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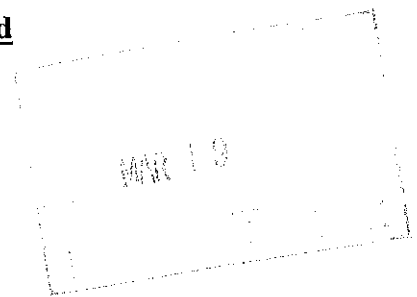
OF COUNSEL  
LEAH C. HEALEY\*  
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**CONFIDENTIAL**  
**Attorney Client Privilege Asserted**  
**Attorney Work Product Privilege Asserted**

**MEMORANDUM**

TO: Ringwood Mayor & Council  
FROM: Albert Telsey   
DATED: March 16, 2007  
RE: EPA Order



**Consequences of Non-Compliance**

This memo addresses certain financial exposures facing the Borough given the position the Borough is taking with regard to compliance with the EPA Order.

By way of background, in September 2005 the Borough was issued an EPA Order to cooperate with Ford. That order required that the Borough assist Ford do all or some of the investigative work or in lieu thereof help Ford pay for all or some of the work. We engaged in protracted negotiation and discussion with Ford throughout 2005, 2006 and the early part of 2007. Ford wanted the Borough to pay all costs related to the Cannon Mine investigation. Estimated cost was approximately \$500,000. The Borough counter offered with the position that it had expended considerable money (approximately \$570,000) on efforts related to investigating and remediating sinkholes, relocating residents in harms way as a result of sinkholes, coordinating with Ford and Arcadis with regard to the cleanup and other issues. That offer was made January 30, 2007. On

February 27, 2007, Ford responded and rejected the Borough offer of cooperation. We submitted the Ford rejection letter to EPA by letter dated March 9, 2007. Juan Fajardo, Esq., EPA counsel, contacted me to try to work out the impasse. I told him that the Borough stands firm in its position that it has made a good faith offer given the work the Borough has done to date. I told him I would provide him with more detailed information describing the work the Borough has done to cooperate. Mr. Fajardo, however, told me that he does not believe the work the Borough has done is work required by the scope of work in the EPA Order. He told me that EPA may proceed with an enforcement action.

If EPA proceeds with an enforcement action, the agency will file a complaint in the United States District Court seeking penalties against the Borough for non-compliance with the EPA Order. The EPA Order provides penalties of approximately \$32,000 per day. Consequently, should the Borough be assessed a penalty for non-compliance, the penalty could be significant. Ford asserts that the Borough is responsible for over \$16 million in penalties so far.

We have provided you with an analysis of the problems inherent in the EPA Order, in that it is vague in its terms. (copy attached). In particular, the Order requires that the Borough negotiate in good faith with a third party (Ford) without ever saying exactly what the Borough is required to do, other than be a guarantor to the work in the event Ford fails to do it. This type of vagueness could make the Order void for vagueness and unenforceable. However, while that argument may be strong in this particular case (for the reasons described in the attached memorandum), there are no guarantees that a District Court judge would conclude that the EPA Order is void for vagueness. As such, a judge could issue penalties against the Borough for non-compliance.

The consequence of a penalty assessment is that the insurance policies will not pay for penalties assessed against the Borough for non-compliance with the EPA Order. In addition, insurance will not pay the Borough's defense costs to defend the District Court action seeking penalties. Counsel for the insurance carriers have, however, told me that they would consider paying money to Ford and/or EPA pursuant to the terms of the EPA Order if Ford and/or EPA would conclude that the payment of a sum certain would be considered compliance with the Order.

Our research has not revealed a single case in which EPA has sought to enforce such a "cooperation" Order in Court. Moreover, a decision to enforce such an Order would present significant public policy issues for EPA. In this regard it is important to note that the Order does not compel the Borough to pay money to EPA, rather it requires the Borough to make payments or take action which would relieve Ford of such responsibility. Thus if EPA were to expend its resources in an attempt to enforce the Order, it would be in the odd-and hardly defensible position of taking such action against

a small municipality for the sole purpose of providing significant benefit to a Fortune 500 corporation.

This memo confirms that the Borough has determined not to offer money to Ford pursuant to the EPA Order at this time, but to challenge the EPA Order, if necessary, on the grounds that it is void for vagueness and, more directly, because the problems created in the Upper Ringwood area were the doing of Ford, not the Borough, and the Borough is not going to pay for the misconduct of Ford.

We understand the Borough's position and will prosecute it with diligence. However, we felt obliged to inform the Borough that this course of action may lead to the imposition of penalties not covered by insurance.

