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513681

June 14, 2016

Sent via overnight delivery to:

Mila Bensing, Enforcement Specialist
U.S. Environmental Protection Agency, Region 5
Superfund Divisiion-Enforcement & Compliance Assurance Branch
Enforcement Services Section 1, SE-5J
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

RE: Tocon Holdings, LLC

Dear Ms. Bensing:

I represent Tocon Holdings, LLC in a limited capacity in order to respond to your letter dated May 2, 2016, signed by Samuel Borries. Unfortunately, the entity is insolvent and I was not given as much time as I would have liked to further organize the documents for you. I also was not able to assure that all exhibits to documents were properly attached. Please note that the documents I am referring to were not prepared by my client and are from other sources. We are providing to assist in your inquiry the best we can.

If there is further information you seek, my client is amenable to assisting you gain access to any information Tocon has a legal right to obtain. Please contact me with any questions or comments.

Best regards,

L. Leona Frank
Mailing: PO Box 55081
Indianapolis, IN 46205

Frank Law, LLC
Barrister Building, Suite 825 Indianapolis, IN 46204, 155 E. Market Street
(317) 698-7101

CERTIFICATION OF
ANTHONY ADKINS, MEMBER OF TOCON HOLDINGS, LLC

I, Anthony Adkins, Member of Tocon Holdings, LLC ("Tocon"), certify that the information contained herein is true and accurate to the best of my knowledge and belief. In light of pending litigation regarding all matters contained herein, all information is to be treated as confidential in accordance with the provisions of Section 104(e) of CERCLA, Section 3007(b) of the Resource Conservation and Recovery Act or 40 C.F.R. Section 2.203(b). Incorporated herein by reference is a certain letter dated May 2, 2016 from the United States Environmental Protection Agency signed by Samuel Borries and addressed to myself as Registered Agent for Tocon Holdings, LLC.

On Page 3, you have requested I submit information regarding the Site.

1. Attached are all documents that are in my possession relating to the handling, transportation, storage and/or disposal of asbestos or asbestos-containing materials at the Site located at 1302 E. Monroe Street, Goshen, Indiana. To assist, also attached is an Affidavit that was drafted prior to the bankruptcy filing by Johnson Controls, Inc. attorneys. Tocon was not represented by counsel at that time and the affidavit was intended to assist in the Hostetler law suit to which Tocon did not participate.

2. On October 6, 2015, Tocon Holdings, LLC filed a Chapter 7 bankruptcy in the United States Bankruptcy Court Southern District of Indiana Case No. 15-08397-RLM-7A. Since Tocon remained the titled owner, Tocon incorporates by reference all documents and evidence presented in the case by other parties. Tocon does not have the funds to provide all documents that were filed by other parties in the case as it is insolvent as determined by the Court it the dismissal of the case. In addition, Tocon is providing the 2006 Demolition Asbestos Survey Report provided to

8. Any record in my possession is attached.

9. Tocon did not have liability insurance coverage as it has been insolvent since inception. Self insurance is also impossible during insolvency.

10. It is my understanding that all asbestos was removed prior to demolition after proper permitting and approval of Indiana Department of Environmental Management. I have no actual knowledge of the presence of asbestos and it was my belief that all asbestos had been properly removed and disposed of during the demolition process by Swift, or subcontractors that Swift may have hired.

11. Attached is the Demolition Asbestos Survey Report of Johnson Controls. Any further asbestos abatement documentation (if any is in my possession) is also attached.

12. The asbestos or asbestos containing material was removed from the Site in preparation of the demolition of the buildings on the Site. An eminent domain case was ongoing for more than three years prior to the filing of Tocon's bankruptcy preventing the sale of the Site.

I am the sole remaining member of Tocon Holdings, LLC and there are no other officers, directors, and employees or subsidiaries, divisions, and facilities.

Further affiant sayith not.

Anthony Adkins, Affiant

STATE OF INDIANA)
) SS:
COUNTY OF Marion)

AFFIDAVIT OF TONY ADKINS

I, Tony Adkins, being first duly sworn, state:

1. I am the President and sole member (owner) of Tocon Holdings, LLC ("Tocon"), a defendant in this case. Tocon owns the property at 1302 E. Monroe St. in Goshen that was formerly the Johnson Controls plant.

2. I am competent to testify to the matters set forth in this Affidavit based on my own personal knowledge and/or an investigation and review I conducted concerning the exhibits attached hereto. If called upon to testify as to the truth of such matters, I could and would do so competently.

3. Attached to this Affidavit are true and correct copies of various notices, correspondence, and other business records of Tocon in the current possession, custody and control of Tocon.

4. Tocon was formed on or around June 1, 2007 in connection with a business endeavor between myself and James Conroy involving the purchase of Johnson Controls' former property for certain manufacturing operations.

