



August 8, 2016

VIA E-MAIL AND HAND DELIVERY

Walter Mugdan
Director Emergency and Remedial Response Division
United States Environmental Protection Agency
290 Broadway
New York, NY 10007-1866

RE: Ringwood Mines Superfund Site-O'Connor Disposal Area
Ford Motor Company's Opposition to the July 12, 2016 Borough of Ringwood Request for an
Exemption from CERCLA Liability

Dear Mr. Mugdan:

On behalf of Ford Motor Company ("Ford"), we are writing to object to the Borough of Ringwood's (the "Borough") July 12, 2016 letter ("the Petition") requesting that the United States Environmental Protection Agency ("EPA") find the Borough to be exempt from "owner and operator" liability under the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended ("CERCLA") for a portion of the O'Connor Disposal Area ("the OCDA")¹, specifically the property located at Block 601, Lot 14, which comprises roughly 36 acres of the approximate 465 acre Ringwood Mines/Landfill Superfund Site ("the Site").

Ford disagrees with the Borough's arguments that it qualifies for the CERCLA municipal exclusion from "owner or operator" liability, Section 101(20)(D) of CERCLA, 42 U.S.C. § 9601(20)(D), despite its assertion that it acquired a portion of the OCDA "involuntarily." In 2005, the Borough advanced an identical argument to EPA, which EPA rejected. See the Borough's July 13, 2005 Letter and EPA's 2005 Response attached as Exhibit A. The Borough's recent Petition identifies no new facts or circumstances that justify overturning EPA's 2005 denial of the Borough's exemption request, nor does it explain the great passage of time between the 2005 EPA denial and the Borough's present Petition. The Borough's argument should be rejected now for the same reasons that it was eleven years ago.

¹ The OCDA is comprised of Block, 601, Lots 14 and 14.01. Lot 14.01 is owned by the State of New Jersey and is not part of the Borough's Petition.

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The Petition should also be rejected because the parties, including EPA, have operated under and have relied upon the understanding that the Borough and Ford are responsible parties relative to all the operable units at the Site. To radically shift gears at this point, with investigation and remediation efforts ongoing - and prior to any judicial determinations as to liability - would be unduly prejudicial and is no way supported by CERCLA. Granting the Borough's Petition would essentially allocate all of the liability for the OCDA to Ford and deprive Ford of its fundamental due process rights to fully litigate the issues of liability and allocation before a court.

The Borough has known of the circumstances surrounding its acquisition of the OCDA since it was initially declared a potentially responsible party ("PRP") in or around 1990. In 2005, the Borough informed EPA how it acquired the OCDA. In considering that factual background, and the Borough's overall nexus to the Site, EPA rejected the Borough's exemption request.

The Borough has consistently been held to be a liable party due to its status as an owner and operator of a Site from which hazardous substances have been released, as well as an "arranger" and "transporter" of hazardous materials. Parties liable as arrangers or transporters of hazardous substances may not avail themselves of the CERCLA exemption which the Borough seeks through its current Petition.

Nothing has changed to impact EPA's liability determinations, nor is this the appropriate time for the Borough to advance allocation arguments concerning the Site, particularly as there have been no findings that liability for the Site is divisible or readily apportioned. For these reasons, and as explained in more detail below, the Borough's Petition must again be denied.

Factual Background

Prior to Ford's identification of the Site to EPA in or around 1981, the Borough was actively involved in the disposal of residential and commercial waste throughout the Site as an owner and operator of nearly 300 acres of the approximate 465 acre Site. In addition, prior to, during and after Ford's disposal of certain plant wastes at the Site from its Mahwah, New Jersey assembly plant, the Borough arranged for the disposal of hazardous wastes and transported both residential and commercial wastes throughout the Site. Accordingly, the Borough was actively involved in the disposal of hazardous substances. EPA should deny the Borough's Petition as it did not merely "involuntarily acquire" the OCDA but rather actively disposed, or allowed the disposal of, hazardous substances at the Site.

In or around 1965, Ford's subsidiary, Ringwood Realty Company, owned approximately 800 acres within the Borough, including the approximate 465 acres that comprise the Site. Prior to the start of Ford's historic disposal activities, evidence indicates that the Borough arranged for the disposal of residential and commercial wastes throughout the Site.

In fact, even after Ford took possession of the Site, the Borough continued its disposal of residential and commercial wastes. *See, e.g.*, April 11, 1968 Borough Meeting Minutes attached as Exhibit B (indicating that the Borough agreed with and arranged for the Township of West Milford to dispose of (and to use as cover) “heavy trash” at the Site).

Ford’s contractor, O’Connor Trucking and Haulage Corporation (“O’Connor”) had a contract with Ford, with the Borough’s knowledge and acquiescence, to carry out landfilling activities at the Site. The Borough’s active involvement in, and facilitation of the disposal activity during the time O’Connor disposed of hazardous material at the Site is confirmed within the Borough’s own correspondence between 1967 and 1970. For example, on January 3, 1968, the Borough Clerk, acting on behalf of the Borough Council, confirmed that the Borough “*approv[ed]* of the agreement between Ringwood Realty and O’Connor regarding the sanitary landfill operation using primarily industrial refuse and fill” and that “it was the intention of the governing body to continue to dump the [B]orough’s heavy trash in this area also.” *See* January 3, 1968 Letter from the Borough Clerk to the Ringwood Board of Health, attached as Exhibit C.

Subsequently, on August 27, 1970, Ringwood Borough Mayor, John Kulik, wrote to Ford and acknowledged that the Borough Council had “permitted” the dumping of Ford plant waste at the Site and that it was his “intention to create a solid waste program which will be municipally operated.” *See* August 27, 1970 correspondence from John Kulik to Henry Ford attached as Exhibit D.

In 1970, following discussions between the Borough and Ford, Ford donated nearly 300 acres of the Site to the Borough, despite the Borough’s knowledge that the Site had been utilized as a landfill. The Borough’s correspondence confirms that it authorized Ford’s disposal of plant waste and that the Borough arranged for the transportation and disposal of residential and commercial waste at the Site.

Prior to Ford’s donation of nearly 300 acres to the Borough, the Borough formed the Ringwood Solid Waste Management Authority (“RSWMA”) which began arranging for the transportation and disposal of residential and commercial wastes to a municipally-owned and operated disposal area within the Site. The RSWMA began operating even after the Borough Mayor, as reported in a September 16, 1970 article, acknowledged that the Borough’s dumping arrangements were unsatisfactory due to the potential for fires and contamination. *See* September 16, 1970 Paterson Evening News Article attached as Exhibit E.

In the context of a 1971 personal injury lawsuit, it was observed that the Borough had disposed of municipal solid waste along Peters Mine Road (located within the Site) through its relationship with O’Connor. *See* August 30, 1973 correspondence, attached at Exhibit F (wherein it was noted by a RSWMA official that the Borough “...through its aegis with O’Connor Trucking, was actually operating a kind of dump for solid refuse material...”). Recent investigations confirm that the Borough arranged for the transportation and disposal of residential and commercial wastes throughout the Site, including within the OCDA. *See, e.g.*, January to February 2010 Photo Logs of Trenching Activities at the OCDA (which document subsurface household and industrial debris within the OCDA), attached as Exhibit G.

Moreover, the New Jersey Department of Environmental Protection's ("NJDEP") longtime involvement with the Borough and RSWMA's activities provides undisputed evidence that the Borough owned and arranged for the disposal of residential and commercial waste throughout the Site. As early as December 1972, NJDEP issued Notices of Violation for the Borough's unregistered municipal landfill on the Site. *See* December 8, 1972 Notice of Violation, attached as Exhibit H.

On March 22, 1973, following discussions with NJDEP, the Borough passed a Resolution authorizing it, and the RSWMA, to apply for the requisite permits to discharge municipal solid waste at the Site. *See* March 22, 1973 Resolution, attached as Exhibit I. However, the Borough and the RSWMA were repeatedly cited by NJDEP for violating NJDEP regulations concerning their activities at the Site. *See, e.g.,* May 24, 1974 and August 31, 1976 Notices of Prosecution attached as Exhibit J. Accordingly, the Borough not only oversaw and arranged for Ford's disposal of industrial waste, it also acted as an independent transporter of residential and commercial wastes and discharged hazardous substances throughout the Site, including within the OCDA.

The Site was placed on the National Priorities List ("NPL") in 1983. Thereafter, in 1984, Ford entered into an Administrative Order on Consent ("1984 AOC") with EPA for investigations at the Site. Ford was formally identified as a PRP in or about 1988. In 1989, Ford completed certain removal activities at the Site and entered into a subsequent AOC with EPA, agreeing to conduct long-term monitoring activities. The Borough was identified as a PRP in or about 1990. In 1993, Ford and the Borough entered into a Consent Decree agreeing to pay EPA \$435,000 and \$144,700, respectively, to reimburse EPA for past costs at the Site. Notably, these costs included activities performed at the OCDA.

Subsequently, the Site was removed from the NPL in 1994 based upon the determination that groundwater at the Site did not pose an unacceptable threat to human health or to the environment. However, Ford continued to perform removal activities involving paint waste as well as groundwater monitoring at the Site.

In 2005, and prior to the Site being relisted on the NPL in 2006, Ford entered into another AOC with EPA, agreeing to conduct supplemental investigation work. In connection with these tasks, EPA issued a 2005 Unilateral Administrative Order ("2005 UAO") to the Borough which required the Borough to perform the AOC work with Ford, or to assume financial responsibility for the work.

In 2010, Ford entered into a second AOC with EPA, agreeing to perform remedial investigations and feasibility studies at various areas of concern (including the OCDA) which also encompassed groundwater at the Site. Given the Borough's unwillingness to enter into an AOC with EPA, another Unilateral Administrative Order issued to the Borough in 2010 related to the work Ford agreed to carry out in connection with the 2010 AOC.

In 2012, Ford submitted a final Remedial Investigation Report relative to the Peter's Mine Pit area of concern. In 2013, Ford submitted final Remedial Investigation Reports concerning the Cannons Mine Pit, the OCDA, as well as final Feasibility Studies for all three land-based areas of concern at the Site.

In March 2014, Ford submitted a revised Site-Related Groundwater Remedial Investigation Report. In June 2014, Ford and EPA entered into a Record of Decision for Operable Unit 2 ("2014 ROD") which described the selected remedy for the Peter's Mine Pit, Cannon's Mine Pit and the OCDA.

On September 15, 2014, Ford and EPA entered into an Administrative Order on Consent for Remedial Design ("2014 AOC"). The 2014 AOC provided that Ford would undertake the remedial design to implement the remedies selected in the 2014 ROD, including the design of the recycling center which is part of the contingency remedy that the Borough requested for the OCDA.

On October 1, 2014, EPA issued its most recent Unilateral Administrative Order to the Borough ("2014 UAO") which directs the Borough to coordinate and participate with Ford in the design of the remedy for the Site, including the design of the contingency remedy for the OCDA. Consistent with prior definitions, the Site is defined in the 2014 UAO as including all 465 acres and does not limit the Borough's responsibility to any portions of the Site. On October 30, 2014, the Borough issued a Letter of Intent to comply with the 2014 UAO (which was thereafter ratified by a Borough Resolution dated November 20, 2014).

Argument

I. The Borough's Petition Requests a Review of its Potential Liability which is Impermissible Pursuant to CERCLA as well as the Express Terms of EPA's Unilateral Administrative Orders

Prior to EPA's issuance of the 2005 UAO, the Borough and EPA attempted to negotiate an Administrative Order of Consent ("AOC") regarding the Borough's responsibility for the Site. On July 13, 2005, the Borough submitted several comments to the proposed AOC, including a petition arguing that they were not a PRP relative to approximately "35 acres that Ford sold to How-To Corp" and advanced the argument that, because the Borough acquired the property involuntarily through a tax foreclosure, it was exempt from CERCLA liability for that portion of the Site. The EPA reviewed the Borough's submission and ultimately denied the Borough's exemption request. Following additional negotiations, EPA issued the 2005 UAO against the Borough finding it to be, as discussed in Section 2, *infra*, a responsible party as an owner, operator and arranger for both the disposal and transportation of hazardous substances to the Site.

The express provisions of the 2005 UAO indicate that its terms may not be altered or amended, nor can it be judicially reviewed pursuant to CERCLA, but in effect that is exactly what the Borough's Petition seeks to accomplish. Pursuant to Section XXII of the 2005 UAO, the Borough cannot challenge the Order or seek review of the Borough's potential liability despite its ability to "meet and confer" with EPA. Specifically, the 2005 UAO provides as follows:

The purpose and scope of the conference shall be limited to issues involving the implementation of the work required by this Order and the extent to which Respondent intends to comply with this Order. This conference is not an evidentiary hearing, and does not constitute a proceeding to challenge this Order. It does not give Respondent [the Borough] a right to seek review of this Order or to seek resolution of potential liability, and no official stenographic record of the conference will be made. At any conference held pursuant to Respondent's request, Respondent may appear by an attorney or other representative.

See 2005 UAO at p. 25 (emphasis added).

Through correspondence to the Borough dated November 16, 2005, EPA reiterated that the Borough is jointly and severally liable for "all the required investigative work at the Site." Through that letter, EPA specifically stated that the "issue of liability for work at individual parts of the Site goes to allocation of responsibility between the Borough and Ford and not to the Borough's obligation to comply with the [2005 UAO] Order." *See* November 16, 2005 correspondence attached as Exhibit K.

The Borough's Petition seeks an improper review of EPA's prior liability determinations because the 2005 UAO expressly prohibits a challenge to the Order or to the resolution of potential liability. Moreover, to grant the Borough's Petition would deprive Ford of its fundamental due process right to take discovery on and litigate the issue of liability and to have such final determinations adjudicated and determined by a Court.

The Borough's Petition is also improper pursuant to CERCLA and applicable case law which bars judicial review of the terms of a UAO except for specifically enumerated situations – none of which apply in this instance. Specifically, 42 U.S.C. § 9613(h) of CERCLA states in relevant part:

No Federal court shall have jurisdiction under Federal law other than under section 1332 of title 28 (relating to diversity of citizenship jurisdiction) or under State law which is applicable or relevant and appropriate under section 9621 of this title (relating to cleanup standards) to review any challenges to removal or remedial action selected under section 9604 of this title, or to review any order issued under section 9606(a) of this title, in any action except one of the following:

- (1) An action under section 9607 of this title to recover response costs or damages or for contribution.
- (2) An action to enforce an order issued under section 9606(a) of this title or to recover a penalty for violation of such order.
- (3) An action for reimbursement under section 9606(b)(2) of this title.
- (4) An action under section 9659 of this title (relating to citizens suits) alleging that the removal or remedial action taken under section 9604 of this title or secured under section 9606 of this title was in violation of any requirement of this chapter. Such an action may not be brought with regard to a removal where a remedial action is to be undertaken at the site.
- (5) An action under section 9606 of this title in which the United States has moved to compel a remedial action.

42 U.S.C. § 9613(h) (emphasis added); *see also General Electric Co. v. Environmental Protection Agency*, 360 F.3d 188, 191 (D.C. Cir. 2004) (observing that 42 U.S.C. § 9613(h) focuses on challenges associated with “removal or remedial actions under §§ 104 and 106(a), as well as ‘any enforcement activities related to’ response actions”); *General Electric Co. v. Jackson*, 610 F.3d 110, 115 (D.C. Cir. 2010) (“CERCLA section 113(h) bars PRPs from obtaining immediate judicial review of a UAO”) (citations omitted). In light of the foregoing, any PRP that is issued a UAO pursuant to Section 106(a), such as the Borough, must wait to seek judicial review of such an order until “the PRP completes the work [directed under the UAO] and seeks reimbursement.” *Id.*

Despite the statutory framework upon which the 2005 UAO was ordered, as well as the more recent 2010 and 2014 UAOs against the Borough and the preclusion of judicial review of such orders pursuant to CERCLA § 9613(h), the Borough now improperly requests that EPA review its prior liability determinations. The clear language of the UAOs confirms that the Borough is not entitled to seek a review of their terms or their imposition of potential liability. The Borough may have the future opportunity to assert challenges as to its potentially liability in accordance with CERCLA, and through a proper judicial proceeding which will afford all parties the right to take discovery, litigate the relevant issues and promote their respective arguments.

II. The Borough is not Entitled to the CERCLA Municipal Exemption

a. EPA has consistently determined the Borough to be a responsible party for the entire Site.

The Borough's Petition is merely an attempt to seek adjudication of the parties' respective liability concerning the Site without affording a full and fair opportunity to litigate or take discovery on the issue of liability. Accordingly, the Borough's request for EPA to modify its prior determination as to the Borough's liability is yet another example of its effort to improperly challenge the UAOs while depriving Ford its fundamental due process right to fully litigate the issues of liability and allocation before the proper court with jurisdiction to make those final determinations.

There have been no findings of fact or conclusions of law that the Site, as a whole, is amenable to divisibility of liability. Accordingly, the Petition is not only procedurally defective, it must also fail given the lack of a proper record to make the requested determinations as to the division of liability. The Borough's Petition presupposes that liability regarding the Site is readily divisible between a portion of the OCDA and the Site as a whole, and that liability can be reasonably apportioned between the two areas. The Borough fails to even address this issue, likely because this showing can not be made on the present record.

As noted by the United States Supreme Court in *Burlington Northern and Santa Fe Railway Company v. United States*, the "the universal starting point for divisibility of harm analyses in CERCLA cases' is § 433A of the Restatement (Second) of Torts." 556 U.S. 599, 614 (2009) (which held that, in order to establish that an EPA designated Superfund Site is divisible, the party must establish by concrete and specific evidence causation for separate and distinct harms to the environment); *see also United States v. Hercules, Inc.*, 247 F.3d 706, 717 (8th Cir. 2001).

The Supreme Court held that "apportionment is proper when there is a reasonable basis for determining the contribution of each cause to a single harm." *Id.*; *see also Durham Mfg. Co. v. Merriam Mfg. Co.*, 294 F. Supp. 2d 251, 266-67 (D.Conn. 2003) (holding that a site was not divisible between two parties because there was insufficient evidence that there were two separate and distinct plumes of ground-water contamination).

The Third Circuit has adopted the Restatement (Second) of Torts approach to the apportionment of CERCLA liability. Notably, the burden of proving divisibility lies with the PRP (*i.e.* the Borough) and not with the Government. *See, e.g., United States v. Rohm & Haas Co.*, 939 F. Supp. 1142, 1155 (D.N.J. 1996) (noting the factual complexity of the divisibility analysis and observing that, "where the joint tortfeasors cause indivisible harm which cannot be apportioned on a reasonable basis, joint and several liability will apply"). The Borough's two page Petition does not even reference, let alone address, this burden or provide such an analysis.

The 2005, 2010, and 2014 UAOs have all defined the Site as being between 455 and 500 acres, which includes the OCDA. By way of example, the 2005 UAO defined the Site as:

‘Site’ shall mean the Ringwood Mines/Landfill Superfund Site, encompassing approximately 455 acres, located in the Borough of Ringwood, which is located in the northeast corner of Passaic County, New Jersey, and which is depicted generally on the map attached as Appendix B.

See 2005 UAO at p. 3; *see also* June 30, 2014 Record of Decision Ringwood Mines/Landfill Superfund Site (“ROD”) at p. 1 (describing the Site as encompassing approximately 500 acres).

Moreover, EPA has consistently determined that the Borough is a responsible party for the entire Site. As early as 1990, EPA formally notified the Borough that it was a potentially responsible party for the Site given that the Borough was then, and still is, the owner of a large portion of the Site, acquired the property with full knowledge that industrial wastes had been disposed of at the Site, as well as the fact that it had been actively involved in the discharges of hazardous wastes. Most recently, in October 2014, the EPA issued another UAO to the Borough, requiring it to coordinate and participate in the design of the remedy for the entire Site, including the OCDA.

The 2014 UAO reaffirms the Borough’s responsibility as a liable party for the entire Site and requires the Borough to provide for: (a) unrestricted access to Ford to perform the work required under the 2014 Administrative Order without requiring any compensation from Ford to the Borough; (b) good faith negotiations with Ford to arrange for participation in performing the design of the ROD remedy, including at the OCDA; and (c) good faith offers to Ford to perform or pay for work required by the 2014 Order. Notably, on October 30, 2014, the Borough issued to EPA a letter of intent to comply with the 2014 UAO which was thereafter ratified by a Borough resolution on November 20, 2014.

