

# Norris McLaughlin & Marcus, P.A.

ATTORNEYS AT LAW



NJ Mailing Address:  
P.O. Box 1018  
Somerville, NJ 08876-1018

NJ Hand Delivery:  
721 Route 202-206  
Bridgewater, NJ 08807

P: (908) 722-0700  
F: (908) 722-0755

NY Address:  
875 Third Avenue, 18th Floor  
New York, NY 10022

P: (212) 808-0700  
F: (212) 808-0844

www.nmmlaw.com  
E: info@nmmlaw.com

Richard A. Norris  
G. Robert Marcus  
William A. Dreier  
Peter D. Hutcheon  
Joel N. Jacobson  
Richard J. Schachter\*  
J. Anthony Manger  
Walter G. Reinhard  
Victor S. Elgort  
Kenneth D. Meskin  
Jack J. Lintner  
Kevin T. O'Brien  
M. Karen Thompson\*  
Ira S. Novak  
Edward G. Sponzilli\*  
William R. Robinson  
Carl G. Weisenfeld  
Theodore Margolis  
James J. Shrager  
Joseph J. Fleischman  
Ezra N. Goodman<sup>1</sup>  
Stephen M. Offen  
John J. Eagan  
James H. Laskey  
Michael J. Stanton\*\*  
Kurt G. Briscoe<sup>2</sup>  
William C. Gerstenzang<sup>1</sup>  
Bruce S. Londa<sup>1</sup>  
Edward A. Hogan  
Burt A. Solomon  
Stuart J. Freedman  
David R. Strickler

Robert C. Gabrielski  
Patrick T. Collins  
Gary N. Marks  
Bruce J. Wisotsky  
Morris S. Bauer  
Larry K. Lesnik  
Michael F. Chazkel  
Jerome F. Gallagher, Jr.  
Douglas R. Brown  
Martha N. Donovan  
Charles W. Miller, III  
Robert Mahoney  
Nicholas F. Pellitta  
John N. Vanarthos  
Michael K. Ligorano  
Dean M. Roberts  
Frank T. Araps  
Daniel R. Guadalupe  
Marion K. Littman  
Timothy P. McKeown  
Steven A. Karg  
David C. Roberts  
Alison L. Galer  
Andrew N. Parfomak  
Rikki L. Field  
Margaret R. Flood  
Christa Hildebrand<sup>1</sup>  
David T. Harmon<sup>1</sup>  
Thomas N. Torzewski  
Bryan Blaney  
Kathleen Cavanaugh  
Jeanne Hamburg<sup>1</sup>

Jerry S. D'Aniello\*\*  
Jeralyn L. Lawrence\*\*  
David E. Cassidy  
Scott M. Baach  
Annmarie Simeone  
David S. Blatteis  
Haekyoung Suh  
Fernando M. Pinguelo  
Jeremy I. Silberman  
Padraig P. Flanagan

Christina Boulougouris<sup>1</sup>  
Charles A. Bruder  
Mia D. Falls<sup>1</sup>  
Karol S. Robinson<sup>1</sup>  
Rachel A. Wingarter  
Robert L. Schmidt  
Christopher Stevenson  
April Scott McCann  
John A. Jakub  
Patrick T. Mottola  
Kerry J. Roach  
Christopher S. Casieri  
Jeffrey M. Casaletto  
Andrea S. Glaser  
Stefanie R. McNamara  
Mark D. Marin  
Brian C. Anscumb  
Oren M. Chaplin  
Michael T. Reilly<sup>1</sup>  
Karen Bekker<sup>1</sup>  
Deanna L. Koestel

Kerry A. Duffy  
Keith D. McDonald  
Melissa A. Pena  
William J. Beneduce  
Jesse P. Nash  
Frank A. Coppa  
Keya Denner  
Jignesh J. Shah  
Christine D. Socha  
Laurie C. Poppe  
Lisa Stein-Browning  
Erin T. Welsh  
Andrew D. Linden  
Andrew K. Taylor  
Christopher G. Elko

Of Counsel:  
Jill Lebowitz  
Serle I. Mossoff<sup>3</sup>  
Melinda Fellner Bramwit  
Michele S. Marcus

Certified By The  
Supreme Court of  
New Jersey as a  
\*Civil Trial Attorney  
\*\*Matrimonial Law  
Attorney  
1 NY Bar Only  
2 MD Bar Only  
3 PA Bar Only

January 7, 2009

Honorable Michael A. Shipp  
M.L. King Jr. Federal Bldg & U.S. Courthouse  
50 Walnut Street  
Newark, New Jersey 07101

**Re: In the Matter of Abrachem Group, LLC  
Clifton, New Jersey**

Dear Judge Shipp:

Kindly accept this correspondence on behalf of Abrachem Group, LLC ("Abrachem") in response to the United States of America, by and through counsel, on behalf of the United States Environmental Protection Agency ("EPA"), Application for an Administrative Warrant for complete and unlimited access to the property located at 2 Peekay Drive in Clifton, New Jersey (hereinafter the "facility").

