



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2

290 BROADWAY

NEW YORK, NY 10007-1866

NOV - 3 2016

Wanda Chin Monahan, Esq.
Sedita, Campisano & Campisano, LLC
145 Route 46 West
Wayne Plaza I, Suite 102
Wayne, New Jersey 07470

RE: Ringwood Mines/Landfill Superfund Site – O'Connor Disposal Area

Dear Ms. Monahan:

On July 12, 2016, you wrote to the United States Environmental Protection Agency ("EPA"), on behalf of the Borough of Ringwood ("the Borough"), requesting that EPA "agree and provide written confirmation that for the O'Connor Disposal Area at Block 601, Lot 14 (OCDA), the Borough is exempt from liability under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA")"

The Borough bases its position that it is exempt from liability for the OCDA response costs on the provisions of Section 101(20)(D) of CERCLA, 42 U.S.C. § 9601(20)(D). Section 101(20)(D) states:

The term "owner or operator" does not include a unit of State or local government which acquired ownership or control involuntarily through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government involuntarily acquires title by virtue of its function as sovereign. The exclusion provided under this paragraph shall not apply to any State or local government which has caused or contributed to the release or threatened release of a hazardous substance from the facility, and such a State or local government shall be subject to the provisions of this chapter in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, including liability under section 9607 of this title.

In support of the Borough's application, you included in your letter the following documents:

- 1) A copy of the 1918 New Jersey Act, incorporating the Borough of Ringwood in the county of Passaic (Exhibit A);

- 2) A 1973 Deed of Gift, transferring ownership of the Block 601, Lot 14 (as delineated on the Tax Assessment Map of the Borough of Ringwood) from Ringwood Realty Corp., to the Housing Operation with Training Opportunity, Corp. (Exhibit B); and
- 3) A 1981 Final Judgment of the Superior Court of New Jersey, Chancery Division, vesting fee simple title to Block 601, Lot 14 in the Borough of Ringwood.

In addition to the initial request for exemption sent by the Borough on August 8, 2016, Joseph Lagrotteria, on behalf of Ford Motor Company, submitted correspondence and supporting documents to EPA, objecting to the Borough's request for an exemption from liability. On September 21, 2016, the Borough submitted additional correspondence and documents responding to Ford's opposition. We have carefully reviewed all the correspondence and documents submitted.

Before discussing the particulars of this matter, I must note that CERCLA does not vest EPA Region 2 with authority to adjudicate the scope of the Borough's CERCLA liability. Rather, EPA makes decisions to take enforcement action, or not, based on its assessment of the applicable facts and law. The Agency's conclusions are generally subject to a tribunal's ultimate determination.¹ While EPA, in its enforcement discretion, may decide that the facts known to it do not support taking an enforcement action under CERCLA § 107, it alone cannot take the affirmative step of "exempting" a party from liability and declines to do so in this instance.

Moving to the case at hand, we start with Section 107(a)(1) of CERCLA, which states that an "owner and operator of a vessel or a facility," where hazardous substances have been disposed, "shall be liable for all costs of removal or remedial action"

Section 101(20)(D), however, excludes from the definition of "owner and operator" a local government unit that acquires title to the facility in question involuntarily through, among other things, tax delinquency.

As indicated by the documents produced by the Borough, and described above, the Borough first took title to Block 601, Lot 14, referred to as the O'Connor Disposal Area, in 1981, after obtaining a Judgment for In Rem Foreclosure against the property in question. As discussed in EPA guidance, generally, the taking of a property by a local government by means of tax delinquency foreclosure can satisfy the statutory requirement of acquisition "involuntarily through . . . tax delinquency."² Assuming that the Borough acquired the property involuntarily

¹ See *Kelley v. U.S. EPA*, 15 F.3d 1100, 1107 (D.C. Cir. 1994) ("[EPA's] preliminary conclusion that the party was liable is entitled to no consideration, let alone the deference afforded to the typical administrative agency adjudication."). See also *GE v. Jackson*, 610 F.3d 110, 118 (D.C. Cir. 2010) ("...the district court reviews EPA's determination de novo: although the PRP must prove that it is not liable by a preponderance of the evidence, EPA's liability determination warrants no judicial deference"); *Redwing Carriers, Inc. v. Saralands Apartments*, 94 F.3d 1489, 1507 n.24 (11th Cir. 1996) ("Although the EPA's view of who is liable for cleaning up the Saraland Site may support Redwing's case, neither the district court nor this Court are obliged to defer to the agency's conclusions on this issue.").

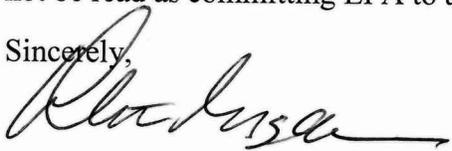
² See *The Effect of Superfund on Involuntary Acquisitions of Contaminated Property by Government Entities* Fact Sheet (OECA Dec. 1995), available at <https://www.epa.gov/enforcement/fact-sheet-effect-superfund-involuntary->

through tax delinquency, Section 101(20)(D) states further that, “The exclusion provided under this paragraph shall not apply to any State or local government which has caused or contributed to the release or threatened release of a hazardous substance from the facility, and such a State or local government shall be subject to the provisions of this chapter in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, including liability under section 9607 of this title.” (Emphasis added.) The exclusion of the local government unit as a liable “owner or operator” does not apply, therefore, if the local government “caused or contributed to the release or threatened release of a hazardous substance from the facility.”

EPA is aware that the Borough and/or the Ringwood Solid Waste Management Authority (RSWMA) were involved in solid waste disposal activities in several areas of the 455 acre Ringwood Site from the mid-1960s through the 1980s, when cleanup activities were commenced at the Site. While EPA is not yet aware of any facts that indicate that the Borough or the RSWMA had any direct involvement in disposal activities at OCDA, the Agency cannot state with certainty that the Borough did not cause or contribute to the release or threatened release of a hazardous substance at OCDA.

This letter reflects our understanding of the evidence available to EPA at this time, and should not be read as committing EPA to any particular course of action in the future.

Sincerely,



Walter Mugdan, Director
Emergency & Remedial Response Division

cc: Joe Gowers, U.S. EPA Region 2, Emergency & Remedial Response Division
Frank Cardiello, Esq., U.S. EPA Region 2, Office of Regional Counsel
Robert Maher, Esq., U.S. Department of Justice
Natalie Harrison, Esq., U.S. Department of Justice
Timothy Green, Esq., Ford Motor Company
Joseph F. Lagrotteria, Esq., LeClair Ryan

[acquisitions-contaminated-property-government; CERCLA Liability and Local Government Acquisitions and Other Activities](https://www.epa.gov/enforcement/fact-sheet-cercla-liability-and-local-government-acquisitions-and-other-activities) Fact Sheet (OECA Mar. 2011), available at <https://www.epa.gov/enforcement/fact-sheet-cercla-liability-and-local-government-acquisitions-and-other-activities>.