In effect, the Borough’s Petition seeks a premature finding concerning the allocation of liability by arguing that the Borough is not a responsible party as to a specific portion of the Site. If EPA were to grant the Borough’s Petition, it would be allocating to Ford one hundred percent liability relative to the Petitioned portion of the OCDA, while simultaneously depriving Ford the opportunity to litigate or take discovery on the Borough’s potential liability for that portion of the Site. The Borough’s Petition is both prejudicial and inequitable to Ford, and EPA should deny the request. In addition, given the eleven-year passage of time since EPA’s issuance of the initial 2005 UAO, the subsequent AOCs entered into between Ford and EPA, and the parties’ respective work under the operative documents, the granting of the Borough’s Petition would yield an inequitable result.

b. The municipal exclusion within Section 101(20)(D) of CERCLA for “owner and operator” liability is not applicable as the Borough “caused or contributed to the release or threatened release of a hazardous substance.”

The most recent Unilateral Administrative Order issued to the Borough by EPA on October 1, 2014 declared that the Borough “is a responsible party under Section 107 of CERCLA, 42 U.S.C. § 9607. The Respondent [Borough] is also a person who is liable under one or more subsections of Section 107(a) of CERCLA, 42 U.S.C. § 9607(a)(1).” The Borough agreed to comply with this UAO through an October 30, 2014 letter from Mr. Heck to the EPA. The 2014 UAO reaffirms EPA’s prior determinations that the Borough is a responsible party under CERCLA. With respect to the Borough’s liability, the 2005 UAO found, as a Conclusion of Law based upon EPA’s Findings of Fact, that:

Respondent [the Borough] is a responsible party under Section 107 of CERCLA, 42 U.S.C. § 9607. Respondent Borough is the current owner of a portion of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1). Respondent Borough was the owner and operator of the facility during a period when disposal of hazardous substances took place within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2). Respondent Borough also arranged for the disposal of hazardous substances at the Site and arranged for the transport of hazardous substances to the Site within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

2005 UAO, Conclusions of Law, at ¶ 8.

Further, on September 30, 2015, EPA issued a Notice of Potential Liability for the Ringwood Superfund Site to both the Borough and Ford, requesting that both parties fund the selected remedial actions at the Site, including the remedy chosen for the OCDA.

The Borough’s Petition relies upon Section 101(20)(D) of CERCLA, but that exclusion from “owner or operator” liability simply does not apply to responsible parties, such as the Borough, which have caused or contributed to the release or threatened release of a hazardous substance. In this regard, Section 101(20)(D) provides as follows:

(D) 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.

42 U.S.C.A. § 9601(20)(D) (emphasis added).

The Borough is not a party which merely acquired property involuntarily and had no other nexus to the release of hazardous substances at the Site. Given the Borough's long-standing involvement, knowledge of, and control of the waste disposal operations at the Site, as well as its ownership status, Section 101(20)(D) is not applicable and the Borough's Petition lacks merit. Moreover, EPA's own guidance holds that the municipal exemption from owner and operator liability does not apply to public entities which were involved in the release or threatened releases of hazardous substances.²

In fact, on September 16, 1974, NJDEP cited the Borough on the basis that the Borough operated a disposal site and "the leachage produced as a result of the sanitary landfill impairs the quality of the surface waters of this State." *See* Exhibit L. Subsequently, on September 16, 1975, the North Jersey District Water Supply Commission threatened to take the Borough to court unless protective measures were taken to prevent the Borough's waste disposal operation runoff from reaching the Wanaque Reservoir. *See* Exhibit M. On August 31, 1976, NJDEP again issued a notice of prosecution to the Borough for re-engaging in solid waste disposal on Block 601, Lot 13, located just across Peter's Mine Road from the OCDA, and ordered the Borough to immediately cease all illegal disposal of solid waste. *See* Exhibit J. Thus, the administrative record confirms that the Borough actively participated in the discharge of hazardous substances at the Site and should be held liable for the remediation of the entirety of the Site.

c. EPA has specifically found the Borough liable as an arranger for disposal of hazardous wastes at the Site, including with respect to the OCDA.

As indicated above, the Borough's Petition fails to address EPA's 2005 Conclusion of Law that the Borough is a responsible party, not only pursuant to Section 107(a)(1) owner and operator liability, but also as an arranger for the disposal of hazardous waste at the Site which includes the 36 acres for which the Borough seeks an exemption. *See* 2005 UAO at p. 8.

Pursuant to Section 107(a)(2) of CERCLA, § 9607(a)(2), "any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing

² *See, e.g.,* CERCLA Liability and Local Government Acquisitions and Other Activities, EPA Office of Enforcement and Compliance Assurance, March 2011 at p. 5 ("However, it is important to note that this exemption will not apply to any state or local government that caused or contributed to the release or threatened release of a hazardous substances from the facility").

such hazardous substances,” is deemed a PRP. Even absent any consideration of the Borough’s owner and operator liability, the Borough is nevertheless a responsible party given EPA’s liability finding as to the Borough’s status as an “arranger” which “caused or contributed to the release or threatened release of a hazardous substance.”

The Borough permitted O’Connor, and others, to dispose of waste materials at the Site as the Borough’s own correspondence concedes. In his August 1970 letter, the Mayor of Ringwood readily admitted that “Ringwood Counsel and myself have permitted the dumping of all industrial waste from the Ford/Mahwah assembly plant to be disposed of in the area known as the Ringwood Mines.” *See* Exhibit D.

The evidence demonstrates that the Borough also utilized the OCDA for dumping solid waste. Investigations of the wastes at the OCDA have shown that the area consists of municipal waste³, industrial trash, and historic mine tailings. The landfilled or “municipal waste” materials at the OCDA include general trash (carpet, cloth, paper, cardboard), plastic bits and bags, tires, glass, foam, scrap wood, fiberglass or mineral wool insulation, metal fragments and scrap, automobile debris, and miscellaneous appliance waste. Environmental consultants have found it difficult to distinguish soil cover and distinct layering patterns because the fill material appeared to have been extensively re-worked, causing intermixing of debris and soil from layers above and below. *See* January through February 2010 Photo Log of the OCDA attached as Exhibit G. In addition, a November 15, 1979 NJDEP Inspection Report confirmed that landfills utilized by the Ringwood Solid Waste Management Authority are situated at the Site, including within the OCDA, and that waste hauling companies disposed of materials the entire length of Peter’s Mine Road. *See* Exhibit N.

Although the Borough argues that it took a portion of Lot 14 (located within the OCDA) by foreclosure from the non-profit entity, HOW-TO, documentation regarding the Borough’s relationship with that entity indicates the Borough’s liberally disposed, or allowed the disposal of, waste throughout the Site, including within the OCDA.

³ Municipal Solid Waste (“MSW”), although typically found to contain usual household waste—e.g. carpet, cloth, paper, cardboard - has been found to contain substances that are considered hazardous. *See, e.g., B.F. Goodrich Co. v. Murtha*, 958 F.2d 1192, 1997 (2d. Cir. 1992). If a municipality “arranges for the disposal or treatment of waste containing substances listed as hazardous ... it may be held liable for contribution or response costs under the Act [CERCLA] if a subsequent release or threatened release requires cleanup efforts.” *Id.* at 1201. Accordingly, even if the Borough merely disposed of MSW on the 36 acres of the OCDA, it could still be held liable for such activities if it is later determined that the MSW contained hazardous substances. The EPA’s July 28, 2005 correspondence to the Borough’s attorney, Albert Telsey, Esq., further confirms that “Municipal waste is known to contain hazardous substances from residential and commercial sources. Common sources of hazardous material in municipal waste include lead and mercury from batteries, paint, paint thinner and other solvents, drain-opening chemicals, waste oil and oven cleaner.” *See* Exhibit A.

On February 28, 1973, the Borough executed an Agreement with HOW-TO which provided the Borough's permission to commence landfill operations on HOW-TO-owned property north of the Borough Landfill area and south of the Peters Mine Road/Cannon Mine Road intersection (which included a "Lot 14"). Under the 1973 Agreement, the Borough assumed the responsibility to properly fill the landfill, control pests, to cap the Cannon Mine shaft, and to distribute fill across several lots, some of which apparently were subsequently developed into residential property.

On June 4, 1974, counsel for HOW-TO notified the Borough that the Borough had "flagrantly disregarded" all of its obligations under the Borough/HOW-TO Agreement by failing to: (1) properly seal the Cannon Mine shaft; (2) properly cover the garbage fill; (3) control pests; and (4) distribute fill - "not garbage" - on certain lots. HOW-TO also indicated that the Borough improperly extended the garbage fill onto a lot not covered by the parties' Agreement and noted that "[e]ven to present, any scavenger is still allowed to enter and dump upon these premises without any supervision or control." A copy of the June 4, 1974 correspondence is attached as Exhibit O.

Courts in the Third Circuit have long recognized that municipalities may be held liable for municipal solid wastes on the basis of owner, operator and arranger liability under CERCLA. *See, e.g. DEP v. Gloucester Envtl. Mgmt. Servs., Inc.*, 821 F. Supp. 999, 1005-06 (D.N.J. 1993) ("CERCLA makes no distinctions between or among PRPs, nor according to the source of the hazardous substances, in its definition of hazardous substance."). Likewise, "[w]hether a potentially responsible party is an owner or operator of a facility, or an arranger, generator or transporter of the hazardous substances, or a municipality [...] is not relevant in determining whether a substance is hazardous." *Murtha, supra*, 958 F.2d at 1192.

The Borough's exemption request must fail because the Borough is liable under CERCLA as an owner, operator, transporter and arranger of hazardous substances at the Site, including at the OCDA. The CERCLA provision relied upon by the Borough expressly excludes the availability of the exemption for "state or local government" entities which have "caused or contributed to the release or threatened release of a hazardous substance." Accordingly, the Borough's request is inappropriate and must be denied.

d. The Borough has waived its right to seek a statutory exemption to CERCLA liability at the Site.

The Borough's petition is not only impermissible under CERCLA and the terms of the 2005 UAO, it is also inappropriate given the Borough's actions of the past eleven years, through which the Borough has repeatedly informed EPA of its intention to comply with the terms of the UAOs. Following the issuance of the 2005 UAO, the Borough eventually complied with the EPA's Order to coordinate a Supplemental Site Investigation with Ford and did in fact coordinate such an investigation. Moreover, the Borough informed EPA of its intention to comply with the terms of the 2010 and 2014 UAOs which

ordered the Borough to coordinate and participate in a Site Remedial Investigation/Feasibility Study and the design of the remedy for the Site.

Following the issuance of the 2005 UAO, the Borough notified EPA and Ford that it would participate in the Supplemental Investigation efforts carried out by Ford. In fact, on or about November 1, 2005, the Borough Council passed a resolution authorizing the Borough to hire a consulting firm to coordinate and cooperate with Ford and its consultants in their effort to investigate the Site. *See* November 1, 2005 Resolution attached as Exhibit P.

In 2010, following a second AOC entered into by Ford and EPA, the Borough was issued a subsequent UAO mandating its cooperation with Ford in the performance of a Remedial Investigation/Feasibility Study for the Site. The Borough complied with EPA's 2010 UAO and final RI/FS reports for the Site were submitted to EPA. Following the submission of the final RI/FS reports for the Site, the Borough and Ford participated in several meetings to discuss the reports and the proposed alternative remedial designs for the Site.

On June 30, 2014, EPA issued its ROD for the Site. In October 2014, Ford entered into a third AOC with EPA in order to implement the remedial design for the selected remedies. Also, in October 2014, EPA issued a third UAO to the Borough requiring it to cooperate with and participate in the performance of the Remedial Design AOC entered into by Ford and EPA. Again, the Borough informed EPA of its intention to participate in the Remedial Design for the Site, including the OCDA. *See* Letter to EPA from the Borough attached as Exhibit Q.

According to the Borough, it has substantially complied with the 2005 and 2010 UAOs issued by EPA, and as such, the Borough has waived its right to now seek review or modification of the terms of the 2005 UAO which laid the groundwork for subsequent EPA directives and orders concerning the investigation and eventual remediation of the Site as a whole.

Conclusion

Based on the foregoing reasons, the Borough's Petition should be denied as it is both procedurally and substantively defective. To grant the Petition would deprive Ford of its substantive due process rights and would effectively render a premature and final determination of liability and allocation.

August 8, 2016

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Ford submits its opposition to the Borough's Petition without prejudice to or waiver of Ford's right to respond to any additional argument or positions taken by the Borough. Ford also reserves the right to assert any applicable claims or defenses, at law or in equity, should the Borough further pursue its inappropriate exemption request now or in any future private or agency action.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Joseph F. Lagrotteria".

Joseph F. Lagrotteria

Enclosures

ecc: Douglas Garbarini, USEPA
Frank Cardiello, Esq.-USEPA
Joseph Gowers-USEPA
Salvatore Bdalamenti, USEPA
Timothy Green, Esq.

Exhibit A

*Direct Dial (973) 912-6801
Direct email: atelsey@mshenvlaw.com*

July 13, 2005

Via email/fax/regular mail
Virginia Curry, Esq.
USEPA
290 Broadway, 17th Floor
New York, NY 10007

Re: Ford Motor Company/Borough of Ringwood
Draft Administrative Order on Consent

Dear Ms. Curry,

This letter follows up our discussions with regard to the draft Administrative Order on Consent (AOC). The Borough recognizes that the remaining Ford waste may jeopardize the health and safety of the community and its residents and will do everything reasonable to cooperate with Ford and EPA to resolve this matter quickly. What puzzles us, however, is why EPA wants the Borough to sign the AOC. EPA had Ford sign half a dozen AOCs the first time around and never required that the Borough sign any of them.

The draft AOC exposes the Borough to 100% of the cost to do work that Ford should have done years ago. This additional work may cost millions or tens of millions of dollars. The Borough cannot reasonably commit itself to such numbers and cannot properly budget for this expense since the amount required for the Borough to comply with the AOC is unknown. The Borough discussed this concern with George Pavlou, Director, EPA Emergency and Remedial Response some time ago when Ford sludge was found popping up again. In his letter of December 26, 2003 to an attorney for local residents, Mr. Pavlou stated that, "EPA assured the officials that Ford was still responsible for removing significant paint sludge contamination." The draft AOC nevertheless puts all that cost to the Borough since it does not allocate responsibility between Ford and the Borough.

EPA's insistence that the Borough execute the AOC has compelled us to look closely at the document. This critical review has raised a number of significant issues. They are outlined below.

Elements of CERCLA Responsibility.

The AOC's Conclusions of Law seem unsupported by the facts. To attach CERCLA liability to the Borough, EPA must prove that: (1) the Borough falls within one of four enumerated categories of responsible parties (present owners or operators, past owners or operators, generators or transporters); (2) the site is a "facility" as defined in the Act; (3) there is a release or threatened release of hazardous substances at the facility; (4) EPA incurred costs in responding to the release or threatened release of hazardous substances; and (5) the costs and response actions conform to the National Contingency Plan. My immediate concerns are with regard to the first three elements.

The Borough as a Responsible Party and the Definition of "Facility."

What strikes me as most peculiar about the AOC is the undefined scope of the facility to be investigated. The document does not define "facility" at all but uses the term "Site" and it defines "Site" as 455-acres generally depicted on a map attached as Attachment B, which has not been provided to us. At our recent meeting you told me the facility is really the 900-acres that Ford bought in 1965.

This amorphous definition is troubling because it does not define the boundaries of your intended investigation. For the sake of this discussion, however, I am going to assume the "facility" will be the 900-acres purchased by Ford. If this is the case, the Borough objects for reasons discussed below.

The AOC also requires that Ford and the Borough agree to undertake investigative plans in various locations across the Site even though most of those plans have not yet been prepared, provided to us or approved by EPA. The document further permits EPA to tack on additional investigative plans as EPA may desire or as pressure from others may dictate without the Borough's prior consent. The document further provides that if the Borough objects to any of these future undefined plans for any reason, the Borough will be subject to stipulated penalties of hundreds or thousands of dollars per day. This may be acceptable to Ford, since the focus of the investigation is Ford waste, but it is not acceptable to the Borough.

Facility.

EPA now defines the "Site" as the 900-acres Ford bought in 1965 (even though the AOC references 455-acres) and, at Paragraph 12, further describes the Site as an area consisting of rugged forested areas, open areas overgrown with brush, abandoned mine structures, sealed mine shafts and filled mine pits, an open ore conveyance shaft, an inactive municipal landfill, an industrial disposal area, small surficial dumping areas, a

municipal recycling center, the Ringwood Borough garage and approximately 50 private residences located north of Margaret King Avenue.

Paragraph 31 of the AOC concludes that the Ringwood Mines/Landfill Site is a "facility" as defined by CERCLA; however, I do not understand how this is the case. It does not appear to me that CERCLA permits a "facility" to be defined simply as a hatch-lined area on a map covering hundreds and hundreds of acres. Sierra Club v Seaboard Farms, 387 F.3d 1167 (C.A. 10 Okla. 2004).

CERCLA Section 101(9) defines "facility" to mean (A) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or (B) any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel.

To conform to 101(9)(A), EPA must define the facility specifically as the Cannon Mine pit, the Peter's Mine area, the O'Connor Disposal landfill or some other individual or series of descriptive sites. To conform to 101(9)(B), EPA could use a general description of the area as it has done, but only if the area is a "site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located." In either case, however, EPA must tie the facility to the release or threatened release of a hazardous substance. This has not been done given the gargantuan area covered by EPA in its definition of the facility. EPA has used both the specific subsection (A) and general subsection (B) approach to defining the facility and in each case has failed to tie the facility to the release of a hazardous substance.

The difficulty in tying these two elements together (location and release) is due to the fact that the Site has already gone through the painstaking scrutiny of a CERCLA investigation and cleanup. In the December 26, 2003 letter from George Pavlou, he set forth the administrative record in this matter with considerable detail. He then concluded that, "The record supports EPA's position that it has taken appropriate actions to remediate the Site and that the Site does not pose a current threat to the health of residents at the Site." This conforms with the 1988 Record of Decision, the Notice to Delete the Site from the NPL, the 1998 Five Year Review Report and the 2003 Addendum to the Five Year Review Report wherein, for example, EPA stated that, "the Site is protective of public health and the environment and is expected to remain so."

I do not believe there is a reasonable factual foundation to conclude that the entire 900-acre site qualifies as a CERCLA "facility" that is still being impacted by the release or threatened release of a hazardous substance. Ford's current reconnaissance work

proves this to be the case. Ford has not found paint sludge in most places it has looked and, where Ford has found sludge, it has already removed it.

The Borough submits that, not until Ford completes its reconnaissance work can the new "facility" correctly be defined for the purposes of this new AOC. The new facility should be identified by specific site identifiers as permitted by 101(9)(A) or generally by area as permitted by 101(9)(B), but only after the location of hazardous substances are known or reasonably inferred. Recapturing the old 900-acre facility as the new "facility" as if the last twenty years of investigation, cleanup and monitoring did not occur is over inclusive and burdensome to the Borough. That is not to say, however, that the Borough disapprove of EPA's efforts to compel Ford to come back to do this work. We whole-heartedly do approve of that effort. Making the Borough pay for it all is what we object to.

Release or Threatened Release of a Hazardous Substance.

Paragraph 33 of the draft AOC states that, as a result of the conditions referenced in Paragraphs 16, 17 and 20 of the document, there has been an actual or threatened release of a hazardous substance from the facility. I disagree. All of these paragraphs address conditions in the area that existed prior to Ford undertaking the cleanup years ago to EPA satisfaction. For example, paragraph 16 discussed groundwater samples taken in 1983. Paragraph 17 discussed the remedial investigation undertaken by Ford from 1984 through 1987. Paragraph 20 discussed groundwater conditions taken after the remedial work was done showing slightly elevated levels in groundwater that did not pose an unacceptable health risk. The 1988 ROD, the 1994 Notice to Delete and the 1998 and 2003 Five Year Reviews prepared by EPA have concluded that, as a result of the work performed by Ford, hazardous substances at the site have been addressed to EPA satisfaction. How does all that now get reconstituted as a release or threatened release of a hazardous substance across 900 acres? Where are the findings of fact regarding a recently discovered release or threatened release of a hazardous substance? No such facts are set forth in the AOC.

It appears that the only area where paint sludge has been recently discovered is the area west of the Cannon Pit and perhaps sporadic locations identified by local residents and others. Those locations have not been referenced in the draft AOC. That is because the reconnaissance survey has not been completed and the boundaries of the new facility have not yet been reasonably determined. As such, EPA appears to be bootstrapping factual findings from 20-years ago as present findings and ignoring the intervening cleanup that was undertaken to EPA's satisfaction.

