

Esposito, Bevin

From: Brad Pollack <bgpollack@gmail.com>
Sent: Tuesday, January 21, 2020 11:16 AM
To: Lisa, Joseph
Cc: Esposito, Bevin; Goldman, Andrew
Subject: Fwd: In re: Magnate CERCLA Lien Hearing - Transcript error
Attachments: EPA Inspector General.pdf

U.S. EPA-REGION 3-RHC
FILED-21JAN2020am11:34

Dear Presiding Officer Lisa,

Please see the below and attached from my client.

Best regards,

Bradley G. Pollack
Attorney at Law
753 South Main Street
Woodstock, VA 22664
bgpollack@gmail.com
540-459-8600
540-335-4712 (cell)
540-459-8670 (fax)

----- Forwarded message -----

From: Darryl Bates <darrylwbates@gmail.com>
Date: Tue, Jan 21, 2020 at 9:54 AM
Subject: Re: In re: Magnate CERCLA Lien Hearing - Transcript error
To: Brad Pollack <bgpollack@gmail.com>

Dear Mr. Lisa,

Magnate is in agreement that the answer (39:1-4) should be attributed to Mr. Bates.

Furthermore, Magnate accepts Eratta corrections of January 8, 2020 by Mr. Goldman. Magnate appreciates a clean record of transcript.

Though these corrections are excellent as to punctuation; grammar, spelling and syntax, they should have no bearing as to a proper adjudication of the matter at hand.

Furthermore, Magnate has included its forthcoming Inspector General of EPA complaint. We have included this report since it references this hearing procedure.

Thank You, Darryl W. Bates/Magnate, LLC

On Thu, Jan 16, 2020 at 12:18 PM Brad Pollack <bgpollack@gmail.com> wrote:

Bradley G. Pollack
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----- Forwarded message -----

From: **Lisa, Joseph** <Lisa.Joseph@epa.gov>

Date: Thu, Jan 16, 2020 at 11:59 AM

Subject: In re: Magnate CERCLA Lien Hearing - Transcript error

To: Goldman, Andrew <Goldman.Andrew@epa.gov>, bgpollack@gmail.com <bgpollack@gmail.com>

Cc: Esposito, Bevin <Esposito.Bevin@epa.gov>

Dear Mr. Pollack and Mr. Goldman:

I have been reviewing the transcript of our December 2019 telephonic meeting concerning the Magnate matter. I believe that there is a material error in the transcript. This error was also identified by Mr. Goldman in his letter of January 8, 2020. I asked a question of Mr. Bates beginning on page 38, line 10 of the transcript. The answer to that question is located on page 39, lines 1-4. This answer, however, is attributed to Mr. Goldman. It is my recollection and that of the Regional Hearing Clerk, who was in attendance during the December meeting, that Mr. Bates provided this answer and not Mr. Goldman.

As a result, Mr. Pollack I would ask that you please confer with your client and communicate to myself and Mr. Goldman if you and Mr. Bates are in agreement that this answer (39:1-4) should be attributed to Mr. Bates.

Please feel free to send you response via email to myself and Mr. Goldman. Also, please copy Ms. Esposito, the Regional Hearing Clerk, on your response.

The Regional Hearing Clerk will ensure that this email and any responses that are received are made apart of the Administrative Record of this matter.

Thank you.

Joseph J. Lisa

Joseph J. Lisa

Regional Judicial Officer/Presiding Officer

U.S. Environmental Protection Agency – Region III

1650 Arch Street

MailCode 3RC00

Philadelphia, Pennsylvania 19103

Phone: 215-814-2479

Lisa.joseph@epa.gov

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EPA Inspector General Complaint

Having been the victim of an unwarranted CERCLA response action, Magnate LLC makes the following complaint. From its initiation until its conclusion, the entire procedure has been fraught with duplicity. During EPA's investigation and response action, CERCLA guidelines and "due process" were avoided like the plague. Even your cost recovery action is "above the law" and "beyond the pail". At my property, there was never a threat to the environment and never a need for a CERCLA action.

The History

Magnate LLC owns 30 acres of land formerly the Aileen textile plant in Edinburg, VA. This property was purchased with two transactions in 2007 and 2009, The Aileen went bankrupt in the mid nineties and the facility was sold at auction in 1999. It sat for eight years in neglect before Magnate purchased it with eyes wide open. To Aileen's credit, they left the property in an environmentally sound condition. Magnate took possession of the property with the intent of developing the property as a green industrial park using subdivisions, and removal of dysfunctional buildings. To that end, Magnate embarked on removal of approximately half of the existing. In order to do so, Magnate had to get demolition permits from state and local authorities. First, Magnate would have to do a complete and thorough abatement of asbestos and PBCs. Magnate spent \$175,000 to Semco and WECI to conduct the abatement and oversee the results. This abatement was also under the watchful eye of DOLI. After successfully completing the abatement,

securing the necessary demolition permits, building removal commenced. Once the buildings were demoed and the metal was scrapped, Magnate was left with piles of roofing and rubble. When Magnate sought permission from DEQ to remove piles to landfill or use as on site fill, they would not grant permission for either, requiring the piles to remain. DEQ now wishes to fine Magnate for operating an unlicensed landfill for letting it remain.