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March 12, 2007

**Via e-mail and regular mail**

Kim Hollaender, Esq.  
Nelson Levine de Luca & Horst, LLC  
Four Sentry Parkway  
Suite 300  
Blue Bell, PA 19422

**Via e-mail and regular mail**

Margaret F. Catalano, Esq.  
Carroll, McNulty & Kull, LLC  
120 Mountain View Boulevard  
Post Office Box 650  
Basking Ridge, N.J. 07920

**Via e-mail and regular mail**

Robert Muilenberg, Esq.  
Coughlin Duffy, LLP  
350 Mount Kemble Avenue  
P.O. Box 1917  
Morristown, New Jersey 07962

**Re: Ringwood EPA Unilateral Order**

Dear Counsel,

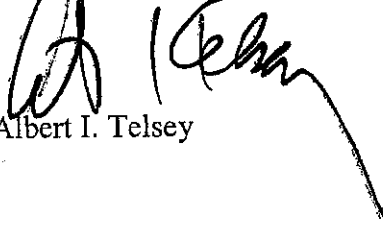
We received the letter from Ford counsel rejecting the Borough's offer of cooperation and participation (Attached). We prepared a letter to EPA (enclosing the Ford rejection letter) which states that we believe we negotiated in good faith and that we are in compliance with the Order. (Attached). I have also prepared a memo describing our strategy with regard to the EPA Order, which includes a fuller discussion of topics and issues we addressed during our last conference call. (Attached).

At the present time, the Borough desires to pursue the strategy outlined in the memo, which is to pursue a political/legislative intervention with EPA with Senators Lautenberg and Menendez and to gauge the EPA reaction to the present standstill with Ford. As set forth in the memo, the EPA Order does not require payment to Ford. It requires good faith negotiations with Ford. We believe we have engaged in good faith negotiations for all the reasons expressed in the memo. For that reason, at this time Ringwood is not requesting that its insurers pay Ford (or to contribute to a payment to Ford) in response to the demand by Ford for payment towards Ford's investigation costs.

Kim Hollaender, Esq.  
Margaret F. Catalano, Esq.  
Robert Muilenberg, Esq.  
March 12, 2007  
Page 2

We will continue to provide you with the status of these discussions and negotiations. Please contact me if you want to discuss any issues before our next conference call.

Regards,

A handwritten signature in black ink, appearing to read "A. Telsey", with a long, sweeping horizontal line extending to the right.

Albert I. Telsey

Enclosures

Cc: Kenneth Hetrick, Municipal Manager (w/ encl)

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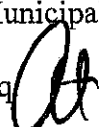
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ATTORNEY WORK PRODUCT PRIVILEGE ASSERTED

To: Kim Hollaender, Esq.  
Margaret Catalano, Esq.  
Robert Muilenburg, Esq.

Cc: Kenneth Hetrick, Municipal Manager

From: Albert I. Telsey, Esq. 

Date: March 11, 2007

Re: Borough of Ringwood  
EPA Unilateral Administrative Order

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STATUS REPORT

This memo provides our analysis and recommendations with regard to the current status of the EPA Order.

Ford's Rejection of Borough Offer

Attached is the letter from counsel for Ford (that I mentioned was coming), which rejects our offer of participation and cooperation. Also attached is a draft letter to EPA forwarding Ford's rejection letter. We are required under the Unilateral Order to notify EPA.

By way of summary, the EPA Order requires the Borough to undertake best efforts to coordinate with the Performing Party [Ford] and to undertake best efforts to participate with Ford. Best efforts to “coordinate” with Ford means (a) telling Ford the Borough desires to comply with the Order by participating in all or some of the Work, paying for all or some of the Work or both, (b) negotiating in good faith with Ford, and (c) submitting a good faith offer to Ford. Best efforts to “participate” with Ford means performing those work items agreed upon and (b) payment of amounts agreed upon. If an agreement can not be reached, the Borough must notify EPA.

With regard to undertaking best efforts to coordinate with Ford, the Borough did send a letter to Ford in 2005 indicating its intent to comply with the EPA Order; did engage in negotiations with Ford by letter, telephone and meetings during 2005, 2006 and 2007; and did make an offer to Ford.

The Borough indicated in its offer letter dated January 30, 2007 (Attached) that it has spent a considerable amount of money (approximately \$568,928) responding to the needs of residents in the upper Ringwood area who have been impacted by the investigation work being undertaken by Ford and its consultants. For example, the Borough has relocated families who were in danger after sinkholes opened up next to their homes and in streets near work areas, fenced those areas and repaired the street. The Borough has also been working with Ford’s consultants during the investigation work in the area, meeting weekly with them. The Borough has also provided Ford with free access to Borough property, free space on Borough property to house the Arcadis

work trailer and to store fill material and executed various permit applications required for investigative activities.