I submit that references to Paragraphs 16, 17 and 20 should be deleted and that EPA should wait until the reconnaissance survey is completed to determine where

specifically hazardous substances have been released or are threatened to be released so that the new facility can be correctly defined.

The Borough as a Responsible Party.

Paragraph 35b of the draft AOC defines the Borough as a responsible party because it is a current owner of the property and because it arranged for the disposal of hazardous substances. I disagree. I will accept that the Borough is the current owner of certain tax lots referenced on the tax maps of the Borough. However, I do admit that the Borough is the current owner of the 900-acre facility. I also do not admit that the Borough arranged for the disposal of Ford's waste. (See discussion below). I further submit that if EPA is arguing that the Borough arranged for the disposal of municipal solid waste and that constitutes a release or threatened release of a hazardous substance, I disagree with that as well. That issue was extensively examined during the first CERCLA exercise at this site and no such evidence was found. In addition, no such allegation is made in the AOC. There has also been no new disposal of municipal solid waste in the area since then. If, for example, EPA is arguing that ancient buried automobiles are contributing to the release of hazardous substance, I submit that no such proof has ever been found despite the first CERCLA exercise and that the focus of EPA's investigation this time around does not focus on buried cars, at least from my review of the investigative plans shared with me so far.

For the Borough to be a responsible party it must be responsible in some way for some part of a facility.

First, the 260 acres which Ford conveyed to PSE&G were never owned or operated by the Borough. (See attached Document Chronology – Paragraph 80). Therefore, this part of the facility is not the responsibility of the Borough.

Second, the 218 acres that Ford conveyed to High Point Homes were never owned or operated by the Borough. (See attached Document Chronology – Paragraph 80). Therefore, this part of the facility is not the responsibility of the Borough.

Third, the 109 acres that Ford conveyed to the State of New Jersey were never owned or operated by the Borough. (See attached Document Chronology – Paragraph 67). Therefore, this part of the facility is not the responsibility of the Borough.

Fourth, the 290 acres that Ford gifted to the Borough in 1970 was never used by the Borough for the disposal of Ford's hazardous waste.

Fifth, the 35 acres that Ford sold to How-To Corp. were acquired by the Borough by way of tax foreclosure in 1981 and therefore the Borough is exempt from CERCLA liability.

Third Party Defense/Passive Interim Owner Defense.

Presuming that recently discovered paint waste is being discovered on property currently owned by the Borough, the Borough has a reasonable third party defense as set forth in CERCLA Section 107(b)(3) in that the recently discovered waste is related solely to Ford, not the Borough. In addition, to the extent that recently discovered paint waste is being discovered on property once owned by the Borough, but no longer, the Borough has a reasonable passive interim owner defense.

The third party defense requires that the Borough establish by a preponderance of the evidence that (1) the release or threat of release of a hazardous substance and the resulting damages were caused solely by an act or omission of Ford and not an employee or agent of the Borough, (2) Ford's act or omission did not occur in connection with a contractual relationship (either direct or indirect) with the Borough, (3) the Borough exercised due care with respect to the hazardous substance; and (4) the Borough took precautions against the third party's foreseeable acts or omissions and the foreseeable consequences resulting therefrom. CERCLA Section 107(b)(3).

The passive interim owner defense requires proof that the Borough was not responsible for the initial dumping of Ford waste which occurred prior to its ownership, that the Borough did not disrupt Ford's dumped waste during its ownership and that the Borough later sold the property to someone else. The substance of the defense is that, since the Ford hazardous waste was only leaching (if at all) during the Borough's ownership of the property, that is passive activity which does not arise to the level of active conduct, such as releasing, pouring and emitting which is required by CERCLA. United States v. CDMG Realty Company, 875 F. Supp. 1077 (D.N.J. 1995).

Both of these defenses have the same focus and that is that someone other than the Borough is responsible for placing paint sludge at the property, whether the property is currently owned by the Borough or formerly owned by the Borough.

Ford would have us believe that the Borough is liable for Ford's waste simply because the Borough is or was the owner of property where the Ford waste has been or is now being found. This liability theory based on status alone does not take into consideration the third party defense and passive interim owner defenses that are quit viable here.

The Borough can establish all the elements of these defenses. To do so, I will be referring to the attached Document Chronology that summarizes documents in my possession obtained from the Borough, Ford and elsewhere, all of which are in EPA's possession. The numbers in parentheses refer to the paragraph numbers in the Document Chronology, which in turn refer to primary source materials.

Factual Chronology.

The focus of the third party defense and the interim owner defense is the idea that a third party was solely responsible for the release of a hazardous substance. Ford fits that description. Ford was solely responsible for the release of paint sludge and drums at the site.

Ford acquired the approximately 900-acre parcel in Ringwood in January 1965. (2). Through its development entity, Ringwood Realty Company, Ford wanted to redevelop the parcel into an industrial park, garden apartments and homes for its employees (4) and undertook considerable work to seal the mines and clear the area of junked cars to proceed with this plan. (5)(6)(7)(10).

However, even though Ford was cleaning up the area, Ford was also adding waste to the area (circa 1965-1967). Ford permitted Monroe Carting & Transfer Systems, Inc. from Monroe, NY to dump waste from Greenwich, Connecticut in the Cannon Mine Pit (9). Ford also contracted with Round Lake Sanitation Co. to dump waste in Ringwood. (14). Ford did not notify the Borough about this dumping activity and when the Borough discovered it, the Borough issued Ford a cease and desist order. (11)(12).

We suspect that Ford was using Monroe Carting and/or Round Lake Sanitation to dump Ford's industrial waste, including paint sludge from its Mahwah plant in the Ringwood area for the period 1965-1967. Ford had no vested interest in making sure the waste from Greenwich, Connecticut was disposed of, but it did have a vested interest in making sure waste from its Mahwah plant was disposed of.

Given the fact that Ringwood denied Monroe Carting and Round Lake Sanitation access to the area to continue dumping, Ford was without a hauler for its own plant waste. In 1967, O'Connor Trucking & Haulage Corp. contacted Ford and offered its services. (14). Ford made a good deal with O'Connor and signed them up. (The Ford Property Manager stated, "I authorized a contract with a new waste disposal outfit (not garbage, just trash) which will bring us \$800 per month (\$300 more than we had been receiving previously), in one of the mine shafts. Part of the trash comes from our Mahwah plant." (16).

The mineshaft first used by O'Connor was apparently the Cannon mine pit. In January 1968, O'Connor made an arrangement with Ford to use the Peter's Mine area as an additional dumping area for Ford's Mahwah industrial waste. (19). As with Monroe Carting and Round Lake Sanitation, Ford again did not notify the Borough about the dumping arrangements it had just made with O'Connor. The Borough discovered it on its own in January 1968. (20).

Within short order, O'Connor was out of compliance with NJ Department of Health sanitary codes. In April 1968, Ringwood Realty Co. was facing fines for O'Connor's poor dumping habits (21), even though O'Connor had promised Ford and the Borough that it would comply with all appropriate code requirements (18). Nevertheless, Ford continued to contract with O'Connor to handle its Mahwah plant waste. (17)(23)(27).

Ford was not O'Connor's only customer. O'Connor was dumping waste in Ringwood for a lot of other customers besides Ford. Ford knew O'Connor was engaged in this practice but did not know who the other customers were. This began to concern Ford. In 1969 Ford wanted O'Connor to tell them about the other customers; who they were, type of waste, etc. (24)(25)(26). Ford also wanted an assignment of O'Connor's accounts receivable. (26).

As early as 1967, Ford realized that its redevelopment vision for the Ringwood area had "disappeared." (16). As such, Ford wanted to sell its Ringwood property, especially if it could not use it for dumping. (16).

Not until the Borough began to discuss the idea of forming a Solid Waste Management Authority in August 1970 did Ford form the idea of gifting 437 acres to the Borough. (41)(42). Ford, however, was concerned with the Borough's ability to put together a Solid Waste Management Authority and begin using a process of waste management the Mayor was interested in at the time (The English Process). Ford did not want to get involved with the Borough's "political plan" because it might tie-up Ford's ability to continue dumping its Mahwah industrial waste in Ringwood. (42). As such, in September 1970 Ford offered to gift 290 acres to the Borough if the transfer could occur within 6-weeks. (42). As the plan unfolded, Ford decided to gift less than the original 437 acres because Ford wanted to retain its dumping rights on the property which O'Connor was already using. (42).

In a memo dated October 22, 1970, the Ford Property Manager wrote that the Borough just adopted an Ordinance to accept the gift of 290 acres and that, "about 150 acres (the dumping area) is retained by Ringwood Realty Corp. which will continue to be used for a dumping area in cooperation with either the Borough or other outside operations." (48). The gift of 290 acres to the Borough occurred by deed dated November 2, 1970. (50).

Ford continued to use O'Connor through 1970 and into 1971 (57). However, by 1971, O'Connor's performance was terrible. O'Connor serviced Ford poorly and maintained the landfill poorly. (58). As a result, Ford decided to fire O'Connor (58), which it did in May 1971. (60). Ford then tried to get Industrial Services of America, Inc. (ISAI) as its new waste hauler (58). However, objections from the North Jersey District Water Supply Commission prevented this from occurring (61)(64).

This left Ford with an inventory problem. It had property it could not use for redevelopment or waste dumping. Ford, therefore, decided to get rid of it. How to do so was the issue. Ford knew the property was contaminated by O'Connor and Ford did not want that news to get out. In a memo dated December 1971 (68), Ford discussed the situation:

Ford still owns approximately 150 acres of the Ringwood Mine area, which is the location of the dump site formerly used by O'Connor, and which we want to continue using. This property originally encompassed 500 acres of which 350 were given to the City of Ringwood Solid Waste Authority who have the responsibility of administering the area. The dumping permit, however, has to be issued by the Environmental Agency of the State of New Jersey along with the concurrence of the State Water Quality Board.

Unfortunately, the former contractor, O'Connor, did not adequately operate his dumping operations so as to prevent pollution of a small stream which flows through the property and into a water source leading to a major reservoir used for drinking water. This stream became definitely polluted as a result of paint and other refuse finding its way into the water course. Accordingly, the state is very hesitant about issuing permits for any continued dumping operations, even with the assurance of Ford Motor Company that it will be adequately policed and operated. [Emphasis added]

In a June 1972 memo (71), Ford continues with its divestiture plan and states that the 151 acre parcel was withheld from the earlier land gift to Ringwood because "we wanted the parcel to be continued as a dump site for the Mahwah Assembly Plant and there was no assurance the Borough would continue this use with property under its control." The memo further stated that, "The Plant Engineering Office has recently determined this parcel cannot be operated economically as a dump site for the Plant. Accordingly, we recommend that the property be placed on the open market for sale at \$700 per acre with authority to accept an offer no less than \$500 per acre, \$350 below its appraised value." Some of the reasons offered in the memo for why the land should be sold cheap was because, "the area used as a dump site for numerous years is leaching into public water supply and represents a contingent liability." [Emphasis added] The memo finally states that if no interest is shown, the land might be donated to a tax deductible entity.

There was no interest in the property on the open market during the year June 1972 to June 1973. As such, by June 1973, Ford's final divestiture plan was to donate 100 acres to the State of New Jersey and 45 acres to How-To, Corp. despite its concerns that the recipients of the gift might raise questions about the possibility of pollution. The divestiture plan is described in a memo dated June 1973 (80). The memo states:

The waste contractor for the Mahwah plant was given a permit to dump on the Ringwood property and the low areas and mines were used for this purpose until mid 1971. The plant and the state were not satisfied with the contractor's service or his control of the dump site. His right to dump on the property was terminated, and the Company made efforts to get a new contractor and a permit for this contractor to use the Ringwood property as a landfill. After much effort, the state agreed to grant a permit, but subject to restrictions imposed by the North Jersey District Water Supply Commission, which controls a nearby reservoir. Plant engineering Office determined the restrictions could not practically be complied with and abandoned Ringwood property as a dumpsite.

The property was placed on the market in June 1972, just after Plant Engineering advised the site would not be of use to the Company as a dump site, so it is presently on the market.

We should seek a donation by first laying a foundation for the gift with the selected donor by securing from the donee a written request asking for the donation. The most likely candidates are the State of New Jersey (Department of Environmental Protection) and "How-To, Inc.," a non-profit corporation funded by DOE and the State. We have such a letter from How-To, Inc., but not one from the State.

We could probably make a donation to How-To, Inc., sooner with fewer questions and less risk of inquiry and exposure as to the general condition of the property. We should determine whether How-To by its charter can receive donations and own real estate.

The state would be intrigued with receiving the property at no cost but also would be more suspicious and make more inquiry as to the general condition of the property. The state's Department of Environmental Protection also has jurisdiction over solid waste disposal, and it would not take much of an inquiry for the State to determine that the former landfill presents some problems. Accordingly, the State could condition receipt of the gift and thereby cause Ringwood Realty Corp. cash expenditures not anticipated in a donation at this time. To effect a donation with the State will take a minimum of six months. [Emphasis added].

In December 1973, Ford made the donations to How-To and NJDEP. By this time, Ford no longer owns property in Ringwood.

First Element – Sole Action. It is the Borough's position that nothing about this factual chronology suggests the Borough was working with Ford in the disposal of Ford's waste. Ford alone contracted with O'Connor, Monroe Carting and Round Lake

Sanitation to dispose of Ford's waste. The Borough had nothing to do with it. O'Connor, Monroe and Round Lake were not employees or agents of the Borough.

Ford argues that the Borough was working with Ford in the disposal of Ford's waste based on an August 1970 letter from Borough Mayor Kulik to Ford (41). Mayor Kulik was touting the idea of The English Process at that time and stated, "The Ringwood Council and myself have permitted the dumping of all the industrial waste from the Mahwah assembly plant be disposed of in this area known as the Ringwood Mines."

Ford argues that this statement by the Mayor is akin to a partnership, joint venture, contract, arrangement, etc., wherein Ford and the Borough agreed to work together in some fashion to dispose of Ford's waste at the Ringwood Mines area. I disagree. At best, the argument can be made that the Borough was acting under the color of its police powers to make sure O'Connor complied with the requirements of applicable Borough Ordinances and sanitary codes that address local permits, inspections, etc. because that is exactly what the Borough was doing. Ford's argument is similar to the argument raised by PRPs in landfill cases where they claim NJDEP is an owner or operator of a landfill because it permitted the use of the landfill and inspected it. That argument has always been deemed unpersuasive and it is unpersuasive here too. See, U.S. v. Rohm and Haas Co., 939 F. Supp. 1157 (D.N.J. 1996).

Second Element – No Contractual Relationship. Mayor Kulik's comment also cannot be considered a contractual relationship with Ford, direct or indirect, because it does not amount to a land contract, deed, or other instrument transferring title or possession. CERCLA 107(b)(3).

Third Element – Due Care. The Borough also exercised due care with respect to the Ford waste because, when it was first discovered in the late 1970s/early 1980s, the Borough brought in NJDEP and EPA and the area was placed on the National Priorities List and was addressed to EPA satisfaction.

Fourth Element – Precautions. The Borough also took precautions against Ford's foreseeable acts or omissions and foreseeable consequences resulting therefrom. For example, the Borough made Ford cease and desist the dumping operations by Monroe Carting and Round Lake Sanitation when that unknown dumping activity was discovered by the Borough in 1967. (11)(14). The Borough also tried to make O'Connor comply with applicable code requirements in 1968. (18). What was not foreseeable was the fact that Ford knew O'Connor's bad dumping habits were contributing to the pollution of the area (68) and that Ford intended to keep this problem a secret. (80). That secret was well kept, which is why the consequences of O'Connor's dumping activity was not discovered for almost 10 years after the dumping had ended.

The bottom line here is that the Borough did not orchestrate, control or arrange the dumping of Ford waste at the site and EPA is not focused on municipal solid waste

because that is not the issue of concern here. Ford controlled its own dumping; Ford controlled what parcels it would convey, when it would convey them and to whom it would convey them; and Ford controlled what it would say or not say about the contaminated condition of the property when it did convey. Ford chose to say nothing about the contaminated condition about the parcels. These facts support the third party defense and passive interim owner defense.

Summary of Comments to the Draft AOC.

Given the background provided herein, the Borough's comments to the draft AOC are as follows:

1. A definition of "facility" must be adequately stated by referring to current site conditions.
2. A description of "release or threat of release" must be adequately stated by referring to current site conditions.
3. Paragraph 6 must limit the Borough's responsibility to work related to property owned by the Borough.
4. Paragraph 11, the definition of "municipal solid waste" should remain.
5. The AOC should be amended to state that it does not apply to municipal solid waste.
6. Paragraph 11, the definition of "Site" should refer to the definition of "Facility" and an appropriate definition of "Facility" should be provided.
7. Paragraph 15, proposed language from Ford should be omitted (regarding Ringwood allowing O'Connor to dump).
8. The three paragraphs proposed by Ford after Paragraph 15 should be omitted.
9. Paragraph 25, reference to the Borough acquiring the property with knowledge of the disposal of waste must be eliminated or modified to reflect that the Borough acquired with knowledge about solid waste but not hazardous waste.
10. Current events related to the discovery or attempted discovery of additional Ford waste beginning in 2004 should be added to the end of factual statements.
11. Paragraph 31, reference to "facility" must be modified as discussed herein.

12. Paragraph 33, reference to "release/threatened release" must be modified as discussed herein.
13. Paragraph 35a should be eliminated since it defines the Borough's potential liability trigger incorrectly.
14. Paragraph 35c should be amended to state only that the Borough is the current owner of a part of the facility. Ford's suggested language about owner/operator liability should be eliminated.
15. Paragraph 38 and the Paragraph after 99 added by Ford should not state the AOC is an Administrative Settlement since it is not.
16. Paragraph 44, the Statement of Work must be defined specifically without catchall language permitting the ability to tack on unlimited additional tasks.
17. Paragraph 85 should split out the past response costs due from Ford and those due from the Borough.
18. Paragraph 86 (future response costs) should be modified as suggested by Ford.
19. Paragraph 101, the Borough's existing insurance coverage shall be deemed adequate. Proof of coverage can be provided to EPA.
20. Paragraph 102, the Borough shall not be responsible for posting financial assurance.

Thank you for the opportunity to provide these comments.

Sincerely,

Albert I. Telsey

Enclosure

Cc Mayor and Council, Borough of Ringwood
Kenneth Hetrick, Business Admin., Ringwood
David Hayes, Esq., Ford Counsel
John Corbett, Esq., Ford Counsel
Joseph J. Maraziti, Esq.
Sui Leong, H2M Group

Document Chronology

1. Ringwood mines are grouped in five lines. Beginning with the southeast vein going southwest, the mines are as follows:

- Blue, Hard, Mule, Little Blue, Bush and Wood Mines.
- Cannon and New London Mines.
- St. George, Miller and Keeler Mines.
- Cooper Mine
- Peters, Hope and Oak Mines.

Pustay, M. R. and Shea, T. K., "Abandoned Iron Mines of Passaic & Bergen Counties," NJ DOL, Division of Occupational Safety & Health, Office of Safety Compliance (1992).

2. January 7, 1965. Ringwood Realty Co. purchases property from Pittsburgh Pacific Co. Ford 1983 104(e) response.
3. The Pittsburgh Pacific Mines Co. is selling the Cannon and Peter's mine area to the J. I. Kislak real estate firm, agent to Ford Motor Co., for \$500,000. Lawyer for Pittsburgh Pacific Mines Co. is Uldric L. Fiore, esq., who is also attorney for the Ringwood Planning Board. Newspaper article titles, "Death Valley," date unknown. Sale occurred in October 1964. Trends Newspaper, Sunday, May 23, 1965.
4. Ringwood Realty Co. plans to build an industrial park, garden apartments and homes on 900-acre track. Trends Newspaper, Sunday, May 23, 1965.
5. Ringwood Realty Co. is a Division of the J. I. Kislak real estate company of Newark, NJ, acting as a real estate arm for Ford Motor Co. Ringwood Realty Co. is working with state officials to seal the mines. The Paterson Morning Call, 7-26-65.
6. Ringwood Realty Co. is trying to remove abandoned cars in the mine shafts in order to begin redevelopment. Frank Lynford, J. I. Kislak real estate company, estimates 10,000 cars are in the mine area. Many are in the mines themselves. The work is taking longer than expected. Cars in the mines may be left there. The Patterson Morning Call, July 21, 1965.
7. Councilman Kulik wants Ringwood Realty Co., owner of the mine area, to step up efforts to cap, fill or fence the mines as required by Borough Ordinance. Trends, July 21, 1965.

