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

UNITED STATES OF AMERICA, Plaintiff,	)	Civil Action no. 1:97-CV-1037
v.	)	Hon. David W. McKeague
CITY OF ALBION, Michigan Defandant.	)	

US EPA RECORDS CENTER REGION 5
469006

PLAINTIFF'S RESPONSE TO DEFENDANT'S FIRST SET OF INTERROGATORIES

Plaintiff, the United States of America ("United States") by and through its attorneys, pursuant to Rule 33, 34, and 36 of the Federal Rules of Civil Procedure, files this response to Defendant City of Albion's First Set of Interrogatories, Requests for Admission, and Request for the Production of Documents.

GENERAL OBJECTIONS

1. The United States objects to all interrogatories, requests for admissions, and document requests to the extent theat they impose any duty or obligation upon the Untied States in excess of the duties and obligations imposed by the Federal Rules of Civil Procedure.

2. The Untied States objects to all interrogatories, requests for admissions, and document requests to the extent that they seek information protected from disclosure by the attorney-client privilege, the attorney work product doctrine, or any other legally cognizable privilege or immunity from discovery, and the Untied States declines to Provide any such information or documents to which such privileges or immunities attach.

3. The United States objects to all interrogatories, requests for admissions, and document requests to the extent that they would require the United States to conduct research and investigations to the acquire information not presently within its possession which the City of Albion can perform or compile, or would require the Unite States to compile or evaluate information in a manner that is unduly burdensome or oppressive.

4. The United States objects to each interrogatory, request for admission, and document request calling for any answer requiring "each," "all" and "every" on the grounds that such interrogatories and production requests are overly broad, unduly burdensome, and oppressive. The United States further objects that it had not completed its investigation of facts relating to the actions. Discovery and the United States' search for documents and related material is ongoing. The response of the United States are set forth herein with prejudice to its

rights to assert additional objections or provide supplemental responses should the United States discover additional information or grounds for objections.

5. To the extent that the United Sates answers these interrogatories, requests form admissions, and document requests, the United States does not concede that the information requested is relevant to this action. The United States expressly reserves the right to object to further discovery of the subject matter of any of these interrogatories, requests fro admissions, and document requests and the introduction into evidence of any answer or portion thereof or any document produced in response to these interrogatories, requests fro admissions, and document requests. The United States further objects to all interrogatories that prematurely and improperly demand a legal conclusion and seek to require the United States to provide legal contentions by way of interrogatories.

6. The United States objects to all interrogatories, requests form admissions, and document requests to the extent they require the United States to detail its legal conclusions and require the United States to detail its legal contentions and supporting facts on the grounds that such requests are premature at this state of discovery.

7. The United States incorporates these general objections into its answer to each interrogatory, request for admission, and document request as if fully set forth therein and each such answer is subject to theses general objections.

PLAINTIFF'S ANSWER TO DEFENDANT'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

Request for Production of Documents no. 1:

Produce all documents relating to the response costs allegedly incurred and to be incurred by Plaintiff withe regard to the Sheridan Township Landfill site at issue on the complaint in the captioned action.

ANSWER

1. Please see Cumulative Cost Summary Prepared 9/17/97.

Request for Production of Documents no 2:

Produce all documents supporting the consistency of Plaintiff's "response costs" with the National Contingency Plan ("NCP"), 40 C.F.R. Part 300.

ANSWER

The United States will rely on the testimony of Regional Program Managers John Peterson and Leah Evison. The United States is not aware of any documentation upon which they will rely.

Request for Production of Documents no 3:

Produce all documents relating to the allegation in paragraph 6 of the Complaint that Defendant "contracted with the Site owner to operate the Albion-Sheridan Landfill Site. . ."

