

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA

|                          |   |                       |
|--------------------------|---|-----------------------|
| In re                    | ) | Chapter 11            |
|                          | ) |                       |
| FREEDOM INDUSTRIES, INC. | ) |                       |
|                          | ) | Case No. 14-20017-RGP |
|                          | ) |                       |
| Debtor.                  | ) |                       |
| _____                    | ) |                       |

**STATEMENT OF MARK WELCH, CHIEF RESTRUCTURING OFFICER OF  
FREEDOM INDUSTRIES, INC. IN SUPPORT OF PLAN OF LIQUIDATION**

And now, comes Mark Welch, the Chief Restructuring Officer (the “CRO”) of Freedom Industries, Inc. (“Freedom” or the “Debtor”) by and through undersigned counsel and in support of his Statement in Support of Plan of Liquidation states as follows:

1. The plan of liquidation dated as of April 30, 2015 (the “Plan”) filed by Freedom is the result of constructive dialogue and negotiations by the CRO and undersigned counsel with parties including but not limited to the following: (a) the Official Committee of Unsecured Creditors (the “Committee”) which is comprised of trade creditors, spill claim creditors and the West Virginia-American Water Company (“WVAWC”), (b) counsel to certain class action claimants, including those representing parties in what is referred to in the Plan as the Bar 101 Case and the Good Case, (c) the current equity owner of the Debtor and affiliated parties, (d) Gary Southern and affiliated parties, (e) Dennis Farrell, William Tis and Charles Herzing and their respective affiliated parties, who collectively are the former owners and board members of Freedom. Although disparate in perspective and approach, these parties were able to come together with Freedom and universally agree upon the terms and conditions of the Plan. The Plan creates significant value for the Debtor, its bankruptcy estate and creditors otherwise not available without significant and risky litigation.

2. Noticeably absent from the list of parties coming to affirmative agreement under the Plan is the West Virginia Department of Environmental Protection (“WVDEP”). The fact that WVDEP does not support the Plan at this time cannot and should not be read to suggest that the CRO has not given environmental remediation a first priority nor that the CRO has in any way derogated the duties of the CRO to remediate the Etowah River Terminal in accordance with this Court’s directive. The CRO submits that notwithstanding considerable efforts on his part and those of his professionals to reach resolution with WVDEP regarding the nature and extent, if any, of ongoing remediation obligations at the Etowah River Terminal, to date the CRO has not been able to accomplish this goal. This fact is evidenced by WVDEP’s Objection To Debtor’s Motion To Proceed With Plan Solicitation And Confirmation And Cross-Motion For Order Directing Remediation (the “WVDEP Plan Objection”) [Docket No. 793]. The CRO disputes a substantial portion of the content of the WVDEP Plan Objection. Notwithstanding the inflammatory rhetoric of the WVDEP Plan Objection, the CRO does not understand that Freedom and WVDEP are as far apart in approach as the WVDEP Plan Objection suggests. The

CRO files this Statement in an effort to bring resolution and closure to the Freedom bankruptcy case, including important remediation matters involving WVDEP.

3. Freedom is a participant in the West Virginia Voluntary Remediation Program (“VRP”). Freedom filed an application to participate in the VRP based on extensive dialogue with certain representatives of WVDEP with whom the CRO has often communicated with this matter. The CRO understood the VRP to afford Freedom the opportunity negotiate a final resolution for remediation of the Etowah River Terminal. In fact, understanding this to be the premise of the VRP, the CRO caused Freedom to undertake substantial environmental remediation work and testing in advance of Freedom’s acceptance in the VRP. Additional testing and remediation work have continued since Freedom’s acceptance in the VRP. Of increasing concern to the CRO, however, is the inability of the CRO and WVDEP to come to a negotiated resolution of final remediation requirements based upon scientific information as well as the realities of the Freedom situation.

4. Under the VRP, a licensed remediation specialist, or LRS, is appointed on behalf of the VRP participant to make recommendations to WVDEP on the manner in which a site should be remediated. In the instance of Freedom, the LRS is a representative of Freedom’s Bankruptcy Court approved environmental consultant, ARCADIS US, Inc. The CRO understands that its LRS has approximately 8 years of experience in this role, having served roles of this nature in West Virginian and elsewhere on approximately 30 projects. There now appears to be a disconnect between advice received by the CRO from environmental professionals of Freedom, including the LRS and recent commentary by WVDEP. At this time, the CRO is not able to reconcile these positions.

5. The financial resources of Freedom were quite limited at the time Freedom was accepted into the VRP, and these resources have only diminished over time. The CRO has not spent a single dollar on matters not directly related in some way to site remediation since acceptance into the VRP, and prior to this time, the CRO closely and tightly managed cash. Water collection and disposition is far and away the most significant financial burden of Freedom.

6. The CRO has actively sought, with advice from the LRS and environmental professionals of Freedom, to negotiate a cessation of water collection obligations on the part of Freedom with WVDEP. In dialogue with WVDEP, the CRO was recently of the impression that significant progress had been made on this front, however, in actuality, this has not proven to be the case. The CRO understood from dialogue with WVDEP that with the removal of additional soil from the MCHM Footprint at the Etowah River Terminal, Freedom would no longer be required to collect water. To assist Freedom in further removal of soil from the Etowah River Terminal, the CRO understood that WVDEP was coordinating with the Charleston Landfill in an effort to allow Freedom to dispose of soil at this location. The CRO understood that at the prompting of WVDEP, the Charleston Landfill did begin to negotiate with Freedom to accept soil from the Etowah River Terminal. To this end, the CRO caused significant additional analytical testing of soil to occur and these results were shared with the Charleston Landfill. The CRO and a representative of Charleston Landfill negotiated pricing for soil to be accepted from Freedom on a per ton basis at a price approximately \$410 per ton less than any other option

available to Freedom. As quickly as these discussions commenced, they ceased. As of this date, the representative of Charleston Landfill with whom the CRO was engaged in discussions has ceased all communications with the CRO. Accordingly, the CRO has no economically viable location willing to accept soil from Freedom at this time. Likewise, the CRO does not have a full understanding of the extent to which WVDEP requires additional soil removal even in the event that Freedom were to have an economically viable location to which soil could be sent. Accordingly water collection and disposition as well as soil removal are at the center of the CRO's current disconnect with WVDEP.