Ford has taken the position that the efforts undertaken by the Borough to protect residents from harm during the work being done by Ford and to coordinate with Ford's consultants are not acceptable. Ford wants the Borough to pay Ford money now and regularly in the future as Ford's expenses accrue with regard to work in the Cannon Mine area. We take the position that we have acted in good faith and that our conduct is in compliance with the Order.

EPA's possible reaction to Ford's Rejection of the Borough's Offer

Mediation. The Order is silent as to what happens after we notify EPA that the parties have not been able to make an agreement. EPA may get the parties together to try to mediate a workout. That exercise might succeed; it might not. Our position is that we want EPA to confirm in writing that whatever we do by way of participation and cooperation constitutes full compliance with the Order and that no other requirements in the Order are left outstanding.

Litigation. In addition to a workout meeting or instead of one, EPA could take the Borough to court to enforce the Order (seek penalties). EPA will have to present an argument that the Borough's offer of participation and cooperation was not made in good faith. This may be difficult to prove because it was made in good faith (as Borough representatives will testify) and even if EPA does not concur, how does EPA prove it was

not made in good faith? We submit the order is void for vagueness for the reasons that follow.

EPA prepared an internal document entitled, "Guidance on CERCLA Section 106(a) Unilateral Administrative Orders for Remedial Designs and Remedial Actions," OSWER Directive No. 9833.0-1A (March 9, 1990). This Guidance Document was designed to assist EPA representatives determine who should be issued a unilateral order, what the orders should say and why the order should be issued. The document states that EPA should issue the order to a responsible party who does not voluntarily undertake work at a site where EPA does not intend to expend funds to do the work itself. With regard to what the order should tell the responsible party to do, the guidance is quite clear:

Unilateral orders should specifically define the response action required, to the maximum extent possible. A specifically identified response action is required for implementation by the PRPs, for the Agency to determine compliance, and for the order to be legally enforceable. For RD/RA actions, the order should reference the ROD and specify a schedule of deliverables. Often, the order should also include a Statement of Work. (Section V.A.3, p.15).

A cooperation unilateral order does not meet these criteria, which is why it is not widely used. Our research has not found an instance where the cooperation unilateral order has been litigated in court. Nevertheless, the order appears to suffer from considerable vagueness problems.

The court in Candid Productions, Inc. v. International Skating Union, 530 F. Supp 1330, 1336-1337 (Dist. Ct., S.D.N.Y.) described the difficulty it faces when asked to enforce a "good faith" agreement:

While the power of the Court to fashion in appropriate cases an equitable remedy is great, it does not encompass the right to make an agreement for the parties. To issue a decree of specific performance, as plaintiff requests, would require the Court to enter into the realm of the conjectural. An agreement to negotiate in good faith is even more vague than an agreement to agree. An agreement to negotiate in good faith is amorphous and nebulous, since it implicates so many factors that are themselves indefinite and uncertain that the intent of the parties can only be fathomed by conjecture and surmise. Suppose the defendant, in its initial request, asks for an amount for the licensing rights which plaintiff considers exorbitant or outrageous and in its view has been advanced solely for the purpose of defeating the Court's direction to negotiate. On what basis does the Court decide that the sum is so unreasonable so that it can determine that the proposal was contrary to good faith bargaining? Is the Court then required in furtherance of its decree to direct the parties to continue negotiations until they reach an agreement or does it conclude that an impasse has resulted which reflects good faith and thereby releases the defendant to negotiate with third parties? Indeed, this is by no means a hypothetical inquiry. (Emphasis added).

In our case, the EPA Order does not state what the Borough must do to cooperate and participate with Ford, where it must offer its services or money, when it must offer its services or money, or how it must offer its services or money. As the court stated in Candid Productions, what does the court do if it looks like Ford is over-reaching given that it has a captive partner? How does the court decide the Borough did or did not make a reasonable offer?

In addition to the coordination and participation component of the EPA Order, the Order also requires that the Borough act as a guarantor for the work Ford may not do. Specifically, the Order states that, as Ford does the work required by the Order, the Borough remains responsible for all planned work still remaining undone. (Paragraph 46). The Order also states that, should Ford fail to do anything or everything required by EPA, the Borough is obligated to do what Ford does not do. (Paragraph 47). These sections suggest that EPA recognizes that, as the "Performing Party," Ford is expected to do the work. With that understanding, how can Ford claim that the Borough must pay now instead of later, should it decide to pay anything? The Order does not require payment when Ford wants payment. This is just another ambiguity of the Order that works against EPA and Ford.

