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Via: Email and First Class Mail

Sarah Flanagan, Esq.
Juan Fajardo, Esq.
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 17th Floor
New York, N.Y. 10007-1866

Re: **Diamond Alkali Superfund Site**
Lower 8.3 Miles of Lower Passaic River

Dear Ms. Flanagan and Mr. Fajardo:

We are counsel to The Newark Group, Inc. ("TNG") in connection with the above referenced Site. We are in receipt of the U.S. Environmental Protection Agency's ("EPA") March 31, 2016 correspondence. TNG appreciates EPA's effort reflected in that letter to set forth its intended course of conduct with respect to the lower 8.3 miles of the Site. We are writing to request that the agency include TNG in any discussions concerning cash-out and/or *de minimis* settlements at the Site.

TNG does not admit, and expressly denies, that it has any liability under CERCLA § 107(a) [42 U.S.C. § 9607(a)] with respect to the Site. TNG's Newark, New Jersey facility at issue formerly manufactured recycled paperboard; manufacturing operations ceased in approximately 2003. TNG's recycled paperboard operations were not a source of dioxins/furans, PCBs, or DDT and other pesticides. The facility did not have any frontage on the Passaic River, and accordingly did not directly discharge to the river. TNG is not a "major PRP" at the Site: the only plausible basis for EPA to assert liability under CERCLA relates to indirect discharges of wastewater that may have contained trace concentrations of certain metals and that may have reached the Passaic River.[1]

Given that, and the findings in EPA's Record of Decision that dioxin/furans, PCBs, and DDT and other pesticides account for the overwhelming majority of human-health and

[1] The response to EPA's February 27, 2003 CERCLA § 104(e) information request submitted on April 29, 2003 by TNG's then-counsel, Lowenstein Sandler PC, contains an apparent typographical error in the response to Question 4(b)(ii). From a review of discharge records accompanying that response, the range of zinc discharged to the Passaic Valley Sewerage Commission from 1997 to 2002 (expressed as pounds of metal per pound of product) should read "Zinc from 3.4×10^{-7} to 5.6×10^{-7}." This letter accordingly revises the previously-provided response to Question 4(b)(ii) of the information request.

ecological risk at the Site, any CERCLA liability that potentially may exist is divisible and, in any event, of a nature that makes TNG eligible for a *de minimis* settlement under CERCLA § 122(g) [42 U.S.C. § 9622(g)].

EPA's March 31, 2016 letter recites the agency's intention to provide a future notice to certain PRPs of the opportunity to discuss a cash out settlement. Given the nature of TNG's potential CERCLA liability at the Site, TNG is eligible for a cash out settlement and respectfully requests that EPA include TNG in any separate notice of the opportunity to discuss such a settlement.

TNG strongly encourages EPA to begin such a process as early as possible, starting by identifying the parties the agency currently believes are eligible for such a settlement. We believe early identification would significantly facilitate the identified parties' ability to enter the eventual discussions EPA contemplates in a coordinated fashion that will increase the likelihood of reaching an amicable result efficiently.

Finally, the March 31, 2016 letter did not address opportunities to discuss *de minimis* settlements with EPA, and it is unclear whether the agency intends to deal with such settlements during a cash-out settlement process or as part of a separate process. From prior correspondence EPA sent to certain potentially responsible parties at the site that had previously requested to enter into *de minimis* settlement negotiations, we understood that EPA considered the issuance of the ROD to present the appropriate time for such discussions. Consequently, to the extent that EPA intends to discuss *de minimis* settlements in a process separate from cash-out settlement discussions, TNG also respectfully requests to be included in any *de minimis* settlement discussions.

TNG appreciates EPA's consideration of this correspondence. If you have any questions or would like to discuss, please give me a call.

Sincerely,

David M. Meezan

cc: Nicoletta Di Forte (via email)
Robert D. Mowrey (via email)