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February 8, 2017

Via Regular and Electronic Mail

Robert A. Kaplan
Office of Regional Administrator
U.S. Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Re: *Touhy* Request for Employee Testimony - South Dayton Dump

Dear Mr. Kaplan:

This letter serves as a Touhy Request to the United States Environmental Protection Agency - Region 5 ("U.S. EPA") from the Dayton Power & Light Company ("DP&L") pursuant to 40 C.F.R. § 2.401 through 2.406.

Attached please find subpoenas issued to three U.S. EPA employees—Karen Cibuskis, Leslie Patterson, and Steven Renninger—whose testimony is essential to litigation concerning the South Dayton Dump, as described in more detail below. These individuals have been deeply involved in the ongoing matter involving the South Dayton Dump in Dayton, Ohio, Southern District of Ohio Case No. 3:15-cv-115. Without their testimony, key facts and issues alleged by the more than 20 potentially responsible parties ("PRPs"), including three plaintiffs who have brought this suit due to entering settlement agreements with U.S. EPA, will go unrecorded or potentially be misstated.

The Lawsuit

The South Dayton Dump and Landfill is a former disposal area for industrial and municipal waste. The site is approximately 80 acres. Waste was deposited at the South Dayton Dump from the early 1940s until 1996. Plaintiffs—Hobart Corporation, Kelsey-Hayes Company, and NCR Corporation—are PRPs who originally filed suit against DP&L and a host of other PRPs under CERCLA, 42 U.S.C. § 9607 and 9613, asserting claims of cost recovery and contribution, declaratory judgment, and unjust enrichment. Plaintiffs were identified as PRPs under CERCLA because they either generated the hazardous substances disposed of at the South Dayton Dump, or arranged for disposal or transport for disposal of hazardous substances there.

ED_001207_00000383

As you may already know, in August of 2006, Plaintiffs entered into an Administrative Settlement and Order on Consent with U.S. EPA ("2006 ASAOC"). In May of 2010, Plaintiffs sued several other PRPs, including DP&L, seeking cost recovery and contribution, Southern District of Ohio Case No. 3:10-cv-195. Plaintiffs joined additional PRPs in June of 2012 (Case No. 3:12-cv-213). Both of these cases were eventually dismissed by the Southern District of Ohio once it was determined that Plaintiffs were limited to a contribution action pursuant to CERCLA § 113(f)(3)(B), and that time for bringing that suit had summarily run.

On April 5, 2013, Plaintiffs entered into an ASAOC for Removal Action ("2013 ASAOC") with U.S. EPA, in connection with certain "vapor intrusion risks" in and around the South Dayton Dump. Subsequently, on June 11, 2016, Plaintiffs entered into an ASAOC for performance of a remedial investigation and feasibility study ("RI/FS") in and around the South Dayton Dump ("2016 ASAOC"). Given their newest agreements with U.S. EPA, and overcoming their previous statute of limitations failures, Plaintiffs were then able to file the current matter against DP&L and various other PRPs. Although Plaintiffs asserted the same exact four causes of action asserted in their first two cases, the claims at issue in the present matter arise out of the 2013 and 2016 ASAOCs. In February of 2014, the Southern District of Ohio dismissed the cost recovery claim brought under § 107(a) of CERCLA, and Plaintiffs have since proceeded with their § 113(f)(3)(B) contribution claim.

In their most recent Complaint, Plaintiffs rely on their 2013 and 2016 ASAOCs with U.S. EPA to support standing in bringing their claims. They allege that DP&L contributed waste to the South Dayton Dump, both in the form of deposited waste and potentially through migrating exposure from the DP&L Facility on Dryden Road. Plaintiffs, thus far, have used deposition testimony from former South Dayton Dump employees to justify their claims, with little other evidence produced against DP&L.

Conversations with and input from U.S. EPA personnel requested for deposition herein not only underlie Plaintiffs' claim of standing, but have affected the course of this litigation. Clarity regarding U.S. EPA's positions and facts exchanged with U.S. EPA is both in U.S. EPA's interest, and essential to the fair adjudication of Plaintiffs' claims.

Requirements for Touhy Request Under 40 C.F.R. § 2.401

This Touhy request complies with the regulations set forth in 40 C.F.R. § 2.403 ("Procedures When Voluntary Testimony is Required"). That section requires the request is in writing, states the natures of the testimony requested, and why such deposition testimony is in the interest of U.S. EPA.

Nature of the Testimony Requested

Ms. Karen Cibulskis
US EPA – Region 5
Former Remedial Project Manager
Chicago, Illinois

Ms. Cibulskis formerly functioned as the Remedial Project Manager for the South Dayton Dump from approximately 2000 until 2012. DP&L anticipates that her deposition testimony would be based on her involvement with the site and be based on factual realities of that involvement, as opposed to her technical expertise in this area. As Remedial Project Manager, Ms. Cibulskis was responsible for: representation of U.S. EPA as the lead federal agency at the South Dayton Dump; accountability for planning, safety, scoping, budget, quality, and project schedule as well as accounting for stakeholder expectations and compliance with work tasks governed by state and federal regulations; and managing the overall project team, including budget and planning, scoping, milestones, and reporting to senior management. For the South Dayton Dump, Ms. Cibulskis was integrally involved in environmental investigations, decisions, data collection, establishing boundaries of the project, its schedule, and objectives. *See, e.g.* attached correspondence copying Ms. Cibulskis, related to U.S. EPA employing an investigator and corresponding with potential witnesses related to the South Dayton Dump. This role has been crucial to Plaintiffs, and testimony from Ms. Cibulskis is essential to the proper and complete adjudication of this matter.

Ms. Leslie Patterson
US EPA - Region 5
Current Remedial Project Manager
Chicago, Illinois

Ms. Patterson took over as Remedial Project Manager for the South Dayton Dump in 2012. Her role and duties track those of Ms. Cibulskis but for a different time period. Ms. Patterson has been involved in decision making at the South Dayton Dump, communicating priorities and working closely with Plaintiffs. *See, e.g.*, attached meeting minutes for meeting between Ms. Patterson and other stakeholders involved at the South Dayton Dump. DP&L anticipates that testimony from Ms. Patterson would involve her work at the South Dayton Dump, and any contact between U.S. EPA and Plaintiffs since the lodging of the 2013 ASAOC.

Mr. Steven Renninger
US EPA On-Scene Coordinator
Emergency Response Branch
Cincinnati, Ohio

Mr. Renninger functions as the on-scene coordinator for the South Dayton Dump. In that role, he has been responsible for monitoring and directing response, as well as coordinating all federal efforts with, and providing support and information to, local, state, and regional response communities. Key duties for Mr. Renninger as on-scene coordinator include assessment, monitoring, response assistance, and evaluation at the South Dayton Dump. Mr. Renninger has also been instrumental in corresponding and coordinating with Plaintiffs in the present matter, *see* for example the attached meeting minutes between Mr. Renninger, Ohio EPA, and consultant for Plaintiffs, Conestoga-Rovers and Associates. DP&L anticipates testimony from Mr. Renninger on all these topics as they relate to the South Dayton Dump. Mr. Renninger has been integrally involved in investigative and response efforts at the South Dayton Dump. His testimony is crucial to presenting the complete picture of events and activities that have taken place, as well as the technical aspects of U.S. EPA actions at and involving the South Dayton Dump. This testimony is not available from any other source and is crucial to all claims involved in the present matter.