#### Perception

The decision to go to court may have public perception issues as well as legal difficulties. For example:

- Why is EPA taking the Borough to court before it takes Ford to court given what Ford has done at the site (ineffective cleanup, possible malfeasance, etc)?
- It seems poor strategy for EPA to tell the court that the work the Borough did (sinkhole triage, relocation of those in peril, etc.) is something EPA would not have wanted done, which EPA will have to say if it is going to

argue that the Borough's work did not comply with the EPA Order. Isn't EPA in the people protection business?

- Also, can EPA "win" the argument that the Borough is in non-compliance with an order that only required the Borough to negotiate in good faith with Ford, but not actually do anything?
- Can EPA anoint itself the arbiter of what constitutes "good faith" and simply conclude that the Borough is not acting in good faith without providing the Borough with some guidance, regulatory or otherwise, as to how the Agency interprets "good faith"?
- Can EPA let Ford decide what is "good faith" without running afoul of delegating its administrative responsibilities to a third party?

These are thorny questions for EPA and the court, should EPA go to court.

#### Background to Unilateral Order

These tough questions will all have to be answered in the unique context of this case. Ford failed to properly cleanup the site the first, second, third and fourth times they were told to do so; EPA failed to properly oversee a proper cleanup during these efforts and the Borough was not required by EPA or Ford to undertake any cleanup during any of these prior efforts to cleanup the site. There are other interesting background stories that may come out in court.

In 2004 and early 2005, before the Unilateral Order was issued in September 2005, we met with Virginia Curry, the EPA attorney. She told us that she thought the

complaints raised by the residents (pre-lawsuit) about a poor cleanup were ridiculous. She also told us about the rancor she personally had for the Borough. She was involved with the first cleanup, which was carried out from 1983 to 1994. Towards the end of the cleanup, in 1992, she sued the Borough along with Ford to recover some of the EPA oversight costs that were not paid. (The Borough ultimately paid about \$142,000, leaving the balance of about \$350,000 to Ford). She told us a couple of times about how she had to work over a weekend to file the complaint before the statute of limitations expired because the Borough would not agree to a Tolling Agreement. This annoyed her and she reminded us several times of her annoyance during the 2005 discussions about having the Borough enter into a Consent Order with Ford for the cleanup. The Borough rejected the Consent Order because it did not divide the burden of investigation between Ford and the Borough, making the Borough responsible for all the work. Our failure to enter to Consent Order in 2005 also annoyed Ms. Curry. She had to draft the unilateral Order for cooperation and participation. The "cooperation" unilateral order is a unique order not used in all EPA Regions (probably because of the difficulties discussed herein).

Before Ms. Curry even approached us about entering into a Consent Order with Ford, Ford unilaterally sent letters to Ms. Curry in 2004 encouraging her to name the Borough in an Order by claiming the Borough was responsible for dumping hazardous materials at the site in the 1960s and 1970s, an allegation Ford never pressed during the ten-years of the first cleanup. We suspect Ford wanted a "partner" during this second go-round and we further suspect the Ford letters further poisoned the already poisoned mind

of Ms. Curry. Once the second cleanup action took on a new life of its own in late 2005, Ms. Curry was reassigned or retired.

I mention this background because if a court is going to have to dive into the murky waters of "good faith," the background to the Unilateral Order and parole evidence may become important. Little of it looks good for EPA.

#### Legislative Intervention

Given that the decision to go to court is left within the discretion of the Agency, the Borough has sent letters requesting to meet with Senator Lautenberg and Senator Menendez to discuss the EPA Order and the present situation. We want to ask the Senators to contact EPA on our behalf and to tell EPA that the work the Borough has done and the offer it has made is reasonable and to urge EPA to do more for the local residents by making Ford do more to protect them. In particular, we want EPA to make Ford do seismic testing to make sure additional investigative work to be done by Ford does not cause more sinkholes. (See Borough letters to EPA and DEP regarding seismic testing). The Borough is shouldering this burden now, which should not be their burden. We hope to have a meeting with the Senators shortly.

#### Ford's Investigative Work

Ford is undertaking investigative work in a variety of areas known as Modules. Their work started with a Reconnaissance Survey. Other Modules include paint sludge removal, drum removal, Cannon Mine Area investigation, Peters Mine area investigation, surface water, groundwater and other areas. The site is hundreds of acres in size. In

order to get a feeling for the areas under investigation you may want to visit the EPA website ([www.epa.gov/region02/superfund/npl/ringwood/index.html](http://www.epa.gov/region02/superfund/npl/ringwood/index.html)) and the website operated by Ford ([www.ringwoodsiteupdate.com](http://www.ringwoodsiteupdate.com)). Maps, documents and other information are provided on the websites. If you want us to provide you with an overview of the cleanup we can have our consultant, H2M prepare a document, we could have H2M join us during one of our upcoming conference calls or we can schedule a meeting where H2M can brief you on cleanup issues over a conference table.