8. The Borough had been using a certain mine shaft (unnamed) for many years to dump garbage. Much of it settled over the years. Paterson Evening News, July 22, 1965.
9. About December 1965. Letter from Ringwood Realty to Monroe Carting & Transfer Systems, Inc., Monroe, NY (Pasquale D'Arco). License to Monroe Carting to dump non-combustible waster from Town of Greenwich, Conn. (furniture, logs, tree stumps, trimmings, grass cuttings, excluding garbage and residue) to Cannon Mine pit. Indemnity required.
10. 1965. Third Annual Report. Ringwood Planning Board. This document indicated that Ringwood was experiencing a population growth, that a large sanitary landfill operation application was denied and that the mine area redevelopment plan was delayed due to legal issues. With regard to the mine area, the report also indicated that the NJ Dept of Mines removed over 500 abandoned vehicles from 31 of 33 mine shafts and sealed them off. It also mentioned that the Ringwood Realty Company demolished industrial structures and abandoned residences in the Peters Mine and Cannon mine areas.
11. November 24, 1967. Borough told Ringwood Realty Co to stop dumping in the mine holes. Letter from Wm. E. Betts, Ringwood Board of Health to Mayor and Council.
12. November 27, 1967 letter from Kislak (Frank Lynford) to Monroe Carting (Joseph Mongelli) telling him he has to stop dumping per letter from Ringwood.
13. December 1, 1967 letter from Ringwood Realty to O'Connor Trucking & Haulage Corp. License to O'Connor to dump in Peter's Mine. Allegedly the same materials dumped by Monroe Carting (The letter is a copy of the one sent to Monroe Carting in Dec. 1965, subject to a few modifications.
14. December 11, 1967 letter from J. I. Kislak (Frank Lynford, Manager) to Ford Motor Company. Lynford said Ringwood Bd. of Health told him he had to stop dumping. Lynford said they had been using Round Lake Sanitation Co. He told Round Lake to stop dumping. He then said he had been approached by O'Connor Trucking & Haulage Co. He said O'Connor has a good relationship with the Borough and that O'Connor would like to operate the dump site for \$800/mo. He enclosed a copy of the original rental agreement with Monroe Carting and said he could enter into a similar arrangement with O'Connor. He enclosed a copy of O'Connor's letter of December 6, 1967 with an \$800 check.

15. December 12, 1967. O'Connor Trucking tells Borough it has reached a tentative agreement to lease the mine are property from Ringwood Realty in order to construct sanitary land filling operations. Letter from Charles O'Connor to Borough.
16. December 21, 1967 Memo from Ford Motor Company (Arthur Basse, Property Manager) to S. A. Seneker re: Ringwood. Basse says the idea of constructing low cost housing in Ringwood for Mahwah plant employees has "disappeared" and the "Automotive Assembly Division wants to get out of this project as soon as possible because it is consuming considerable time (especially of Mr. O'Sullivan)." The Automotive Assembly Division has requested transfer of the file to Property Management. The Ford Assistant Treasurer thought a new real estate development corporation might be formed and, if that is the case, the matter should be with Property Management. The Assistant Treasurer was pointing to a roughly 220 acre track south of Margaret King Highway since there are no Jackson Whites in this area. Sale of this parcel could recoup about \$320,000, ½ of Ford's \$600,000 investment in Ringwood to purchase the 900 acre track. Mr. Lynford with Kislak is putting together a development plan. Basse also said in this memo that, "I authorized a contract with a new waste disposal outfit (not garbage, just trash) which will bring us \$800 per month (\$300 more than we had been receiving previously), in one of the mine shafts. Part of the trash comes from our Mahwah plant."
17. Sept 1967 – Sept 1968. Ford Motor Co., Mahwah Plant, waste disposal documentation indicates the Ford Mahwah Plant generated 100,000 cu/ft, 3,704 cu/yds. or 2,500 tons of paint sludge during this one year time frame. Documents also state that O'Connor Trucking was its contractor and that O'Connor/J. I. Kislak was paid \$320,000 for disposal of paint sludge and misc. paper refuse.
18. January 3, 1968. Letter from Borough clerk advises Borough Board of Health that O'Connor Trucking has entered into an agreement with Ringwood Realty to conduct a sanitary landfill operation using "primarily industrial refuse and dirt fill," that all appropriate code requirements will be met, that no garbage dumping will be permitted and that the Borough will continue to dump the Borough's heavy trash in this area as well.
19. January 18, 1968. Letter from Frank Lynford, Kislak, Inc. to Robert C. Lawson, Property Management Division, Ford Motor Co. advising him that O'Connor is dumping Mahwah industrial waste in Ringwood site and wants to reserve the old Peter's Mine excavation for an additional dumping area on a standby basis paying \$200/month.

20. January 23, 1968. Letter from Joan M. Kennedy, Secretary to Board of Health to Mayor and Council advising that the O'Connor Trucking agreement to sump was made without the knowledge of the Board of Health and was illegal, but that the Board of Health would abide by it as long as no violations are discovered.
21. April 23, 1968. Letter from Frank Lynford to George Kiroos, attorney from Ford Motor Company, advising him that Ringwood Realty is facing fines from the NJ Dept of Health for the dumping being done by O'Connor Trucking and that O'Connor indicates he will take responsibility for any fines.
22. July 1, 1968. Paterson Evening News article talks about cooperative neighborhood cleanup effort undertaken in mine area with oversight from Albert Getts, Chief of ther NJ Bureau of Mines undertaking oversight. Getts said cleanup was fine; however, O'Connor is dumping industrial waste into Peter's Mine.
23. July 28, 1969 Contract with attached Scope of Work between O'Connor Trucking and Ford Motor Co., Mahwah Plant, describes the paint sludge management requirements for disposal. 1969-August 31, 1972 is term.
24. August 25, 1969 letter from Florence C. Hayes, VP, Kislak to O'Connor requesting a discussion about O'Connor's other customers besides Ford, the types of waste he is hauling and if he is dumping into mine shafts. Also, account is behind date.
25. October 16, 1969 letter from Florence Hayes, VP, Kislak to Lawson, Ford Property Manager indicating O'Connor paid back payments for April through August 1969. Hayes indicates she agrees they should have more control over the money O'Connor gets from other customers.
26. October 22, 1969 letter from Ringwood Realty to O'Connor Trucking. License to dump which supersedes license issued December 1967. Materials referenced include furniture, logs, tree stumps, trimmings, grass cuttings, excluding garbage and residue. Location of dumping not stated, although map is supposed to be attached. Indemnity required. Ringwood Realty wants a list of O'Connor's customers. \$1,000/mo. Ringwood Realty wants an assignment of accounts receivable. Rent stated. O'Connor added an amendment to the license agreement that stated: "When we started dumping in July at the Cannon Mine Hole there was no fence or improvement made. In the event we move to an adjacent mine that will be fenced in we will repair and replace fence if necessary or whatever improvements are necessary."

27. 1969 Ford Motor Co., Mahwah Plant, waste disposal documentation indicates the Ford Mahwah Plant generated 175,000 cu/ft or 4,350 tons of paint sludge during 1969.
28. October 29, 1969 letter from A. E. Scala, Chief Civil Engineer, Ford Plant Engineering Office to Robert S. Lawson, Ford Property Management providing a map indicating the two areas in red on the attached map where O'Connor will be permitted to dump. Map entitled, "Ringwood Iron Mines, N.J. --- Property Surface Plan." Map not attached.
29. November 21, 1969. Ringwood realty sells 87.310 acres to High Point Homes, Inc. Ford 1983 104(e) response.
30. February 2, 1970 Ford Motor Co. Purchase Notification with O'Connor. Removal of production stock (plastic strips, rubber strips, pads, broken glass, located at Fidelity Warehouse, Newark, NJ & Mahwah.
31. March 17, 1970 letter from Robert Lawson, Ford Property Manager to Mrs. Hayes, Kislak, indicating that O'Connor is behind again in payments and that a meeting may be in order.
32. April 13, 1970 Ford Motor Co. Purchase Order Amendment with O'Connor, eff. August 13, 1970.
33. April 24, 1970 letter from O'Connor to Ford Mahwah Plant requesting price increase in disposal of waste.....
34. April 24, 1970 Ford Motor Co. Purchase Order Amendment re: Blanket Order - Refuse Removal. (Addresses increase in price.)
35. April 25, 1970 letter from O'Connor to NJ Dept. of Health, Solid Waste Disposal Program regarding his response to the Dept.'s letter of 2-26-70 concerning the Cannon Mine Landfill. He said a fire halted operations, then cold weather preventing them from getting water and dirt on the site. Ringwood and West Milford continue to dump "heavy trash."
36. May 14, 1970 Ford Amended Purchase Order agrees to pay O'Connor's increased prices, subject to right of contract cancellation within 120 days.
37. May 14, 1970. Ringwood realty sells 207.97 acres to PSE&G. Ford 1983 104(e) response.
38. June 7, 1970. Ringwood Realty sells 18.54 acres to High Point Homes, Inc. Ford 1983 104(e) response.

39. June 15, 1970 Ford Motor Co. Purchase Notification with O'Connor. Operation of bailing house and disposal of refuse on Sunday June 14, 1970.
40. July 28, 1970 NJDEP issues a 1-year Certificate of Registration No. 16551001 to O'Connor for solid waste disposal and/or processing facility on lots 1, 3/block 600 and lot 1/block 601.
41. August 27, 1970 letter from Mayor Kulik to Henry Ford asking him to assist in the development of a new solid waste disposal technology (the English process) in the mine area since the Ringwood Realty Co plans fell through. The Mayor acknowledges that he and borough Council have been permitting the Mahwah plant to dump its industrial waste, but that the new process should reduce fires, which have been a problem.
42. September 14, 1970 memo from Robert Lawson, Ford Property Manager, discussing a meeting with Florence Hayes, Kislak co. and John Kulik, Mayor. Lawson said the Mayor talked about the English process, housing and the establishment of a solid waste authority. Lawson said Ford was interested in selling 437 acres of land to the borough, but that he did not want to get involved in a political plan. Sale would be conditioned on the sale occurring before November 1, 1970 and that Ringwood Realty would retain the dumping rights until the Borough had a disposal process in operation sufficient to handle the Mahwah plant.
43. September 23, 1970 Borough introduces and Ordinance to create the Ringwood Solid Waste Management Authority (RSWMA).
44. September 24, 1970, Garfield Trust Co. enters into an Assignment of contract monies with Ford to have those monies assigned to Garfield Trust.
45. October 9, 1970, public hearing was held with regard to creation of a Ringwood Solid Waste Management Authority. Ordinance adopted creating the RSWMA.
46. October 14, 1970 article in Midweek Suburban Trends states that the RSWMA was approved by the Borough the previous week. Councilman Dale Peters said the Borough generates 30-40 tons of garbage per week (per the road foreman), while O'Connor generates 200 tons per week. Councilman Frank Fahy said the Borough generated about 100 tons per week.
47. October 21, 1970 Council minutes state that J. I. Kulik has offered to donate 290 acres of land north of Margaret King Ave. and west of Peters Mine to the Borough. Map provided. Not attached.

48. October 22, 1970 memo from Robert Lawson, Ford Property Manager indicates that the Borough adopted an Ordinance to accept the gift of 290 acres and that "about 150 acres (the dumping area) is retained by Ringwood Realty Corp. which will be continued to be used for a dumping area in cooperation with either the borough or other outside operators."
49. October 30, 1970 article in the Newark Evening News states that Ringwood Realty donated 290 acres to the Borough that West Milford also dumps in the area. Dale Peters, Councilman, says Ford Motor Co has been dumping in the area for six (6) years.
50. November 2, 1970 Deed of Gift from Ringwood Realty to RSWMA approved by Resolution the same date. 289.89 acres. Ford 1983 104(e) response.
51. November 6, 1970 Council minutes indicate a suit was filed to challenge the creation of the RSWMA. According to a July 3, 1972 article in the Herald-News, the suit was brought by Philip and Sandra Watson who charged that the RSWMA should be invalidated because, in order for the RSWMA to be a self sustaining economic enterprise it would have to process 1,600 tons of refuse weekly and it only processes 100 tons weekly from Ringwood and 200 tons weekly from Ford. Plaintiffs therefore argue that the RSWMA was merely created as a shell entity for the benefit of Ford Motor Co. in the disposal of its waste.
52. November 13, 1970. Ringwood realty sells 122.03 acres to High Point Homes, Inc. Ford 1983 104(e) response.
53. November 25, 1970 Council minutes indicate the Council considered an Ordinance establishing costs and expenses for the treatment and disposal of solid waste originating in the Borough. Ordinance adopted December 11, 1970.
54. December 18, 1970 Appraisal by Gaffney Appraisal Co., 545 Cedar Lane, Teaneck, NJ. Appraisal appraised the 290 acre parcel gifted to the Borough and the 151 acre parcel retained by Ringwood Realty Co. Appraisal of the 290-acre tract was \$246,500. Appraisal of the entire 441 acre tract was \$375,000.
55. 1970 Ford Motor Co., Mahwah Plant, waste disposal documentation indicates the Ford Mahwah Plant generated 180,000 cu/ft or 4,500 tons of paint sludge during 1970. O'Connor/J. I. Kislak was paid \$367,323 for disposal of paint sludge and misc. paper refuse.

56. February 10, 1971 Council minutes indicate the RSWMA was engaged in activity including a bonding resolution, a mine area housing planning committee and Ringwood area water supply system.
57. February 28, 1971 article indicates that Ford continues to use its tract to dump and the Borough is looking at 50 of its 290 acres to create a solid waste landfill. The RSWMA is promising land to local people as part of the HOW-TO program, whereby they will build their own new homes. The locals are frustrated with the red tape involved in the sale of RSWMA property to them.
58. April 6, 1971 memo by Ford regarding poor performance by O'Connor and need to terminate his services. Equipment breakdowns due to poor maintenance, fires at the dump site, permitting waste to backlog at plant. Reported that RSWMA is also dissatisfied with O'Connor performance at maintaining landfill. Ford decided to terminate O'Connor, cease dumping in Ringwood and tell RSWMA to tell O'Connor his dumping rights are ended. Ford would hire a new contractor, Industrial Services of America, Inc. (ISAI).
59. May 3, 1971 memo from Ford Mahwah plant indicates O'Connor is backlogged in getting rid of drums because he cannot dump in Ringwood anymore.
60. May 18, 1971 letter from Ringwood realty to O'Connor canceling contract.
61. May 19, 1971 letter from North Jersey District Water Supply Commission to NJDEP opposing the plan by ISAI to construct a new landfill near the Wanaque reservoir and opposing the continued operation of the existing industrial landfill by O'Connor for the following reasons: too close to Peter's Mine Brook which feeds into the reservoir, the existing landfill is already polluting this stream, leachate from the landfills is the real problem.
62. May 26, 1971 Council minutes indicate the Fire Prevention Bureau permitted O'Connor a 7-day extension to get a water pump to the dump site.
63. June 9, 1971 memo from Robert Lawson indicating that the O'Connor agreement is now canceled. Memo also indicates that Ford Motor Co. depositing \$3,000 into Ringwood Realty Corp. account representing three monthly payments from O'Connor. "This check represents payment from Charles O'Connor, the person licensed by Ringwood to use its land for a landfill, for the months of March, April and May 1971."
64. June 14, 1971, NJDEP notifies ISAI that its application for a new landfill is denied.

65. November 3, 1971 NJDEP issues \$300 penalty to Ringwood Realty Corp. for burning tires, cardboard, wood and automobiles at the landfill, B600/L11.
66. November 22, 1971 letter from Robert Lawson to DEP enclosing \$300 check. Lawson says land is no longer used and the fires were caused by trespassers.
67. November 24, 1971 council meeting minutes indicate certain roads were improved by application of stone and oil and solid waste land filling operations are going along well with the use of a borrowed bulldozer.
68. December 15, 1971 memo from Ford regarding status of waste management at Mahwah. Memo says they had to fire O'Connor because he was "intolerable." Ford hired ISAC which tried to get a landfill permit in the Ringwood area but failed. AS such, ISAC must haul to a new location 30-miles from the Mahwah plant. The memo further states that,

Ford still owns approximately 150 acres of the Ringwood Mine area, which is the location of the dump site formerly used by O'Connor, and which we want to continue using. This property originally encompassed 500 acres of which 350 were given to the City of Ringwood Solid Waste authority who have the responsibility of administering the area. The dumping permit, however, has to be issued by the Environmental Agency of the State of New Jersey along with the concurrence of the State Water Quality Board.

Unfortunately, the former contractor, O'Connor, did not adequately operate his dumping operations so as to prevent pollution of a small stream which flows through the property and into a water source leading to a major reservoir used for drinking water. This stream became definitely polluted as a result of paint and other refuse finding its way into the water course. Accordingly, the state is very hesitant about issuing permits for any continued dumping operations, even with the assurance of Ford Motor Company that it will be adequately policed and operated. As a matter of expediency and involvement of the proper Municipal and State functions, the State would much prefer to have the City of Ringwood, through its Solid Waste Authority, administer the dump. Ford Motor Company has agreed and steps are being taken to determine the means of deeding, leasing or donating this property to the City of Ringwood in return for continuous and insured dumping rights of our plant wastes. The city of Ringwood is agreeable to this and would like to use Industrial Service of America as their contractor to administer such

an operation. This would be under a separate contract and would not affect our contract relations with I.S.A. for plant disposal handling.

These negotiations are in progress and another meeting is scheduled early in January with Officials of Environmental Control Agency, the Ringwood Waste Authority, Industrial Service of America and Ford Motor Company to present 3 schemes for filling the area involving adequate protection against pollution of the stream feeding the reservoir.

We anticipate this will be successfully resolved. The present operation is under a temporary one-year contract. When all above aspects are resolved, we will then renegotiate a new contract with Industrial Service of America based upon the reduced hauling distance from 30 to 8 mile trips which will be made possible with the use of the Ringwood site.

69. December 22, 1971 minutes of Council meetings state that the Planning Board Subdivision application from the RSWMA/How-To, Inc were approved to subdivide B600/L1, 12 on Margaret King Ave, into 16 lots.
70. March 28, 1972 letter from Dean Noll, Chief Engineer, North Jersey District Water Supply Commission (NJDWSC) to DEP re: Ringwood's proposed sanitary landfill. Noll objects for the following reasons: leachate threatens the reservoir; once started, a landfill operation is hard to stop; Ford Motor Company waste dumped into a landfill near the reservoir does not make sense; Ringwood might find it lucrative to operate a landfill and invite out-of-area generators to dump; and if ford stops dumping at the proposed landfill, Ringwood will probably not have enough money to operate it properly. However, Noll reports that the NJDWSC will not object to the landfill on the strength of the DEP's assurance that it will compel the landfill operator to manage the landfill with appropriate protections including, use of cover material, surface water drainage system, landfill liner and leachate collection system, monitoring wells, and an Agreement between NJDWSC and Ringwood that addresses the following: limits height of the landfill; restricts use of landfill to Ringwood, West Milford and Ford Motor Co.; restricts Ford Motor Co. waste to "industrial packing and waste parts and precludes any liquid waste, any chemical or petroleum products and any toxic or deleterious substances. The municipalities shall not dispose of any industrial waste unless said waste receives approval, in writing, from this Commission. Liquid wastes from the municipalities are excluded"; relocate Peters Mine Brook away from the landfill; provide a Performance Bond; establish a

recycling program at Ford and municipalities; establish a cleanup program to remove the gypsy dumps, wrecked cars and other junk strewn throughout the area; and DEP must close all unauthorized dumps in the area, including one located near the Greenwood Lake Airport in West Milford.