Deposition Testimony of the Requested Individuals Is In The Interest of U.S. EPA[1]

For a number of reasons, the testimony sought by DP&L is in the interest of U.S. EPA.

(1) The requested testimony is discoverable and appropriately tailored, as it is directly relevant to the claims in this case, and is neither confidential nor privileged. DP&L seeks only factual testimony from the individuals subpoenaed in this matter, and has only subpoenaed the most essential individuals to testify.

(2) The individuals named as potential deponents first arose as a result of Plaintiffs production of their Initial Witness List in the present litigation in November 2016. *See* attached Witness List at Nos. 27, 94, and 105. There, Plaintiffs named five U.S. EPA employees, including the three named here. Plaintiffs have since amended their witness list to remove the names of all current and former U.S. EPA employees; however it is still apparent that Plaintiffs have used their communications and interactions with U.S. EPA as the foundation for the present litigation. Moreover, Plaintiffs offer no reasoning for their change in stance on this point. The employees named here remain relevant and essential to the adjudication of this matter, as originally recognized by Plaintiffs.

(3) U.S. EPA has repeatedly demonstrated an interest in the South Dayton Dump and this litigation, making the testimony appropriate. U.S. EPA has been engaged with the South Dayton Dump since the year 2000, or earlier. The present litigation would serve to potentially determine the allocation outcome between all PRPs in question as to the vapor

[1] Attached hereto is Mr. James Morris' letter outlining several concerns of U.S. EPA. This Touhy request addresses each concern, in addition to demonstrating why testimony of the requested individuals is in the interest of U.S. EPA, as referenced in 40 C.F.R. § 2.403.

intrusion issue, and perhaps any future cleanup at the South Dayton Dump. Such resolution is clearly beneficial to U.S. EPA. Moreover, time and again, U.S. EPA has demonstrated its interest in the litigation in question through its formal and informal participation in this matter. For example, Thomas Nash, formerly of U.S. EPA, attended and participated in the deposition of Horace Boesch (a deponent upon which Plaintiffs have based much weight) in December of 2011 in Dayton, Ohio. U.S. EPA has also continued to contact PRPs in this matter, encouraging them to cooperate with Plaintiffs and/or enter into settlement agreements.

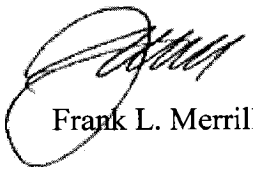
(4) Testimony available to all parties avoids potential inconsistencies and misstatement of U.S. EPA's factual information that may occur otherwise. In this regard, only Plaintiffs have been privy to the factual findings of U.S. EPA through their various communications to date. The requested testimony remedies this issue, as it provides an opportunity for U.S. EPA personnel to ensure essential information is available in an impartial manner.

(5) The subpoenaed testimony is necessary to the further resolution of this case. The employees in question have already spent much time on the ASAOCs and the site in general. To forego the factual testimony on these topics is to the detriment of DP&L, the other PRPs, and even Plaintiffs. Indeed, these individuals' testimony may aid the resolution of the case. Their participation, for this reason would be beneficial to all parties, including U.S. EPA.

(6) The benefits of permitting the requested testimony outweigh demands on these individuals' time. To that end, DP&L is more than willing to come to the U.S. EPA Region 5 Office in Chicago, Illinois to complete this testimony in the most efficient manner possible with as little disruption to normal work activities as is practicable. Moreover, as individuals continuously engaged with administrative settlements and matters clearly pertaining to CERCLA, participation from the three employees identified is not out of the realm of their stated job function.

I hope you will agree the testimony requested herein should be permitted. I am available to discuss this request at your earliest convenience, and I respectfully request a determination as soon as possible in light of upcoming court deadlines in the litigation.

Best regards,



Frank L. Merrill

cc: Jim Morris, U.S. EPA – Region 5
Enclosures (6)

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ATTACHMENT 1

UNITED STATES DISTRICT COURT

for the

Southern District of Ohio

HOBART CORPORATION, et al.	)	
Plaintiff	)	
v.	)	Civil Action No. 3:13-cv-115
	)	
THE DAYTON POWER AND LIGHT COMPANY, et al.	)	
Defendant	)	

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To:

Ms. Leslie Patterson

(Name of person to whom this subpoena is directed)

☑ *Testimony:* **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place:	Date and Time:
United States Environmental Protection Agency Region 5 Office, 77 West Jackson Blvd. Chicago, Illinois 60604	03/07/2017 10:00 am

The deposition will be recorded by this method: Court Reporter

☐ *Production:* You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 02/03/2017

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk | *Attorney's signature*

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Defendant, The Dayton Power and Light Company, who issues or requests this subpoena, are:

Frank L. Merrill, Bricker & Eckler LLP, 100 South Third Street, Columbus, Ohio 43215, fmerrill@bricker.com (614) 227-2300

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 3:13-cv-115

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____

on *(date)* _____ .

☐ I served the subpoena by delivering a copy to the named individual as follows: _____

_____

_____ on *(date)* _____ ; or

☐ I returned the subpoena unexecuted because: _____

_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of $ _____ .

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) ***For a Trial, Hearing, or Deposition.*** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial and would not incur substantial expense.

(2) ***For Other Discovery.*** A subpoena may command:

(A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) ***Command to Produce Materials or Permit Inspection.***

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) ***Quashing or Modifying a Subpoena.***

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) ***Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) ***Claiming Privilege or Protection.***

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

UNITED STATES DISTRICT COURT

for the

Southern District of Ohio

HOBART CORPORATION, et al. *Plaintiff*	)	
v.	)	Civil Action No. 3:13-cv-115
THE DAYTON POWER AND LIGHT COMPANY, et al. *Defendant*	)	

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To:

Mr. Steven Renninger

(Name of person to whom this subpoena is directed)

☑ *Testimony:* **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place:	Date and Time:
United States Environmental Protection Agency Region 5 Office, 77 West Jackson Blvd. Chicago, Illinois 60604	03/08/2017 10:00 am

The deposition will be recorded by this method: Court Reporter

☐ *Production:* You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 02/03/2017

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk | *Attorney's signature*

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Defendant, The Dayton Power and Light Company, who issues or requests this subpoena, are:

Frank L. Merrill, Bricker & Eckler LLP, 100 South Third Street, Columbus, Ohio 43215 / fmerrill@bricker.com (614) 227-2300

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 3:13-cv-115

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____

on *(date)* _____ .

☐ I served the subpoena by delivering a copy to the named individual as follows: _____

_____

_____ on *(date)* _____ ; or

☐ I returned the subpoena unexecuted because: _____

_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of $ _____ .

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

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(1) ***For a Trial, Hearing, or Deposition.*** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:
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(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
(i) is a party or a party's officer; or
(ii) is commanded to attend a trial and would not incur substantial expense.