#### Cost Exposure

In terms of cost exposure, Ford has not released its cost figures for the investigative exercise in the upper Ringwood area. We are certain it is in the millions of dollars. With regard to Cannon Mine, the investigation portion is about \$500,000 (cost figures were already provided). Remedial work in addition to investigative work may also be required in the Cannon Mine area or the former municipal landfills, among other places. I mention these two areas because these are areas where the Borough is known to have dumped municipal solid waste. Even if we settle the Unilateral Order, the Order relates only to investigative work, not remedial work. EPA may issue another order to Ford (and possibly the Borough) related to remedial exercises. Consequently, the ultimate cost exposure to the Borough is hard to quantify at this time.

#### Recommendations:

1. The Borough will send the attached letter to EPA enclosing the Ford rejection letter.

2. The Borough will seek a meeting with Senators Lautenberg and Menendez.
3. The Borough will meet with EPA if requested. At that meeting we will tell EPA about its enforcement difficulties with the EPA Order and suggest that EPA let the investigative phase of work come to completion before compelling the Borough to do anything further with regard to negotiating with Ford. If EPA has other ideas, we will listen.
4. The Borough will supplement the administrative record with anything else we may want to add in the event EPA intends to take the Borough to court.

We will update this memo as further events transpire.

JOSEPH J. MARAZITI, JR.  
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March 9, 2007

**Via Telecopy and Regular Mail**

Juan Fajardo  
Environmental Protection Agency  
Region II  
290 Broadway, 17th Fl  
New York, New York 10007

Re: Ringwood Mines Superfund Site  
Ringwood Borough Unilateral Order

Dear Mr. Fajardo,

As required by the Unilateral Order, the Borough of Ringwood sent an offer of participation and cooperation to counsel for Ford Motor Company on January 30, 2007. (Copy attached). A copy of this letter was provided to you at the time. Ford and the Borough, however, have not been able to come to agreement on acceptable terms for cooperation and participation. Counsel for Ford sent us a letter indicating Ford will not accept our offer. (Copy attached).

The Borough indicated in its offer letter that it has spent a considerable amount of money (approximately \$568,928) responding to the needs of residents in the upper Ringwood area who have been impacted by the investigation work being undertaken by Ford and its consultants. For example, the Borough has relocated families who were in danger after sinkholes opened up next to their homes and in streets near work areas, fenced those areas and repaired the street. The Borough has also been working with Ford's consultants during the investigation work in the area, meeting weekly with them. The Borough has also provided Ford with free access to Borough property, free space on Borough property to house the Arcadis work trailer and to store fill material and executed various permit applications required for investigative activities.

Ford has taken the position that the efforts undertaken by the Borough to protect residents from harm during the work being done by Ford and to coordinate with Ford's consultants are not acceptable. Ford wants the Borough to pay Ford money now and regularly in the future as Ford's expenses accrue with regard to work in the Cannon Mine area.

The Borough has not rejected an offer of payment but has stated that a determination of financial participation cannot be made until after Ford completes its work. For municipal budgeting purposes, the Borough must dedicate a sum certain for such an expense if it is to be expended. More importantly, as stated in the Order, Ford is the "Performing Party," not the Borough. As such, Ford is required to do the work.

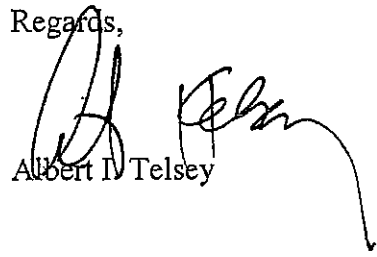
The Order requires that the Borough act in good faith to negotiate an agreement to assist Ford. The Borough has acted in good faith, which is evident by the length of time the parties have spent in discussions. The Borough will continue to act in good faith to resolve the issue with Ford. However, the Order provides no guidance as to how to resolve the conflict. The Order does require that the Borough act as guarantor of the work should Ford fail to do it. This provision appears to be unaffected by the parties' current inability to agree on participation terms.

Mr. Fajardo, the Borough has taken aggressive and proactive measures to work with and protect this community. After years of false assurance by Ford and its consultants that the area was hazard free, this community now knows that is not the case, which is why the area was re-listed as a Superfund site. Community members are looking to the Borough to assist them with regard to immediate safety, health and welfare issues that Ford is not addressing, but should address. The Borough has been continually on alert and in action with regard to the crisis facing this community.

The Borough submits that it is and will remain in compliance with the Order. The Borough will continue to work with Ford and honor the terms of its offer.

I am available to discuss this matter with you further.