ANSWER:

1. Contract between the City of Albion ("City") and Gordon Stevick dated 5/24/66;
2. Contract between the City and Gordon Stevick dated 6/26/72;
3. Contract between the City and Gordon Stevick dated 3/1/78.
4. Letter from Neal Godby, City Manager, to City Clerk re: June 1972 contract;
5. Letter dated 10/31/78 from Lee Davis, City Manager to Michigan Department of Natural Resources seeking a meeting re: the landfill site;
6. Minutes for Albion Common Council meeting for 1966, particularly 3/21/66, 3/23/66, 7/18/66, 8/22/66, 9/19/66, 11/7/6612/5/66;
7. Minutes from Albion Common Council Meetings for 1967, particularly 6/19/67, 10/2/67, 11/6/67, 11/20/67, 12/4/67;
8. Proceedings from Albion Common Council Meetings for 1968, particularly 4/9/68;
9. Proceedings from Albion Common Council Meetings for 1969, particularly 5/26/69, 8/4/69;
10. Proceedings from Albion Common Council Meetings for 1970, particularly 2/16/70, 4/6/70, 4/20/70, 5/4/70, 5/25/70;
11. Proceedings from Albion Common Council Meeting for 1972, particularly, 3/20/72;
12. Proceedings from Albion Common Council Meetings from 1977, particularly, 2/7/77, 2/21/77.

Request for Production of Documents no 4:

Produce all PRP Search Reports and related materials prepared for, by, or furnished to Plaintiff or U.S. EPA, with regard to persons potentially responsible for the Site contamination alleged herein.

ANSWER:

The United States objects to this request to produce on the grounds that it violates the attorney work product privilege. See, Hickman v. Taylor, 329 U.S. 495 (Jan.13, 1947, Upjohn Company v. United States, 449 U.S. 383 (Jan. 13, 1981).

Request for Production of Documents no 5:

Produce all documents identified in the accompanying Interrogatories.

ANSWER:

INTERROGATORIES

INTERROGATORY NO. 1:

For each and every of the following questions, please identify by name, title, and address, each person(s) providing information for Plaintiff's Answer to that particular Interrogatory.

ANSWER:

please see answers to interrogatories 2-19.

INTERROGATORY NO. 2:

State whether Plaintiff has ever claimed that Decker Manufacturing is a person liable for the Sheridan Township Landfill Site pursuant to CERCLA Section 107(a), 42 U.S.C. 9607(a).

a) If so, what facts were considered in this determination?

b) If so, what determination was made?

ANSWER:

2(a) The United States objects to this subpart on the grounds that it violates the attorney work product privilege.

2(b) Decker Manufacturing was identified as a such a person.

INTERROGATORY NO. 2:

State whether Plaintiff has ever claimed that Corning, f/k/a/ Corning Glass Works, is a person liable for the Sheridan Township Landfill Site pursuant to CERCLA Section 107(a), 42 U.S.C. 9607(a).

a) If so, what facts were considered in this determination?

b) If so, what determination was made?

ANSWER:

3(a) The United States objects to this subpart on the grounds that it violates the attorney work product privilege.

3(b) Corning was identified as such a person.

INTERROGATORY NO. 4:

State whether Plaintiff has ever claimed that Eagle-Pitcher Industries f/k/a/ Union Steel, is a person liable for the Sheridan Township Landfill Site pursuant to CERCLA Section 107(a), 42 U.S.C. 9607(a).

a) If so, what facts were considered in this determination?

b) If so, what determination was made?

ANSWER:

4(a) The United States objects to this subpart on the grounds that it violates the attorney work product privilege.

4(b) Eagle-Pitcher Industries f/k/a Union Steel was identified as such a person.

INTERROGATORY NO. 5.:

State whether Plaintiff has ever claimed that Cooper Industries, Inc, f/k/a/ McGraw-Edison, is a person liable for the Sheridan Township Landfill Site pursuant to CERCLA Section 107(a), 42 U.S.C. 9607(a).

a) If so, what facts were considered in this determination?

b) If so, what determination was made?