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(i) disclosing a trade secret or other confidential research, development, or commercial information; or
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(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

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UNITED STATES DISTRICT COURT

for the

Southern District of Ohio

HOBART CORPORATION, et al. *Plaintiff*	)	
v.	)	Civil Action No. 3:13-cv-115
THE DAYTON POWER AND LIGHT COMPANY, et al. *Defendant*	)	

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To:

Ms. Karen Cibulskis

(Name of person to whom this subpoena is directed)

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Place: United States Environmental Protection Agency Region 5 Office, 77 West Jackson Blvd. Chicago, Illinois 60604	Date and Time: 03/06/2017 10:00 am

The deposition will be recorded by this method: Court Reporter

☐ *Production:* You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 02/03/2017

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk | *Attorney's signature*

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Defendant, The Dayton Power and Light Company, who issues or requests this subpoena, are:

Frank L. Merrill, Bricker & Eckler LLP, 100 South Third Street, Columbus, Ohio 43215, fmerrill@bricker.com (614) 227-2300

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 3:13-cv-115

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____ on *(date)* _____ .

☐ I served the subpoena by delivering a copy to the named individual as follows: _____

_____ on *(date)* _____ ; or

☐ I returned the subpoena unexecuted because: _____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of $ _____ .

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) ***For a Trial, Hearing, or Deposition.*** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:
(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
(i) is a party or a party's officer; or
(ii) is commanded to attend a trial and would not incur substantial expense.

(2) ***For Other Discovery.*** A subpoena may command:
(A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
(B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) ***Command to Produce Materials or Permit Inspection.***
(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.
(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:
(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) ***Quashing or Modifying a Subpoena.***

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;
(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
(iv) subjects a person to undue burden.
(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:
(i) disclosing a trade secret or other confidential research, development, or commercial information; or
(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.
(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:
(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) ***Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information:
(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.
(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.
(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.
(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) ***Claiming Privilege or Protection.***
(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:
(i) expressly make the claim; and
(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.
(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.
The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

ATTACHMENT 2

From: Morris, James [mailto:Morris.James@epa.gov]
Sent: Thursday, January 12, 2017 4:57 PM
To: Merrill, Frank
Cc: Campbell, Drew
Subject: RE: Hobart Corp. v. DPL, Case No. 3:13-cv-115 [BRICKER-WS.FID33029]

Hi Frank,

Thank you again for providing to me the plaintiffs' lay witness list in the *Hobart* litigation. As you know, the witness list currently contains the names of four current EPA employees (Karen Cibulskis, Leslie Patterson, Steve Renninger, and me) and one former EPA employee (Tom Nash). Since your email to me of January 5th, I have been in contact with counsel for the plaintiffs and requested that the names of all current or former EPA employees be removed from the plaintiffs' witness list; while I have confirmed as of this morning that the plaintiffs are in the process of amending their lay witness list to remove the names of the four current EPA employees, it is my understanding that you wish to maintain your request for the voluntary testimony of these people, as well as for the testimony of the former EPA employee.

The regulations governing requests for EPA testimony received by EPA and its employees (and former employees) can be found at 40 C.F.R. §§2.401-2.406 (EPA's *Touhy* regulations, taken from *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951)). It is important to note that EPA usually does **not** allow its employees to testify in litigation in which it is not a party, unless such testimony is clearly in the interests of EPA (40 C.F.R. Section 2.403). The purpose of the *Touhy* regs, as delineated at 40 C.F.R. Section 2.401(c), is:

(1) To ensure that employees' official time is used only for official purposes;
(2) To maintain the impartiality of EPA among private litigants;
(3) To ensure that public funds are not used for private purposes, and
(4) To establish procedures for approving the giving of testimony in third-party situations.

The determination of whether providing the testimony would clearly be in the interests of EPA is made, at the Regional level, by the Regional Counsel, in consultation with the Regional Administrator and the direct supervisors of the employees involved.

In accordance with 40 C.F.R. Section 2.403, therefore, for each of the current or former EPA employees from whom you wish voluntary testimony, please provide to me in writing (1) the nature of the requested testimony, and (2) the reason(s) why EPA's providing of such testimony would clearly be in the interests of EPA.

Please feel free to give me a call if you have any questions.

Thanks,

Jim
312.886.6632

ATTACHMENT 3

-----Original Message-----
From: Nash.Thomas@epamail.epa.gov [mailto:Nash.Thomas@epamail.epa.gov]
Sent: Tuesday, March 07, 2006 10:40 AM
To: Lunn, Robin
Cc: Cibulskis.Karen@epamail.epa.gov
Subject: Wayne Wertz

Robin:

Please take a look at what Mr. Wertz told our investigator.

Mr. Wertz confirmed that he had been approached several months ago by two Dayton police officers that were either retired or working on the side. They had questioned him about materials he hauled to the SDD many years ago. Mr. Wertz expressed concern that a lot of companies are likely responsible for a wide array of contamination at landfills throughout the Dayton area. He said many of these companies are out of business and will probably never be held accountable for any environmental damage. He surmised that there will probably be many occasions when calls to congressmen will relieve these firms of any cleanup responsibilities. He was hesitant to provide any information for the following reasons: he would not get anything out of it; it probably would not do any good; and because it is unverifiable.

1. Mr. Wertz confirmed information from the NASS interview report that he is presently employed by the State of Ohio. He works as a truck driver on occasion but mainly supervises other truck drivers.

2. Mr Wertz confirmed that he was employed as a truck driver by B.G. Danis from about 1972 to 1976 and with IWD from about 1976 to 1984. While with B.G. Danis, he primarily hauled debris from construction sites such as bricks, blacktop chunks, scrap metal and other waste materials that he characterized as nonhazardous. He hauled these materials to various landfills in the Dayton metropolitan area including the SDD and to an area near there across Dryden Road and over a hill next to a Dayton Power and Light (DP&L) facility. He said the SDD was located on Dryden Road south of the river and Nicholas Road. He could not identify the number of loads he actually brought to the SDD or the DP&L facility over any particular period.

3. Mr. Wertz said that, while wi+th IWD, he was usually informed on a daily basis at the beginning of his shift as to the companies he would be hauling wastes from. This varied greatly, i.e., he might have hauled from particular locations everyday or every several days over any given period, but there were times that his scheduled pickups were not routine in terms of the locations and quantities hauled. Therefore, he could not really give any credible estimate as to the number of loads he may have hauled from a particular facility during a given time frame. In addition, he could not say how many of the loads actually went to the SDD or DP&L. He would not identify other individuals that worked for IWD.

4. Mr. Wertz stated that many of the Dayton area landfills were operated by Charlie Moore for B.G. Danis, other Moore family members, and an individual by the name of "Skip." Skip had responsibility for operating the SDD, Valley Crest and Cardington Road landfills. He said that some IWD drivers may have had keys for the SDD and/or the DP&L landfill that allowed them to enter at night.

5. Mr. Wertz confirmed that, while working for IWD, he hauled many loads of foundry sand from GH&R Foundry near Route 4 east of Route 75 to the SDD and DP&L. He said foundry sand was good cover material for other trash dumped at landfills because it could fill in the empty spaces well. Peerless Trucking and GH&R themselves also hauled the foundry sand from the GH&R site to the SDD and DP&L sites. Mr. Wertz also hauled many loads of foundry sand from the Dayton Walther facility on Fluhart Street to these landfills.