71. June 15, 1972 memo from Robert Lawson, Ford Property Manager re: remaining land at Ringwood. Lawson states that Ford still owns 208 acres of the 930 acres it acquired in 1965: 57 acres comprised of an 8-mile long railroad bed 50-100feet wide and 151 acres. The railroad parcel is being sold to PSE&G. The 151 acre parcel was withheld from the earlier land gift to Ringwood because "we wanted the parcel to be continued as a dump site for the Mahwah Assembly Plant and there was no assurance the Borough would continue this use with property under its control." The memo further stated that, "The Plant Engineering Office has recently determined this parcel cannot be operated economically as a dump site for the Plant. Accordingly, we recommend that the property be placed on the open market for sale at \$700 per acre with authority to accept an offer no les than \$500 per acre, \$350 below its appraised value." Some of the reasons offered in the memo for why the land should be sold cheap was because, "the area used as a dump site for numerous years is leaching into public water supply and represents a contingent liability." The memo finally states that if no interest is show, the land might be donated to a tax deductible entity.
72. September 13, 1972 council minutes indicate the Borough approved payment to RSWMA for \$13,500 for dumping operations in the Mine Area.
73. December 8, 1972 Order from DEP to Ringwood Borough for the solid waste operation occurring at the Cannon Mine Disposal site, Cannon Mine Rd., B600/L1. (Actually Lot 12. See August 23, 1973 memo from Charles E. Gingrich, DEP to Bernhardt V. Lind). Violations alleged include not registered; not complying with landfill operational requirements, burning.
74. December 23, 1972, Mayor Peters has a conference with DEP and tells DEP the Borough will take corrective action with regard to its landfill: submit an updated registration; submit an engineering design; correct operating violations; submit a letter outlining time frames. (August 23, 1973 memo from Charles E. Gingrich, DEP to Bernhardt V. Lind).
75. January 15, 1973 letter from Borough Mayor Dale T. Peters to DEP identifying steps taken by the Borough to improve its land filling

operations: putting out the underground fire in the Cannon Mine air shaft and submitting engineering plans for its landfill including cover for the steep slope of heavy trash on the western side of the landfill, final cover for the east side of the landfill and design of a fill operation about 100 yards east of the present operation. Situation is an interim in nature pending creation of the Lakeland Regional Solid Waste management Study Committee.

76. February 28, 1973 Agreement between Borough and How-To. How-to agreed to permit the Borough to begin/continue a land filling operation on its property (southerly portion of Lot 14 no greater than ¼ of the area). Borough would have to secure the Cannon Mine shaft; land filling will require 3-feet of clean fill cover, top soil/seed; landscape; pest control; remove and distribute fill from westerly slope of lot 16 across lots 16, 15 and 14; complete roads A and B on preliminary subdivision map; cover daily, locked gate.
77. April 15, 1973 letter from RSWMA to Borough indicating RSWMA adopted a resolution that RSWMA and the Borough would jointly apply for landfill permit.
78. May 10, 1973 DEP inspects Borough landfill and find no deficiencies in their current operating area. (August 23, 1973 memo from Charles E. Gingrich, DEP to Bernhardt V. Lind).
79. -May 15, 1973 Borough submits a new engineering design to DEP naming RSWMA as applicant, not Borough. DEP is surprised. Design did not address necessary corrections for the steep slope on the westerly side of the landfill. (August 23, 1973 memo from Charles E. Gingrich, DEP to Bernhardt V. Lind).
80. June 1973 Ford memo from Robert Lawson. Ford intends to donate 100 acres to State of NJ and 45 acres to Housing Operations With Training Opportunity, Inc. (HOW-TO). Property was on the market for a year and no offers were made. Other dispositions were as follows:

Sale Public Service	208acres, 52acres
Sale High Point Homes	87, 18.6, 122acres
Donation to RSWMA	290acres

Memo further states:

The waste contractor for the Mahwah plant was given a permit to dump on the Ringwood property and the low areas and mines were

used for this purpose until mid 1971. The plant and the state were not satisfied with the contractor's service or his control of the dump site. His right to dump on the property was terminated, and the Company made efforts to get a new contractor and a permit for this contractor to use the Ringwood property as a landfill. After much effort, the state agreed to grant a permit, but subject to restrictions imposed by the North Jersey District Water Supply Commission, which controls a nearby reservoir. Plant engineering Office determined the restrictions could not practically be complied with and abandoned Ringwood property as a dump site.

The property was placed on the market in June 1972, just after Plant Engineering advised the site would not be of use to the Company as a dump site, so it is presently on the market.

We should seek a donation by first laying a foundation for the gift with the selected donor by securing from the donee a written request asking for the donation. The most likely candidates are the State of New Jersey (Department of environmental Protection) and "How-To, Inc.," a non-profit corporation funded by EOE and the State. We have such a letter from How-To, Inc., but not one from the State.

We could probably make a donation to How-To, Inc., sooner with fewer questions and less risk of inquiry and exposure as to the general condition of the property. We should determine whether How-To by its charter can receive donations and own real estate.

The state would be intrigued with receiving the property at no cost but also would be more suspicious and make more inquiry as to the general condition of the property. The state's Department of environmental Protection also has jurisdiction over solid waste disposal, and it would not take much of an inquiry for the State to determine that the former landfill presents some problems. Accordingly, the State could condition receipt of the gift and thereby cause Ringwood Realty Corp. cash expenditures not anticipated in a donation at this time. To effect a donation with the State will take a minimum of six months.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

July 28, 2005

Albert J. Telsey, Esq.
Maraziti, Falcon & Healey
150 John F. Kennedy Parkway
Short Hills, New Jersey 07078

Re: Ringwood Mines/Landfill Superfund Site - Legal Issues

Dear Mr. Telsey:

In your letter dated July 13, 2005, you raise some fundamental objections to the terms of the Settlement Agreement/Administrative Order on Consent which EPA has proposed to the Borough of Ringwood ("Borough") and to the Ford Motor Company ("Ford") for Supplemental Investigative work at the Ringwood Mines/Landfill Superfund Site in Ringwood, New Jersey ("Site"). You assert, in particular, that the Borough is not liable for response costs at the Site and that Ford is solely responsible for conducting and paying for response actions at the Site. You also assert that EPA has no legal right to identify hundreds of acres of Ringwood as a facility or site but rather must identify the specific locations at which hazardous substances are found as separate facilities.

EPA has reviewed your legal and policy arguments and disagrees with your positions for the reasons explained below.

I. Background

Ford's wholly owned subsidiary Ringwood Realty Corporation ("RRC") gave O'Connor Trucking and Haulage Corporation ("O'Connor") a license to carry out landfilling operations on RRC's property in Ringwood, New Jersey ("the RRC Property.") O'Connor also had a contract with Ford to dispose of industrial waste, including paint sludge, drums with obsoleted hardener and cardboard and other packing materials from Ford's Mahwah, New Jersey manufacturing plant. Between approximately 1967 and April 1971, O'Connor transported some or all of Ford's Mahwah industrial waste to the RRC Property and disposed of that waste in mining pits and at various other locations on the RRC Property. In November 1970, RRC transferred 289.89 acres of the RRC Property to the Borough of Ringwood. In 1973, RRC transferred approximately 100 acres of RRC Property to the New Jersey Department of Environmental Protection ("NJDEP") so the property could be added to the Ringwood State Park.

In 1983, EPA placed the Site on the National Priorities List and arranged for a Remedial Investigation/Feasibility Study ("RI/FS") and several removal actions to be conducted at the Site. In 1988, EPA issued a Record of Decision for the Site which called for a groundwater monitoring program and said that no additional paint sludge removal was necessary. In 1993, EPA announced it planned to delete the Site from the National Priorities List and asked for comments from the public. EPA consulted with NJDEP and Borough officials and reported that no one expressed concerns about the remedial work or objected to the delction. The Borough did ask EPA to require Ford to continue the groundwater monitoring.

Meanwhile, EPA was taking enforcement actions related to the Site. In 1988, EPA notified Ford that it was a potentially responsible party for response costs at the Site pursuant to section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9607(a). Pursuant to a series of EPA Administrative Orders, Ford conducted the RI/FS and several removal actions at the Site. In 1990, EPA notified the Borough that it was also a responsible party under section 107(a) of CERCLA. In 1993, EPA entered into a Consent Decree with Ford and the Borough in which both entities agreed to pay EPA's unreimbursed past costs.

In March 2004, attorneys for certain residents of Upper Ringwood invited officials from EPA and other federal agencies, NJDEP, and the Borough and representatives of the press to view areas where paint sludge remained at the Site. The residents' attorneys also conducted a public meeting at which they described their concerns about the remedial work that had taken place and demanded that all contamination be removed from the Site. EPA agreed to reevaluate conditions at the Site and to arrange for the removal of any paint sludge or other industrial waste that posed an unacceptable risk to the residents and the environment at the Site.

In the fall of 2004, Ford began a comprehensive reinvestigation of the Site. In early 2005, EPA proposed that Ford and the Borough enter a Settlement Agreement/Administrative Order on Consent for Supplemental Investigations at the Site ("Agreement"). The Agreement would include a Statement of Work which describes the components of the Supplemental Investigations and sets forth a schedule for the completion of the work. The Agreement would also require the payment of EPA's unreimbursed Past Costs as well as EPA's Future Costs for the Supplemental Investigations.

II. The Borough of Ringwood is liable for response actions and costs at the Site.

EPA has determined that the Borough is liable for response costs under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a) for the following reasons:

Section 107(a) of CERCLA provides that, subject only to the defenses set forth in section 107(b), certain specified persons shall be liable for all costs of removal or remedial action incurred by the United States Government or a State not inconsistent with the national contingency plan. These persons shall also be liable for any other necessary costs of response incurred by any other person consistent with the national contingency plan as well as for natural

resource damages and the costs of any health assessment or health effects study carried out under section 9604(I). The liable persons include the current owner and operator of a facility and any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were placed.

A. The Borough is the current owner of nearly 300 acres of the Site.

The Deed of Gift shows that the Borough acquired 289.89 acres of land from RRC in November 1970. That acreage is within the Site. The Borough still owns much of this acreage and is, therefore, the current owner of a substantial part of the Site.

You assert that the Borough acquired 35 acres of the former RRC Property that were not included in the original Deed of Gift by tax foreclosure in 1981 and is not, therefore, liable under CERCLA. You did not provide any documentation of the tax foreclosure action but, assuming the facts are correct, the 35 acre parcel is only a part of the former RRC Property which is currently owned by the Borough.

B. The Borough is a person who, at the time of disposal of hazardous substances at the Site, owned and operated a part of the Site.

Records also indicate that the Borough owned and operated a portion of the Site during an approximately six month period from November 1970 until sometime in April 1971 when O'Connor was disposing of industrial waste at the Site. It is likely that O'Connor was disposing of some or all of the waste in the Cannon Mine area of the Site during this time period. The Borough currently owns much of the Cannon Mine area. Before and after the O'Connor disposal period, the Borough also conducted disposal operations in the Cannon Mine area and other areas of the Site with municipal waste from Ringwood and New Milford. Municipal waste is known to contain hazardous substances from residential and commercial sources. Common sources of hazardous materials in municipal waste include lead and mercury from batteries, paint, paint thinner and other solvents, drain-opening chemicals, waste oil and oven-cleaner.

III. The Borough does not meet the requirements of the liability defense provided by section 107(b)(3) of CERCLA.

You also argue that the Borough is not liable because it has a defense under section 107(b)(3) of CERCLA, specifically that the contamination at the Site was caused by the act of a third party other than an employee or agent of the defendant, or other than one whose act occurred in connection with a contractual relationship, existing directly or indirectly with the defendant.

A. The Borough had a contractual relationship with RRC, a Ford subsidiary.

The defense under section 107(b)(3) is not available to the Borough because, as discussed above, the Borough did have a contractual relationship with Ford through Ford's subsidiary RRC. The documents cited in your submission include the November 2, 1970 Deed of Gift from Ford

subsidiary RRC to the Borough which establishes a contractual relationship between the Borough and RRC/Ford within the meaning section 107(b) (3).

Section 101(35)(A) of CERCLA, 42 U.S.C. § 9601 provides:

The term "contractual relationship", for the purpose of section 9607(b)(3) of this title, includes but is not limited to, land contracts, deeds, easements, leases, or other instruments transferring title or possession. . . .

B. The disposal or placement of hazardous substances at the Site took place both before and after the Borough acquired Site property. The Borough, moreover, knew that hazardous wastes had been disposed on the Site property.

Section 101(35)(A) further provides that a "third party" defense to liability will not be available if there is a contractual relationship

unless the real property on which the facility concerned is located was acquired by the defendant after the disposal or placement of the hazardous substance on, or in, the facility, and one or more of the circumstances described in the clause (i), (ii), or (iii) is also established by the defendant by a preponderance of the evidence:

The O'Connor contract to dispose of Ford's Mahwah wastes at Ringwood was not terminated until May 1971. The Borough acquired the Site property in November 1970.

Section 101(35)(A) (i), referred to above, requires a defendant to establish not only that all disposal of hazardous waste on a property was acquired before the defendant acquired the property but also that it did not know, and had no reason to know that any hazardous substance which is the subject of the release or threatened release was disposed of on, in or at the facility.¹

Even if the disposal of all the hazardous substances from Ford's plant at the Site had taken place before the Borough acquired the property, the Borough cannot avail itself of the "innocent landowner defense" because it knew that industrial waste had been disposed of on, in and at the facility before it acquired the property.

¹ Section 101(35)(A)(ii) refers to government entities that acquire property involuntarily or by exercising eminent domain. This would apply to property that the Borough acquired by tax default. Section 101(35)(A)(ii) refers to defendants who acquire property through inheritance or bequest.

Section 101(35)(B) provides in subparagraph (i);

To establish that the defendant had no reason to know of the matter described in subparagraph (A)(i), the defendant must demonstrate to a court that - (I) on or before the date on which the defendant acquired the facility, the defendant carried out all appropriate inquiries, as provided in clauses (ii) and (iv), into the previous ownership and uses of the facility in accordance with generally accepted good commercial and customary standards and practices;

Documents provided by the Borough and Ford in response to EPA's Requests for Information provide substantial evidence that Borough officials were well aware that O'Connor was disposing of industrial waste from Ford's Mahwah plant at the Site. See, for example, the January 3, 1968 letter from the Borough Clerk to the Borough Board of Health indicating that O'Connor has a contract with Ringwood Realty in order to conduct sanitary landfill operation using "primarily industrial refuse and dirt fill" and that the Borough will continue to dump the Borough's heavy trash in this area also. In fact, Borough wastes were layered with Ford's industrial wastes in several locations, including the Cannon Mine Pits. See also the August 1970 letter from Borough Mayor Kulik to Ford which says that "[t]he Ringwood Council and myself have permitted the dumping of all the industrial waste from the Mahwah assembly plant to be disposed of in this area known as the Ringwood Mines."

C. Since acquiring the property, the Borough has not taken the reasonable steps required by the section 107(b)(3) defense to prevent or limit human or environmental exposure to hazardous substances.

In addition to the knowledge requirement, section 107(b)(3) of CERCLA requires the defendant arguing a third party defense to demonstrate it has exercised due care with respect to the hazardous substances at the facility or that it took precautions against the foreseeable acts or omissions of the third party involved and the consequences that could foreseeably result. The required steps are specified in more detail in section 101(35)(B) (II) of CERCLA. This provision requires a defendant to demonstrate it took reasonable steps (after acquiring the property) to - (aa) stop any continuing release; (bb) prevent any threatened future release; and (cc) prevent or limit any human, environmental, or natural resource exposure to any previously released hazardous substance.

There is no evidence in the record that the Borough took any precautionary steps during or after the O'Connor disposal period in 1970-71. In a letter dated November 24, 1967, Borough Health Officer Betts told the Mayor and the Council that he had notified RRC to discontinue dumping in the mine holes on its property. He notified the Council that all dumping must be discontinued. In its January 2, 1968 response, the Council advised him, as discussed above, that O'Connor had an agreement with RRC to dispose of industrial refuse and that the Borough would continue dumping in this area as well. The Council advised Mr. Betts that if, after an inspection, the dumping site did not meet with his approval, they would appreciate his "further comments." He responded that although he believed the agreement was illegal, he would abide by that so long

as no violations occurred. In fact, O'Connor continued to dispose of industrial waste at the Site for three more years. In 1972, NJDEP cited the Borough for violations in the Cannon Mine area, including failure to comply with landfill regulations and failing to prevent fires in landfilled mine pits.

There are currently no fences and no signs on Borough property which might limit human exposure to hazardous substances in the areas in which paint sludge and other wastes were disposed of and can be found today. The Borough has not taken any action even when residents and EPA have pointed out paint sludge which remain on Borough property, including "sludge hill" in the Cannon Mine area and in the former O'Connor Disposal area.

III. EPA has appropriately identified much of the area formerly owned by RRC as a facility for purposes of response under CERCLA.

You also argue that EPA has no legal basis for calling hundreds of acres a "facility" for the purposes of the proposed Agreement. However, as you noted in your letter, section 109(a) of CERCLA provides that a facility can be any site or area where a hazardous substance has been deposited, stored, disposed of, or placed. As we have discussed, Borough residents and their attorneys have pointed out to Borough officials, EPA, NJDEP, and the media, that paint sludge from Ford's Mahwah plant is still found at the Site. Ford is currently conducting a Site Reconnaissance Survey and has found significant amounts of paint sludge remaining in various areas of upper Ringwood. These areas include "sludge hill" and other parts of the Cannon Mine Area and the O'Connor Disposal Area, both Borough properties. Paint sludge has been found on at least one residential property as well as on an abandoned road (also Borough property) which is being used by another group of residents as part of their property. Contrary to statements in your letter, Ford has not yet removed any of this paint sludge. (Ford has removed some paint sludge from the state park.) Since the paint sludge and some drum remnants have been found in various areas of the former RRC property, EPA has determined that it is prudent to investigate that entire property and some adjacent property to make sure that all areas of industrial waste have been identified.

IV. Federal case law supports EPA's determination that the area can be considered one facility or site.

In support of your argument that EPA cannot legally identify a large area as one facility, you cite the case Sierra Club v. Seaboard Farms, 387 F. 3d 1167 (C.A. 10 Okla. 2004). In that case, the owner of a large farm argued that an entire farm complex could not be a facility but that individual contaminated areas should be identified as individual facilities within the farm complex. The court held, however, that the farm complex as a whole, as opposed to every barn, lagoon and land application area within the complex, constituted a single "facility" under CERCLA.

This holding is consistent with that of other courts that have considered the issue. In United States v. Rohm and Haas Co., 2 F.3 1265 (3d Cir. 1993), a case within our federal circuit, the court examined liability under Section 107 of CERCLA in a situation where an owner argued it was not "the owner" of a facility because it owned less than 10% of the contaminated area. This defendant had asserted that EPA, when faced with a release involving several disparately owned properties, must define each property as a facility and bring separate enforcement actions against the owners.

The court disagreed and stated "we think it evident from the broad statutory definition of 'facility' that Congress did not intend EPA to be straight-jacketed in this manner in situations involving a release transcending property boundaries." *Id.* at 1279. The court went on to say:

[w]e decline to attribute to Congress an intention to distinguish between single owner and multiple owner situations. A current owner of a facility may be liable under § 107 without regard to whether it is the sole owner or one of several owners. . . . [w]e do recognize that holding the owner of a small portion of the site jointly and severally liable for response costs for the whole site may involve some unfairness. However, the solution to this potential unfairness is apportionment and contribution in appropriate circumstances. *Id.* at 1279, 1280.

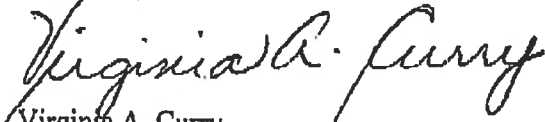
In another case, Akzo Coatings, Inc. v. Aigner Corp., 960 F. Supp. 1354 (N.D. Ind. 1996), certain defendants argued that because the Site in this case could be divided into five distinct geographic areas, each area was a distinct facility. The court found that what mattered for purposes of defining the scope of facility is where the hazardous substances have come to be located. There was no dispute that hazardous substances had "otherwise come to be located" in several locations at that Site. EPA had placed the entire area where wastes from a chemical manufacturing plant had come to be located on the National Priorities List as a whole, and not as separate and distinct facilities, and had consistently treated that entire site as one facility. The court said that

[t]o suggest otherwise [than identifying this whole area one facility] could have disastrous consequences, for ultimately every separate instance of contamination, down to each separate barrel of hazardous waste, could feasibly be construed to constitute a separate CERCLA facility. To require a plaintiff to establish the liability of a defendant with respect to each separate facility at this level would defeat the purpose of imposing strict liability under CERCLA, because it would require a plaintiff to trace each harm to a defendant before liability for contribution may be imposed. *Id.* at 1359.

