



RHODE ISLAND  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

OFFICE OF LEGAL SERVICES  
235 Promenade Street, 4th Floor, Providence, RI 02908-5767

401-222-6607

TDD 401-222-4462

FAX 401-222-3378

BRIAN A. WAGNER, DEPUTY CHIEF LEGAL COUNSEL  
*brian.wagner@dem.ri.gov*

January 12, 2007

Silvia Aldredge  
28 Crescent Street  
Providence, RI 02907

Re: *Former Gorham Site, 333 Adelaide Avenue, Providence, RI*

Dear Silvia:

I apologize for the delay in responding to your letter of December 7, 2006. I lost track of it briefly in the run up to the holidays and it just re-surfaced again.

I can understand how Textron's "characterizations" of the site and its work are confusing, especially given the way that this situation has unfolded. At times, it seems that Textron is actually trying to make things as confusing as possible. I'll try and answer your questions as directly as possible, but while I'm doing so, please keep a couple of fundamental concepts in mind:

1. Textron is not a party to DEM's lawsuit against the City, nor is it directly bound by the orders that came out of that lawsuit;
2. The objective of DEM's suit against the City was injunctive in nature, to stop the City from building the school before it had received the necessary DEM approvals, not to get the entire Gorham complex cleaned up;
3. DEM has not yet taken any formal actions to compel Textron to clean up the site so, technically, Textron has not been "ordered" to do anything;
4. Whatever agreement(s) exist between Textron and the City only effect the relationship between those two parties and have no binding effect on either party's liability at the site to DEM.

Based on the above, while Textron can "claim" to be acting "voluntarily," that claim is heavily dependant on how you define "voluntary." Textron's actions are voluntary in the sense that it hasn't been ordered to do the clean up, but is involuntary in the sense that Textron knows that it cannot deny/escape liability at this site and thus is obligated to perform some kind of investigation and remedy. The truth is that Textron is simply acting in its own best interests; appearing to act in good faith to meet its legal obligations, while trying to delay and minimize the extent and cost of the clean up.

RECEIVED  
D.E.M./O.W.M.  
2007 JAN 12 P 3:04

Attorney Schiff's assertion that Textron did not "have to" remove the slag pile is both correct and incorrect. It is true in the extent that Textron was not subject to any order requiring it to remove the pile (Textron is not a party to the Superior Court Consent Orders) and to the extent that Textron may have shifted its legal obligation to the City via agreement. However, Attorney Schiff's assertion is false to the extent that Textron is a responsible party at the site and will be until it resolves its liability to the state and federal governments. Textron remains liable to the government regardless of any agreement that it may have with a third-party like the City. The City may have to reimburse Textron for any clean up for which Textron is found to be liable, but Textron is still the liable party.

Textron, along with the City, is responsible for the entire site. The level to which the site must be cleaned up is dictated by the proposed future use of the property. That is why the Stop & Shop parcel only had to meet industrial/commercial standards while the rest of the property (school, YMCA and park) must meet residential standards. As responsible parties, Textron and the City are both obligated to DEM to clean the site to the appropriate standards. However, the City apparently agreed to assume Textron's liability at the site in return for a cash payment and Textron's promise to clean the entire 37.7 acres to the industrial/commercial standard. Thus, while DEM can still compel Textron to clean the site up to residential standards based on future use, Textron, under its agreement with the City, can simply turn around and demand that the City foot the bill for the difference in cost between an industrial/commercial clean up that Textron agreed to do and the residential clean up that is required.

It is common for responsible parties to divvy up the workload based on their relative share of responsibility. Many Superfund sites involve large numbers of responsible parties, some of whom have only a tiny fraction of responsibility relative to others. These "de minimis" parties commonly negotiate deals to "cash-out" with both the larger responsible parties and the government. Neither Textron nor the City even remotely qualifies as "de minimis" a party and both will remain responsible for the site until a DEM-approved remedy is completed.

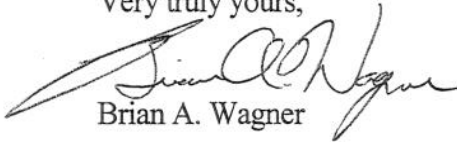
I think that Joe Martella is better qualified to respond to your question regarding the "completeness" of Textron's remedial work at the site, but I will do my best to describe my lay (i.e. non-engineering) understanding. With respect to the Stop & Shop parcel, Textron's industrial/commercial remedy is incomplete in that it has yet to adequately address the chlorinated solvent plume under the parking lot. Work on this issue is ongoing. With respect to the school and YMCA parcels, DEM has determined that the proposed "cap & vent" remedies, if properly constructed and maintained, will be protective for the proposed residential uses. At this time, the remedy at the school site is under construction, while the remedy at the YMCA site has yet to begin. Finally, with respect to the park parcel, although Textron has started its site investigation and removal activities, it is likely that further site investigation work will be required before an appropriate residential remedy will be able to be designed.

Per your request I have reviewed my file for a copy of the agreement between Textron and the City, however, while I seem to recall seeing a copy of that agreement at some point, I do not appear to have a copy in my file. I have asked Joe Martella to take a look in his materials; however, I see no reason why you should not be able to obtain a copy of the agreement directly from either the City or

Textron. At a minimum, the City is subject to the state's Access to Public Records Act ("APRA") and should be obligated to provide a copy on request. Off the top of my head I cannot think of an exception to APRA that would entitle the City to refuse to provide you with a copy of that document.

Again, sorry for the delay and I hope this adequately responds to your letter. Please feel free to write or call if you have any other questions.

Very truly yours,



Brian A. Wagner

Cc: Joseph Martella - OWM