

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN THE MATTER OF:

New Lyme Metals Site;
618 State Route 6, Jefferson
New Lyme Township,
Ashtabula County, OH

1:10 MJ 5074

Civil Docket No.

MAG. JUDGE GALLAS

**ADMINISTRATIVE WARRANT TO EFFECTUATE A TIME-CRITICAL
REMOVAL TO ABATE AN IMMINENT AND SUBSTANTIAL THREAT
OF ENDANGERMENT TO HUMAN HEALTH OR THE ENVIRONMENT**

TO: THE UNITED STATES MARSHALL FOR THE NORTHERN DISTRICT OF OHIO;
DR. SUSAN HEDMAN, REGIONAL ADMINISTRATOR, UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY, REGION 5; AND ANY DULY
DESIGNATED EMPLOYEES OR REPRESENTATIVES OF U.S. EPA.

Proper application having been made pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601 *et seq.* (“CERCLA”), for an administrative warrant to perform the first phase of a time-critical removal to abate an imminent and substantial endangerment to human health or the environment at and from the property owned or formerly owned and/or operated by New Lyme Metals Recycling, Inc., Steven Turner, and/or Barbara Turner, which is located at 618 State Route 6, Jefferson, New Lyme Township, Ashtabula County, Ohio (“New Lyme Metals Site” or “Site”), this Court finds that the United States has established reasonable grounds for issuance of an administrative warrant to authorize representatives of the United States Environmental Protection Agency (“U.S. EPA”), including contractors and representatives authorized by U.S. EPA, to enter to

perform response actions as required and necessary pursuant to Sections 104(a) and (e) of CERCLA, 42 U.S.C. § 9604(a), (e). The materials supporting the United States' Application for *Ex Parte* Administrative Warrant to Effectuate Response Actions to Eliminate an Imminent and Substantial Endangerment to Human Health Or the Environment ("Application") consist of the Declarations of U.S. EPA On-Scene Coordinator ("OSC") Shelly Lam and U.S. EPA Civil Investigator Joseph Malek and all exhibits attached thereto.

The supporting materials submitted to this Court establish that U.S. EPA has determined that a CERCLA time-critical removal is needed at the Site based on reasonable evidence that there may be a release or threat of release of one or more hazardous substances, pollutants, or contaminants that present a threat or potential threat to human health or the environment. Hazardous substances at the Site include polychlorinated biphenyls (PCBs), leachable metals, and asbestos. Hazardous substances may migrate to the private drinking water wells of the approximately 150 people that live within one mile of the Site and/or a waterway that flows east to west along the southern Site boundary.

The Site formerly was home to a scrap yard operated by New Lyme Metals Recycling, Inc. The current record owners of the Site are Steven Turner and Barbara Turner. As detailed in Section I.B. of the U.S. EPA's Application and the Declaration of Joseph Malek, U.S. EPA, Civil Investigator, attached to the Application as Attachment 2, U.S. EPA has been unsuccessful in obtaining a signed consent from any party with rights or potential rights to the Site.

U.S. EPA's Application, and the Action Memorandum attached as Exhibit 4 to the Declaration of Shelly Lam, U.S. EPA, OSC, explain the scope and nature of U.S. EPA's planned

time-critical removal at the Site under CERCLA, currently estimated to take 10 on-site working days (excluding weekends) to perform. To account for any unexpected delays, U.S. EPA-designated representatives are granted 30-days of access to the Site. The initial phase of the time-critical removal is intended to mitigate threats posed by the presence of hazardous substances at the Site and includes the following:

- a. Develop and implement Site-specific Health and Safety Plan, including an Air Monitoring Plan, and a Site Emergency Contingency Plan;
- b. Conduct characterization sampling for disposal to determine if wastes can be segregated to minimize the volume of mixed waste transported off-site. U.S. EPA and its Emergency and Rapid Response Services (ERRS) contractor will dig test trenches across the Site and collect samples from various depths within each test trench;
- c. Conduct a treatability study to determine if leachable metals can be treated prior to off-site disposal;
- d. Inventory and perform hazard characterization on substances contained in cylinders and drums;
- e. Consolidate and package hazardous substances, pollutants and contaminants contained in cylinders and drums for transportation and off-site disposal;
- f. Transport and dispose off-site any cylinders, drums, or other materials containing hazardous substances, pollutants or contaminants to a RCRA/CERCLA-approved disposal facility in accordance with U.S. EPA's Off-Site Rule (40 C.F.R. § 300.440); and
- g. Take any other response actions to address any release or threatened release of a hazardous substance, pollutant or contaminant that U.S. EPA determines may pose an imminent and substantial endangerment to the public health or the environment;

In order to fully characterize the nature and extent of contamination, U.S. EPA may use various types of equipment, including a hand auger, geoprobe, and geophysical equipment. It may be necessary or convenient to leave some of the equipment at the Site while the response actions are ongoing. It may also be necessary and desirable to take photographs of portions of the Site and of the performance of the time-critical removal. All of these actions are typical of actions taken by U.S. EPA under the authority of CERCLA.

THEREFORE, IT IS HEREBY ORDERED that, pursuant to Section 104(a) and (e) of the CERCLA, U.S. EPA and its duly designated representatives, including contractors and representatives authorized by the U.S. EPA, are hereby entitled to and are hereby permitted to enter upon the premises and property owned and/or operated by New Lyme Metals Recycling, Inc., Steven Turner, and/or Barbara Turner, located at 618 State Route 6, Jefferson, New Lyme Township, Ashtabula County, Ohio for the purposes of effectuating the time-critical removal described above and in the Action Memorandum dated May 20, 2010, Exhibit 4 to the Declaration of Shelly Lam, OSC, U.S. EPA. As part of the response actions, employees of the U.S. EPA, including contractors and representatives authorized by the U.S. EPA, are permitted to enter and to re-enter the Site in order to effectuate the response actions as the Agency deems necessary. The Agency is authorized to destroy any portions of buildings on the Site that are considered unsafe. The Agency is authorized to remove fixtures on the Site pursuant to this warrant as necessary to abate the release or threatened release of hazardous substances, pollutants, and/or contaminants. If the Agency excavates areas of the Site or otherwise significantly alters the Site, the Agency shall re-grade the land and otherwise attempt to return

the Site to its prior condition at the time immediately prior to effectuating the time-critical removal.

The entry and effectuation of the response actions shall be conducted within reasonable limits and in a reasonable manner between the hours of 8:00 a.m. and 7:00 p.m. shall commence on July 1st, 2010, and shall continue for the number of days that are reasonably necessary for the U.S. EPA to complete the response process. Entry shall be completed within thirty (30) days from the date that this warrant is issued. U.S. EPA further reserves the right to request another warrant to complete any additional removal actions beyond those set forth herein and approved in the Action Memorandum attached as Exhibit 4 to the Shelly Lam Declaration.

A copy of this warrant shall be left at the Site at the time the response actions commence.

A copy shall also be delivered to all persons from whom the Agency has sought consent for access.

The United States Marshal is hereby authorized and directed to assist representatives of the U.S. EPA in such manner as reasonably may be necessary and required to execute this Warrant and the provisions contained herein.

DATED THIS 27th DAY OF June, 2010. at 3:00 p.m.


UNITED STATES DISTRICT COURT MAGISTRATE JUDGE