5. Tocon has no current business operations, no business income, and no current employees. The only business Tocon ever operated or was involved with was equipment assembly and fiberglass manufacturing for the RV industry beginning after Tocon's purchase of the former JCI plant. That business had only a few employees. It operated for about one year, and by October of 2008, the business ended and the property was vacated.

6. None of the manufacturing and assembly operations conducted at the site during Tocon's ownership involved the use of trichloroethylene ("TCE"), chemicals containing TCE or other similar hazardous materials.

7. Tocon also did not store TCE or any similar chemicals on site, and none of the waste generated during Tocon's limited operations contained such hazardous chemicals.

8. The TCE plume emanating from the former JCI site that is the focus of the current lawsuit existed long before Tocon purchased the property. I was aware of the site contamination and TCE plume prior to Tocon's purchase of the property. I knew that Johnson Controls had a remediation agreement with the Indiana Department of Environmental Management ("IDEM"), had pumps on site to address the contamination, and had been working with IDEM to clean up the property for many years.

9. Johnson Controls provided Tocon reports of the contamination and remedial efforts in connection with Tocon's purchase of the property. The issue of the contamination and Johnson Controls' responsibility for remediation was specifically addressed in the Real Estate Purchase Agreement ("Purchase Agreement") between Tocon's predecessor and JCI. (*See* Purchase Agreement dated June 1, 2007, attached hereto as Exhibit 1.)

10. Johnson Controls and Tocon were obligated, as a condition of the Purchase Agreement, to enter into an Environmental Remediation and Indemnification Agreement ("Remediation Agreement"; Ex. 1 at §8(A)(iv) and Ex. G) regarding the pre-existing contamination. In the Remediation Agreement, Johnson Controls agreed to be responsible for all claims against Tocon arising out of the pre-existing contamination. (Remediation Agreement dated June 8, 2007, attached hereto as Ex. 2.)

11. The Remediation Agreement states that the environmental contamination on and around the site and claims arising from the contamination "shall be the responsibility of Seller [Johnson Controls], including without limitation any liability or obligation to remediate the Environmental Conditions that may be imposed by the State of Indiana..." (Ex. 2 at §3(d).)

12. With regard to the remedial activities for the site contamination that Johnson Controls had already undertaken with the Indiana Department of Environmental Management's ("IDEM") approval years prior to Tocon's purchase, the Remediation Agreement provides that: "Any outstanding Environmental Conditions shall be remedied by Seller [Johnson Controls] to the point sufficient to enable Seller to receive a Compliance Notice from the appropriate Governmental Entit(ies)." (*Id.* at §3(a).)

13. Under the Purchase Agreement and Remediation Agreement, JCI assumes and has always maintained all responsibility for remediating the TCE contamination at and around the site, even during Tocon's ownership. The Remediation Agreement specifies that Johnson Controls "shall have the right to determine how to handle or satisfy any and all investigation or cleanup requirements that may be imposed under any applicable Environmental Law" and "shall direct implementation of the response activities required on the Property." (*Id.* at §3(b).)

14. The Remediation Agreement specifically prohibits Tocon from taking any active role in the remediation or in communications with IDEM concerning the remediation. For instance, the Remediation Agreement states that "Purchaser [Tocon] will not meet with any Governmental Entity with respect to any matter subject to this Agreement unless such meeting has been arranged by Seller [Johnson Controls] and Seller attends the meeting or the meeting was convened at the request of a Governmental Entity directed to Purchaser and Seller declines to attend the meeting." (*Id.*)

15. Tocon was never made a party to JCI's Voluntary Remediation Agreement with IDEM, nor did it execute any separate agreement with IDEM. IDEM has told me repeatedly that JCI is responsibility for any environmental problems at the site. Tocon could not have caused or failed to prevent pre-existing contamination to migrate offsite, because IDEM and Johnson Controls were in charge of the cleanup and Tocon was not obligated or even allowed to participate directly in the IDEM approved cleanup activities.

16. Following Tocon's purchase of the property, I learned the Goshen School District was interested in possibly purchasing it to convert it to athletic fields. After the cessation of Tocon's operations at the site in late 2008, I discussed the issue with the school superintendent Bruce Stahly. We could not reach an agreement on the sale price, and an eminent domain proceeding was later commenced by the school to obtain the property.

17. During the eminent domain proceedings, I learned that the property was worth more to the school district if the buildings and structures standing on it were removed.

18. In order to maximize the value of the property, I hired a contractor, Richard Swift, to assist in the demolition of the physical structures on the property. Throughout this time, the property remained open to and accessible by JCI and IDEM for the remediation efforts, as required by Tocon's Remediation Agreement with JCI.

