

GROVEMAN | HIETE LLP

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February 11, 2020

VIA CERTIFIED MAIL / RETURN RECEIPT REQUESTED

Gary J. Weisenberg, CEO
S&W Atlas Iron & Metal Co., Inc.
10019 S. Alameda Street
Los Angeles, California 90002

Re: 90-Day Notice of Intent to Sue Owner/Operator of Facility at Which Disposal of Hazardous Substance Occurred, and Generator That Arranged for a Disposal of a Hazardous Substance: Notice of Violation of the Solid Waste Disposal Act ("RCRA"; 42 U.S.C. §§ 6901 et seq.); Notice of Intent to Sue Person Whose Disposal of Hazardous Substance and Solid Waste May Present Imminent and Substantial Endangerment to Health and the Environment

Mr. Weisenberg:

This firm represents the Los Angeles Unified School District ("LAUSD" or the "District") with respect to the investigation and cleanup and abatement of heavy metal contamination, including, but not limited to, arsenic and lead (hereafter the "Contamination") in and around the real property located at 2265 East 103rd Street, Los Angeles, California, and the location of David Starr Jordan High School (the "School" or "School Site").

On behalf of LAUSD, we are writing to put you on notice of LAUSD's intent to file an action against Gary Weisenberg, individually and as Trustee of the Dorothy Sebulsky Trust, and as Co-Trustee of the Residual Trust created under the Will of Jacob L. Sebulsky, Sophie Weisenberg a/k/a Sophia Weisenberg, as Co-Trustee of the Residual Trust created under the Will of Jacob L. Sebulsky, Doris Sebulsky as an individual, and 10019 S. Alameda LLC (collectively, the "Facility Owners") and S&W Atlas Iron & Metal Co., Inc. ("Atlas"), as the owners and/or operators of property located at 10019 S. Alameda Street in the City of Los Angeles, California, the current facility where Atlas operates (the "Atlas Site"), to recover response and remediation costs pursuant to the National Contingency Plan ("NCP") for contribution, and for injunctive relief and civil penalties under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") (42 U.S.C. §§ 9607, 9611, 9613, 9659) and the Resource Conservation

and Recovery Act ("RCRA") (42 U.S.C. § 6972). (The Facility Owners and Atlas are collectively referred to herein as the "Atlas Parties.")

The Atlas Parties are liable to LAUSD under RCRA as: (i) a person who owned and/or operated a facility at a time during which a hazardous substance was disposed of, i.e., released into the environment, at that facility (an "Owner/Operator"); and/or (ii) a person who owned a hazardous substance and arranged for its transportation to, or disposal, i.e., release into the environment, at a facility operated by another (an "Arranger"). The Atlas Parties are also liable to LAUSD as persons who operated a facility at which their past handling, storage, treatment, and/or transportation of Contamination resulted in and continues to present an imminent and substantial endangerment to health and the environment.

Arsenic and Lead Have Been Detected in and Around the School Site

LAUSD will make the following allegations, among others, in the contemplated action:

1. For the last several years, LAUSD has been conducting site investigation and removal activities at the School Site. LAUSD has incurred significant costs to conduct the site assessment and removal activities and has incurred damages specific to it because it owns the School Site.

2. As part of the Site activities, LAUSD has conducted site characterization, site investigation and limited removal activities at the School Site. The purpose of the School Site investigations is to assess, characterize and, if necessary, remediate, among other things, lead and arsenic contamination from the soil at the School Site.

3. LAUSD has incurred significant costs as a direct result of the migration of Contamination onto the School Site from the Atlas Site. LAUSD estimates that the total cost to address the Contamination, that is directly attributable to the Atlas Site, is substantial, and continues to increase.

4. The Atlas Parties have owned and operated the Atlas Site since the 1940s as a metal salvage yard and recycling facility. Metal scrap recycling operations involve large and potentially hazardous equipment, the use of flammable and explosive gases, and the generation of metal fumes, dusts, and toxic vapors. During the time Atlas has operated on the Atlas Site, it has kept piles of dirt, debris, and other materials that contained hazardous levels of polychlorinated biphenyls ("PCBs") and other hazardous materials, substances and/or wastes on-site. In addition, there have been, and continue to be, releases and discharges from the Atlas Site, including sudden and accidental releases and discharges of hazardous materials, substances and/or wastes that migrated by various means from the Atlas Site onto the School Site.