In February of 2016, the property was paid a visit by DEQ, DOLI, several local officials and EPA, responding to a complaint by an anonymous person. Having previously dealt with all the visiting entities except EPA, Magnate was highly suspicious as to this visit. When asked who had made the complaint and was denied the name, Magnate decided to take a “third party defense”. I announce that the piles that they were concerned about were the product of previously abated buildings and that any contamination of those piles would have to be at the hands of others. We further informed all parties that Magnate had no money and that an ATF “sting” operation had taken place on the property. Then we proceeded to walk the property with no evidence that should result in an EPA concern. During the initial walk through we passed by area #5, where there was no disrupted friable asbestos pipe wrap detected. At the end of this walkthrough, DEQ had some minor violations to site. EPA found nothing that would cause need for a CERCLA response.

In April of 2016, Magnate received a call from Myles Bartos, the OSC who had previously visited the property. He requested a complete and thorough inspection/investigation of the property to determine the proper disposal of the previously abated buildings. Magnate granted EPA permission to conduct the investigation with the same qualifications; Magnate had no

money and would not be responsible for any costs occurred, and that any contamination found, Magnate will not be responsible for.

On or about May 15th, Myles Bartos and 6 investigators arrived to inspect and investigate. After several days, The EPA team completed their investigation. Before leaving, Magnate asked when a final report would be forthcoming? Myles Bartos said “approximately six weeks”. In early November, I received a call from Mr. Bartos requesting further inspection of the site. When asked about the report being six months, instead of six weeks, the OSC claimed computer problems. When asked what the report concluded; he stated that the results were inconclusive. Magnate gave EPA yet another access to the property in order to complete their investigation. On November 15th, the OSC returned with several investigators to complete their investigation. This visit was solely focused on the basement of the still standing dye house.

Several weeks later, I received a phone call from the OSC, Myles Bartos saying that the final report was completed and that that the report revealed very high levels of PBCs in the basement and that it needed to be addressed. He offered to meet with me so he could deliver the report to me in a thumb drive. We met, and the thumb drive was delivered.

Due to the OSC’s duties being needed in Puerto Rico, Magnate did not hear from the OSC until August of 2017. On August 22, Magnate received a phone call and the following email:

As the property currently exists (no more demolition, tanks still in good condition, etc) there are three areas that would need attention.

- 1) Pile 3 (southeast corner). Remove and properly dispose.**

- 2) Area 5 (northeast building). Area where some pipe insulation fell onto ground within building. Remove and properly dispose.
- 3) Area 10 (basement). Remove all loose asbestos and bagged asbestos. Remove PCBs above 50. Properly dispose. Seal off all access to basement to prevent occupancy and migration of hazardous substances left behind (PCBs and asbestos contaminated materials).

Upon receiving this email, I contacted the environmental contractor, WECl, that had overseen the previous abatement. Upon reviewing this very scant remediation schedule, they asked for a more complete remediation schedule so that could put it out to bid. After much back and forth with the OSC, and getting nowhere, I requested a meeting to qualify the evidence and clarify the remediation necessary. This meeting was to include the OSC, Magnate representative, Representatives from WECl, DOLI, DEQ and several county officials familiar with the previous abatement and the property in general. This meeting was scheduled for 3:00 on October 11, 2017, on site. However, at 11:00 on October 11, the OSC cancelled the on site meeting in favor a meeting 30 miles away at DEQ headquarters, where the only action taken was to present Magnate with letters of potential liability. I took my environmental representatives from WECl, and they were perplexed. They had no idea how to proceed without more information as to remediation requirements. I emailed the OSC asking how to proceed with no specificity as to a remediation schedule.

At the on site meeting, that I requested, Magnate was not only seeking remediation clarification, but also wanted to qualify the evidence found so that there might be a determination of cause and who might be the responsible party. Magnate deemed the cancellation of the on site meeting to be a breach of due process, and an attempt to conceal the record from Magnate.

After several attempts to clarify the specifics with no success; I asked WECI to get the usual contractors that had bid on the previous abatement together, so that we can compose a remediation schedule for submittal to the OSC. WECI agreed, but could not find a single contractors wanting to get involved.

So, Magnate went outside theWECI pool and found three contractors willing to come to the site. All three showed up and said they would get back to me. Two disappeared and one proposed to do the work required, but after discussing with the OSC, he disappeared. And shortly thereafter, WECI bailed as well. At this point, Magnate started making offers to cleanup area #5 (a two hour cleanup), entomb area #10 (the basement), and make a further determination as to how a minute piece a friable pipe wrap could contaminate a 150 ton pile of previously abated roofing. All offers by Magnate were rejected.

