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November 22, 2016

**VIA CERTIFIED MAIL**

Eric Schaaf, Esq.  
Regional Counsel - Region II  
United States Environmental Protection Agency  
290 Broadway  
New York, New York 10007-1865

Re: Lower Passaic River

Dear Mr. Schaaf,

We represent Three County Volkswagen Corp. (hereinafter "3 County") located at 701 Riverside Avenue in Lyndhurst, New Jersey (the "Site").

3 County received the EPA's Notice of Potential Liability letter dated March 31, 2016. 3 County did not discharge any CERCLA hazardous substance to the Passaic River. Consequently, 3 County requests that EPA withdraw its Notice of Potential Liability letter. Alternatively, 3 County seeks a *de micromis* settlement pursuant to 42 U.S.C. 9607(o).

3 County operated an automobile dealership at the Site since 1965, where a small car washing operation was conducted.

In the late 1990s, 3 County removed five underground storage tanks at the Site. By letter dated October 8, 1993, the NJDEP confirmed that the appropriate remedial investigation was performed, soil was not contaminated, and the case was closed. See Exhibit A.

We have also provided three pages of records allegedly produced by the Passaic Valley Sewerage Commission ("PVSC") in connection with the state lawsuit captioned *NJDEP v. Occidental Chemical Corp., et al.* See Exhibit B. These three pages, addressing events during a one-month period in 1972, are the only "nexus" documents that were produced by the dioxin parties, i.e., Maxus Energy and Tierra Solutions. The notes reflect that on April 7, 1972, no flow was seen in the 8" line that led to the River. 3 County explained to PVSC that cosmoline was washed off cars and the rinse water went into a separating tank. Then, only water was able to flow into the 8" line.

On April 11, a "milky flow" was observed and PVSC ordered the discharge to be halted. Thus, by May 1, 1972, 3 County routed the effluent to the sanitary sewer. "Milky flow" cannot be considered a CERCLA hazardous substance.

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Regional Counsel  
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Further, small businesses that contribute only small volumes to a NPL site's contamination are exempt from CERCLA liability. *See* 42 U.S.C. 9607(o). CERCLA exempts parties who have contributed less than 110 gallons of liquid materials or 200 pounds of solid hazardous materials that were disposed of, treated, or transported to a National Priorities List site prior to April 1, 2001. The Act authorizes the government to withdraw this exemption from a particular party if: (1) it determines that the materials contributed significantly to the cost of the response action; (2) the person failed to comply with an information request; or (3) a person has been convicted of a criminal violation for the conduct to which the exemption would apply. Thankfully, none of these exemptions apply to 3 County.

Finally, as a member of the Cooperating Parties Group, 3 County has contributed more than its "fair share" to fund the RI/FS for the 17 miles of the Lower Passaic River and the River Mile 10.9 removal action. It cannot be seriously questioned that 3 County has already paid a significant amount considering its alleged discharge to the River. 3 County has withdrawn from the CPG and now seeks protection from the EPA.

Please do not hesitate to contact me regarding any questions or to provide the requested relief.

Very truly yours,



LEE HENIG-ELONA

Attachments

# **EXHIBIT A**



State of New Jersey  
Department of Environmental Protection and Energy  
Division of Responsible Party Site Remediation  
CN 028  
Trenton, NJ 08625-0028

Scott A. Weiner  
Commissioner

Karl J. Delaney  
Director

Robert A. Senior  
701 River Bank Corporation  
701 Riverside Avenue  
Lyndhurst, NJ 07071-3099

OCT 08 1993

Re: Three County Volkswagen Corporation  
701 Riverside Avenue  
Lyndhurst Township, Bergen County  
UST #0046028  
Case #91-03-31-2159  
TMS #C-92-0283, C-92-0284, C-91-0285

Dear Mr. Senior:

The New Jersey Department of Environmental Protection and Energy (Department) received reports dated July 30, 1992, March 3, 1993 and August 12, 1993 from Three County Volkswagen Corporation. These reports document the removal of five underground storage tanks performed in response to the Department's investigation of a suspected discharge of hazardous substances.