The Akzo court went on to state "that the harm may be divisible based upon geographic location goes not to the issue of liability under § 107 but to the allocation of contribution under § 113." *Id.*

During investigation phases of response actions, EPA often identifies large study areas to be investigated and conducts the activities in phases. Your letter identifies the Borough's real concern when you say that the Borough supports the investigative activities but does not believe it should have to pay for any of them. EPA does expect Ford to take care of most of the proposed work and expenses. EPA, however, also identified the Borough as a responsible party more than ten years ago for the reasons discussed above. We urge you to work with Ford to complete a thorough investigation of the Site.

Yours truly,



Virginia A. Curry
Assistant Regional Counsel

cc: David Hayes, Esq.
John Corbett, Esq.

Exhibit B

4-11-68

matter was referred to the Borough Attorney and the Borough Engineer.

A letter dated April 4, 1968 and a certified copy of a resolution adopted by the West Milford Township Committee was presented and read. This represents agreement by the Township of West Milford, granting the Borough of Ringwood temporary use of the Township Dumping area for the disposal of garbage collected in Ringwood, in return for providing landfill for cover and permission to the West Milford Township to dispose of heavy trash in Ringwood on property owned by the Ringwood Realty Corp. This communication and resolution was ordered placed on file.

A letter dated April 11, 1968 from the Skyline Lake Volunteer Fire Department was presented and read. This letter offered the use of the Old Firehouse located at 67 Edgewood Road for the purpose of Registration and Polling Place for the Second Election District. This letter was ordered placed on file.

A letter dated April 1, 1968 from the Ringwood Cooperative Nursery School, requested the assistance of Special Police for an affair to be held at the Peter Cooper School on April 20, 1968. The Borough Clerk was directed to answer this communication, advising it would be necessary for the Ringwood Cooperative Nursery School to engage and to pay for any Special Police who would be necessary for this activity.

A letter dated April 8, 1968 from Borough Engineer Schilling was presented and read. The letter stated that upon inspection of the W. Pfefferkorn property on High Mountain Road, it has been verified that a well used to service this property has been located within the present right of way limits of High Mountain Road.

Mr. Pfefferkorn was in the audience and addressed the Council briefly on the problem he has encountered due to the location of the well. This matter was discussed at length but Mr. Pfefferkorn was advised that there is nothing the Borough could do for him in connection with this encroachment.

At this time a delegation from West Milford Lodge No. 2236, Benevolent and Protective Order of Elks, presented a wheelchair to the Ringwood Ambulance Corps., Inc., Mayor Van Voorhis expressed his deep gratitude to the Elks for their kindness in presenting this wheelchair for the Citizens of Ringwood.

A letter dated April 9, 1968 from Skyline Lakes Women's Club was presented and read. The Mayor thanked the Ladies from Skyline for their suggestion concerning the erection of signs in their area and turned the matter over to the Chairmen of the Road and Police Committees for attention.

A letter dated April 9, 1968 from August W. Fischer, Esq., concerning property owned by Carl Strautmalis, Block 838, Lot 30. In his letter Mr. Fischer stated that he had advised Mr. Strautmalis that he is within his rights to stop the flow of water through his property at the boundary. This matter was referred to the Road Committee for attention.

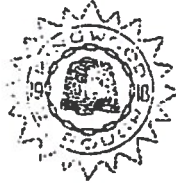
A letter dated April 11, 1968 from the residents of the Harrison Mountain Lake Road was presented and read. Permission was granted to the residents on this road to hire the Borough Grader and other equipment necessary to grade Harrison Mountain Lake Road and payment for the use of the equipment and the compensation of the members of the Road Committee will be paid by these residents as in the past.

Councilman Reed, seconded by Councilman Calvino, moved that permission be granted to the Capuchin Sisters to hold an On-Premise and a Non-Draw Raffle to be held at the Convent on May 18, 1968.

On roll call, Councilmen Calvino, Kulik, Peters, Reed and Woodier voted "aye". "Nays", none. Councilman Mark had been called from the meeting at this time. The mayor declared the motion carried.

Exhibit C

Borough of Ringwood



3
Main office file
given copy.

VIOLET E. BOGERT
BOROUGH CLERK

60 MARGARET KING AVENUE
RINGWOOD, NEW JERSEY 07456

January 3, 1968

Board of Health
Ringwood, New Jersey

Re: Dumping in the Mine Area

Gentlemen,

I have been directed by the Mayor and Council to advise that O'Connor Trucking & Haulage Corp. has made an agreement with Ringwood Realty to lease the property known as Ringwood Mines in order to conduct a sanitary landfill operation using primarily industrial refuse and dirt fill.

We have been advised that all state and local health and air-pollution codes will be carefully observed, that proper fire equipment will be maintained on a stand-by basis, and that there will be no garbage dumped in this area.

It is the intention of the governing body to continue to dump the borough's heavy trash in this area also.

If upon your inspection this site does not meet with your approval we would appreciate your further comments.

Very truly yours,

[Signature]
Violet E. Bogert (Mrs.)
Borough Clerk

veb
bcm

Hand typing

*De Board Health
1/3/68*

Exhibit D

BOROUGH OF RINGWOOD

PASSAIC COUNTY
NEW JERSEY

OFFICE OF THE
MAYOR
RINGWOOD, N. J.

23 Walker Dr.
Ringwood, N.J.

VICE PRESIDENT
CIVIC & GOVERNMENT
AFFAIRS

Mr. Henry Ford
Ford Motor Company
Dearborn, Michigan

1970 AUG 27 PM 12:55

VICE PRESIDENT
PUBLIC AFFAIRS

1970 AUG 27 PM 10:47

Dear Sir:

Approximately six years ago the Ringwood Realty Company purchased eight hundred acres in the Borough of Ringwood. The Ford Foundation or Ford Company were seriously involved with several programs which never did materialize. One of the problems at that time which still remains is, there are many hundreds of people, (minority group) living in the area. You may be aware the Ringwood council and myself have permitted the dumping of all the industrial waste from the Mahwah Ford assembly plant to be disposed of in this area known as the Ringwood Mines. There have been several major fires in the area because of the volatile nature of the waste. We have received complaints from our fire departments and other organizations in the borough.

For the last six months, I have been meeting and negotiating to buy the remainder of the mine tract from the Kislak Realty Company. It is my intention to create a solid waste program which will be municipally operated. A revolutionary process will be used to dispose of garbage and industrial waste. I have traveled to England to see this equipment which in my opinion is the greatest ecological advancement for solid waste disposal to date.

The Mahwah plant will be welcome to participate in this program, I might add the final product is virtually fire resistant.

The Ford Company and several of us in Ringwood have been the victims of adverse publicity in the past, therefore, I am offering the Ford Motor Company or the Ford Foundation an opportunity to participate or contribute in the overall improvement of this area. I would welcome any support that may be given to the people living in the area or to the municipality. The overall project will certainly be mutually beneficial. I certainly would appreciate your comments.

Yours truly,

John Kulik

John Kulik, Mayor

Exhibit E

Ringwood Mayor Unveils New Anti-Pollution Plan

Book 2, page 1

RINGWOOD — In a bid to eliminate some of the pollution plaguing his borough and the county, Mayor John Kulik Tuesday announced a new method of fighting the pollution crisis through the use of a solid waste disposal plant which will pulverize the refuse into an innocuous, inert material.

Currently, the township dumps refuse into the numerous abandoned mine shafts in the area. This landfill program, however, has proved to be unsatisfactory because of the constant threat of soil pollution and fire.

The landfill area in Ringwood is also used by neighboring communities and the Ford Motor Company in Mahwah.

Result of Study

The announcement was the culmination of almost a year of study and investigation into the various feasible methods of solid waste disposal.

Mayor Kulik stated that "the present methods of solid waste disposal, not only in Ringwood but in the entire country, are inadequate and totally incompatible with the needs of a constantly growing population."

Noting that these methods contribute considerably to environmental pollution, the mayor stressed that the "very survival of our nation depends on how acceptable a solution we find to the problems of solid waste disposal."

The proposed disposal method has been used successfully in Europe, and Kulik stated that "if Ringwood can put a positive plan of solid waste disposal into action it will not only serve the community but it will be an example for the rest of the country."

How to Meet Costs

To help defray the expenses for the new plant, Kulik would convert the 400-acre tract of land presently used for landfill into usable property, thus attracting new industry and increasing community revenues. In addition, outside parties desiring to use the disposal plant would be charged for the use of the facilities.

Kulik stated that one of the main advantages of the entire process is the end product: "the inert material produced by the disposal unit can be used in many ways," the mayor pointed out. "When used for landfill, the material goes through a fermentation process which makes it impossible for the breeding of rats, mice and insects; when mixed with the proper chemicals, the material actually improves the texture and fertility of the soil."

He said that potentially valuable scrap metals could be sorted out by the machine, and that it would produce no unpleasant odor.

"Most important of all," said Kulik, "this new process will eliminate all air, water and soil pollution by solid waste."

The mayor said, "I have spent the last 11 months trying to solve Ringwood's most pressing problems, while also trying to find a solution to the massive clean-up job this country is facing. I feel that the program I have outlined today will be a major step in making Ringwood a leader in this giant struggle to save our nation's environment."

Program's Phases

In a program Tuesday afternoon at the Suburban Restaurant, Wanque, Kulik outlined advantages of the program, such as the elimination of atmospheric



MAYOR JOHN KULIK
Announces Plan

ic pollution; rodent and insect infestation; the risk of spreading disease by such carriers as birds, insects, rodents, and drainage; odor and excessive noise.

Other advantages are the low operating labor requirements and minimal land use of the machines, and that the machines will accept unsorted refuse, including cans, bottles, ashes, paper, cardboard, plastic bones, vegetables, putrescence, and bulky items such as concrete blocks, refrigerators furniture and lumber.

The purpose of the presentation was to show how a small municipality could solve its waste and garbage problems at a minimum cost, in a most efficient and uncomplicated manner, "with no atmospheric pollution," Kulik said.

September 16, 1970
from PASSAIC - column of the
PATERSON EVENING NEWS

Exhibit F

August 30, 1973

Mr. John J. Ryan
Moran Adjustment Bureau, Inc.
395 Springfield Avenue
Berkeley Heights, N.J. 07922

Re: Your File #123-139 - Claim #4129-302
Raymond Dougherty vs. Ringwood Solid Waste Management Authority
D/L 4/4/71

Dear Mr. Ryan:

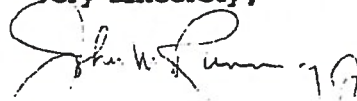
I am in receipt of the letter with interrogatories dated August 27.

On August 23, another member of the Authority resigned and as I expect there will not be a formal meeting of the Authority, with a quorum for some months, I want you to know that the interrogatories cannot be answered by a member of the Authority excepting someone who has the knowledge or authority to sign the answers. As I explained to you on the telephone, the five men in the Authority has changed its membership totally and as ^{many} of the members have moved out of town, I am informed they know no more than what was put down on the police report. In the light of the fact that they have no knowledge other than what is said in the police report, I ask you to prepare the answers to the interrogatories.

As the Borough of Ringwood, through its aegis with O'Connor Trucking, was actually operating a kind of dump for solid refuse material and the road was transversed by O'Connor Trucking, it seems to me that the answers with regard to the roads, signs and contract relationship should really be placed with the municipal body. As I indicated to you, I believe the municipal body to be a necessary part of this suit with O'Connor Trucking. Again repeating that the Authority, a part time group who meet once a month, have no personal knowledge (most having left town already) regarding physical facts.

If you do not send me answers to interrogatories based on this letter, I will await having a meeting of the Authority and will then give you the answers the members of the Authority give me.

Very sincerely,



JMR:jh

Exhibit G

Photo Log
 Trenching Activities in O'Connor Disposal Area
 January through February 2010
 Ford Ringwood, Ringwood, New Jersey



Date	Time	Description	Photo
1/19/2010	10:45	T1-0+88 transit. Excavation pile lifted from trench displaying subsurface household trash.	
1/20/2010	13:20	T1-1+16 transit. Lithology of trench on east sidewall. Deposit of debris mixed with minetailing in gray area.	

Photo Log
 Trenching Activities in O'Connor Disposal Area
 January through February 2010
 Ford Ringwood, Ringwood, New Jersey

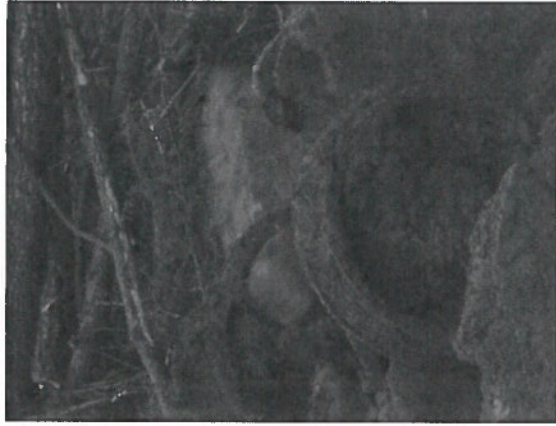

Date	Time	Description	Photo
1/25/2010	15:10	T8-2+00 transit. 5.11 to 7.4 feet bsg. tires and axel.	
1/25/2010	15:10	T11-2+00 transit. Excavation pile lifted from trench displaying non-native backfill of blast material.	

Photo Log
 Trenching Activities in O'Connor Disposal Area
 January through February 2010
 Ford Ringwood, Ringwood, New Jersey



Date	Time	Description	Photo
1/26/2010	11:30	T1-2+78 transit. Excavation pile lifted from trench displaying non-native backfill of blast material.	
1/27/2010	8:50	T1-4+10 transit. Excavation pile lifted from trench displaying non-native backfill of blast material and household debris.	

Photo Log
 Trenching Activities in O'Connor Disposal Area
 January through February 2010
 Ford Ringwood, Ringwood, New Jersey



Date	Time	Description	Photo
1/27/2010	11:20	T7-1+00 transit. Lithology of west sidewall approximately 9.5-10.5 feet bsg displaying household/industrial debris with a daily coat layer.	
1/27/2010	11:21	T7-1+00 transit. Lithology of east sidewall approximately 9.5-10.5 feet bsg displaying household/industrial debris with a daily cover layer.	

Photo Log
 Trenching Activities in O'Connor Disposal Area
 January through February 2010
 Ford Ringwood, Ringwood, New Jersey


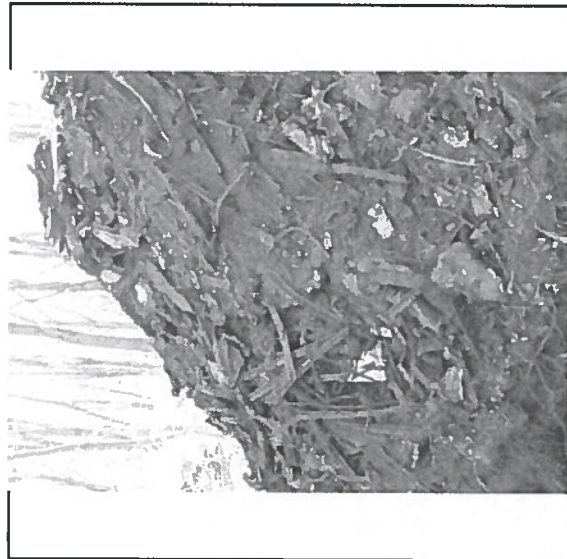
Date	Time	Description	Photo
1/28/2010	11:07	T1-6+10 transit. Excavation pile lifted from trench displaying subsurface household/ industrial debris.	
2/1/2010	11:48	T6-4+00 transit. Excavation pile lifted from trench displaying subsurface household/ industrial.	

Photo Log
 Trenching Activities in O'Connor Disposal Area
 January through February 2010
 Ford Ringwood, Ringwood, New Jersey



Date	Time	Description	Photo
2/1/2010	13:15	T6-3+00 transit. Excavation pile lifted from trench displaying subsurface household/ industrial debris.	
2/2/2010	9:49	T11-7+10 transit. Lithology of west sidewall displaying household and industrial debris with daily cover layer.	

Photo Log
 Trenching Activities in O'Connor Disposal Area
 January through February 2010
 Ford Ringwood, Ringwood, New Jersey


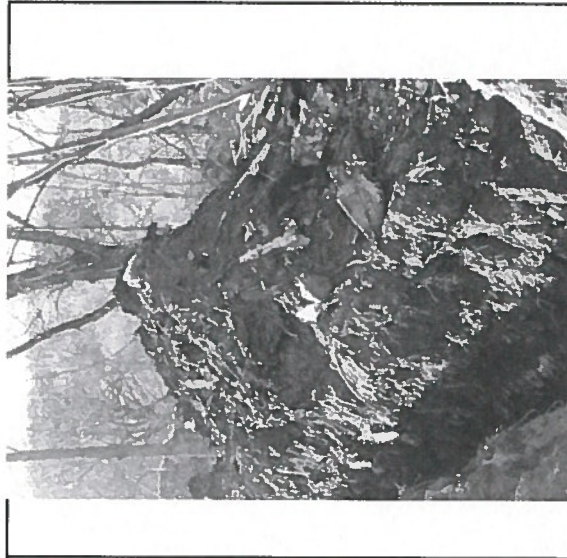
Date	Time	Description	Photo
2/2/2010	11:11	T1-7+97 transit. Excavation pile lifted from trench displaying subsurface household/ industrial debris.	
2/8/2010	15:35	T5-3+00 transit. Excavation pile lifted from trench displaying subsurface household/ industrial cover layer.	

Photo Log
 Trenching Activities in O'Connor Disposal Area
 January through February 2010
 Ford Ringwood, Ringwood, New Jersey



Date	Time	Description	Photo
2/9/2010	7:57	T5-1+90 transit. Lithology of west sidewall displaying household and industrial debris with daily cover layer.	
2/9/2010	7:57	T5-1+90 transit. Excavation pile lifted from trench displaying subsurface household/ industrial cover layer.	

Photo Log
Trenching Activities in O'Connor Disposal Area
January through February 2010
Ford Ringwood, Ringwood, New Jersey


Date	Time	Description	Photo
2/9/2010	7:57	T2-4+90 transit. Lithology of west sidewall displaying household and industrial debris with daily cover layer.	

Exhibit H



State of New Jersey
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF ENVIRONMENTAL QUALITY
 JOHN FITCH PLAZA, P. O. BOX 1390, TRENTON, N. J. 08625

NOTICE OF PROSECUTION

(Ringwood Borough)
 (c/o Borough Clerk)
 (60 Margaret King Avenue)
 (Ringwood, New Jersey 07456)

RE: N.J. Administrative Code
 Chapter 26 (Bureau of Solid
 Waste Management)
 ORDER, Dated December 8, 1972

Violation Occured on Premises
 Known As: Cannon Mine Disposal Site
 Cannon Mine Road
 Block 600, Lot 12
 Ringwood Borough
 Passaic County, New Jersey

Dear Sir:

Investigation(s) by this Department on August 21, 1973 discloses violation(s) of the N.J. Administrative Code 7:26-2.6,-2.8 (formerly Chapter VIII, Regulation(s) 6, 8, of the New Jersey State Sanitary Code) and referenced ORDER. The maximum penalty that may be levied for these violation(s) is \$2,000.

Prosecution is being withheld until October 5, 1973 to allow for settlement of a claim for a penalty against you in the amount of \$600. Should you desire to settle your claim, payment must be made on or before this date by money order or check drawn to the order of the New Jersey State Department of Environmental Protection. In the event payment is not made within the time specified, this case will be referred to the Office of the Attorney General for prosecution.

*went
 face
 junk*

PROBLEM: Because back is about 100 ft high !!
N.J. Administrative Code 7:26-2.6(b)3 The investigation disclosed that Ringwood Borough has failed to correct violation of bulky items protruding through the side slope as stated in referenced Order.

*Put more
 cones on
 flammable
 so along
 clear full
 only !!*

N.J. Administrative Code 7:26-2.8 The investigation disclosed that Ringwood Borough has failed to extinguish a smoldering fire as stated in the referenced Order.

DATED September 5, 1973

Richard D. Goodenough
 Richard D. Goodenough, Director

All from Bros Truck to go into proper landfill with "garbage"

Exhibit I

RINGWOOD SOLID WASTE MANAGEMENT AUTHORITY

MINUTES

A regular meeting of this Authority was held on Thursday, March 22nd, 1973, at 8:25 P.M., at the Borough Hall, Ringwood, New Jersey. The meeting was called to order by Chairman Bassett.

Present were Messrs. Bassett, Ryan and Kulik. Messrs. Dimidjian and Petzold were absent (Mr. Petzold attended the meeting at 9:15 P.M.).

Also present were Messrs. Ferraioli, Leidy, Running, Van Voorhis and Florman.