7. In total, Freedom has removed in excess of 1,000 tons of soil from the Etowah River Terminal, almost all of which was located within the MCHM Footprint. Freedom removes soil from the site on almost a daily basis to address MCHM "hot spots" on the site revealed as a result of sample results and physical exploration of the MCHM Footprint. Ultimately, the CRO submits that capping or paving the MCHM Footprint is the most economical and efficient method to assure containment of any MCHM residue to the extent not previously removed from the site. Getting to this point, however, has proven more difficult than reasonably expected by the CRO.

8. Understanding that the VRP exists, in theory, for the purpose of negotiating a consensual resolution of required remediation steps for an affected site, the CRO has continued in his efforts to bring closure to remediation efforts at the Etowah River Terminal. Although the CRO understood the VRP to be a program based on negotiation, it has proven to be one where the CRO makes proposals, and in turn, receives criticism rather than participation in negotiations. The CRO appreciates the complex political backdrop of the Freedom matter and the seemingly hostile environment within which WVDEP must regulate Freedom. These factors, however, now appear to substantially impact the CRO's efforts to bring conclusion to Freedom's remediation obligations at the Etowah River Terminal.

9. Saying "NO" to proposals made by a VRP participant under the VRP is easy. It allows for plausible deniability and blame if the clean-up project were not to be successfully completed by the VRP participant. A corollary to the same approach is the requirement that every dollar now or in the future available to a VRP participant must be spent on environmental remediation, with a declaration of success and completion at the point in time when the VRP participant runs out of money. The CRO submits that these approaches are neither necessary nor appropriate in the case of Freedom. Instead, the CRO encourages fair and constructive negotiation for a final resolution of remediation matters at Freedom. The CRO submits that completion of this project is very near, and that it would be unfortunate for the citizens of Charleston, WV and creditors of Freedom for the chapter 11 process to fall apart at this juncture.

10. The CRO believes that a clear path forward continues to exist in the Freedom bankruptcy case, even with the backdrop of the WVDEP Plan Objection and notwithstanding the challenges described herein. The WVDEP Plan Objection demands that the CRO establish a \$1.0 million fund for the benefit of WVDEP. Notwithstanding the negative connotations contained within of the WVDEP Plan Objection, the CRO views this demand as a positive step in the right direction because WVDEP has, for the first time in this process, provided the CRO with a specified target to meet. The CRO submits that Freedom has no immediate ability to

create such a fund. In fact, Freedom currently has approximately \$75,000 and the CRO is concerned about the financial ability to satisfy ongoing water collection obligations. With that said, however, the CRO believes that were WVDEP to work with the CRO to: (x) clearly define and justify the proposed uses for the fund WVDEP requests in the WVDEP Plan Objection, and (y) provide assurances that with the satisfaction of (x) no further environmental obligations will exist other than capping the MCHM Footprint and water testing, the CRO may very well be able to negotiate with certain parties in interest to create a remediation fund. It will be a challenge for the CRO to manage cash to a point in time where additional funding for defined remediation can be established, but with collaboration and cooperation by WVDEP, the CRO is prepared to attempt to create such a fund.

11. With specific guidance and cooperation from WVDEP as suggested by the CRO in the foregoing paragraph, the CRO expects that the path forward would generally include the following steps: (a) definitive negotiation of a clear and reasonable resolution of water collection and soil removal obligations of Freedom as well as any other or further remediation and testing mandates required by WVDEP; (b) agreement with WVDEP that subject to the satisfaction of the elements of (a) the CRO can, upon Court approval, sell the Etowah River Terminal free and clear of all obligations other than capping the MCHM Footprint and testing water for a defined duration; (c) negotiation by the CRO with certain parties in interest in the Freedom bankruptcy case for the funding of an amount necessary to satisfy the elements of (a); (d) implementation of steps necessary to create the fund requested by WVDEP; (e) implementation of final remediation steps; (f) finalizing and filing of an agreement of sale for the Etowah River Terminal and corresponding motion for approval; (g) revising of Plan to take further remediation funding into account; (h) Court approval and closing on sale of Etowah River Terminal, and (i) confirmation of Plan. Steps (a), (b) and (c) must occur promptly, otherwise Freedom will run out of money, and this case will then take a very different path – one that the CRO submits will benefit no party in this case.

12. The CRO understands the ultimate goal of the VRP to consist of implementing a risk-based remediation plan for an affected site in order to allow the site to be placed back into the stream of commerce in the State of West Virginia. With reasoned cooperation from WVDEP, the CRO can and will satisfy this goal and likewise confirm a plan of liquidation that wraps up numerous loose ends in the Freedom bankruptcy case and creates substantial value for the benefit of creditors of Freedom. These two outcomes need not be mutually exclusive, but time, and more importantly money, is running out. The CRO remains hopeful that science and practical realities of the Freedom situation rather than alternative motivations will rule the day.

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Dated: May 6, 2015

Respectfully submitted

/s/ Mark Welch

Mark Welch  
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of Freedom Industries, Inc.

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