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275533

May 28, 1999

For Settlement Purposes Only
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Sherry Estes, Esq.
Office of Regional Counsel
U.S. Environmental Protection Agency
Region V
77 West Jackson Boulevard (C-29A)
Chicago, Illinois 60604

Re: ***Skinner Landfill***

Dear Ms. Estes:

The City of Silverton ("the City") entered into a de minimis settlement agreement earlier this year with the Plaintiffs in the Skinner Landfill private cost recovery action in the United States District Court for the Southern District of Ohio. In addition to providing for settlement of Plaintiffs' claims regarding their past costs at the Skinner Site, that agreement requires certain of the Plaintiffs to seek to negotiate a de minimis settlement between the City and the United States (on behalf of the U.S. Environmental Protection Agency ("EPA")) that is at least as protective of the City's interests as are the terms of EPA's Model De Minimis Consent Decree set forth in the December 7, 1995 Federal Register.

It is the City's understanding that the EPA, Region V has now concluded what information it will require in order to determine that the City qualifies for a de minimis settlement at this Site. That information consists of: (i) the summary of each de minimis settlor's waste-in volume and percentage share of Site costs, as determined by the Allocator in the Final Allocation Report from the Skinner Alternative Dispute Resolution process, and (ii) the narrative description of the Allocator's findings for each de minimis settlor, as set forth in the Preliminary Allocation Report, and where the Allocator supplemented or altered those findings in the Final Allocation Report, the Final Allocation Report.

Accordingly, I am enclosing the information requested by the EPA for the City. I believe that this information sufficiently demonstrates that the City is entitled to a de minimis settlement pursuant to the EPA's model de minimis settlement decree. The City understands that the EPA and Plaintiffs in the private cost recovery litigation will allocate among themselves the monies to be paid by the City in settlement of the claims of Plaintiffs and the United States. By making this settlement offer, the City does not acknowledge any liability for response costs at the Skinner Site.

In order to ensure that the City is able to avoid the incurrence of additional transaction costs in connection with the ongoing Skinner cost recovery litigation, the City urges the EPA to finalize an appropriate de minimis settlement as expeditiously as possible. Such timely action would fulfill the statutory objectives of Section 122(g) of CERCLA and the EPA's de minimis settlement policies, as well as provide needed funds for response actions at the Skinner Site. Thank you for your attention to this matter.

Very truly yours,

Jeffrey S. Goldenberg

Enclosures

cc: Michael E. Morthorst, Esq. (w/o enclosures)
Mark A. VanderLaan, Esq. (w/o enclosures)
John C. Murdock, Esq. (w/o enclosures)

Final Allocation Recommendations in Alphabetical Order, Skinner Landfill Superfund Site, April 12, 1999

Name Of Party	Solid Waste In Cys	Liquid Waste In Gallons	Solid Waste In Total Cys 372906	Percentage	Liquid Waste In Total Gallons 262252	Percentage	Solid Waste	Liquid Waste	Owner/ Operator & Part of Chem-Dyne	Rest of Chem-Dyne	Total
CITY OF SILVERTON	338	0	372906	0.0906%	262252	0.0000%	0.01%	0.00%			0.00906%

City of Silverton

Settlement Amount: **$3,911.41**

Excerpt from Allocator's Preliminary Report:

Silverton apparently had its own waste collection services for a period of time, before bidding the work out to others. The City self hauled MSW from 1930 - 1989. The City had one 6 cy open dump truck and one 13-16 cy load packer.

The City submitted copies of ledger sheets indicating payments to disposal contractors such as Clarke's Incinerator. The City also submitted, confidentially, City Council minutes indicating other disposal sites. On January 3, 1930, in handwritten minutes, there is a comment about a disposal site within the City. Minutes of the April 1, 1949 meeting of the City Council indicate a contract with a private party for use of his property for dumping. The August 3, 1951 City Council minutes refer to a contract with a public entity for waste disposal. At the June 20, 1957 meeting, the Council voted to sign a contract with a public entity for garbage disposal. The April 16, 1959 Council minutes approved a contract with a public entity for dumping garbage. Minutes of the December 27, 1966 meeting of the City Council indicated that the City would start using a landfill other than Clarke's Incinerator for waste disposal. On February 20, 1969, the Mayor informed the Council about a rate hike by the City's existing landfill and the Council voted to sign a contract with a different landfill at a lower price effective March 1. The May 16, 1974 minutes refer to a waste-to-energy plant that might be constructed and the Council voted in favor of expressing its intent to participate.