Resolution #182

Introduced: K. Ryan

Seconded: B. Bassett

RESOLVED that the Minutes of the March 1st, 1973 meeting be approved.

<u>Roll Call</u>	<u>Yes</u>	<u>No</u>
Bassett	X	
Kulik	Abstain	
Ryan	X	

Bills and Communications: An Annual Report of Division of Pensions, State of New Jersey; a Bond on Mr. Van Voorhis from Bischoff Insurance Agency, together with a statement of premium in the amount of \$60.00; copy of a letter from Mr. Running to Hearing Officer, Bureau of Housing Inspection regarding jurisdiction, dated 3/2/73; a Memo regarding Social Security reported dated 3/10/73, was received from the State; the Quarterly Report of Wages paid was received from the State; a copy of a letter from Mayor Peters to Mr. Charles Mathews, Chief, Bureau of Housing Inspection, dated 2/15/73, was received; copy of letter from Mayor Peters to Mr. Kramer, Commissioner Department of Community Affairs regarding request of funding for How To was received; two groups of Applications for Certificates of Registration from the State of New Jersey dated 2/16/73, were received; a letter from the Department of Health regarding the forwarding of the names and addresses of licensed operators of the water system was received; a letter from the DEP, Mr. Slinsky, reminding the Authority of the action on the upgrading of the Mine Area water system.

Mr. Leidy noted that in November a report was submitted on this and at that time Aqua Associates was in the Borough's employ. He said the report suggested that the Authority discuss with them services and make several repairs to the system—to seal all openings in the pump house floor, to lock the pump house door and to improve monthly samplings. He said Phase II of this report included chlorination.

Mr. Bassett said it might be in the Authority's interest and in the interest of the Mine Area to have this system chlorinated.

Mr. Leidy said it would take approximately one month to draw up proposals and plans and would make a recommendation at the next meeting.

Resolution #183

Introduced: B. Bassett

Seconded: J. Kulik

RESOLVED that the Engineer be authorized to prepare a proposal to install adequate chlorination equipment in the pump house and to have those proposals available for the next meeting of this Authority.

<u>Roll Call</u>	<u>Yes</u>	<u>No</u>
Bassett	X	
Kulik	X	
Ryan	X	

Mr. Bassett stated that with regard to the letter from the Department of Environmental Protection the Authority's reply should incorporate the original report of the Engineer recommending improvements to the system, the November 2 nd, 1972 Memorandum from the Engineer, and the Resolution of tonight's meeting to provide chlorination equipment.

The applications for Certificates of Registration from the State were to be held in abeyance until word is received on the appeal with the Department of Community Affairs.

Mr. Ryan stated in regard to the water system that the letter should also include a statement that it is anticipated that by July 1st the system will be functional and repairs to the pump house will have been made as required, in view of the financial situation of the Authority.

Further correspondence included receipt of a letter from Linda Mann regarding House #73. The letter stated she would like to rent this house.

(Mr. Petzold attended the meeting at this time)

Mr. Van Voorhis stated that House #73 is Sheilah Millegan's house and in his opinion is in deplorable condition.

Mr. Kulik suggested that the house should be looked at by the members before it is to be rented. He said if it is bad, it should be torn down.

Mr. Van Voorhis said there would be a problem because there was a family living on the other side. He said it is one house with a partition through the middle. He said he has had all kinds of requests from people to rent this house, but in his opinion the house was unlivable.

The secretary was directed to complete the Quarterly Report received.

Mr. Ferraioli said that since the Authority would not be meeting before April 15th, a resolution was needed to pay the Quarterly Taxes.

Resolution #184

Introduced: J. Kulik

Seconded: K. Ryan

RESOLVED that the proper officers are directed to sign the checks to pay the Withholding, Social Security and Pension Insurance taxes as required.

<u>Roll Call</u>	<u>Yes</u>	<u>No</u>
Bassett	X	
Kulik	X	
Petzold	X	
Ryan	X	

Resolution #185

Introduced: K. Ryan

Seconded: H. Petzold

RESOLVED that the Authority pay the following bills:

Orange & Rockland Electric Co.	\$192.07
Bischoff Insurance Agency (bond on P. Van Voorhis)	60.00

<u>Roll Call</u>	<u>Yes</u>	<u>No</u>
Bassett	X	
Kulik	X	
Petzold	X	
Ryan	X	

Resolution #186

Introduced: B. Bassett

Seconded: K. Ryan

RESOLVED that this Authority, as the applicant on premises for a sanitary landfill operation, join with the Borough of Ringwood as operator for the landfill, in filing the proper applications to provide for a permit for the disposal of solid waste generated within the municipality.

<u>Roll Call</u>	<u>Yes</u>	<u>No</u>
Bassett	X	
Kulik	X	
Petzold	X	
Ryan	X	

Mr. Kulik said he had read that people are offering Ringwood as a regional garbage landfill. He said this offering cannot be made without the consent of this Authority.

Mr. Leidy said this Authority is the exclusive operator of solid waste.

Resolution #187

Introduced: H. Petzold

Seconded: K. Ryan

RESOLVED that the regular meeting of this Authority be held on the fourth Thursday of each month, at 8:00 P.M. at the Borough Hall, Ringwood, New Jersey.

<u>Roll Call</u>	<u>Yes</u>	<u>No</u>
Bassett	X	
Kulik	X	
Petzold	X	
Ryan	X	

Resolution #188

Introduced: B. Bassett

Seconded: K. Ryan

RESOLVED that a work meeting be held on the Monday preceding the regular meeting date, at the Borough Hall, Ringwood, New Jersey, at 8:00 P.M.

<u>Roll Call</u>	<u>Yes</u>	<u>No</u>
Bassett	X	
Kulik	X	
Petzold	X	
Ryan	X	

Treasurer's Report: Mr. Ryan reported that the bank balance as of 2/28/73 was \$14,010.75.

Committee Reports: None

The following committees were appointed by the Chairman:

Finance Committee	Messrs. Kulik and Ryan
Building & Grounds	Messrs. Ryan and Petzold
Construction Committee	Messrs. Bassett and Petzold
Liaison to Mayor & Council	Mr. Ryan
Operating Committee	Mr. Kulik
Rates & Charges Committee	Mr. Dimidjian
Public Relations Committee	Mr. Bassett

Auditor's Report: None

Engineer's Report: Mr. Leidy asked to see the current electrical bill and stated he had nothing to report other than what was discussed previously.

Attorney's Report: Mr. Running submitted a short opinion on Housing Authorities which would be discussed at the next work meeting.

The Chairman asked if there was any unfinished or new business.

Mr. Ed Florman was present and asked to discuss with the Authority easement

requirements. He said he owned the property across the street from Authority property and made an appeal to the Freeholders of the County who overruled the Planning Board and approved his subdivision subject to the conditions of a comprehensive drainage study and asked him to deed a strip of land 3 feet wide along the entire frontage plus an additional 12 foot easement for possible additional widening. He said in his opinion the proper way would be to take 3 feet from his property, 3 feet from the Authority's property, an additional 6 feet from his property and 6 feet from the Authority's property to avoid a jog in the road. He felt if the Authority would give 7 feet as an easement and a dedication of 3 feet it would made for better planning.

Mr. Bassett said the disadvantage would be the Authority would be losing bargaining power that Mr. Florman's subdivision gave him. He said he felt if the Authority had already given the County an easement it may want other concessions when it came time to develop the land. He said he was reluctant to give public land away without getting anything for it. He said he suggested that Mr. Florman give the County the 12 foot easement and let them worry about the planning aspect.

Resolution #189

Introduced: H. Petzold

Seconded: K. Ryan

RESOLVED that the Authority authorize the proper officers to open a safety deposit box with First National Bank of New Jersey, at a cost not to exceed Fifteen Dollars.

<u>Roll Call</u>	<u>Yes</u>	<u>No</u>
Bassett	X	
Kulik	X	
Petzold	X	
Ryan	X	

Concerning the repairs to the pump house, the secretary was directed to write to Mr. Jack Wichterman, saying that the Authority would appreciate the Road Department's fixing the cement floor in the pump house and sending the voucher to the Authority, and to check with Mr. Leidy for details.

Mr. Van Voorhis reported that rents collected for February were \$1,095.00 and approximately \$1,000.00 for March, so far.

Mr. Running requested Mr. Van Voorhis give him a list of the tenants to show who did not pay.

The Chairman asked if there was any further new or unfinished business, and there being none, a motion made by Mr. Ryan and seconded by Mr. Petzold to adjourn the meeting was unanimously approved. The next regular meeting will be held on Thursday, April 26th, 1973, and the work session will be held on Monday, April 23rd, 1973. The meeting was adjourned at 10:12 P.M.

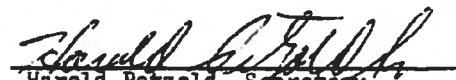

Harold Petzold, Secretary

Exhibit J



State of New Jersey
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF ENVIRONMENTAL QUALITY
JOHN FITCH PLAZA P. O. BOX 2807 TRENTON, N. J. 08625

May 24, 1974

Mayor & Council
Borough of Ringwood
Borough Hall
60 Margaret King Avenue
Ringwood, New Jersey 07456

Gentlemen:

Attached herewith is a Notice of Prosecution which indicates that you have violated the New Jersey State Sanitary Code as determined by recent departmental investigations conducted on your premises. The maximum statutory penalty provided by law for each violation is a fine of up to \$1,000 per day and an injunctive order of the Superior Court.

The Notice of Prosecution constitutes an offer by the Department to amicably compromise its claim for the maximum penalties through payment of the specified settlement sum. Should this payment be received by the indicated date, you will be eligible to apply by written request for a rebate. The Department is authorized to rebate up to 90 percent of any penalties paid after a suitable waiting period during which there are no subsequent violations.

If settlement is not received by the indicated date, the matter will be referred to the Office of the Attorney General with the recommendation that he seek the maximum penalties as described above.

Should you have any questions regarding these matters, please feel free to contact the undersigned at Area Code 609-292-7645.

Very truly yours,

Bernhardt V. Lind

Bernhardt V. Lind
Chief
Bureau of Solid Waste Management

FC:omt
Attachment



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION
SOLID WASTE ADMINISTRATION
TRENTON, 08625

BEATRICE S. TYLUTKI
DIRECTOR

NOTICE OF PROSECUTION

(Borough of Ringwood)
(60 Margaret King Avenue)
(Ringwood, New Jersey 07456)

Violation Occurred on Premises
Known As:

Block 601, Lot 13
Pipeline Road
Borough of Ringwood
Passaic County

Dear Sir:

Investigation by this Department on August 20, 1976 disclosed violation of New Jersey Administrative Code 7:26-2.2.1 and 2.2.2. The Maximum penalty that may be levied for each violation is \$1,000 per day.

Prosecution is being withheld until October 1, 1976 to allow for correction of the violation and settlement of a claim for a penalty against you in the amount of \$500. Should you desire to settle your claim, payment must be made on or before this date by money order or check drawn to the order of the New Jersey State Department of Environmental Protection. In the event payment is not made and/or the violation has not been corrected by the indicated date, this case will be referred to the Office of the Attorney General for prosecution.

- N.J.A.C. 7:26-2.2.1 - The investigation disclosed that the Borough of
- 2.2.2 Ringwood engaged in the disposal of solid waste on Block 601, Lot 13, without first filing a completed registration statement and obtaining Departmental approval of said statement.

DATED August 31, 1976

Beatrice S. Tylutki, Director
Solid Waste Administration

Exhibit K



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1868

NOV 16 2005

BY EXPRESS MAIL

Albert Telsey, Esquire
Maraziti Falcon & Healey
150 John F. Kennedy Parkway
Short Hills, New Jersey 07078

Re: Administrative Order CERCLA Docket No. 02-2005-2003
Ringwood Mines/Landfill Superfund Site, Ringwood, New Jersey

Dear Mr. Telsey:

At the request of George Pavlou, Director of the Emergency Response and Remedial Division and on behalf of the United States Environmental Protection Agency ("EPA"), I am writing to you concerning the response of the Borough of Ringwood ("Borough") to Administrative Order CERCLA Docket No. 02-2005-2003 ("Order.") The Order requires the Borough to "cooperate and coordinate" with Ford in the supplemental investigation of the Site. The issue of liability for work at individual parts of the Site goes to allocation of responsibility between the Borough and Ford and not to the Borough's obligation to comply with the Order.

The Borough of Ringwood stated that it interpreted the Order to mean it was required to "assist Ford Motor Company ("Ford") in its efforts to investigate the Site" and stated its intent to comply with the Order in certain specified ways. The Borough listed the work-related obligations required by the Order and unilaterally assigned all these obligations to Ford except for the performance of the Reuse Assessment. Moreover, the Borough stated that it would make the "good faith offer" to Ford required by Paragraph 43 b "provided Ford provides us with the documents we requested."

EPA does not accept conditioned statements of compliance. Under the Order, the Borough is required to "cooperate and coordinate" with Ford, not assist Ford in its efforts. The Borough is jointly and severally liable for all the required investigative work at the Site. We recognize that the Borough has provided Ford with access to its property for the investigative work. The Borough must make best efforts to work with Ford to complete all the investigative work either by performing some or all of the investigative work or, in lieu of performance, pay for the performance of the work.

You requested that EPA explain the statement in Paragraph 48 concerning the scope of the Order. Ford is currently removing surficial paint sludge that it locates during the investigative work. At this time, Ford is voluntarily removing that paint sludge according to approved work plans. EPA plans to formalize the obligations for the removal work in a separate order currently being developed. This Order does not include any obligation to remove and dispose of paint sludge.

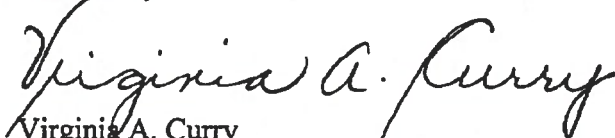
You also requested information about EPA's guidance for Reuse Assessments. You can find EPA's guidance on our web site at:

<http://www.epa.gov/superfund/programs/recycle/tools/reusefinal.pdf>

I am enclosing a copy of the February 24, 2005 letter you requested. In this letter, EPA notified the New Jersey Department of Environmental Protection that it was initiating negotiations with potentially responsible parties for the Site and inviting participation.

The Borough must state its unconditional intent to comply with the Order by November 29, 2005, or EPA will interpret your October 12, 2005 letter to be a refusal to comply.

Yours truly,



Virginia A. Curry
Assistant Regional Counsel

Enclosure

Exhibit L

9/18/74 Copy to

R. Strait
J W Leidy
TGC jr

(C)



State of New Jersey
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF ENVIRONMENTAL QUALITY
JOHN FITCH PLAZA, P. O. BOX 2807, TRENTON, N. J. 08625

September 16, 1974

COPY TO MFC
REC'd
9-20-74

Borough of Ringwood
c/o Borough Clerk
60 Margaret King Avenue
Ringwood, New Jersey 07456

Dear Sir:

The attached Departmental Order is directed to your attention for action. Should you have any questions regarding this matter, please contact this office at 609-292-7645.

Very truly yours,

Frank Coolick

Frank Coolick
Environmental Engineer
Bureau of Solid Waste Management

omt
Attachment

Postmarked 9-17-74
Cert Mail - Special Delivery
#145908

Handwritten notes:
...
...
...
...
...



State of New Jersey
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF ENVIRONMENTAL QUALITY
JOHN FITCH PLAZA, P. O. BOX 2807, TRENTON, N. J. 08625

(In the matter of alleged violations of N.J.A.C.)
 (7:26-1 et seq. by Ringwood Borough at its solid)
 (waste disposal facility located at Block 600,)
 (Lots 1, 12, Ringwood Borough, Passaic County,)
 (New Jersey)

DEPARTMENTAL ORDER

WHEREAS, Ringwood Borough operates a disposal site located at Block 600, Lots 1, 12, Ringwood Borough, Passaic County, New Jersey, and

WHEREAS, analysis of water samples taken at the Ringwood Borough solid waste disposal facility, dated September 3, 1974, discloses that leachate produced as a result of the sanitary landfill impairs the quality of the surface waters of this State beyond the classification established by the Department for the surface water in question, or in violation of N.J.A.C. 7:26-2.5.4.

NOW, THEREFORE, under the authority of N.J.S.A. 13:1E-1 et seq., the Borough of Ringwood, IS HEREBY ORDERED to correct the aforementioned violation by November 16, 1974 so as to comply with N.J.A.C. 7:26-1 et seq.

NOW, THEREFORE, the Borough of Ringwood, IS HEREBY NOTIFIED THAT:

1. Violation of N.J.A.C. 7:26-1 et seq. is punishable in accordance with N.J.S.A. 13:1E-9 by a maximum penalty of \$1,000 per day, and
2. Under the provisions of N.J.S.A. 52:14B-1 et seq., the "Administrative Procedure Act", the Borough of Ringwood is entitled to a hearing in the aforementioned matter, and that the New Jersey State Department of Environmental Protection will provide such a hearing at a time and place to be designated by the Department.

DATED September 16, 1974

Richard D. Goodenough, Director

Exhibit M



NORTH JERSEY DISTRICT WATER
SUPPLY COMMISSION
OF THE
STATE OF NEW JERSEY
WANAUKE, N. J. 07465

COMMISSIONERS
FRANK A. GRECHIO
CHAIRMAN
NUTLEY, N. J.
CHARLES K. KRIEGER
JERSEY CITY, N. J.
JACK R. CONLAN
WAYNE, N. J.

JOHN KORIBANICS
CLIFTON, N. J.
DINO O. BLIASLIAS
SHORT HILLS, N. J.

September 16, 1975

Mr. William L. C. Hui
Bureau of Solid Waste Management
N. J. Dept. of Environmental Protection
Division of Environmental Quality
P. O. Box 2807
Trenton, N. J. 08625

RE: Proposed Sanitary Landfill
Peter's Mine Road
Ringwood, N. J.

Dear Mr. Hui:

We are in receipt of a letter from John W. Leidy of Pandullo, Chrisbacher & Associates, dated August 7th in which he has sent revised engineering drawings for the proposed Peter's Mine Road Landfill, Ringwood, New Jersey.

The primary revision that we see is the addition of a lagoon to receive the leachate collecting system. We object most strenuously to this lagoon since it appears to us to be a scheme to do away with the hauling out of the area of the leachate. Even though this lagoon provides dilution of this leachate material, this does not remove the problem. Only treatment of the leachate or hauling the leachate out of the watershed will resolve this problem.

We have not received anything on the proposed dewatering system so we cannot judge its merits.

In the protective material to be used for the protection of the liner it only calls for "compacted fill". We feel this should be more definitive so as to eliminate anything which would be detrimental to the integrity of the liner.

The observation wells we feel should be installed as part of the initial contract rather than leaving it to a later date.

William L. C. Hui

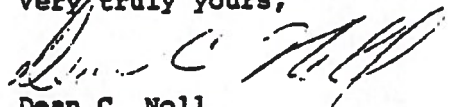
September 16, 1975

- 2 -

To date, everyone has been silent on correcting the problem at the existing Ringwood Landfill. We have asked that the correction of this problem be tied to the issuance of any permits for construction of a new landfill operation. The leachate continues to pour forth unabated and in ever increasing volumes from this site which is in close proximity to the Wanaque Reservoir. Unless some action on the resolution of this problem is forthcoming in the very near future, the Commission will have no recourse than to go to court.

Awaiting your reply to these various points, I am,

Very truly yours,



Dean C. Noll,
Chief Engineer

DCN:cm

cc: John W. Leidy
Timothy Coppinger,
Ringwood Borough Administrator

DR

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Exhibit N

U.S. Environmental Protection Agency
Region II

Hazardous Waste Site Survey Record

movement from
HAZ. Management
File

I. Inspection Summary

1. Facility Name: Ringwood Mines

2. Facility I.D. number: Passaic 2

3. Address (including city, county, state, zip code):
End of Cannon Mine Rd.,
End of Peter's Mine Rd, Ringwood Boro

Passaic County, New Jersey

4. Location (Latitude, Longitude or special instructions):
Peter's Mine - 74° 16' 00" 41° 08' 50" Cannon Mine 74° 16' 20" 41°

5. Owner or Responsible Official (title, phone number):
Ringwood Boro Solid Waste Authority - Land to be subdivided and
sold in near future

6. Operator (if different than #5)(title, phone number):

N/A

7. Owner of Reality (and address): Same as #5

8. Facility Representative(s) Interviewed (title, phone number): NONE

9. Inspector's Name (title, division, phone number):
Wayne Howitz, Thomas Brady - TSIU

10. Inspection Participants Names (affiliation, phone number): Richard Wynne - Passaic Basin - DWR

11. Date of Inspection: November 15, 1979

12. Weather: Clear - Cool

13. Samples collected: yes () no (X)
groundwater () surface water () waste () air ()
runoff () spill () soil () other ()

14. Field Measurements: yes (X) no () types: Rough
measurements of mine areas

15. Photos Taken: yes (X) no ()

16. Site Mapped: yes () no (X)

17. Local Residents or Workers Interviewed Yes (X) No ()

Michael Stefanick-Longtime resident and acting liaison with
local people

See attached page ⁽¹⁹⁾ for other persons contacted.

