



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

December 13, 2013

Joel Bolstein
Fox Rothschild LLP
Stone Manor Corporate Center
2700 Kelly Road, Suite 300
Warrington, PA 18976

Dear Joel:

This letter follows our meeting by telephone on November 20, 2013, and various other communications about the City of Nanticoke Municipal Recreation Park in Nanticoke, Luzerne County, Pennsylvania ("the Property").

By this letter, EPA withdraws its August 27, 2013 request to enter the Property to conduct a removal assessment under Section 104 of CERCLA, the federal Superfund law. EPA withdraws its request because it understands the City will conduct an assessment and, potentially, other response activities at the Property as part of the Commonwealth of Pennsylvania's Voluntary Cleanup Program under Act 2.

Prior environmental investigations at the Property have uncovered the presence of polychlorinated biphenyls ("PCBs") and other hazardous substances. An issue that we discussed on November 20 is the potential applicability of the federal Toxic Substances Control Act ("TSCA") to the PCBs on the Property. Generally, the federal regulations promulgated under TSCA concerning the storage and disposal of PCBs (40 C.F.R. Part 761, Subpart D) will not apply to sites where PCB wastes were disposed of before April 18, 1978. But this is not an absolute exclusion. If EPA determines there is reason to believe that uncontrolled releases of pre-April 1978 PCB wastes pose an unreasonable risk of injury to human health, TSCA and its PCB regulations may apply. *See* 40 C.F.R. § 761.50(b)(3)(i)(A). Thus, it is EPA's position that as long as PCBs remain at the Property, the City may become liable for their clean-up under TSCA.

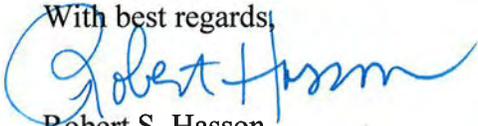
The history of the City's acquisition of the flood-prone Property and its proximity to the Susquehanna River and nearby wetlands suggest that concerns about uncontrolled releases are well founded. If, as proposed in the City's 2013 Brownfields Grant application, the City placed a one-foot soil cap over the Property, and later, a Hurricane Agnes-like storm were to wash away that cap, there could be uncontrolled releases of PCBs threatening human health and the environment, thus triggering TSCA liability. In addition, should the City decide to move the PCBs and either consolidate them in an on-site landfill or dispose of them off-site, EPA asserts that the federal PCB regulations would apply to these activities.

Under the PCB regulations, the City has the burden of proving the date when PCB wastes were disposed of at the Property. *See* 40 C.F.R. § 761.50(b)(3)(iii). EPA acknowledges receipt of

deeds and other documents from the City describing the Property, its past uses, and the City's acquisition. While these records do not reveal the date when PCBs were disposed of at the Property or the concentrations of these PCBs, they may provide circumstantial proof that PCB disposal occurred prior to the City's acquisition. To provide a record consistent with the application of 40 C.F.R. § 761.50(b)(3)(iii), EPA requests additional proof in the form of an affidavit or declaration of a knowledgeable City official attesting to the claim that no PCBs were placed on the Property since its acquisition by the City.

Please call me if you wish to discuss this matter further.

With best regards,



Robert S. Hasson
Senior Assistant Regional Counsel

cc: Kelley Chase (3HS31)
Kelly Bunker (3LC61)
John Ruggero (3RC30)