Regards,

  
Albert D. Telsey

Enclosures

Cc: Mayor and Council, Borough of Ringwood  
Kenneth Hetrick, Manager, Borough of Ringwood  
Joseph J. Maraziti, Jr., Esq.  
David J. Hayes, Esq., Ford Counsel

32-520

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January 30, 2007

David J. Hayes, Esq.  
Latham & Watkins, LLP  
555 Eleventh Street, N.W., Suite 1000  
Washington, D.C. 20004-1304

Re: Ford-Ringwood Landfill/Mines Superfund Site  
EPA Unilateral Order to Borough of Ringwood  
Dated September 25, 2005

Dear David,

This letter follows up our discussions with regard to Ringwood undertaking work in the upper Ringwood area as required by the 2005 Unilateral Order issued by the United States Environmental Protection Agency (EPA). The Order requires that we cooperate and participate in good faith with Ford, which is the Performing Party under the Order.

We have generally been discussing the idea that, in addition to the work the Borough is already doing in the area, the Borough would share with Ford the cost for investigative work Ford is doing in the Cannon Mine area since that is the area the Borough is known to have disposed of municipal solid waste as well as an area where Ford is known to have dumped Ford waste. Over the last few months we have discussed certain reimbursement scenarios and you have provided me with some cost estimates and draft agreement language.

We have had an opportunity to discuss this matter in detail with Borough Council. As a result of those discussions, the Borough will (1) apply the work it has done and will do to address residential properties in the upper Ringwood area towards the cost of compliance with the EPA Order, (2) do the reuse assessment required in paragraph 54d of the Order, and (3) pay in trust to EPA an appropriate sum towards the investigative work Ford has done and will be doing in the Cannon Mine area once the work is completed and a sum certain can be determined. The Borough cannot pay piecemeal sums towards the Cannon Mine investigation. A fixed amount must be budgeted given the Borough's

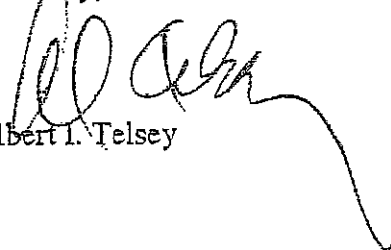
municipal budget requirements. We will also need a fixed sum in order to try and settle with our insurance carriers.

Attached is a list of the work the Borough has done and expects to do in the upper Ringwood area in compliance with the requirements of the EPA Order. Attendant costs total approximately \$768,928. With regard to the Borough's contribution towards the Cannon Mine investigation costs we should wait until EPA approves the Cannon Mine investigation results so that a sum certain for contribution can be determined.

This of course is all in addition to the Borough providing Ford and Arcadis with free access to all of the Borough property, free space on Borough property to house the Arcadis work trailer and to store soil and fill materials, and executing various permit applications required for investigative activities.

Please call me so we can further discuss this offer.

Sincerely,



Albert L. Telsey

Enclosure

(All w/ encl)  
Cc: Juan Fagardo, USEPA  
Mayor and Council, Ringwood  
Kenneth Hetrick, Borough Manager, Ringwood  
Joseph J. Maraziti, Jr., Esq., Ringwood Attorney  
Sui Leong, H2M Group

## ATTACHMENT

### (Borough offer of cooperation/participation under EPA Order)

In addition to the work described in the Statement of Work (SOW) attached to the EPA Unilateral Order, which relates to the investigation required at Cannon Mine, Peters Mine, the O'Connor Landfill and other defined locations, Paragraph 48 of the EPA Order requires the Borough "to cooperate with investigation activities performed by EPA and its contractors to evaluate residential properties."

The evaluation of residential properties has been difficult because the residents have refused Ford and EPA access to their properties and will only permit access by the New Jersey Department of Environmental Protection (DEP) and its subcontractors. This is due in part to the fact that the residents distrust EPA and Ford; that thousands of tons of paint sludge (including wet paint sludge) is still being found in the area even after the first Superfund matter was considered satisfactorily remediated by EPA; that the site has been re-listed as a Superfund site; that wildlife studies show contaminated wildlife is present in the area; and that the residents have brought a \$2 billion dollar toxic tort claim against Ford and others. In addition, sinkholes have developed in the area over the past few months while investigative activity has been ongoing, which have compounded the difficulty of investigating the residential parcels. This situation has added additional requirements on the Borough to comply with the EPA Order.

One sinkhole opened up in the yard of Roger DeGroat. A second sinkhole swallowed Sheehan Drive, near Mr. DeGroat's home. The Passaic County Emergency Management Coordinator declared Sheehan Drive a disaster/emergency area. A third sinkhole opened up across the street from Sheehan Drive. At a fourth location, several small sinkholes opened up between two homes on the south side of Van Dunk Lane. A fifth sinkhole opened up at the end of Van Dunk Lane.