19. In demolishing the property, Mr. Swift and I were careful to coordinate with JCI and IDEM to ensure that the demolition would not impede JCI's on site remedial activities. IDEM frequently visited the site throughout the demolition to ensure the remedial activities being conducted by Johnson Controls were not impeded.

20. IDEM advised me that tearing down the buildings was not a problem in the remediation context so long as the concrete slab foundations of the structures were not removed. The concrete slabs were therefore left in place for all demolished structures.

21. IDEM also told me that asbestos in the former JCI buildings, an issue unrelated to the pre-existing soil and groundwater contamination and the underground TCE plume, would likely necessitate permits and proper abatement of the asbestos in advance of the demolition.

22. The demolition contractor I hired had responsibility for the permitting and abatement. He hired a subcontractor to perform the asbestos abatement in accordance with the

regulatory guidelines. Tocon was never issued any citations or violations for improper or inadequate asbestos abatement.

23. On May 9, 2013, IDEM sent Tocon a Notice of Violation letter regarding certain 55 gallon drums that had been staged and stored by the demolition contractor on pallets at the site during the demolition. The drums contained catalyzed resin from Tocon's prior operations, a material used in fiberglass manufacturing that does not contain TCE or similar chemicals.

24. In the May 9 letter, IDEM stated that Tocon had not conducted a written inventory or performed a waste determination for the drummed material under 40 CFR 262.11. (*See* IDEM Letters dated May 9, 2013, attached hereto as Exhibit 3; *see also See* IDEM Letter dated July 17, 2013 reissued to Tocon, attached hereto as Exhibit and 4.)

25. In response to the letter, the demolition contractor conducted the inventory and Tocon provided proof to IDEM that the drums contained catalyzed resin, a non-hazardous solid waste, and were properly disposed of as a non-hazardous waste at a permitted landfill.

26. On October 28, 2013, IDEM issued Tocon a letter acknowledging the drums contained non-hazardous waste, that the waste was properly inventoried, managed, and disposed of, and that Tocon was therefore in compliance with 40 CFR 262.11 and the terms of the previous letter. (*See* IDEM Compliance Letter to Tocon dated October 28, 2013, attached hereto as Exhibit 5.)

27. In December 2014, the demolition was not yet complete, and Tocon received a new letter regarding additional violation from IDEM. (*See* IDEM Letter dated December 31, 2014 and attached Inspection Report, attached hereto as Exhibit 6.) IDEM sent a follow up to this letter to Tocon on April 21, 2015. (*See* IDEM Letter to Tocon dated April 21, 2013, attached hereto as Exhibit 7.)

28. These new letters did not relate to TCE contamination and did not involve the drums that were the subject of IDEM's previous letters from 2013. The new letters solely addressed the piles of construction and demolition debris (metal and wood debris) that have not been fully removed from the site.

29. In the letter, IDEM informed Tocon the extended storage of construction debris violates Indiana laws on open dumping. I have discussed the issue with IDEM and made her aware that I am working with the demolition contractor to finish the demolition and get the debris removed.

30. There is no claim by IDEM that this debris contains hazardous substances or has in anyway contributed to the TCE contamination at the site that existed before Tocon purchased the property.

31. There are several barrels currently being kept at the site during the demolition, which were depicted in some of the photos attached as Exhibit P to Plaintiffs' Supplemental Remand Motion. None of these barrels contain TCE or other hazardous waste. The barrels are being used by the demolition contractor to store hydraulic oil for the demolition equipment.

32. IDEM representatives have been on the site while these barrels were present, but have never issued Tocon any citations or violations for the barrels or the storage of hydraulic oil in them.

33. Despite advising Tocon of its discretion to commence an enforcement action against Tocon directly if Tocon causes or contributes to the release of hazardous substances at the site, IDEM has never done so. IDEM has continued to work exclusively with JCI to remedy the soil and groundwater contamination from the site.

34. Other than the property itself, Tocon has no assets and is not financing any of the demolition activities. During the eminent domain proceeding by the Goshen School District,

several appraisers appraised the property before the demolition at a zero dollar value, although I personally disagree with this valuation.

35. Tocon no longer is an active business operation and is basically insolvent. Previously, Tocon was represented in this case by counsel, but Tocon has no liquid assets or income with which to pay its attorneys in this case.

36. Tocon is also not paying for legal representation in the eminent domain proceeding. Tocon's counsel there is being provided by the bank that has a security interest in the property.

37. Tocon does receive service of legal documents and notices at its registered address regarding this case, which is my home address. To date, Tocon has not been served any interrogatories or document requests by anyone.

FURTHER AFFIANT SAITH NAUGHT.

Date: 8/26/2015

Tony Adkins

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Andre Dangavietis,
ORC Attorney on 6/21/16
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