Based on a review of the information submitted, the Department finds that Three County Volkswagen Corporation has complied with the existing requirements regarding the removal and remedial investigation for the investigated underground storage tank systems. Therefore, no further action will be required at this time.

Please be advised that this approval only addresses the listed suspected discharges and tank systems. This approval makes no representation regarding the environmental conditions of any other areas for the referenced property.

Thank you for your cooperation in this matter.

Sincerely,

Wayne C. Howitz, Assistant Director  
Industrial Site Evaluation Element

c: David S. Rubin, BUST, Certified Subsurface Evaluator  
Joseph A. Miller, BUST, Section Chief  
Steven Tiffinger, Bergen County Department of Health Services

# **EXHIBIT B**

Violation and Elimination - Three County Volks-  
wagon, 701 Riverside Ave., Lyndhurst, N.J.  
April 3 - May 1, 1972 (F. Cupo)

Mr. Steve Roemer, a Colgate pre-med student, living in Summit, New Jersey, decided to test several outlets which discharged to the Passaic River. With a La Motte field test kit, he checked several sources on April 3, 1972.

He contacted Mr. Goldberg on the afternoon of April 7, and reported the following pollutions:

1. Lawyer's Ditch in Newark at the Essex Public Service Generating Station.
2. Volkswagon dealer in Lyndhurst.
3. Storm sewer at East Rutherford.
4. Ciba Pharmaceuticals in Summit.

Mr. Goldberg referred him to the State Department of Environmental Protection for item 4 and contacted Mr. Cuccinello to check and sample the other three. No pollution was detected in items 1 and 3, however, when the inspector checked item 2 (although no flow was discharging at the time) he noted that the macadam had the appearance of recent work on the 8" line that extended to the river. A Mr. Kaluza informed Mr. Cupo that the line had

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Violation and Elimination - Three County Volkswagon continued

recently been repaired and referred Mr. Cupo to Mr. Robert Senior, the President of Three County Volkswagon.

Mr. Cupo explained the reason for his visit and Mr. Senior denied putting any polluting material into this line. Mr. Senior showed Mr. Cupo into the garage where cosmoline was washed from the cars. According to Mr. Senior, the liquid went to a separating tank and only water flowed to the 8" line. Mr. Cupo informed him that this "water" may be polluting and he would take a sample. Mr. Senior volunteered to help Mr. Cupo anytime he wished to sample.

On April 11 at 1:00 P.M., Mr. Cupo made another inspection of the line and this time a milky flow was emanating from the pipe. A sample was taken and Mr. Kaluza, Service Manager was informed this was polluting and should be halted at once.

Analysis showed a C.O.D. of 6772, a B.O.D. of 210, total solids of 1597 and pH of 9.3.

On April 13, Mr. Luketkin wrote to Three County Volkswagon, informing them that the discharge was illegal and directing them to halt the pollution at once. They were informed that they should seal the 8" outlet and if they connect to the local sanitary sewer, they should go through a proper oil and grease trap and the oil and grease should be disposed of by another legal method. They were directed to reply to the letter at once telling the Commissioners what they would do to halt the pollution, together with a time table.

No reply was received, however, the inspector reported that on April 19, Mr. Senior informed him that he was contacting a contractor to make the proper connections to halt the pollution.

On April 21, Inspector Cupo met with Mr. H. Kaluza and Mr. Lombardi, Plumbing Contractor of Lyndhurst, concerning this work.

On April 26, Mr. Cupo was informed that a contract had been signed and the work would begin Monday, May 1, 1972.

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Violation and Elimination - Three County Volkswagon  
continued

On May 3, Mr. Senior informed the Commissioners by letter that all work was completed and the discharge which the Commissioners found objectionable had been connected to the sanitary sewer, work being completed by Mr. Lombardi, Plumbing Contractor, May 1, 1972.

This was confirmed by the Inspector.

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