6. Mr. Wertz said that, while with IWD, many of the companies he hauled from had their own coal-fired power plants. He hauled many loads of fly ash and lamp black from these companies to the SDD and DP&L landfills. One of these facilities was the Delco plant located at about Dryden and Spring Road. It is now a facility where Chevrolet's are made. He also hauled grease and oil sludge from this facility to the SDD and DP&L landfills.

7. Mr. Wertz said that he hauled wastes from other GM/Delco facilities, such as the Inland plant, in Dayton to the SDD and DP&L sites while working for IWD. This included the downtown plant and one on Kettering. One of these GM facilities may have also been operated by Frigidaire and Harrison Radiator during different periods. The wastes he hauled from these facilities to the SDD and DP&L landfills also included fly ash in addition to oil and grease sludge. In addition, he transported to these landfills 12-15 cubic yard containers of paint that had been used to dip shock absorbers.

8. Mr. Wertz said He hauled many loads of lamp black dust from the 63-acre Dayton Tire and Rubber facility to the SDD and the DP&L landfill. He understood lamp black to be a powder-like waste that came from tire manufacturing.

9. Mr. Wertz, said that he hauled unknown wastes to the SDD and DP&L landfill from the NCR site which was a huge facility consisting of about 28 buildings. The total quantities he hauled from NCR were significantly less than the amounts from the aforementioned firms.

10. Mr. Wertz stated that he hauled an unknown amount of plaster wastes from BiMac to the SDD and the DP&L site.

11. He hauled unknown quantities of lamp black, fly ash and other unknown wastes from Kimberly Clark, aka Bergstrom Paper, located in West Carrollton to the SDD and DP&L areas.

12. Mr. Wertz stated that he believes IWD sold out to Waste Management because of liability concerns. This was because many companies did not tell IWD what was in the waste loads that were transported from these facilities.

13. Mr. Wertz was aware through hearsay that the brother of Bill Wagers was hauling a load of paint-related wastes that caught fire on his truck and killed him. Mr. Wertz was unsure if this occurred at the SDD.

Thanks, Tom

(c) Thomas C. Nash
Associate Regional Counsel
phone: 312-886-0552
fax: 312-886-7160 or 312-886-0747
email: nash.thomas@epa.gov

The preceding message (including any attachments) contains information that may be confidential, be protected by attorney work-product, attorney-client or other applicable privileges and may be exempt from disclosure under applicable law. It is intended to be conveyed only to the named recipient(s). If you received this message in error or if you

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ATTACHMENT 4

South Dayton Dump Meeting

5/23/14; 8:30 AM – 1 PM

Attending	USEPA - Leslie Patterson Ohio EPA - Maddie Smith, Mark Allen CH2M HILL - Brett Fishwild, Dave Boehnker

Initial Thoughts

Mark – What happens if we do and do not move forward on the new AOC?
Leslie – Priority for the site overall is to 1) move forward; and 2) remember that it's an alternative site, meaning it's proposed for listing to the NPL but not listed yet, so Fund money cannot be spent on it. But USEPA could explore using the NPL listing card if need to. Remember the original risk scoring may not be up to date.
Mark – Regarding the risk scoring for the site, the backup wells for Montgomery County should be close enough to score points for groundwater use.
Leslie – We will look at the risk ranking again. Is vapor in it at all? Just groundwater use?

Roles

Leslie - OEPA is the partner agency, needed for its local knowledge, geology, and regulatory landscape. USEPA is the lead agency. CH2M HILL provides technical and hydrogeology support.

Overall Schedule

Leslie – A Special Notice is to be issued sometime in June 2014, consisting of the letter to the PRPs establishes their liability and sets the deadline (within X number of days) for entering into the RI/FS negotiations. PRPs are assumed to be receptive because they want a revised AOC. The PRP list may change in that the current PRPs may have identified more parties. USEPA is assuming that AOC negotiations will take place over the summer of 2014, with a new AOC identified in the fall of 2014. There would then be a new list of deliverables, more so for OU2 than OU1.

OU1 Schedule

Leslie – The RI/FS would be conducted through to the summer of 2016, with the Proposed Plan ready by late 2016, and the ROD in 2017. This schedule assumes a presumptive remedy is prepared after the Phase 1B/2A work and a 25- to 30-day TAT on reviews. The FS in early 2016. Is there an urgency to get a cap on the OU1 landfill?
Mark – Time is not the biggest driver; rather, getting it done right the first time is. Remember that originally this was a direct contact risk only to the central 30-acre area. Is this still applicable? USEPA's response at that time was that the 30-acre direct contact cover was not sufficient and that all of OU1 should be covered with a cap.
Leslie – PRPs do not want to pump and treat all groundwater at OU1. If they can address sources, they could reduce the overall effort to a smaller groundwater capture of contaminant plumes.
Mark – OEPA would be interested in PCBs being delineated better. Results were below lab quantitation limits but they were detected (i.e., between MDL and RL). High pH is needed to mobilize PCBs. The fact that they were detected in multiple monitoring wells without that high pH is a concern, especially near the river, and because of the history of transformer dumping at the site.
Dave – We should check the turbidity from those samples then, as a mobilizer of PCBs in lieu of high pH.

OU2 Schedule

Leslie – First, the OU2 RI/FS work plan should be revised to have the full suite of deliverables in the SOW. The RI/FS will go through to spring 2017, with the Proposed Plan ready by fall 2017, and the ROD in 2017/2018.
Mark – What happens if the renegotiations are not successful? What happens if there is no good separation of OU1 and OU2? Is there overlap of the landfill into OU2, for example?
Leslie – Defining the separation is tricky because fill extends across the OU1/OU2 boundary.
Mark – The landfill permit itself isn't the main driver for this decision of where OU1 and OU2 split, mainly used for ARARs.
Leslie – but the boundary may impact what the presumptive remedy extents are.

Overall Thoughts

Mark – The overall goal for the site is to define a disposal area as OU1, and contaminated media outside of that as OU2.
Leslie – Does the 30-day TAT for reviews work for you?
Maddie – Yes, even with other experts as part of the review team.
Leslie – This TAT then allows us to get comments back to PRPs in 45 days, which is important because all these review days add up in the overall schedule. However, it is understood that the review time also depends on the number and type of comments received.
Mark – The quality of the submittal affects the TAT too.
Leslie – this issue of the quality of the deliverable and the review process will be written into draft SOW. After review comments by USEPA, the PRPs will have reasonable time to address comments. If the document is still deficient, there are three options: 1) fix it ourselves; 2) approve the document conditionally if appropriate; 3) have the PRPs fix it again. The new SOW will also require a Response to Comments attachment be submitted with the revised deliverables to better track the review comments.

The Site

Leslie - Presumptive remedies are for municipal landfills. If part of the landfill isn't municipal, then what is the driver for that area?
Mark – The landfill is not "closed" because there was no application or closure plan or closure process followed. Therefore, the current landfill rules apply.
Leslie – Historical documents seem to indicate the landfill is closed.
Mark – However, when the owners said they would stop taking waste, they didn't actually go through closure.
Leslie – As reviewed in a legal procedure today, would it pass the practicality test to say it's not "closed?"
Mark – The Ohio legal counsel would argue that it's closed.
Leslie – What about the foundry sand site – same as the rest of the disposal site? This (the foundry sand site) is also documented as unlicensed.
Mark – this ARAR issue should be relevant and appropriate.

