



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

August 30, 2004

SITE: BCX Facility
BREAK: 11.1
OTHER: v. 6

40EA

Daniel D. Richardson
Lewis, Longman & Walker, P.A.
Suite 625
9428 Baymeadows Road
Jacksonville, FL 32256

SUBJECT: Planned Removal Action
BCX Tank Superfund Site ("the Site")
Jacksonville, Duval County, Florida

Dear Mr. Richardson:

Thank you for your letter of August 19th in which you explained that your client, Seven Out, LLC, is working on a business plan to address environmental problems at both his Jacksonville, Florida, and Waycross, Georgia waste treatment facilities. While we hope that your client's business plan develops rapidly and successfully, the removal and enforcement team here at Region 4 of the U.S. Environmental Protection Agency ("EPA") is not willing to wait any longer to begin the planned removal action.

As I understand it, your client's plan is to borrow enough money to bring the Waycross facility into compliance with State environmental regulations, and then to use the Waycross facility to treat the wastes stored at the Jacksonville Site. It appears that there are several obstacles that your client would need to overcome in order to put his plan into action, all of which will take time.

1. The business plan is contingent upon receiving financing, which is by no means certain. Our research shows that Seven Out, LLC, is already indebted to Atlantic Coast Federal for more than \$4,500,000—a loan for which all of the corporation's real property and equipment are collateral. Further research reveals a default under that loan and a subsequent Forbearance Agreement, which contained a covenant that the wastewater and waste oil would be removed from the Jacksonville Site. The wastes clearly have not been removed.
2. In order for the business plan to work, the Waycross facility must be re-permitted and the State of Georgia satisfied with your client's plans to characterize and remove the wastes stored at that facility. You reported ongoing negotiations with the State of Georgia over a



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substantial penalty the State is seeking from your client, but EPA has no indication that the penalty issue will be resolved quickly.

3. The hazardous substances stored at the Jacksonville Site are subject to EPA's Off-Site Rule, which may exclude the Waycross operation as an acceptable treatment facility. Because the Jacksonville facility is now the BCX Tank Superfund Site, the off-Site transfer of hazardous substances is governed by the National Contingency Plan ("NCP") Procedures for Planning and Implementing Off-Site Response Actions, 40 C.F.R. §300.440. This section of the NCP applies whether the removal is conducted by EPA or by private parties. Under Part 300.440(b)(i), a facility is an unacceptable destination for hazardous substances removed from a Superfund Site if that receiving facility is in violation of certain environmental laws and regulations, including the improper storage of CERCLA waste. Although the Waycross facility may meet the Off-Site rule sometime in the future, it is not likely to regain acceptable status under the NCP during the time frame contemplated for the time-critical removal action planned at the Jacksonville Site.

EPA plans to mobilize its contractor at the Jacksonville Site during the first week of September. I will contact you with exact dates as soon as they are confirmed. If your client can demonstrate the financial resources and technical expertise to conduct the work as the removal action progresses, EPA will reconsider your client's participation in the removal action.

Finally, EPA is interested in how your client might reimburse EPA for the costs it will incur conducting the removal action. You mentioned an environmental insurance policy during one of our recent telephone calls. Please send me a copy of the policy as soon as possible.

Sincerely,



Stacey A. Haire
Assistant Regional Counsel
Office of Environmental Accountability

cc: Terry Stilman
On-Scene Coordinator
U.S. EPA Region 4

Johnny Morgan
Enforcement Project Manager
U.S. EPA Region 4