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FOR SETTLEMENT PURPOSES ONLY

May 17, 1999

Fred R. Wagner, Esq.
BEVERIDGE & DIAMOND, P.C.
1350 I Street, N.W.
Suite 700
Washington, D.C. 20005-3311

FEDERAL EXPRESS DELIVERY

Re: Skinner Landfill
Offer of Buy-Out - John J. Whitton Trucking, Inc.

Dear Fred:

Confirming my telephone call to your voice mail on Thursday, May 13, 1999, I received authority from my client, John J. Whitton Trucking, Inc. ("Whitton") to settle all claims that the parties may have against Whitton for a complete cash-out for the sum of \$50,000.

Pursuant to your request, I am enclosing copies of Tax Returns and Financial Statements for the years 1997 and 1998. These documents were prepared by the independent certified public accountant retained by Whitton. I have placed the documents in a separate envelope marked "confidential", and I have also marked the documents "confidential". It is requested that these documents not be copied or sent to clients without my authority. If requested of you, you may provide a copy of the confidential documents to counsel after you have received written assurances that copies will not be provided to their clients or any other third party.

Background. John J. Whitton Trucking, Inc., an Ohio corporation, is in the business of providing roll-off containers for construction sites within the Southwest Ohio region. Whitton places roll-off containers at the construction sites and then when they are filled, retrieves the containers which contain debris from the construction of buildings. The debris is transported to the nearest

construction and demolition debris landfill. Prior to incorporating, Whitton was operated from 1960 through December, 1993 as a sole proprietorship owned by Mr. John J. Whitton. John J. Whitton died intestate in January of 1992. Mr. Whitton's estate included the assets of John J. Whitton Trucking Company. Certified copies of the Hamilton County, Ohio Probate Court filings in the estate of John J. Whitton were provided to Copyplex and the Allocator. The assets relating to the sole proprietorship were transferred to Mr. Whitton's surviving spouse, Ruth Whitton. Mrs. Whitton, as Administratrix of her late husband's estate, operated the business until January 1, 1994, at which time the business was incorporated as John J. Whitton Trucking, Inc., with Mrs. Whitton as the sole shareholder. Copies of the Articles of Incorporation were provided to the Allocator and Copyplex with the Initial Position Paper. All of the alleged disposal at the Skinner Landfill were by John J. Whitton Trucking Company, the sole proprietorship, through Mr. John J. Whitton as the owner. No claim by the United States or any other potentially responsible party (PRP) was submitted to the estate of John J. Whitton, deceased. I argued in the Initial Position Paper that those claims should be barred, therefore by the Ohio Claims Statute contained in the Ohio Probate Code (Section 2117.06). It is my position that this claim should be barred because the Administratrix was not aware of any claims, nor did she receive any notice of such claims within the time period of the Claim Statute.

Since 1994, Ruth Whitton has been the sole shareholder of the corporation, and it has been operated as a "family business". Since the formation of the corporation, the children have been involved in the business in various capacities.

The revenue and net income are just not available to pay the amount sought by the Plaintiffs as recommended by the Allocator, John Barkett. Under OXY's proposed allocation among participating parties dated May 13, 1999, Whitton's share was proposed at 6 percent. Assuming clean-up costs of \$13,200,000, this represents a cost to Whitton of \$792,000.

The Tax Returns and Financial Statements included herein reflect the cashflows, net income, and the value of the corporation's assets. You will also note that there are bank loans and credit facilities in place, which are secured by all of the assets of Whitton.

Please also note in reviewing the Tax Returns that there has been no allowance for corporate income taxes. This corporation is an "S" corporation for income tax purposes. The income from the corporation is "distributed" to the shareholder for inclusion on her personal income tax returns. Thus, the ordinary income of the corporation must be reduced by an amount equal to 36 percent for federal income taxes and 7 percent for Ohio income taxes, for a total of 43 percent.

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In summary, John J. Whitton Trucking, Inc. is offering the sum of \$50,000 as payment in full of its obligation for the Skinner Landfill site. This would be for a "cash out", which would be a full and complete release for any additional costs relative to the site for Whitton and its customers. This would also include contribution protection from other PRPs, and also protection from any action which may be brought by the United States. I have not sent copies of this letter or the enclosures to any other party, except for Mr. Louis Tosi and Mr. Michael O'Callaghan.

This offer of \$50,000 was arrived at by calculating the fees and expenses of counsel in filing a Chapter 11 in the United States Bankruptcy Court. Bankruptcy counsel's estimate was approximately \$20,000 to \$25,000 for fees. Whitton has elected to double that figure for purpose of this offer for the intangible expenses relative to a Chapter 11 filing.

If you have any questions or comments on the above, please do not hesitate to contact me.

Very truly yours,

KEVIN J. HOPPER CO., LPA

Kevin J. Hopper

KJH/th

Enclosures

CC: John J. Whitton Trucking, Inc.
Louis E. Tosi, Esq.
Michael J. O'Callaghan, Esq.

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FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

KENNETH J. MURPHY, Clerk
CINCINNATI, OHIO

_____)
 UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 AERONCA, INC. (f/k/a Aeronca)
 Manufacturing Corp. f/k/a/ Aeronca)
 Aircraft),)
 CLARKE CONTAINER, INC.,)
 CLARKE'S INCINERATORS, INC.,)
 JOHN J. WHITTON TRUCKING, INC.,)
)
 Defendants.)
 _____)

0-101-489

CIVIL ACTION NO.
JUDGE

COMPLAINT

The United States of America, by the authority of the Attorney General and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("U.S. EPA"), files this complaint and alleges as follows:

NATURE OF THE ACTION

1. This is a civil action pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9607(a), for recovery of response costs incurred by the United States in responding to releases or threatened releases of hazardous substances at or from the Skinner Landfill

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Superfund Site in Westchester, Ohio (the "Site"). Pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), the United States also seeks declaratory relief that Defendants are jointly and severally liable for all future response costs that the United States may incur as a result of the release or threatened release of hazardous substances at or from the Site.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to Sections 107(a) and 113(b) of CERCLA, 42 U.S.C. § 9607(a) and 9613(b), and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) and Section 107(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9607(a) and 9613(b), because the claims arose and the releases or threatened releases of hazardous substances that give rise to the claims occurred in this district.