The group then reviewed the historical aerial photos.

Leslie – Does the SOW need to specify ARARs? We use potential ARARs until the Proposed Plan.
Maddie – Based on information in the 1968 letter and adding up the acreage on the maps, the site consists of 45 acres that include the Southern Parcels. OEPA is concerned about splitting the landfill by operable units.

Mark – ARARs apply to OU2, so it would not be necessary to do a risk assessment in OU2. The entire permitted landfill includes portions of OU2.
Leslie – Tom Nash (USEPA legal) wants to do an ARARs analysis. He needs to see specific citations.
Mark – We can always do a waiver where there is no waste (referring to OU2). See also the 6-page letter that OEPA sent to USEPA (the "Garland Letter"). It makes sense to dig up OU2 waste/fill and use it as fill for the OU1 cover anyway because the PRPs will need so much material to bring it to grade, which would result in digging and capping OU2 anyway.
Leslie – Should we just get rid of the OU1/OU2 split and/or do just do a site-wide RI/FS?
Dave – If we did that, would the OU2 risk sampling be unnecessary?
Leslie – This raises some issues, but yes, that risk sampling may then go away.
Maddie –OEPA's concerns would be: 1) does the landfill permit cover OU2; 2) what ARARs apply; 3) is the landfill considered "closed"?
Leslie – To help USEPA and Tom Nash answer these questions and look at ARARS, we would like OEPA to provide a list of which specific citations apply, an explanation of why they apply, and what the result of that application means.

Valley Asphalt Drums

Mark – Remember that when VA was trenching to install a new sewer, they found buried drums. They then made a circuitous route around that area to finish the sewer. It is likely that drums are still there.
Leslie – What do you propose should happen?
Maddie – The drums that were found contained mixed waste and the Emergency Response group addressed them. Now it's a DERR site. It was understood that someone would go back and look for the rest of the drums that are presumed to be still buried.
Leslie – But even if there are still buried drums, after all this time it does not appear that any contents are mobile. Not much is showing up in nearby monitoring wells.
Mark – But impacts are in the groundwater. After the drums are investigated we may find that they don't need to be removed; but regardless the drums need to be investigated and the contents tested. Even the SOW that USEPA issued says this.
Leslie – Where in the SOW is this stated?
Mark – OEPA is only asking for a drum investigation in this spot, not an investigation over the entire site.
Brett – So the only hot spot investigation item in question is this one spot?
Mark – Yes.
Leslie – This may be an issue OEPA and USEPA end up not agreeing on; more consideration is needed.

Remedial Investigation

Leslie – How groundwater control is handled has been an issue up to now. Would combining OU1 and OU2 help resolve this issue?
Maddie – Combining the shallow and deep monitoring would help.
Leslie – What do we do with the deep groundwater then? Perform MNA and risk it out?
Mark – We will need a contingency if the hot spot investigation and mitigation doesn't work. We may want to also consider a pumping system at the bottom of the waste to cut off migration of leachate from the shallow to the deep aquifer.

Quarry Pond

Mark – Due to the periodic flooding, the PRPs will still need to do an ecological risk assessment of the quarry pond.

Leslie – The pond is in OU2, which at present requires a full RI. But if we go to a site-wide, combined OU, presumptive remedy approach, then a full RI would not be conducted.
Mark – An ecological risk assessment of the pond would still be needed.
Brett – The current PRP plan is to collect samples from the pond anyway, so maybe additional sampling to satisfy this issue can be added to a Valley Asphalt drum investigation if that ends up being completed?
Group – Discussion on whether the pond would be included in the presumptive remedy or not, if a site-wide approach were pursued. Is the current OU2 RI/FS work plan sampling of the pond sufficient to address these OEPA questions? Yes, in part. However, either way, the PRPs will need to delineate the extent of waste at the north end of the pond, and possibly on the east side too. And they will need to collect ecological risk samples in the pond.

ATTACHMENT 5

CONESTOGA-ROVERS & ASSOCIATES

MEETING MINUTES Reference No. 038443-62-03

PROJECT: South Dayton Dump & Landfill - Vapor Intrustion Mitigation

RE: Weekly Status Call

LOCATION: Teleconference DATE: July 24, 2014 TIME: 2:30 pm ET

Participants:

Steve Renninger	USEPA	Maddie Smith	Ohio EPA
Lauren Foster	Tetra-Tech	Jim Campbell	ITW
Wendell Barner	TRW	Adam Loney	CRA
Valerie Chan	CRA		

Distribution:

☒File ☒Participants	Ken Brown, ITW	Tom Hut, PHDMC
Leslie Patterson, USEPA	Bryan Heath, NCR	

Item	*Description*	*Action By*
1	**Roll Call**	CRA
2	**Status of Property Access:** ☐ No additional mitigation work has been completed due to prohibited Site access to properties owned by the South Dayton Remediation Trust. ☐ The lawyers for the Respondents and South Dayton Remediation Trust have discussed the issue regarding access. The lawyers for the Respondents are preparing letters summarizing the available information to be distributed to the tenants and South Dayton Remediation Trust. In the letters, the South Dayton Remediation Trust and tenants will be presented with the choice to complete additional mitigation work or proceed with indoor air proficiency sampling only. ☐ USEPA requested a copy of a letter to review prior to finalization. CRA will provide a draft to USEPA.	CRA / USEPA
3	**VI Mitigation Status:** ☐ In Buildings 8 and 9 (B&G Trucking), Building 12 (Overstreet Painting and S&J Precision), and Building 15 (SIM Trainer), sub-slab (SS) concentrations less than Ohio Department of Health (ODH) screening levels have not been achieved. ☐ As a result, the Upgraded Indoor Air (IA) sampling plan will need to be strengthened, i.e., collect IA samples in rooms where samples from SS probes exceeded ODH levels; collect samples when no doors are open; revise and strengthen the Standard Operating Procedure. ☐ CRA noted that sampling may be required to be completed on weekends in response to USEPA's proposed Upgraded IA sampling plan. ☐ USEPA requested that Upgraded IA sampling plan language be included in the previously-mentioned letter to the tenants and the South Dayton Remediation Trust.	CRA

CONESTOGA-ROVERS & ASSOCIATES

Item	Description	Action By
3	**VI Mitigation Status: (cont'd.)** ☐ Deliverable: CRA will provide a figure for each building (Buildings 8, 9, 12, and 15) with rationale for Upgraded IA sampling plan locations. ☐ Bldg 24 (Globe Equipment): - Building 24 is not owned by the South Dayton Remediation Trust. - 365-day proficiency sampling is scheduled for August 21,2014. - USEPA will collect split samples. - Deliverable – Provide USEPA with map of Building 24 proficiency sample locations.	
4	**Methane Monitoring:** ☐ 1.1 to 1.7% methane was measured at GP-2, less than the trigger condition for increased monitoring ☐ 0% methane was measured in Building 15 (SIM Trainer). ☐ The values of methane were lower in the charcoal filtered readings than the non-filtered readings, indicating chlorinated solvents are involved in the chemical make-up. ☐ Deliverable – Redistribute the Draft Utility Corridor sampling addendum to USEPA	
5	**Next steps/Other Business:** ☐ Next Call: August 7, 2014 at 2:30 PM ET/1:30 PM CT. ☐ All parties agree to keep bi-weekly conference call schedule.	USEPA / CRA

☐ Attachments: _____

Prepared By: Valerie Chan Date Issued: August 7, 2014

This confirms and records CRA's interpretation of the discussions which occurred and our understanding reached during this meeting. Unless notified in writing within 7 days of the date issued, we will assume that this recorded interpretation or description is complete and accurate.