ANSWER:

5(a) The United States objects to this subpart on the grounds that it violates the attorney work product privilege.

5(b) Cooper Industries f/k/a McGraw Edison was identified as such a person

INTERROGATORY NO. 6:

State whether Plaintiff has ever claimed that Gordon Stevick (or his Estate, heirs, assigns or transferees) is a person liable for the Sheridan Township Landfill Site pursuant to CERCLA Section 107(a), 42 U.S.C. 9607(a).

a) If so, what facts were considered in this determination?

b) If so, what determination was made?

ANSWER:

6(a) The United States objects to this subpart on the grounds that it violates the attorney work product privilege.

6(b) Gordon Stevick was identified as such a person.

INTERROGATORY NO. 7:

State all facts, reasons, and documents which support the statement by the U.S. EPA Assistant Regional Counsel Kurt Lindland on September 24, 1997, that he City of Albion and other parties are liable for the claimed unreimbursed response costs, and the basis for his personal knowledge.

ANSWER:

The United States objects that this interrogatory prematurely and improperly demands a legal conclusion and seeks to require the United States to provide legal contentions by way of interrogatory. The United States further objects to this interrogatory to the extent that it requires the United States to detail its legal contentions and supporting facts on the ground that such request are premature at this stage of discovery. The United States also objects that this inquiry seeks documents such as notes of interviews taken by any attorney which are protected by the attorney work product doctrine and will not be produced. See, Hickman v. Taylor, 329 U.S. 495 (Jan 1, 1947); Upjohn Company v. United States, 449 U.S. 383 (Jan. 13, 1981)

Notwithstanding and without waiving the foregoing objections, the answer to this interrogatory may be derived from an examination of the Unilateral Administrative Order, dated

INTERROGATORY NO. 8:

Identify all persons Plaintiff has at any time considered to be potentially responsible or liable for the Site contamination at issue.

ANSWER:

The United States objects to this interrogatory as it seeks information which is protected by the attorney work product privilege.

INTERROGATORY NO. 9:

Identify all persons whom U.S. EPA issued requests for information pursuant to CERCLA Section 104(e), 42 U.S.C. 9604(e), and all documents relating thereto.

ANSWER:

The United States objects to this interrogatory insofar as the request for "all documents relating thereto" is vague and ambiguous. Moreover, the request is overly broad and unduly burdensome. The United States also objects on the grounds that the material sought in this interrogatory is not relevant to the instant proceeding.

Notwithstanding and would waiving the foregoing objections, the United States will answer the first portion of the interrogatory. If defendant wishes, the documents responsive to the second portion will be made available at a pre-arranged time at the Region 5 Records Center. Subject to and without waiving the foregoing objections, the United States answers as follows:

City of Albion
Albion Sanitary Service
Albion Metal Products
Albion Radiator Service
Albion College
Albion Ford-Mercury
Bilicke Oldsmobile Sales, Inc.
Brooks Foundry
Bundy Mechanical
City Disposal Corporation
Clark Oil Company / Apex Oil Company
Concord Township
Corning Glass Works
George Chambers
Clarence Township
Concord Township
Harold & Isabell Driscoll
Decker Manufacturing
Eagle-Pitcher Industries f/k/a Union Steel
Evans Body Shop
Joe Fitzpatrick
Frahm Chevrolet, Buick, Pontiac
Harvard Industries/ Hayes-Albion Corporation
Haines Auto Service
Harrison's Car Care Center
Village of Homer

Ideal Casings
Jim's Standard
Kinsey Automotive Center
McGraw Edison / Cooper Industries
Mel's Auto Sales
Mike Egnatuck c/o Shell Food Mart
M&R Services
Gerald & Christine Munief
Ed Nieko Body Shop
Robert Norton / B&D Auto Repair
Nelson Chemical (uncollected)
Plassman & Company
Luster & Ollie Mae Prater
Parma Township
Professional Refuse Service
Jerome Richardson
Sheridan Industries
Sheridan Township
Springport Township
Scotts Disposal Service
Seiler Tank Truck Service
Steel Products, Inc
Gordon Stevick
Thompson's Brake Service
Waste Management of Battle Creek / Refuse Service Inc.
Wes' Automotive Service
Wolf's Auto Repair
Zephyr, Inc
Zick's Body Shop