18. Observations and General Remarks: Two mine areas inspected-
Cannon and Peter's Mines. Both have been filled with garbage and
trash over the years; the Peter's mine with waste from the Ford
Motor Co. Plant in Mahway, such as solids (spare parts and accessori
whole cars, large amounts of paper trash, and, according to Mr. Stefani
paint sludges and solvents. The Peter's mine entrance has been filled
and roughly graded, the Cannon Mine has been backfilled but several

(continued on last page)

II. Site Information ⁽¹⁵⁾

1. Type of Operation: a. Generator NO

On-site disposal ()

Off-site disposal ()

b. Storage NO () (if yes,
complete supplemental "storage
information" form)

c. Treatment/disposal NO

Incineration () (if yes,
complete supplemental "incinerati
information" form)

Landfill NO () (if yes, complete supplemental "landfill information" form)

Surface Impoundment () (if yes, complete supplemental surface "impoundment information" form)

Deep Well Injection (?) (if yes, complete supplemental "deep well injection information" form)
OF A SORT

Chemical/Physical/Biological Treatment () (if yes, attach description on separate sheet) NO

Landfarm () (if yes, complete supplemental "landfarm information" form) NO

Open Dump -- No systematic management (X) (attach description on separate sheet)

Recycler () (attach description on separate sheet) NO

d. Transporter () (attach description on a separate sheet) NO

2. Site Active yes () no (X)

2a. Site Abandoned yes (X) no ()

3. Authorization: a. NPDES Permit ()
b. SPCC ()
c. State permits () Type None
d. Air permit ()
e. Other ()

4. Waste Oil or Oil based compounds on site Yes () No ()
Unknown

4a. Waste Types and Amounts Disposed at Site (List all oil and oil compound wastes first): Breakdown of Ford's solvents and paint attached; other material includes household garbage & trash and auto-mobile parts. This breakdown came from analyses of material presently stored at Ford plant - paints and solvents used during time of dumping may or may not vary.

(attach extra sheet if needed) (indicate source of information)

*Attachment
not done*

4(b). Is was a type consistent with information on Preliminary Assessment? Yes () NO () Actual material in mines is unknown

5. List sources of wastes (generator and hauler, as known):
Trash and garbage from Ringwood area, solid and possible liquid wastes from Ford, other possible assorted dumping. Most of information comes from local people through Mr. Stefanick.

6. Identify Off-site Facilities Used For Disposal: _____

N/A

7. Approximate Area of Site See Attached Site Maps

8. Distance to Surface Waters in vicinity Area filled with Natural Springs

9. Distance to Nearest Drinking Water Supply less than 1/2 mile

10. Identify type of drinking water supply

(See Attached Sheet)

(13)

- (X) private
- (X) public (city of Ringwood)
- (X) well & Wanaque Reservoir
- (X) surface water (North Jersey District Water Supply)

11. Proximity to Public Buildings and/or Residences: _____

Immediate Vicinity

12. Estimated depth to Groundwater (depth of estimate):

Very high groundwater table likely due to number of springs
and mine records showing flooding problems in mine shafts.

13. Site is located in:
- a. Known fault zone ()
 - b. Karst zone ()
 - c. 100-year Floodplain ()
 - d. A regulatory Floodway ()
 - e. Wetland ()
 - f. Critical habitat ()
 - g. Recharge zone to a sole source aquifer ()

14. Comment on the following:

a-slope mountainous terrain

b-soils permeability _____

c-recharge or discharge area _____

d-bedrock exposure in area (type) yes

e-type of geologic material observed (overburden, bedrock, sand, gravel, clay, etc) _____

III. Field Evaluation Factors

If at any time during this site inspection you discover any condition requiring immediate containment or other emergency response measures, initiate remedial measures by contacting appropriate local authorities, Regional emergency response team, and H.Q. Hazardous Waste Task Force.

Answer and explain:

1. Evidence of Soil Contamination yes () no (X)

Mines backfilled with comparatively clean fill

2. Evidence of Runoff yes () no (X)

See Item #1

3. Evidence of Spills yes () no (X)

See Item #1

4. Air Emissions yes () no (X)
-
-
-

5. Noticeable Odors yes () no (X)
-
-
-

6. Existing or potential erosion problems yes () no (X)

7. Evidence of Environmental Damage yes () no (X)

8. Evidence of Charred Open Areas, smoke etc. yes () no ()

9. Potential for Groundwater Contamination Based on the Observed Hydrogeologic Settings (X) no ()

Extremely large if suspect materials are present

10. Proper Maintenance and Operation of Runoff Collection and Confining Structures yes () no ()

N/A

11. Controlled access yes () no ()

Open residential areas. Sites are being sold by Ringwood SWMA
for development. Peter's Mine is partially located on State Park
lands.

12. Available Records For Chemical Analysis of Hazardous
Waste Handled at the Facility yes () no (x)

N/A

13. Sewers and Drains yes () no (x)
terminus of sewer: _____

N/A

14. Presence of hoses, pumps or other water diversion
equipment yes () no (x)

N/A

15. Proper placarding of Trucks yes () no (x)

N/A

16. Contingency and Emergency Plan and Equipment Available
yes () no (x)

17. Geologic/Hydrologic/Soil Survey conducted by or for the
owner/operator. Past mine records Yes (X) No ()
- 17(a) Is the survey in item 17 available? Yes (X) No ()
18. Engineering plan of facility available. Yes (X) No ()

Prepared by Thomas Brady

Signed *Thomas Brady*

Title Prin. Environ. Technician

Date This Report Completed November 28, 1979

- I. 17. (5) (continued) Mr. Thomas Shea, of the Labor and Industry Department's Mine Safety Bureau supplied information as to the size, locations, etc. of the various mine shafts. His office has maps and other information of the sites. He also stated he knows of the shafts being filled with garbage and the like, but knows of no chemical dumping while his office was involved. He believes the entire Cannon Mine shafts could be filled with garbage to the bottom, but probably not the Peter's Mine, although cave-ins could let the material sink to unknown depths.

Mr. Morris Savitch of the North Jersey District Water Supply, which operates the Wanaque Reservoir, the water supply for most of northeast New Jersey, is also aware of the situation and the past history of illegal dumping. He stated that the District is planning on sampling the reservoir for various metals in the future, with an A/A unit they will obtain.

Fires
Mr. Art Hughson, Boro Health Officer, stated that frequent fires have occurred in the mines due to the garbage dumped there.

Two other people who were not contacted, but may have other information are:

Mr. Harold McDonald - Boro Water System Manager 201-962-4994
Mr. Robert Metsger - New Jersey Zinc Co. Geologist may know of methods used to close Peter's mine & status of large shaft. 201-827-7121

- I. 18. (5) (continued) shafts have caved in to a depth of 20-30'. For a complete layout of individual mine shafts see attached material from Dept. of Labor & Industry Safety Bureau.

Several drums were observed in one of the Cannon Mine sink-holes. An air shaft is still existent at the Cannon Mine which should extend down to the lowest level (400'), so it can be used for groundwater sampling. It is located on the southwest corner of the Milligan Drive-Dunk Lane Intersection. A similar air shaft measuring 18' x 18' is present at the Peter's Mine, but whether or not it still connects with the main shaft or intersects it below the backfill line is not known. Maps for this mine are not available. If this shaft does connect below the backfill, water samples down to the bottom of the shaft (1700') could be obtained. Full maps of the Cannon mines are available at the Mine Safety Bureau.

Mr. Stefanick stated most of the chemical dumping (Fomoco) occurred in the late 50's and early 60's.

II. 10. (continued) In addition to the Wanaque Reservoir, which is supplied by neighboring streams, two of which originate in the immediate area of the mines, Ringwood Boro has a total of 10 wells and one spring as water sources. The spring is less than a half mile from the sites, and the wells, ranging from 70' to 417' deep, are within 2 miles. Complete records for these sources are available at either DEP's Bureau of Potable Water or the Boro Hall.

Neither DEP, the Boro, nor the NJ Dist. Water Supply have done any sampling for other than routine potable water parameters, such as pH, solids, hardness, etc.

Further review of SWA's files show that the areas used as dumpsites by Ringwood SWLA extend along the entire length of Peter's Mine Road, and that two separate haulers, Gilbert J. Redner Inc. and O'Conner Trucking Co., have disposed of industrial waste at several of these sites over the past years; Redner industrial wastes from the Arrow Metals Industries of Wanaque, and O'Conner, among other material, industrial and general waste from the Fo Mo Co plant in Mahwah. According to SWA files, the following areas are known to have been used as dumpsites:

Block 600 lot 1 Dumpsite south of Cannon Mine Road, used by O'Conner Trucking. This site is also identified as the Margaret King Ave. SLP

Block 600 lot 3 Dumpsite used by O'Conner Trucking

Block 600 lot 12 Dumpsite north of Cannon Mine Rd.

Block 600 lot 13 Mine dumpsite at foot of Pipeline Rd., used by Kingwood and West Milford.

Block 600 lot 14 Two dumpsites used by O'Conner Trucking

Block 601 lot 1 St. George Mine, used by O'Conner Trucking

Two observation wells were listed as having been installed at the Margaret King Ave. SLP. One is between the east leachate collection line and a dirt road, 70' NW of the north corner of the new Boro garage, the other between the south leachate collection line and Margaret King Ave., 345' SW of the intersection of the abandoned RR tracks and Margaret King Ave and 70' offset from the collection line.

Date?
Source?
In what context?

Exhibit O

*copies → Mayor J. J. W. OK Rm RA JW
6/6/74*

VILLORESI AND FLANAGAN
ATTORNEYS-AT-LAW
720 MAIN STREET
BOONTON, NEW JERSEY 07005

335-0004
AREA CODE 201

ALFRED J. VILLORESI
DONALD J. FLANAGAN
NATHANIEL F. BEDFORD
(MEMBER OF N.Y. & N.J. BARS)

June 4, 1974

DAVID J. MARSHALL
EDWARD J. BUZAK

Mayor and Council of the Borough
of Ringwood
60 Margaret King Avenue
Ringwood, New Jersey 07456

Re: Road Agreement of February 28, 1973

Gentlemen:

As you know this firm represents the How-To Corporation. I am in receipt of copies of your May 16th and May 23rd, 1974 letters, and I am astonished by your lack of responsibility.

It should be superfluous for me to point out that the Borough and the Solid Waste Authority required How-To Corp. to comply with numerous conditions and obtain numerous approvals before they were even property owners of the present 8.2 acres. How-To Corp. was required to spend considerable time and money in compliance with these requests. In effect, How-To did everything possible to accommodate the Borough and the Solid Waste Authority in any of its requirements even if they were technically illegally and unsupported either by the Borough or the Authority.

After forcing the How-To Corp. to undergo all of the trials and tribulations of Ringwood's bureaucratic system and after granting How-To final approval on the premises for the subdivision, and after forcing How-To to set aside park lands for the benefit of the future property owners (whereby lands were relinquished which could have been built upon and which would have benefited one more family), you came to How-To with the request to dump your garbage on those very same lands and across part of one of the subdivided lots, Lot 14.

I am sure you will also recall that you entered into an agreement with How-To on February 28, 1973. How-To agreed with several of your requests in signing this agreement. The benefit of this agreement ran predominantly to the Borough. The Borough requested and was allowed to continue its garbage dumping operation over the park area in the How-To subdivision and over not greater than one-quarter of the southerly part of Lot 14. How-To wished to remain on an amicable basis with the Borough and so agreed to these conditions. The Borough pursuant to the agreement agreed to do certain acts, all of which were very clearly set forth in the agreement. The Borough agreed to

June 4, 1974

the following:

1. Seal off the Cannon mine shaft using appropriate engineering techniques;
2. To cover over the garbage fill with three (3) feet of clean earth, a layer of top soil and grass seed after properly landscaping same;
3. To subject the entire area to rigorous pest control measures using a professional exterminator, and such methods as cyanide gas injections;
4. To remove and distribute fill (not garbage) from the westerly slope of Lot 16 and evenly spread same over Lots 16, 15, and 14;
5. To bring all roads shown on the subdivision map up to rough grade according to the said subdivision approval;
6. To immediately cover the garbage discharged daily, immediately after so discharged;
7. To install a locked gate across the roadway at the entrance of the dumping grounds and limit the access to only Ringwood and its agents. (Even to present, any scavenger is still allowed to enter and dump upon these premises without any supervision/control).

All of these requirements were to be performed by the Borough within 6 months of February 28, 1973. The Borough has flagrantly disregarded each and every of its obligations of this agreement. The Borough has furthermore flagrantly extended its garbage fill operation on an illegal basis over Lot 13 without How-To's permission or consent.

Now by your above letters, you request that How-To go back to the Planning Board to change its road grade so that the Borough will not have to live up to its obligations under this said agreement. This is not only legally untenable, but is a moral outrage as well.

How-To has expended considerable sums to this point in time and has obligated itself for considerable sums to comply with the 8.2 acres subdivision requirements. Several houses are being built and there have been several mortgage financing commitments made by How-To and by the How-To participants, all under the auspices and control of the Farmers Home Administration.

As you also know, How-To is operating on a very strict budget and timetable. Presently How-To is at a standstill as to continuing the improvements in the subdivision due to the Borough's mismanagement and its refusal to live up to its obligations concerning the above agreement.

Mayor and Council of the Borough
of Ringwood

-3-

June 4, 1974 •

How-To has been more than considerate as to any requests made by the Borough or its official bodies and the Solid Waste Authority. However, unless the Borough immediately lives up to its obligations, and I stress the word immediately, suit will immediately be instituted against the Borough for its failure to perform according to the aforesaid agreement. I further wish to point out that the Borough, of course, will be held not only to the cost of performing pursuant to the agreement, but to damages suffered by How-To as a result of the Borough's refusal to act. These include all mortgage financing costs, mortgage payments on the subdivision and any funding which How-To may lose as a result of the Borough's delay.

I trust that the Borough will immediately come to its senses and for once start to live up to its agreements. I trust I will immediately hear from you in regards to all of the above.

Very truly yours,

VILLORESI & FLANAGAN



David J. Marshall

DJM:beh

cc: Mr. Andrew Marshall, How-To
Mr. Timothy Coppinger, Borough of Ringwood Administrator
Terence P. Corcoran, Esq.
Ringwood Solid Waste Management Authority

Exhibit P

Resolution Number
2005-379
(Page 1 of 2)

RESOLUTION AUTHORIZING ADDITIONAL AGREEMENT WITH H2M ASSOCIATES, INC. FOR PROFESSIONAL SERVICES IN CONNECTION WITH THE REMOVAL OF SOLID WASTE AND DEBRIS IN A COOPERATIVE EFFORT WITH FORD AS REQUIRED BY THE EPA ADMINISTRATIVE ORDER ISSUED AGAINST THE BOROUGH

WHEREAS, the United States Environmental Protection Agency ("EPA") issued a unilateral Administrative Order ("AO") against the Borough on September 21, 2005 which requires that the Borough cooperate in good faith with Ford in Ford's efforts to investigate and cleanup paint sludge and other Ford waste dumped on the former Ringwood Mines/Landfill Superfund Site, which work Ford is doing pursuant to an Administrative Order on Consent that Ford signed with EPA; and

WHEREAS, the Borough notified EPA that it has and would continue to cooperate with Ford, EPA, the New Jersey Department of Environmental Protection ("DEP") and any other governmental agency with jurisdiction over this matter whether or not an order was issued to the Borough; and

WHEREAS, the Borough has made no admission of liability with regard to the Ford waste and has so notified EPA and Ford; and

WHEREAS, despite this assertion of non-liability and without waiving any defenses the Borough may have with regard to this matter, the Borough nevertheless desires to cooperate with Ford, not only because the AO requires the Borough to cooperate but because the Borough independently believes its cooperation will benefit the community and its residents, which is of utmost importance; and

WHEREAS, the Borough has requested that its consultant, H2M Group, Inc., provide the Borough with a proposal to survey, identify and remove surficial non-hazardous solid waste and debris littering the top of the former O'Connor landfill located on Block 601, Lot 14, which scope of work shall not include any work to identify or remove Ford waste, but which will assist Ford in doing that work; and

WHEREAS, the cost to fund this scope of work as set forth in the attached proposal from H2M dated October 25, 2005 is approximately \$36,600; and

WHEREAS, provision for payment of the maximum amount proposed for such services has since been made in the 2005 Municipal Budget of the Borough and the Chief Financial Officer has certified the availability of such funds; and

WHEREAS, the Local Public Contracts Law (N.J.S.A. 40:4 et seq.), requires that the Resolution authorizing the award of contract of Professional Service without competitive bids, and the contract itself must be available for public inspection;

NOW THEREFORE, BE IT RESOLVED by the Municipal Council of the Borough of Ringwood as follows:

1. The Mayor and Borough Clerk be and hereby are authorized and directed to execute an Agreement with H2M Associates, Inc., 555 Preakness Avenue, Totowa, New Jersey 07512 in accordance with all the terms of its Proposal dated October 25, 2005, at a cost not to exceed \$36,600 without prior authorization of the Municipal Council.

Resolution Number
2005-379
(Page 2 of 2)

- 2. This contract is awarded without competitive bidding as a Professional Service in accordance with N.J.S.A.: 40:11 et seq of the Local Public Contracts Law because they are services rendered or performed by a person authorized by law to practice a recognized profession.
- 3. A notice of this Resolution will be published as required by law within 10 days of its passage.

Wenke Taule
WENKE TAULE, MAYOR

I hereby certify that the above Resolution was adopted by the Municipal Council of the Borough of Ringwood at its Business Meeting of November 1, 2005.

Kelley A. Rohde
**KELLEY A. ROHDE, RMC
BOROUGH CLERK**

Council Member	Motion	Second	Ayes	Nays	Abstain	Absent
Atles			X			
Hesk			X			
Mae Allen			X			
Marzala	X		X			
Toulous		X	X			
O'Hearn			X			
Taule			X			

Exhibit Q



BOROUGH OF RINGWOOD

www.ringwoodnj.net

Phone: (973) 962-7037 Fax: (973) 962-1594

Scott Heck, C.P.W.M.
Borough Manager/Director of Public Works
(973) 475-7101

Kelley A. Rohde, RMC
Borough Clerk/Deputy Borough Manager
(973) 475-7102

Walter J. Davison
Mayor

John M. Speer
Deputy Mayor

Council Members
Donna S. Anderson
William E. Marsala
Jim Martocci
Sean Noonan
Linda Schaefer

VIA Electronic Mail and First Class Mail

October 30, 2014

Mr. Walter E. Mugdan, Director
Emergency and Remedial Response Division
290 Broadway, 19th Floor
New York, New York 10007-1866

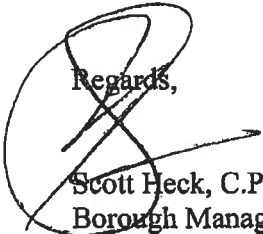
Re: Ringwood Mines/Landfill Site
Unilateral Administrative Order
USEPA Index No. CERCLA-02-2015-2001

Dear Mr. Mugdan:

The Borough of Ringwood is in receipt of a letter dated October 1, 2014 from Frank Cardiello, Esq. enclosing the Unilateral Administrative Order, CERCLA Docket No. 02-2015-2001 ("Order") requiring the Borough to cooperate with Ford Motor Company and participate in Ford's preparation of the design of the remedies selected by the EPA in the Record of Decision dated June 30, 2014 for the Ringwood Mines/Landfill Superfund Site located in Ringwood, New Jersey.

Please accept this correspondence as the Borough of Ringwood's intent to comply with the Order in the same manner as for the Remedial Investigation/Feasibility Study phase. A resolution from the Council ratifying this letter is expected to follow after their meeting on November 20th.

Regards,


Scott Heck, C.P. W.M.
Borough Manager

c: Joseph Gowers, EPA
Frank Cardiello, Esq.