

## CERCLA ENFORCEMENT NEGOTIATION EXERCISE

EPA has served your client, along with all of the other Potentially Responsible Parties at the site, with an order under Section 106 of CERCLA (the "106 Order"). EPA has also issued a special notice letter that asks that the PRPs agree to reimburse EPA for what EPA has already expended at the site (the costs of the 2010-2011 removal) and to establish a group to negotiate future cleanup of the site with EPA. Assuming the PRPs respond to the 106 Order, pay the past costs, and begin good faith negotiations, EPA has indicated they will withdraw its pending CERCLA cost recovery complaint. The PRPs have asked for a meeting with EPA to address these matters.

The PRPs will first meet together to discuss negotiation strategy, funding of past costs, compliance with the 106 Order and whether to finance or perform future cleanup. This meeting starts at 6:00 pm on Nov. 7, 2018. Assuming the PRP group can come to some agreement as to how to finance the past costs, future cleanup, and work required by the 106 Order, they will then meet with EPA. The meeting with EPA is scheduled for 7:00 pm on November 7, 2018.

A junior associate has prepared the following memorandum summarizing the facts and your client's position.

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From the 104(e) letter, the responses to the letter submitted by all of the potentially responsible parties, the complaint, investigations conducted on behalf of your client and conversations with your client, you have learned the following about the site:

### **Site Description** (all information taken from EPA's complaint and 104(e) request)

The site is the Lead Recycling Site in South Houston, Texas, three miles south of Houston, Texas. It consists of approximately five acres of land located in Harris County at 100 Disposal Lane, South Houston, Texas. EPA has conducted a preliminary assessment/site investigation at the site. Located at the Site were over 1,000 drums, one 10,000 gallon storage tank, and debris containing or contaminated with hazardous substances. EPA's investigation revealed, among other things, that the drums were leaking and that hazardous substances (including lead and polychlorinated biphenyls, or PCBs) had been released and threatened to continue to be released from the Site into the air, soil and water. Although different operations at the Site caused the PCB and lead soil contamination, the contaminated soils overlap each other and have contributed to a large plume of contaminated groundwater.

EPA alleges that the release and threatened releases of hazardous substances from the site pose a threat to human health and the environment. During 2010 and 2011, EPA removed the drums and dismantled and removed all structures at the Site (including the tank and some abandoned process furnaces). The 106 order seeks emergency removal of two remaining surface impoundments and improved controls on site access.

## Site Information

Owners	January 1990 - January 2000 January 2000 - January 2009 January 2009 - February 2009 February 2009 - December 2009 December 2009 - Current	Jay & Selma Johnson Lead Recycling Company Bankruptcy Trustee Corporate National Bank Property Broker, Inc.
Operators	January 1990 - January 2009 January 2000 - January 2009	Jay & Selma Johnson Lead Recycling Company
Costs	Per the Complaint, EPA has spent \$2,000,000 on the removal action. Compliance with the 106 Order will cost \$1,000,000. Cleanup of the Site has no cost estimate at this time. EPA has stated it will cost at least \$30 million and could be as much as \$60 million.	
Waste Quantity	There is no information available on the quantity of contamination at the Site. EPA has stated without explaining its basis that it believes 20,000,000 pounds of material were recycled at Lead Recycling Company between January 2000 and January 2009.	

## Publicly Available Evidence Against the Parties

### Lead Recycling Company

Lead Recycling Company admits in its 104(e) that it owned and operated the Site from January 2000 through January 2009. It also stated that it recently emerged from bankruptcy, and that it currently recycles lead and other metals at different sites. Lead Recycling now has a net worth of \$ 2,000,000.

### Chemco Inc

Chemco Inc. admits in its 104(e) response that it produced waste containing lead and contracted with Transporter Inc. to dispose of this waste from January 1990 until January 2000. Chemco denies any reason to believe this waste was shipped to Lead Recycling Company except for one invoice for 1000 pounds discussed below.

Three invoices produced from Chemco Inc.'s files indicate that Transporter picked up a total of 2000 pounds of waste containing lead from Chemco Inc. One of these invoices, for 1000 pounds, had a handwritten note that the scrap was "For delivery to Lead Recycling Company." The invoice is dated "6/92." Another invoice for 800 pounds of waste had the following statement typed on it: "Transporter, Inc agrees to indemnify Chemco Inc. for all costs arising from the transport and disposal of the material listed on this invoice." Transporter Inc. was paid a total of \$550 for transport of this waste.

Chemco has a net worth of \$ 10,000,000.

### **Metals Recycling, Inc.**

Metals Recycling admits in its 104(e) response that it produced 2500 pounds of wastes containing lead and PCBs, and that it hired Transporter, Inc. to dispose of these wastes from January 1990 through January 2009. Over 20 invoices have been found in Metals Recycling's files indicating that Transporter Inc. picked up these wastes and conveyed them to the Site. In addition, over 1000 invoices were attached to the 104(e) response indicate that 2,000,000 pounds of wastes were conveyed by Transporter, Inc. to an unknown location.

Metals Recycling has a net worth of \$ 1,000,000,000.

### **Property Broker, Inc.**

Property Broker admits in its 104(e) response that it currently owns the site, and that it has owned the site since December 2009. It denies that it ever operated the site, or that it knew that the site was contaminated when it purchased the site.

Property Broker has a net worth of \$ 8,000,000.

### **Selma & Jay Johnson**

The Johnsons have been married for fifty years, and they admit that they owned and operated the site from January 1990 through January 2000. Their 104(e) response also states that they transferred their interest in the Site to Lead Recycling Company in January 2000, and that they were corporate officers of Lead Recycling. They were also the sole stockholders of Lead Recycling Company until it went into bankruptcy in January 2009.

Because of Jay Johnson's long illness, the Johnsons have a net worth of \$ 50,000.

### **Transporter, Inc.**

A former truck driver of Transporter Inc. stated under oath to a private investigator hired by Metals Recycling that he recalls taking scrap metal from Metals Recycling and Chemco to "Jay & Selma's place over on Disposal Road." When questioned he could not state the date of the shipments or how many there were. He says he went to Lead Recyclers several times a month bringing scraps loads from various companies in the neighborhood. The driver was employed by Transporter Inc. from 1992 through 2006 when he was fired for on-the-job consumption of alcohol. The investigator noted he had been drinking prior to the interview.

Transporter, Inc was acquired in 2001 by Large Trucking Conglomerate ("LTC") where it was held as a wholly owned subsidiary. For business reasons unrelated to the pending action, subsequent to the filing of the complaint and the issuance of the section 106 order, LTC formally merged Transporter Inc. into the parent company. At the time of the merger, the total value of Transporter, Inc. was \$ 100,000. LTC management has indicated the parent corporation was not involved in the daily management of Transporter, Inc. prior to the merger.

Transporter Inc. (through an LTC attorney) responded to the section 104(e) letter by saying the company was unable to locate any documents or information related to whether Transporter, Inc. transported anything to the Lead Recycling Site (but see documents located by Metal Recyclers and Chemco).

LTC has a net worth of \$ 1,000,000,000.