Polluted discharges from recycling facilities such as the Atlas Site contain pH affecting substances; metals, such as iron and aluminum; toxic metals, such as lead, zinc, cadmium, chromium, copper, arsenic, and mercury; chemical oxygen demand ("COD"); biological oxygen

demand ("BOD"); total suspended solids ("TSS");¹ nitrite plus nitrate ("N+N"); benzene; gasoline and diesel fuels; fuel additives; coolants; antifreeze; total kjehldahl nitrogen ("TKN"); trash; and oil and grease ("O&G"). Many of these pollutants are on the Proposition 65 list of chemicals published by the State of California as known to cause cancer, birth defects, and/or developmental or reproductive harm.

5. After several years of its investigations at the School Site, the District has now identified that the Atlas Site as a likely source of the lead and arsenic contamination that is now impacting the School Site.

6. Despite having been notified by LAUSD that releases from the Atlas Site have caused lead and arsenic contamination, Atlas has not attempted to initiate efforts to investigate and remediate, if necessary, the contamination that has migrated onto the School Site.

The Atlas Parties' Contamination Presents an Imminent and Substantial Endangerment to Public Health and the Environment

The RCRA hazardous wastes, which the Atlas has allowed to be disposed of through its operations have well-documented serious effects on human health and the environment. The following bullets are EPA's assessment of some of the human health impacts that result from some of the constituents of heavy metal waste that has migrated from the Atlas Site to the School Site:

LEAD: Studies on the effects of lead in children have demonstrated a relationship between exposure to lead and a variety of adverse health effects. These effects include impaired mental and physical development, decreased heme biosynthesis, elevated hearing threshold, and decreased serum levels of vitamin D. The neurotoxicity of lead is of particular concern, because evidence from prospective longitudinal studies has shown that neurobehavioral effects, such as impaired academic performance and deficits in motor skills, may persist even after polybrominated biphenyls levels have returned to normal. Although no threshold level for these effects has been established, the available evidence suggests that lead toxicity may occur at PbB levels of 10-15 mcg/dl or possibly less. Additional information on lead toxicity is contained in *The Nature and Extent of Lead Poisoning in Children in the United States: A Report to Congress* (ATSDR, 1988) and the ATSDR Toxicological Profile for Lead (ATSDR, 1992).

ARSENIC: Acute high-level inhalation exposure to arsenic dust or fumes has resulted in gastrointestinal effects (nausea, diarrhea, abdominal pain); central and peripheral nervous system

¹ High concentrations of TSS degrade optical water quality by reducing water clarity *and* decreasing light available to support photosynthesis. TSS has been shown to alter predator prey relationships (for example, turbid water may make it difficult for fish to hunt prey). Deposited solids alter fish habitat, aquatic plants, and benthic organisms. TSS can also be harmful to aquatic life because numerous pollutants, including metals and polycyclic aromatic hydrocarbons, are absorbed onto TSS. Thus, higher concentrations of TSS results in higher concentrations of toxins associated with those sediments. Inorganic sediments, including settleable matter and suspended solids, have been shown to negatively impact species richness, diversity, and total biomass of filter feeding aquatic organisms on bottom surfaces.

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disorders have occurred in workers acutely exposed to inorganic arsenic. Chronic (long-term) inhalation exposure to inorganic arsenic of humans is associated with irritation of the skin and mucous membranes and effects in the brain and nervous system. Chronic oral exposure to elevated levels of inorganic arsenic has resulted in gastrointestinal effects, anemia, peripheral neuropathy, skin lesions, hyperpigmentation, and liver or kidney damage in humans. Inorganic arsenic exposure of humans, by the inhalation route, has been shown to be strongly associated with lung cancer, while ingestion of inorganic arsenic by humans has been linked to a form of skin cancer and also to bladder, liver, and lung cancer. EPA has classified inorganic arsenic as a human carcinogen.

Conclusion

If the Atlas Parties do not act within ninety (90) days to correct the above violations and remove the Contamination from the soil that continues to contaminate the School Site, LAUSD will pursue legal action against the Atlas Parties as set forth above. Among other remedies, LAUSD will pursue RCRA's injunctive relief to immediately assess and remove the Contamination that is impacting the School Site. If you have any questions regarding this matter, please contact this office.

Very truly yours,



Barry C. Groveman
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cc: Jay F. Golida, Esq. (by e-mail)
William W. Funderburk, Esq. (by e-mail)