, 2020).

21. Email from Andrew Goldman, Senior Assistant Regional Counsel, EPA Region III, to Joseph J. Lisa, Regional Judicial and Presiding Officer, EPA Region III, Bevin Esposito, Regional Hearing Clerk, and Turog Properties, Limited, c/o Heywood Becker, re: Chem Fab Site Lien Hearing, Follow-up to Turog Request for Extension of Time (June 5, 2020).

22. Order Granting Turog's Request for Extension of Time, issued by Joseph J. Lisa, Regional Judicial and Presiding Officer, EPA Region III, re: Turog Properties, Limited, Chem Fab Site (June 5, 2020).

23. Email from Joseph J. Lisa, Regional Judicial and Presiding Officer, EPA Region III, to Bevin Esposito, Regional Hearing Clerk, forwarding email from Ron Clever, Attorney at Law, attaching letter to Joseph J. Lisa, Regional Judicial and Presiding Officer, EPA Region III, with cc to Andrew Goldman, Senior Assistant Regional Counsel, EPA Region III, re: Chem Fab Site Lien Hearing, Legal Representation of Turog Properties and Request for Extension of Time (July 22, 2020).

24. Email from Andrew Goldman, Senior Assistant Regional Counsel, EPA Region III, to Joseph J. Lisa, Regional Judicial and Presiding Officer, EPA Region III, Bevin Esposito, Regional Hearing Clerk, and Ron Clever, Counsel for Turog Properties, Limited, re: Chem Fab Site Lien Hearing, Response to Request for Conference Call from Joseph J. Lisa, Regional Judicial and Presiding Officer, EPA Region III (July 23, 2020).

25. Email from Andrew Goldman, Senior Assistant Regional Counsel, EPA Region III, to Ron Clever, Counsel for Turog Properties, Limited, re: Re-send of email due to incorrect email address, Chem Fab Site Lien Hearing, Response to Request for Conference Call from Joseph J. Lisa, Regional Judicial and Presiding Officer, EPA Region III (July 23, 2020).

26. Email from Joseph J. Lisa, Regional Judicial and Presiding Officer, EPA Region III, to Ron Clever, Counsel for Turog Properties, Ltd., Andrew Goldman, Senior Assistant Regional Counsel, EPA Region III, Bevin Esposito, Regional Hearing Clerk, re: Chem Fab Site Lien Hearing, Order Granting Request for Extension of Time (July 23, 2020).

27. Letter, with attachments, from Andrew Goldman, Senior Assistant Regional Counsel, EPA Region III, to Ronald Clever, Counsel for Turog Properties, Ltd., with cc: to Joseph J. Lisa, Regional Judicial and Presiding Officer, EPA Region III, Bevin Esposito, Regional Hearing Clerk, Joan Martin-Banks, EPA Region III, Joanne Marinelli, EPA Region III, re: Chem Fab Superfund Site, Lien Proceeding (July 23, 2020).

28. Email, with attachments, from Ron Clever, Counsel to Turog Properties, Ltd., to Joseph J. Lisa, Regional Judicial and Presiding Officer, EPA Region III, with cc to Andrew Goldman, Senior Assistant Regional Counsel, EPA Region III, and Bevin Esposito, Regional Hearing Clerk, re: Chem Fab Site Lien Hearing, Document for reference during conference call (July 30, 2020).

29. Revised Scheduling Order, issued by Joseph J. Lisa, Regional Judicial and Presiding Officer, EPA Region III, re: Turog Properties, Ltd., Chem Fab Site (July 31, 2020).

30. Letter, with attachments, from Ron Clever, Counsel to Turog Properties, Ltd., to Joseph J. Lisa, Regional Judicial and Presiding Officer, EPA Region III, with cc to Andrew Goldman, Senior Assistant Regional Counsel, EPA Region III, and Bevin Esposito, Regional Hearing Clerk, re: Turog Properties, Ltd, Pre-Hearing (Pre-Meeting) Brief (August 17, 2020).

31. Letter, with attachments, from Andrew Goldman, Senior Assistant Regional Counsel, EPA Region III, to Joseph J. Lisa, Regional Judicial and Presiding Officer, EPA Region III, and Ronald Clever, Counsel for Turog Properties, Ltd., with cc: Bevin Esposito, Regional Hearing Clerk, re: Turog Properties, Ltd., EPA Response Brief (September 10, 2020).

32. Letter from Ron Clever, Counsel to Turog Properties, Ltd., to Joseph J. Lisa, Regional Judicial and Presiding Officer, EPA Region III, with cc to Andrew Goldman, Senior Assistant Regional Counsel, EPA Region III, and Bevin Esposito, Regional Hearing Clerk, re: Turog Properties, Ltd., Chem Fab Site Lien Hearing – Request for Postponement (September 28, 2020). *This letter contains privacy information and has been redacted.*

33. Order Postponing Lien Hearing, issued by Joseph J. Lisa, Regional Judicial and Presiding Officer, EPA Region III, re: Turog Properties, Ltd., Chem Fab Site (October 6, 2020).