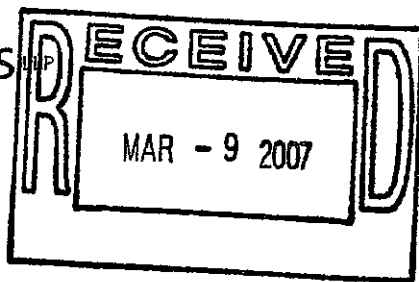
The concern with sinkholes and underground voids that may develop into sinkholes warrants that specialized seismic testing be done at the residential properties to determine if voids exist which may hamper sampling activity and imperil the residents. In addition, the Borough has had to remediate the sinkhole that swallowed Sheehan Drive and repair the road. The Borough has also had to relocate certain residents imperiled by the sinkholes located between the two houses on Van Dunk Lane by temporarily housing them in trailers and rental homes. These residents may ultimately have to be permanently relocated at considerable expense yet to be determined.

As a result of these unique issues associated with the sampling of residential properties required by the EPA Order, the Borough has had to expend and will expend approximately \$768,928. A breakdown of these costs is summarized on the next page.

Work done by Borough pursuant to the EPA Order  
related to residential properties

| <u>Description</u>                                                                                                                                                                           | <u>Cost to Date</u> |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|
| 1. Gary Gartenberg Associates (mine expert) hired to oversee and coordinate sinkhole investigations, including Allstate Blasting Corp. hired to do soil borings at and around sinkholes..... | \$93,000            |
| 2. Structural Preservation Systems hired to remediate (i.e., fill and grout) sinkhole that occurred on Sheehan Drive.....                                                                    | \$235,000           |
| 3. Robert H. Rapp Company, Inc. hired to repair and resurface Sheehan Drive collapsed by sinkhole .....                                                                                      | estimated \$6,500   |
| 4. Hager-Richter (seismic testing consulting firm) may be hired to investigate residential properties for underground voids .....                                                            | proposed \$200,000  |
| 5. Temporary housing costs (Total to Date) .....                                                                                                                                             | \$131,247           |
| Five trailers obtained from Rayewood RV Center of Sussex used to temporarily house residents in the homes next to the sinkhole that opened up on Van Dunk Lane                               |                     |
| Motel accommodations with Courtyard Marriott in Mahwah to temporarily house two families located across the street from the sinkhole on Van Dunk Lane                                        |                     |
| Rental homes to be used instead of RVs and motel rooms to house temporarily displaced families:                                                                                              |                     |
| 37 Skyline Lake Drive, Ringwood (\$1,800/mo)                                                                                                                                                 |                     |
| 367 Cupsaw Drive, Ringwood (\$2,200/mo)                                                                                                                                                      |                     |
| 41 Summit Point, Ringwood (\$2,400/mo)                                                                                                                                                       |                     |
| 6. Fencing of sinkholes, dangerous voids and misc. ....                                                                                                                                      | \$27,381            |
| 7. H2M Associates, an environmental consulting firm hired to coordinate investigation and other activities with EPA, Ford, Arcadis, residents and other stakeholders.....                    | \$75,800            |
| <b>TOTAL .....</b>                                                                                                                                                                           | <b>\$768,928</b>    |

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February 27, 2007

FIRM / AFFILIATE OFFICES

|             |                   |
|-------------|-------------------|
| Barcelona   | New Jersey        |
| Brussels    | New York          |
| Chicago     | Northern Virginia |
| Frankfurt   | Orange County     |
| Hamburg     | Paris             |
| Hong Kong   | San Diego         |
| London      | San Francisco     |
| Los Angeles | Shanghai          |
| Madrid      | Silicon Valley    |
| Milan       | Singapore         |
| Moscow      | Tokyo             |
| Munich      | Washington, D.C.  |

**Via Email and Regular Mail**

Albert I. Telsey, Esq.  
Maraziti Falcon & Healey  
150 John F. Kennedy Parkway  
Short Hills, NJ 07078

Re: Ford-Ringwood Landfill/Mines Superfund Site

Dear Mr. Telsey:

For several months, we have been discussing the terms of an agreement between the Borough and Ford that would resolve the Borough's outstanding liability to finance investigative costs incurred at the Ringwood Landfill/Mines Site, as required by the Unilateral Administrative Order that EPA issued against the Borough on September 21, 2005 (the "Order"). As you know, the Borough is subject to civil penalties of up to \$32,500 for each day that it fails to comply with the Order and, in addition, potential punitive damages. See Order at Paragraph 79.

The Borough is not, and never has, complied with the Order.<sup>1</sup> Because Ford believed that we were making progress toward – and then had reached an agreement in principle regarding – the Borough's financial contributions toward the investigative costs required by EPA under the Order,<sup>2</sup> Ford had not approached EPA and demanded that the Agency enforce the Order and collect penalties from the Borough due to its failure to comply with the Order.