DEFENDANTS

4. Aeronca, Inc. is or at relevant times was a corporation organized under the laws of the State of Ohio and authorized to do business in Ohio.

5. Clarke Container, Inc. is or at relevant times was a corporation organized under the laws of the State of Ohio and authorized to do business in Ohio.

6. Clarke's Incinerators, Inc. is or at relevant times was a corporation organized under the laws of the State of Ohio and authorized to do business in Ohio.

7. John J. Whitton Trucking, Inc. is or at relevant times was a corporation organized under the laws of the State of Ohio and authorized to do business in Ohio.

8. Each of the above-captioned Defendants is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

9. Each of the Defendants except John J. Whitton Trucking, Inc. is a 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 each such Defendant at the Site, as described in Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3), or accepted hazardous substances for transport to disposal or treatment at the Site, and selected the Site for disposal or treatment, as described in Section 107(a)(4) of CERCLA, 42 U.S.C. § 9607(a)(4).

10. In December of 1993, a sole proprietorship that did business as John J. Whitton Trucking Co. was incorporated as John J. Whitton Trucking, Inc. John J. Whitton Trucking, Inc. was a mere continuation of the ongoing business of John J. Whitton Trucking Co. John J. Whitton Trucking, Inc. succeeded to the liabilities of John J. Whitton Trucking, Co.

THE SKINNER LANDFILL SUPERFUND SITE

11. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

12. "Hazardous substances" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), including but not limited to paint wastes, ink wastes, creosote, pesticides and other chemical wastes, and construction debris containing hazardous substances have been

dumped, poured, emitted, discharged or otherwise disposed of onto land surface or subsurface strata at the Site. Elevated levels of hazardous substances, including 1,1-dichloroethane, 1,2-dichloroethane, 1,2-dichloroethene, 1,2-dichloropropane, chloroethane, ethylbenzene, chloroform, trichloroethene 1,3-dichlorobenzene, 1,4-dichlorobenzene, naphthalene, and vinyl chloride have been detected in groundwater at the Site.

13. There have been "releases" or threatened releases of "hazardous substances" into the "environment" at the Site within the meaning of Sections 101(22), 101(14) and 101(8) of CERCLA, 42 U.S.C. § 9601(22) and (14).

14. As a result of the release or threatened releases of hazardous substances into the environment at the Site, the United States has incurred response costs, and may incur future response costs including investigative, administrative, and legal costs.

CLAIM FOR RELIEF

15. The allegations contained in paragraphs 1 - 14 are realleged and incorporated herein by reference.

16. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides, in pertinent part:

- (a) Notwithstanding any other provision or rule of law and subject only to the defenses set forth in subsection (b) of this section -
 - (3) 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 such hazardous substances, and

(4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for--

(A) all costs of removal or remedial action incurred by the United States Government or a State or an Indian tribe not inconsistent with the national contingency plan. . . .

17. Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), provides, in part:

In any such action . . . [for recovery of the costs referred to in section 9607 of this title or for natural resource damages], the court shall enter a declaratory judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages.

18. As a result of releases or threatened releases of hazardous substances at the Site, the United States has incurred "response costs," as defined in Section 101(25) of CERCLA, 42 U.S.C. § 9601(25). As of May 31, 2000, the United States has incurred response costs of at least \$4.3 million in responding to the release or threatened release of hazardous substances at or from the Site.

19. The response costs incurred by the United States at the Site were not inconsistent with the National Contingency Plan, 40 C.F.R. Part 300.

20. Aeronca, Inc. is a member of the class of liable parties described in Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3). The remaining defendants (the "transporter defendants") are members, or successors to members, of the class of liable parties described in Section 107(a)(4) of CERCLA, 42 U.S.C. § 9607(a)(4). Each of the transporter defendants selected the Site for disposal or treatment, as described in Section 107(a)(4) of CERCLA, 42 U.S.C. § 9607(a)(4).

21. Each Defendant is jointly and severally liable to the United States pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for the response costs incurred by the United States in connection with the Site, including enforcement costs.

22. Each Defendant is liable to the United States pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for prejudgment interest on those response costs for which a demand for payment was made.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff United States of America prays that this Court:

1. Enter judgment in favor of the United States and against all the Defendants, jointly and severally, for the response costs incurred by the United States, including prejudgment interest, for response actions related to the Site;

2. Enter a declaratory judgment that the Defendants are jointly and severally liable for all future response costs to be incurred by the United States for response actions related to the Site;

3. Award the United States its costs in this action; and

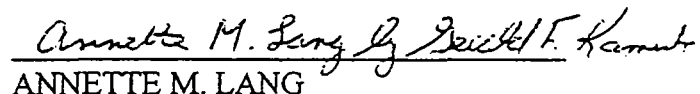
4. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

JOHN C. CRUDEN
Acting Assistant Attorney General
Environment and Natural Resources
Division
United States Department of Justice

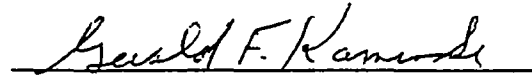


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