INTERROGATORY NO. 10:

Identify all documents and persons with knowledge relating to the allegation in Paragraph 6 of the Complaint that Defendant "contracted with the Site owner to operate the Albion-Sheridan Landfill Site . . ."

ANSWER:

Please see the United States' response to Request to Produce no 3, and the accompanying documentation.

INTERROGATORY NO. 11:

Identify all facts, reasons, documents, and persons with knowledge relative to the allegations of Paragraph 8 of the Complaint that the city of Albion "maintained control over and had responsibility for the use of the Site. . ."

ANSWER

Please see the United States' response to Request to Produce no. 3, and the accompanying documentation.

INTERROGATORY NO. 12:

Does Plaintiff allege that Defendant has any responsibility for the alleged disposal if "industrial wastes" (Complaint Paragraph 9) at the Sheridan Township Landfill Site? If so, Identify all facts, reasons, documents, and persons with knowledge relating to such allegation.

ANSWER:

The United States alleges that as an operator of the site, the City of Albion is responsible for the disposal of industrial wastes at the site.

INTERROGATORY NO. 13:

Identify any and all notices of violation issued by the Michigan Department of Natural Resources (MDNR") or any other governmental agency in conjunction with the landfill operations at he Site during its operation, and ALL persons with knowledge of any such notices.

ANSWER:

The United States objects to this question n the grounds that "any and all" makes the inquiry overly broad, unduly burdensome, and oppressive.

The United States is not aware of any notices of violation issued by the Michigan Department of Natural Resources.

INTERROGATORY NO. 14:

Does Plaintiff allege that the City of Albion is responsible for the "hazardous substances" which were allegedly "spilled. leaked, discharged, or otherwise disposed of at the Site" (Complaint paragraph 14)? If so, identify ALL facts, reasons, documents and persons with knowledge supporting such allegation.

ANSWER:

The United States alleges that the City of Albion is responsible insofar as it was an operator of the site during the relevant period. Please see the Unilateral Administrative Order dated March 19, 1990.

INTERROGATORY NO. 15:

Identify all facts, reasons, documents, and persons with knowledge relating to the allegation in Paragraph 19 of the Complaint that "defendant City of Albion operated the Site at the time of disposal of hazardous substances. . ."

ANSWER:

Please see the United States' response to Request to Produce no. 3, and the accompanying documentation.

INTERROGATORY NO. 16:

Identify ALL facts, reasons, documents, and persons with knowledge supporting the allegation that he Site posed an "imminent and substantial endangerment to the public health or welfare or the environment" as of October 11, 1995, issuance of the U.S. EPA Unilateral Administrative Order.

ANSWER:

Please see the Unilateral Administrative Order dated March 19, 1990.

INTERROGATORY NO. 17:

Identify ALL documents and persons with knowledge supporting the consistency of Plaintiff's claimed "response costs" with the National Contingency Plan ("NCP") 40 C.F.R. part 300.

ANSWER:

John Peterson and Leah Evison, Regional Program Managers , will testify that the United States' response costs are consistent with the National Contingency Plan. As this time, Plaintiff is not aware of which documents, if any, the witnesses will rely on..

INTERROGATORY NO. 18:

Identify ALL witness statements, interviews and depositions taken by, for or provided to Plaintiff with regard to the Site.

ANSWER:

1. Deposition of William Rieger on June 4, 1992.
2. Deposition of Arlo Wilkerson on May 24, 1990;
3. Deposition or Lloyd Mosher on July 26, 1991;
4. Deposition of Charles M. Denton on June 4, 1992;
5. Deposition of Vernon Wainwright on June 3, 1992;
6. Deposition of Donald Hull on June 4, 1992;

The United States provide the name of each individual court reporter upon request.