Given this context, we were surprised and disappointed to receive your letter of January 30, 2007, which failed to even acknowledge the principles that had been guiding our discussions

<sup>1</sup> Under the Order, the Borough was required to submit a good faith offer to Ford to finance a portion of the investigative work required under the Order by October 24, 2005. (i.e., 20 days after the September 21, 2005 effective date of the Order. The Borough did not submit an offer by October 24, 2005. And when the Borough finally submitted a purported "offer" on November 28, 2005, it failed to meet the good faith test insofar as it made no commitment to cover *any* of the investigative costs that were required under the Order. See Letter from Virginia Curry (EPA) to A. Telsey (December 8, 2005); Letter from David J. Hayes to A. Telsey (January 10, 2006).

<sup>2</sup> As you know, these discussions culminated in an amended proposed settlement agreement dated January 18, 2007.

and instead introduced new issues that have no bearing on the Borough's obligations under the Order. In particular, you asserted in your letter that costs that the Borough has incurred in addressing subsidence issues in the upper Ringwood residential neighborhood somehow constitute compliance with the Order. As you know, however, the Order requires that the Borough "pay for the Work required by this Order" and that "Work," in turn, is defined to **exclude** investigative work in residential areas.<sup>3</sup> Instead, the Order requires that the Borough help finance the specific tasks set forth in the accompanying Statement of Work ("Work") including, in particular, certain investigative surveying and test pitting activities that are undertaken in non-residential areas of the Site, and focused investigative activities that must be undertaken in specific former disposal areas such as the O'Connor Disposal Area, the Peters Mine Pit Area, the Cannon Mine Area and the former Borough Landfill.

Your letter introduces another red herring by stating that the Borough intends to conduct the reuse assessment, as described in paragraph 54(d) of the Order. As you know, however, a reuse assessment is not required under the Order. EPA can decide "in its sole discretion" whether a reuse assessment is needed. As I confirmed with EPA, the Agency has made no such decision here.

Finally, your letter rehashes old ground by reiterating the Borough's preference not to finance specific investigative tasks required under the Order, whatever their cost and duration, but instead to pay a sum certain to Ford, after investigative work has been completed. We have been consistently clear on this point. The Order's obligations apply to both Ford and the Borough. Ford is not, and will not, become a guarantor of the Work that EPA has ordered both parties to complete. That said, we worked hard to accommodate the Borough's financial constraints by limiting the Work elements that the Borough would be responsible for and by costing out those tasks, to the extent possible. Our January 18, 2007 settlement agreement reflects that approach.

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<sup>3</sup> The Order and the accompanying Statement of Work did not require either Ford or the Borough to conduct the investigation in the residential area. To the contrary, Paragraphs 8 and 49 of the Order are very clear in stating that *EPA* intends to conduct the investigation in the residential area. EPA was explicit on this point because the residents had objected to having a PRP complete the residential investigation. EPA later deferred to NJDEP's suggestion that DEP conduct that portion of the investigation.

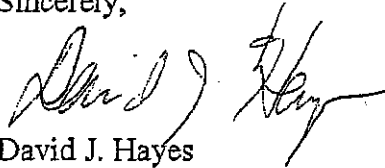
In addition, with regard to the subsidence issues that the Borough has had to address in the residential areas, it was the highly publicized concerns expressed by the residents – *and not any EPA requirements under the Order or otherwise* – that prompted the Borough to undertake subsidence activities in the neighborhood. This problem is a historic one that relates directly to former underground mining-related activities. The Borough's own expert (Gartenberg & Associates) has publicly confirmed this fact. (See Letter from David J. Hayes to NJDEP Commissioner Lisa Jackson (February 15, 2007) (attached hereto)).

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Regretfully, given the Borough's shift in position away from any commitments to do Work that is actually required to be completed under the outstanding Order, we can only conclude that the Borough is not proceeding in good faith. Accordingly, we are preparing to approach EPA and provide a chronology of the Borough's non-compliance with the Agency's Order. By our count, the Borough has been out of compliance with the Order since at least November 28, 2005 – the date when the Borough submitted a tardy and non-compliant "offer" to Ford (see footnote 1, above). Accordingly, the Borough has accrued penalties under the Order of more than \$16,737,500 (\$32,500 per day for one full year, plus five months).

If you have any questions, please do not hesitate to call.

Sincerely,

A handwritten signature in black ink, appearing to read "David J. Hayes", written over a horizontal line.

David J. Hayes  
of LATHAM & WATKINS LLP

cc: Joseph J. Maraziti, Jr., Esq.  
Elaine B. Mills, Esq.