Also, confidentially, the City submitted copies of its monthly accounts payable ledgers for the years 1980 - 1989, indicating payment to various waste vendors. A few months were missing.

The City contracted with the following Exhibit A entities for disposal:

Clarke's Incinerator, Inc.	*From 1963 - January 1, 1967 and January 1, 1978 to April 1989.* Based on interviews with Richard Lehmkuhl, a previous Service Department foreman, a good faith estimate of waste during these time periods would be approximately 165 tons/month. This is based on a 20 cy loader filled 1.5 times per day, five days per week, or 150 cy/week. Using a 550 lb/cy conversion, the City calculated its waste volume to be 179 tons/month. During the two time periods during which it used Clarke's Incinerator, the total volume would have been 32,936 tons. Based on interviews with Paul Steman, the City used one or two 13 - 16 cy load packers during this time frame. According to City Council meeting minutes, Clarke reduced its fees to $3.75/ton in 1963 and the City paid $1.70/cy in the 1978 - 1979 period.

Kings Wrecking Co.:	*On or about August 15, 1980.* This was a one-time use of King Wrecking in connection with the demolition of two small homes on Silverton Avenue. The cost was $2,090 for demolition, transport and disposal.
Clarke's Landfill, Inc.	*On or about June 15, 1983.* This was a one-time disposal of MSW. Paul Steman, Silverton's Service Director, estimated the City paid about $3.00/ton.
Rumpke Waste, Inc.	*From May 1, 1989 - December 31, 1990.* Silverton's contract required Rumpke to use its own sanitary landfill as the primary disposal site for the City's waste. The City said that Rumpke estimated Silverton's volume at about 240 tons/month for approximately twenty months for a total of 4,800 tons. Approximately 24 trucks with a capacity of 10 tons each were used by Rumpke. Based on interviews with Paul Steman, Silverton said that it paid Rumpke $11,737.47/month, or about $49/ton. This amount appeared in a City ordinance which was passed in April 1989.

The waste collected by Silverton or these haulers was MSW from residential and commercial locations. Silverton stated that there was no heavy industry located within the City. During the relevant time period, the only commercial establishment in the City with more than 20,000 square feet was Meier's Wine Cellars.

There were no sewage or wastewater treatment plants in the City during the relevant years.

The Skinner log has two entries in it for disposal by Silverton, one dated August 11, 1957 ($34) and one dated September 18, 1957 ($14). Silverton advised me that during its investigation it did not find any other incident of waste disposal other than those represented by these two entries. Based on the response of the City of Deer Park, Silverton estimated that the volume of waste on the two dates involved would have been a total of approximately 44 tons [based on $1.08/ton]. The City did not discuss the type of waste involved here, but presumably the City's position is that it was MSW.

Elsa Skinner said that the City used the Landfill but could offer no other details. Maria Roy thought that Silverton used a dump truck to bring in waste. She distinctly remembered a Silverton vehicle in the Landfill in 1967 (associating it with a car she had acquired, driving in Silverton, and linking the name of the town to the name on the side of a dump truck door she saw at the Landfill). She felt that Silverton was a long-time user of the Landfill, although she could not say whether they dumped waste every year. M. Roy Depo., p. 318-320. Ray Skinner did not recall the City of Silverton.

Waste-in Amount. With respect to the Skinner log entries, I am using the same multiplier used in the case of Deer Park since the time period is the same. At $.1067 per cy, $48 represents 450 cys. However, I am allocating one-half of this amount to a packer vehicle (2:1 compaction) and one-half to a dump truck. The compacted waste represents 450 cys on an uncompacted basis. Adding 225 cys from the dump truck produces a waste-in amount of 675 cys for Silverton.

Excerpt from Allocator's Final Report :

The City of Silverton's ("Silverton") waste-in amount used a divisor from the Preliminary Report's analysis of Deer Park's volume. That divisor ($.1067) should have been ($.21333). (See the Deer Park discussion.) As a result, Silverton's volume should have been 338 cys, not 675 cys (see page 79 of the Preliminary Report, Appendix 1 and Silverton's comment brief dated October 27, 1998). (Rounding results in the 1 cy difference between this result and that calculated in the comment brief.)

Silverton pointed out to me that I noted that the Village of Lincoln Heights was the only party that raised an ability to pay argument (see page 93 of the Preliminary Report). It, too, raised an ability to pay argument initially and I neglected to note that fact.