34. Status Report, and accompanying 2-page cover letter, filed by Ron Clever, Counsel to Turog Properties, Ltd., re: Turog Properties, Ltd., Chem Fab Site Lien Hearing (October 13, 2020). *The accompanying 2-page cover letter contains privacy information and has been redacted in its entirety.*

35. Email, with attached Order for Second Status Report, from Joseph J. Lisa, Regional Judicial and Presiding Officer, EPA Region III, to Ron Clever, Counsel for Turog Properties, Ltd., and Andrew Goldman, Senior Assistant Regional Counsel, EPA Region III, with cc: to Bevin Esposito, Regional Hearing Clerk, re: Turog Properties, Ltd., Chem Fab Site (October 22, 2020).

36. Status Report, and accompanying 2-page cover letter, filed by Ron Clever, Counsel to Turog Properties, Ltd., re: Turog Properties, Ltd., Chem Fab Site Lien Hearing (dated November 13, 2020, received by Regional Hearing Clerk on November 17, 2020). *The accompanying 2-page cover letter contains privacy information and has been redacted in its entirety.*

37. Order for Third Status Report, issued by Joseph J. Lisa, Regional Judicial and Presiding Officer, EPA Region III, re: Turog Properties, Ltd., Chem Fab Site (November 17, 2020).

38. Status Report, and accompanying 2-page cover letter, filed by Ron Clever, Counsel to Turog Properties, Ltd., re: Turog Properties, Ltd., Chem Fab Site Lien Hearing (January 8, 2021). *The accompanying 2-page cover letter contains privacy information and has been redacted in its entirety.*

39. Scheduling Order, issued by Joseph J. Lisa, Regional Judicial and Presiding Officer, EPA Region III, re: Turog Properties, Ltd., Chem Fab Site (January 20, 2021).

40. Calendar entry for Lien Hearing, set by Bevin Esposito, Regional Hearing Clerk (January 20, 2021).

41. Post-Hearing Scheduling Order, issued by Joseph J. Lisa, Regional Judicial and Presiding Officer, EPA Region III, re: Turog Properties, Ltd., Chem Fab Site (April 9, 2021).

42. Revised Post-Hearing Briefs Scheduling Order, issued by Joseph J. Lisa, Regional Judicial and Presiding Officer, EPA Region III, re: Turog Properties, Ltd., Chem Fab Site (April 20, 2021).

43. Email from Ronald Clever, Counsel for Turog Properties, Ltd., to Joseph J. Lisa, Regional Judicial and Presiding Officer, EPA Region III, with copy to Andrew Goldman, Senior Assistant Regional Counsel, EPA Region III, re: Turog Properties Ltd., request for extension to submit post-hearing brief, with email reply from Andrew Goldman (emails dated June 11, 2021 but provided to RHC on June 14, 2021). *Mr. Clever's email contains privacy information and has been redacted.*

44. Second Revised Post-Hearing Briefs Scheduling Order, issued by Joseph J. Lisa, Regional Judicial and Presiding Officer, EPA Region III, re: Turog Properties, Ltd., Chem Fab Site (June 14, 2021).

45. Email from Ronald Clever, Counsel for Turog Properties, Ltd., to Joseph J. Lisa, Regional Judicial and Presiding Officer, EPA Region III, with copy to Andrew Goldman, Senior Assistant Regional Counsel, EPA Region III, and Bevin Esposito, Regional Hearing Clerk, re: Turog Properties Ltd., request for extension to submit post-hearing brief (July 7, 2021).

46. Email from Joseph J. Lisa, Regional Judicial and Presiding Officer, EPA Region III, to Ron Clever, Counsel for Turog Properties, Ltd., with copy to Andrew Goldman, Senior Assistant Regional Counsel, EPA Region III, and Bevin Esposito, Regional Hearing Clerk, re: Turog Properties Ltd.'s request for extension to submit post-hearing brief (July 7, 2021).

47. Letter, with attachments, from Andrew Goldman, Senior Assistant Regional Counsel, EPA Region III, to Joseph J. Lisa, Regional Judicial and Presiding Officer, EPA Region III, with copy to Ronald Clever, Counsel for Turog Properties, Ltd., and Bevin Esposito, Regional Hearing Clerk, re: Turog Properties, Ltd., EPA's Post-Hearing Brief and Exhibits (July 9, 2021).

48. Letter, with attachment, from Ron Clever, Counsel to Turog Properties, Ltd., to Joseph J. Lisa, Regional Judicial and Presiding Officer, EPA Region III, with cc to Andrew Goldman, Senior

Assistant Regional Counsel, EPA Region III, and Bevin Esposito, Regional Hearing Clerk, re: Turog Properties, Ltd.'s Post-Hearing Brief (July 9, 2021)