ATTACHMENT 6

ED_001207_00000383

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

HOBART CORPORATION, KELSEY-HAYES COMPANY, and NCR CORPORATION, Plaintiffs, vs. THE DAYTON POWER AND LIGHT COMPANY, et al., Defendants.	))))))))))))	No. 3:13-cv-115

Pursuant to the Omnibus Scheduling Order dated April 11, 2016, which states that "All lay witnesses not previously disclosed in initial disclosures or discovery to be disclosed by: November 1, 2016," Plaintiffs disclose the following lay witnesses. The subject Defendant is included below where applicable.

PLAINTIFFS' LAY WITNESSES

1. Jack Akers
   Harris Corporation, *as successor to* Harris-Seybold Co.

2. Robert Aldredge
   7064 Salem Crossing Place
   Englewood, Ohio 45322
   (937) 832-0599
   See deposition.

3. Kenneth Anderson
   ConAgra Grocery Products Co., LLC, *as successor to* McCall Corp.

4. Scott Arentsen
   The Dayton Power and Light Company.

5. Tim Bailey

The Sherwin-Williams Company.

6. Jerry Baker
See deposition.

7. John Baker
The Dayton Power and Light Company.

8. Thomas Beal
57 Tranquil Trail
Dayton, Ohio 45459
(937) 435-6522
See deposition.

9. B.D. Beatty
3407 Oakmont Avenue
Dayton, OH 45429
Coca-Cola Refreshments USA, Inc., *as successor to* Dayton Coca-Cola Bottling Co.

10. George Beemsterboer
Monsanto Company, *a/k/a* Monsanto Research Company, *n/k/a* Pharmacia Corporation.

11. Estle Bernard
1211 Mals Way
Miamisburg, OH 45342
Harris Corporation, *as successor to* Harris-Seybold Co.

12. William Bines
Former Sanitarian, Montgomery County Health District.
May have knowledge of inspections and compliance monitoring of the Site in the late 1960s through the 1970s, operations, types of waste disposed of, identity of generators and transporters of waste to the Site, and methods of disposal at the Site during that time period.

13. Robert Bleazard, PE
Senior HS&E Manager – Environmental Remediation
ZF TRW Automotive Inc.
11202 E. Germann Road
Mesa, Arizona 85212
Current employee; please contact through Plaintiffs' counsel.
Kelsey-Hayes Company.

14. Horace Boesch Jr.
2440 Rugby Road
Dayton, Ohio 45406
See depositions.

15. John Boltz
Harris Corporation, *as successor to* Harris-Seybold Co.

16. Boss Bowlin
444 West Lomar Avenue
Carlisle, OH 45005
937-746-7731
Kimberly-Clark Corporation.

17. Mark Bowling
Waste Management of Ohio, Inc., as successor to Industrial Waste Disposal Co. Inc., and to Blaylock Trucking and Waste Removal, and to SCA Services of Ohio, Inc., and to Container Services, Inc. a/k/a Container Service, Inc., and to General Refuse Service, Inc., and to Container Service Co., and to General Sanitation Corporation.

18. Chris Bridges
The Peerless Transportation Company.

19. Ken Brown, CHMM
Manager of Environmental and Chemical Compliance
Illinois Tool Works Inc.
155 Harlem Avenue
Glenview, IL 60025
Current employee; please contact through Plaintiffs' counsel.
Hobart Corporation.

20. Tracy Buchanan
Former employee of the Montgomery County Health District.
May have knowledge of inspections and compliance monitoring of the Site during the 1980s and 1990s, operations, types of waste disposed of, identity of generators and transporters of waste to the Site, and methods of disposal at the Site during that time period.

21. William Burrell Sr.
Harris Corporation, *as successor to* Harris-Seybold Co.

22. Earl Campbell
Harris Corporation, *as successor to* Harris-Seybold Co.

23. James Campbell
Engineering Management, Inc.
1500 Ardmore Boulevard, Suite 502
Pittsburgh, PA 15221
412-244-0917
Overall dollars spent; PRP search costs.

24. Joe Caperna
2860 Maginn Drive
Beavercreek, OH 45434
937-429-1512
Cox Media Group Ohio, Inc., as successor to Dayton Daily News and to Dayton Journal Herald.

25. Ellis Carver
2614 Kennedy Avenue
Dayton, OH 45420
937-298-6207
Coca-Cola Refreshments USA, Inc., *as successor to* Dayton Coca-Cola Bottling Co.

26. Anthony B. Cibulka
Flowserve Corporation as successor to Duriron Corporation.

27. Karen Cibulskis
US EPA, Region 5.
77 West Jackson Blvd
Chicago, IL 60604
312-886-1843
Consistency with NCP; cooperation by the parties with Federal, State, or local officials to prevent any harm to the public health or the environment; connection of releases to response costs.

28. Dan Crago
Valley Asphalt Corporation.

29. Timothy Crotty
Van Dyne-Crotty Co., *as successor to* Van Dyne-Crotty, Inc.

30. Thomas Ctvrtnicek
See deposition.

31. John W. Davis
117 Westboro Street
Dayton, Ohio 45417

(937) 228-0365
See deposition.

32. Jake Derksen
6864 Colbaugh Road
Bethel Township, OH
937-845-1378
Coca-Cola Refreshments USA, Inc., *as successor to* Dayton Coca-Cola Bottling Co.

33. William R. Dybvad
7411 Brandtvista Avenue
Dayton, OH 45424
(937) 236-2284
See deposition.

34. Ken Eakins
Valley Asphalt Corporation.

35. Greg Edsall
203 E. Elmwood Drive
Dayton, OH 45459
937-672-4420
The Sherwin-Williams Company.

36. Gary Elam
City of Dayton, Ohio.

37. John Eichstadt
Valley Asphalt Corporation.

38. Richard L. Fahrenholz
367 Tampico Drive
Palmetto, FL 34221
(941) 721-9874
See deposition.

39. Charles L. Fields
1033 Cumberland Avenue
Dayton, Ohio 45406
See deposition.

40. William Fleckenstein
194 N. Bickett Road
Xenia, Ohio 45385
(937) 352-6334

See deposition.

41. Richard Foley
Harris Corporation, *as successor to* Harris-Seybold Co.

42. Xonerale Freeman
See deposition.

43. Fred Gentry
Kimberly-Clark Corporation.

44. William Gilman
644 Peach Orchard Drive
West Carrollton, OH 45449
937-859-8727
Kimberly-Clark Corporation.

45. Russell Gilmore III
830 Cottonwood Drive
Tipp City, OH 45371
(937) 667-3822
The Peerless Transportation Co.
May have knowledge of operations, customers, transporters to the Site, and hazardous substances disposed of at the Site.