By way of background, Abrachem is in the business of packaging and repackaging bulk chemicals, and has handled hazardous materials for many years at the Clifton facility. There was an incident reported on October 29, 2008 to the New Jersey Department of Environmental Protection ("NJDEP") of a leaking drum in one of the intermodal shipping containers ("ISCs") at the facility. NJDEP came out to the facility to address the reported incident, as did EPA and local authorities. Upon opening of the ISC in question, it was observed that one drum had leaked and a portion of its contents spilled onto the floor of the container. Abrachem's environmental contractor cleaned up the material within the ISC and overpacked the drum under the oversight of NJDEP and EPA.

EPA incorrectly characterizes the leaking drum as a release. A "release" means any spilling, leaking, pumping, discharging, injecting, escaping, leaching, dumping, or disposing into the environment. 42 U.S.C. §9601(22). "Environment" is defined as "...any other surface water,

The Honorable Michael A. Shipp  
January 7, 2009  
Page 2

groundwater, drinking water supply, land surface or subsurface strata, or ambient air w/in the U.S.” 42 U.S.C. §9601(8), quoting the relevant portion of the definition. None of the drums contents escaped the ISC and never reached any land surface. Thus, this incident did not constitute a release under CERCLA.

After the ensuing events, EPA’s on-site coordinator, Paul Kahn, issued Abrachem a Field Notice on October 30, 2008 stating that “containers of unknown chemicals [were] haphazardly stored in the ISCs”. The Field Notice further requested that Abrachem submit a response to EPA by November 4, 2008, indicating its intention to correct the situation noted in the notice. Abrachem submitted its plan of action to inventory and secure the ISCs to EPA on November 4<sup>th</sup>.

Over the course of the next several weeks, Abrachem engaged GTI, an independent removal broker/contractor, and its subcontractor Clean Ventures to conduct the intended activities. Several of the ISCs were unloaded and approximately 160 drums were placed inside the facility for sampling and overpacking, if necessary, and approximately 70 drums were placed on the ground and covered with a tarp. On November 17, 2008, during the course of relocating an ISC to obtain access to the ISC’s content, one of the drums therein spilled and a portion of its contents leaked out of the ISC and spilled onto the ground. Abrachem’s contractor immediately secured the drum and addressed the droplets of material that spilled onto the soil. Under NJDEP oversight, the contractor excavated the soil containing the material and placed it in a five gallon bucket for appropriate disposal. During the next several weeks, Abrachem’s contractor conducted sampling and overpacking of drums.

Abrachem has been working with and cooperating with EPA and welcomed its presence at the facility since the beginning. It was not until EPA and OSHA instructed Abrachem to cease handling the drums of material that Abrachem stopped work. Our understanding is that EPA and OSHA directed the cessation of field work because these agencies believed Abrachem was handling hazardous waste without the properly trained employees. Abrachem asserts it was not handling hazardous waste, it was handling product. This distinction, in short, means Abrachem did not need such appropriately trained personnel to handle the drums. However, rather than debate the waste verses product issue, Abrachem turned to its contractor, with appropriately trained personnel, to complete the work.

Although there have been issues that have delayed Abrachem’s inventory removal, it never indicated it was unwilling to complete the removal. Abrachem has been working with its landlord and agreed to complete the work and vacate the premises, upon completion of drum removal, as required.

Despite EPA’s assertions, conditions at the facility have changed for the better. Abrachem’s contractors have secured and stabilized eleven of the twelve remaining ISCs that contain any drums. Abrachem is in the process of finalizing a direct agreement with Clean

The Honorable Michael A. Shipp

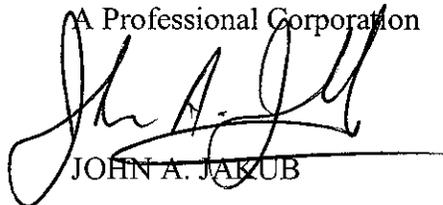
January 7, 2009

Page 3

Ventures today, which we anticipate will be executed no later than tomorrow morning, to complete the handling and removal of the drums remaining at the facility.

Abrachem does not have any objection to EPA having access to the facility, particularly to monitor and inspect the facility and ISCs and to sample drums (Abrachem even designated an area for EPA to conduct its own sampling). However, Abrachem does not see a need for EPA to have access to the facility to package and remove materials, since Abrachem has been addressing this issue and is prepared to continue this work.

Respectfully submitted,  
NORRIS, McLAUGHLIN & MARCUS  
A Professional Corporation



JOHN A. JAKUB