INTERROGATORY NO. 19:

As to any of the accompanying Requests to Admit which Plaintiff does not unequivocally admit, identify ALL facts, reasons, documents and persons with knowledge to support Plaintiff's denial of the request to admit.

PLAINTIFF'S RESPONSE TO
DEFENDANT'S FIRST REQUEST FOR ADMISSIONS

1. Admit that City of Albion is not and was not the "owner" of the Sheridan Township Landfill Site at issue in the Complaint in the captioned action (the "Site").

ANSWER: Admitted insofar as the City of Albion was not the title holder to the property.

2. Admit that Gordon Stevick was the owner of the Sheridan Township Landfill Site during ALL pertinent times.

ANSWER: Admitted that Gordon Stevick was the title holder to the land.

3. Admit that Gordon Stevick operated the Sheridan Township Landfill Site during ALL pertinent times.

ANSWER: Admitted insofar as Gordon Stevick operated the Site in conjunction with the City of Albion.

4. Admit that the Sheridan Township Landfill Site is located in Sheridan Township, Michigan, and not within the City of Albion.

ANSWER: Admitted.

5. Admit that the City of Albion is and was not a tenant, lessee, or holder of any other real estate interest in the Sheridan Township Landfill Site.

ANSWER: Admitted.

6. Admit that Gordon Stevick, not the City of Albion, was licensed or permitted by the state of Michigan to operate the site as a landfill.

ANSWER: Admitted. Gordon Stevick was permitted by the State of Michigan to operate the Site.

7. Admit that the City of Albion did not exercise actual and substantial control of the day-to-day waste disposal activities at the Site.

ANSWER: Denied. The meeting notes from the Albion city Council's meetings indicate the exercise of actual and substantial control over the day-to-day waste disposal activities at the Site. (please see Request to Produce Documents no. 3)

8. Admit that neither Gordon Stevick, nor any Landfill employees, were employed by the City of Albion in connection with the Site disposal activities at issue.

ANSWER: Admitted

9. Admit that no City of Albion employee ever worked at the Sheridan Township Landfill in connection with the Site disposal activities at issue within the scope of their employment with the City of Albion.

ANSWER: Admitted insofar as no city employee worked at the Site, however, according to the March 1, 1975 contract between Gordon Stevick and the City, the Director of Public Works was authorized to place requirements upon the operation in the scope of his or her employment. See Agreement dated March 1, 1975.

10. Admit that Gordon Stevick maintained contracts or arrangements with multiple municipalities, businesses and persons located both within and outside the City of Albion for waste disposal at the Site.

ANSWER: Admitted that Gordon Stevick was authorized by his contracts with the City of Albion to accept waste from other entities. The United States does not poses information regarding any particular arrangements Gordon Stevick may have entered into.

11. Admit that the U.S. EPA identified other potentially responsible parties form the Sheridan Township Landfill Site, but did not join those other persons to this litigation.

ANSWER: Admitted.

12. Admit that the City of Albion timely responded to the U.S. EPA Unilateral Administrative Order issued October 11, 1995.

ANSWER: Admitted.

13. Admit that the City of Albion's response to the October 11, 1995, U.S. EPA Unilateral Administrative Order denied liability but offered a compromise resolution.

ANSWER: Denied. There is no compromise proposed in the December 11, 1995 response to the UAO.

14. Admit that the City of Albion had "sufficient cause" for any failure to comply with the October 11, 1995, Unilateral Administrative Order.

ANSWER: Denied. The City of Albion based its "sufficient cause" defense on the assertion that the city was not an operator of the site. As this issue is at the center of the litigation, United States obviously disagrees with the City's position. See, letter of George Davis on behalf of the City, dated December 11, 1995.