46. D. Gerald Glasgow
988 Congress Park Drive
Dayton, OH 45135
937 433-1702
Former employee of Monsanto Company; may have knowledge of the historic activities of Defendant which have resulted in the discharge, release, or disposal, of hazardous substances, contaminates, or pollutants at or adjacent to the Site.

47. Tom Glass
Former Sanitarian, Montgomery County Health District.
May have knowledge of inspections and compliance monitoring of the Site, operations, types of waste disposed of, identity of generators and transporters of waste to the Site, and methods of disposal at the Site.

48. Art Gray
Dayton Industrial Drum, Inc.

49. Randall Griffin
The Dayton Power and Light Company.

50. David Grillot
2250 Bonnie Birch Court
Dayton, Ohio 45459
937-620-4866
See deposition.

51. Edward Grillot
See depositions.

52. Clarence Hamm
Kimberly-Clark Corporation.

53. Willie Hardy
807 Plover Lane
Clayton, Ohio 45315
(937) 836-2771
See deposition.

54. Richard Hart
160 Marchester Drive
Dayton, Ohio 45429
(937) 298-4080
See deposition.

55. Richard Hartle
See deposition.

56. Julian Hayward
GHD
651 Colby Drive
Waterloo, Ontario N2V 1C2
519-884-0510
Work performed in VI and RI/FS; consistency with NCP; releases at Site; connection between releases and incurrence of response costs.

57. Bryan Heath
NCR Corporation.
3097 Satellite Blvd, Building 700
Duluth, GA 30097
Current employee; please contact through Plaintiffs' counsel.
NCR Corporation.

58. Luther Henry
618 Eleanor Avenue

Dayton, Ohio 45417
(937) 263-1088
See deposition.

59. Gary Herman
Harris Corporation, *as successor to* Harris-Seybold Co.

60. Ralph High
Valley Asphalt Corporation.

61. Robert Hipp
937-433-1236
The Dayton Power and Light Company.

62. William Hopkins
Harris Corporation, *as successor to* Harris-Seybold Co.

63. David Hussong
1880 Radio Road
Dayton, OH 45431
See deposition.

64. Thomas Hut
Former Sanitarian, Montgomery County Health District.
May have knowledge of inspections and compliance monitoring of the Site during the 1980s and 1990s, operations, types of waste disposed of, identity of generators and transporters of waste to the Site, and methods of disposal at the Site during that time period.

65. Victor Infanto
333 Franklin Street
Centerville, OH 45449
937-219-3832
DAP Products Inc. *as successor to* DAP, Inc.; La Mirada Products Co., Inc., *formerly known as* DAP, Inc.

66. Edward Jenkins
2017 Aurora Avenue
Lewis Center, Ohio 43035
(740) 879-4453
See deposition.

67. Ken Jewell
The Dayton Power and Light Company.

68. Marshall Jones
Dayton Industrial Drum, Inc.

69. Henry Jordan
6200 Germantown Pike
Dayton, Ohio 45439
(937) 859-1816
See deposition.

70. Jim Jurgensen
Valley Asphalt Corporation.

71. Jim Jurgensen II
Valley Asphalt Corporation.

72. Gary King
Dayton Industrial Drum, Inc.

73. Larry King
1519 Leo Street
Dayton, OH 45404
Dayton Industrial Drum, Inc.

74. Joseph P. Kwan
Corporate Director, Environmental Remediation
Northrop Grumman Corporation
Please contact through Gabe Calvo, Northrop Grumman Corporation Law Department, 2980 Fairview Park Drive, Falls Church, VA 22042-4511, 703-280-4092.
Kelsey-Hayes Company.

75. Melvin Layer
The Dayton Power and Light Company.

76. Glenn Leis
6105 Springboro Road
Lebanon, OH 45036
(937) 748-1097
See deposition.

77. James Leiter
Former Sanitarian, Montgomery County Health District
May have knowledge of inspections and compliance monitoring of the Site, operations, types of waste disposed of, identity of generators and transporters of waste to the Site, and methods of disposal at the Site.

78. Charles Lewis
Former Sanitarian Inspector, Montgomery County Health District.
May have knowledge of inspections and compliance monitoring of the Site, operations, types of waste disposed of, identity of generators and transporters of waste to the Site, and methods of disposal at the Site.

79. Michael Manzo
See deposition.

80. Cathy McCoy
The Peerless Transportation Company.

81. Jim T. McDonald
117 Trumpet Drive
Dayton, OH 45449
(937) 866-7554
See deposition.

82. Hershell Todd Million
Dayton Industrial Drum Inc.

83. Robert Michigan
3127 E. Stroop Road
Kettering, OH 45440
Cox Media Group Ohio, Inc., *as successor to* Dayton Daily News and to Dayton Journal Herald.

84. James Minor
DAP Products Inc. *as successor to* DAP, Inc.; La Mirada Products Co., Inc., *formerly known as* DAP, Inc.

85. Frank Miracle
Bridgestone Americas Tire Operations, LLC, *as successor to* The Dayton Tire & Rubber Company; Bridgestone/Firestone, Inc. *f/k/a* The Dayton Tire & Rubber Company.
Deceased; see deposition in prior matter, to be produced.

86. Joe Moore
31 Apple Hill
Springfield, OH 45504
937-825-9126
Former employee of Ohio EPA, DSHWM, SWDO.
May have knowledge of inspections and compliance monitoring of the Site, operations, types of waste disposed of, identity of

generators and transporters of waste to the Site, and methods of disposal at the Site.

87. George Morris Jr.
See deposition.

88. James Morris
US EPA, Region 5.
77 West Jackson Blvd
Chicago, IL 60604
312-886-6632
Consistency with NCP; cooperation by the parties with Federal, State, or local officials to prevent any harm to the public health or the environment.

89. James Morris
Harris Corporation, *as successor to* Harris-Seybold Co.

90. Thomas Nash
Former employee of US EPA.
Consistency with NCP; cooperation by the parties with Federal, State, or local officials to prevent any harm to the public health or the environment.

91. Gale O'Brien
Former Sanitarian, Montgomery County Health District.
May have knowledge of inspections and compliance monitoring of the Site in the late 1960s through the 1970s, operations, types of waste disposed of, identity of generators and transporters of waste to the Site, and methods of disposal at the Site during that time period.

92. Bill Osman
Dayton Industrial Drum, Inc.

93. Dean Ottoson
5670 Signet Drive
Dayton, OH 45424
937-522-0696
937-237-1308
Former operator of Ottoson Solvents on the northern portion of the Site now owned by Valley Asphalt.
May have knowledge of operations, customers, transporters to the Site, and hazardous substances disposed of at the Site, including burial of still bottoms at the Site.

94. Leslie Patterson
US EPA, Region 5.
77 West Jackson Blvd
Chicago, IL 60604
312-886-4904
Consistency with NCP; cooperation by the parties with Federal, State, or local officials to prevent any harm to the public health or the environment; connection of releases to response costs.

95. Marshall (Bill) Patterson
The Sherwin-Williams Company.

96. Joseph Pizzino
7001 Hardwicke Place
Dayton, OH 45414
937-890-2319
See deposition.

97. Charlotte Quigley
Kimberly-Clark Corporation.

98. Michael Quigley
2936 Hillcrest Circle S
Clearwater, FL 33759-1210
(727) 796-4229
Waste Management of Ohio, Inc., *as successor to* Industrial Waste Disposal Co. Inc., and to Blaylock Trucking and Waste Removal, and to SCA Services of Ohio, Inc., and to Container Services, Inc. *a/k/a* Container Service, Inc., and to General Refuse Service, Inc., and to Container Service Co., and to General Sanitation Corporation.

99. Stephen Quigley
GHD
651 Colby Drive
Waterloo, Ontario N2V 1C2
519-884-0510
Work performed in VI and RI/FS; consistency with NCP; releases at Site; connection between releases and incurrence of response costs.

100. Kathy Rabbit
Monsanto Company, *a/k/a* Monsanto Research Company, *n/k/a* Pharmacia Corporation.

101. Ernest Rader

Harris Corporation, *as successor to* Harris-Seybold Co.

102. Larry Rankin
343 Red Oak Drive
Fairborn, Ohio 45324
(937) 879-0836
See deposition.

103. Earl Reeder Jr.
Coca-Cola Refreshments USA, Inc., *as successor to* Dayton Coca-Cola Bottling Co.

104. Robert Reis
Harris Corporation, *as successor to* Harris-Seybold Co.

105. Steven Renninger
US EPA, Region 5
25063 Center Ridge Road
WestLake, OH 44145
513-569-7539
Consistency with NCP; cooperation by the parties with Federal, State, or local officials to prevent any harm to the public health or the environment; connection of releases to response costs.

106. Frederick Rice
Harris Corporation, *as successor to* Harris-Seybold Co.

107. Thomas Richie Jr.
The City of Dayton, Ohio

108. Robert Saltsgaver
1095 Holbrook Road
Beaver, OH 45613
740-820-5283
Bridgestone Americas Tire Operations, LLC, as successor to The Dayton Tire & Rubber Company; Bridgestone/Firestone, Inc. f/k/a The Dayton Tire & Rubber Company.

109. G.L. Scandrick
4004 Calhoun Street
Dayton, Ohio 45417
(937) 268-4961
See deposition.

110. Robert Scarborough

The Dayton-Power and Light Company.

111. Robert Seilheimer
DAP Products Inc. *as successor to* DAP, Inc.; La Mirada Products Co., Inc., *formerly known as* DAP, Inc.

112. David Shellhaas
4822 W. Shearer Road
West Milton, OH 45383
937-698-5303
The Dayton Power and Light.

113. Joseph Smart
5240 Tilbury Road
Huber Heights, Ohio
See deposition.

114. John Smelko
318 Enxing Street
West Carrollton, OH 45449
937-554-9565
Kimberly-Clark Corporation.

115. Jim South
5665 Mayville Drive
Dayton, Ohio 45432
See deposition.

116. Thomas Spence
679 High Point Drive
Springboro, OH 45066
937-885-5043
See deposition.

117. John Stitt
Waste Management of Ohio, Inc., as successor to Industrial Waste Disposal Co. Inc., and to Blaylock Trucking and Waste Removal, and to SCA Services of Ohio, Inc., and to Container Services, Inc. a/k/a Container Service, Inc., and to General Refuse Service, Inc., and to Container Service Co., and to General Sanitation Corporation.

118. Frederick Stovall
The City of Dayton, Ohio.

119. Robert Stringer

Flowserve Corporation as successor to Duriron Corporation.

120. Denny Sweet
The City of Dayton, Ohio.

121. Earl Tarr
9087 Stillwater Drive
Bradford, OH 45308
937-448-0812
Former employee of Ottoson Solvents on the northern portion of the Site now owned by Valley Asphalt
May have knowledge of operations, customers, transporters to the Site, and hazardous substances disposed of at the Site, including burial of still bottoms at the Site.

122. Jim Tharpe
3276 Ferry Rd.
Bellbrook, Ohio 45305-9739
(937) 848-4482
See depositions.

123. Jerry Tompkins
Former employee of Monsanto Company; may have knowledge of the historic activities of Defendant which have resulted in the discharge, release, or disposal, of hazardous substances, contaminates, or pollutants at or adjacent to the Site.

124. Dunny Toy
33 Knights Crest Court
Souderton, PA 18964
(215) 723-6113
Monsanto Company, a/k/a Monsanto Research Company, n/k/a Pharmacia Corporation.

125. Vernon Vencill
3115 Myers Tillman Road
Arcanum, OH 45304
(937) 417-2708
See deposition.

126. Clarence Wall
394 Marshall Drive
Xenia, Ohio 45385
See deposition.

127. John L. Wantz

410 Carlwood Drive
Miamisburg, OH 45342
(937) 866-6436
Kelsey-Hayes Company.

128. Michael Wendling
260 Corkill Lane
Franklin, North Carolina 28734
(937) 520-7730
See depositions.

129. Wayne Wertz
9085 Milton Potsdam Road
West Milton, OH 45383
Former employee of Industrial Waste Disposal Co., Inc.
May have knowledge of operations, customers, transporters to the Site; and hazardous substances disposed of at the Site.

130. Wayne Wheeler
Coca-Cola Refreshments USA, Inc., as successor to Dayton Coca-Cola Bottling Co.

131. Alan Williams
Former Sanitarian, Montgomery County Health District
May have knowledge of inspections and compliance monitoring of the Site, operations, types of waste disposed of, identity of generators and transporters of waste to the Site, and methods of disposal at the Site.

132. James Witham
Kimberly-Clack Corporation

133. Leslie Woods
Monsanto Company, *a/k/a* Monsanto Research Company, *n/k/a* Pharmacia Corporation.

134. Herman Woodum
Bridgestone Americas Tire Operations, LLC, as successor to The Dayton Tire & Rubber Company; Bridgestone/Firestone, Inc. f/k/a The Dayton Tire & Rubber Company.

135. Alan Wurstner
343 Telford Avenue
Dayton, Ohio 45419
(937) 298-7995
See deposition.

136. Cecil Younker
2604 E. 4th Street
Dayton, Ohio 45403
(937) 253-4891
See deposition.

137. Unknown corporate representatives of each Defendant.

138. All persons necessary to identify and authenticate any exhibits in this case.

139. All persons identified in Plaintiffs' or any Defendant's initial disclosures, discovery responses, or lay witness lists.

140. All witnesses necessary for rebuttal or impeachment.

141. Plaintiffs reserve the right to move to amend their lay witness list in accordance with the Omnibus Scheduling Order.

Respectfully submitted,
/s/ James A. Dyer

James A. Dyer, Esq. – Trial Attorney
(Ohio Reg. No. 0006824)
Email: jdyer@ssdlaw.com
Scott Davies, Esq. – Trial Attorney
(Ohio Reg. No. 0077080)
Email: sdavies@ssdlaw.com
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1900 Kettering Tower
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Dayton, Ohio 45423-1013
(937) 222-2500
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jmeyer@lssh-law.com
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing document was filed and served upon all counsel of record via email on November 1, 2016.

/s/ Jennifer Graham Meyer
Jennifer Graham Meyer