At this point, after two years of total cooperation with all authorities, Magnate needed accountability. And set out to get it. None of this made any sense. We made a F.O.I.A. request of Myles Bartos in order to complete the record. (Attached) And so is the nonresponse.

The Complaint

Magnate asserts from day one until today, that the entire EPA/CERCLA process has failed at “due process”. Magnate is aware that “due process” is sometimes challenged by imminent danger or the threat thereof. Though CERCLA’s mandate is certainly a little short on “due process”, it should not be avoided entirely.

CERCLA

Comprehensive Environmental Response Compensation and Liability Act

Magnate asserts that in all actions by EPA against Magnate; that there was no **Comprehensive** action taken as to **Response, Compensation, or Liability**.

Cause

Where as the OSC of EPA did a complete and thorough investigation in May & November of 2016, of the Aileen “site”, and made a determination as to the status of the site, based solely on analytical evidence; Magnate asserts that a “cause” could not be determined relying solely on analytical evidence, and without a determination of “cause”, there is no reasonable determination as to the remedy, prevention of further threat, or the PRP (Potential Responsible Party). At the exclusion of historical data, empirical evidence, forensic evidence and exculpatory evidence; a reasonable determination of “cause” can not be made. Whereas the OSC in this case failed to consider, rejected, dismissed, or denied any evidence, other than analytical evidence; any determination is suspect as to its validity. Whereas, the OSC’s investigation was thorough and complete as to analytical evidence, it failed to seek the cause of the analytical evidence. Magnate

offered to supply evidence to help make a successful determination as to the cause, however, all offers were rejected.

Procedure

Upon notification of a potentially hazardous waste site, the EPA conducts a Preliminary Assessment/Site Inspection (PA/SI), which involves records reviews, interviews, visual inspections, and limited field sampling.^[28] Information from the PA/SI is used by the EPA to develop a Hazard Ranking System (HRS) score to determine the CERCLA status of the site.^[29] Sites that score high enough to be listed typically proceed to a Remedial Investigation/Feasibility Study (RI/FS).

The RI includes an extensive sampling program and risk assessment that defines the nature and extent of the site contamination and risks. The FS is used to develop and evaluate various remediation alternatives. The preferred alternative is presented in a Proposed Plan for public review and comment, followed by a selected alternative in a ROD. The site then enters into a Remedial Design phase and then the Remedial Action phase. Many sites include Long-Term Monitoring. 5-year reviews once the Remedial Action has been completed are required whenever hazardous substances are left onsite above levels safe for unrestricted use.

The above procedure allows for a reasonable assessment and a reasonable determination. This procedure was not adhered to, in any way at the Magnate site. The notification was given by agents of DEQ and DOLI. Both agencies were privy to and oversaw the \$175,000 abatement performed by Magnate in 2010. Both agencies had inspected property several times since the original abatement, and could not find anything that would have given cause for the notification to be given to EPA. The OSC actually asked to do an extensive testing by EPA, in order to give Magnate a clean bill of health. The PA/SI was never done to determine a Hazardous Ranking in order to determine the CERCLA status of the site. Therefore, proceeding to a RI/FS is without cause. To date, we have no HRS score and are not listed in the CERCLA site registry. A Proposed Plan of remediation

was never presented to the public, and the public was never notified as to the threat at hand.

Proportionment

The purpose of the procedure above, is to achieve a comprehensive assessment as to environmental impact, liability and risk. This procedure is to assure that an appropriate response, proportionate to the threat posed vs cost of remediation, so as to prevent an unjustified and unwarranted action or expense. The initial finding, after a thorough Remedial Investigation, was completed, were as follows:

- 1) Pile 3 (southeast corner). Remove and properly dispose.
 - 2) Area 5 (northeast building). Area where some pipe insulation fell onto ground within building. Remove and properly dispose.
 - 3) Area 10 (basement). Remove all loose asbestos and bagged asbestos. Remove PCBs above 50. Properly dispose. Seal off all access to basement to prevent occupancy and migration of hazardous substances left behind (PCBs and asbestos contaminated materials).
-
- 1) Pile 3 (southeast corner). Remove and properly dispose. (small pieces of asbestos pipe wrap, that had no earthly reason to be found in a previously abated pile of roofing; in need of further investigation)
 - 2) Area 5 (northeast building). Area where some pipe insulation fell onto ground within building. Remove and properly dispose. (a two hour cleanup) located within a building.
 - 3) Area 10 (basement). Remove all loose asbestos and bagged asbestos. Remove PCBs above 50. Properly dispose. Seal off all access to basement to prevent occupancy and migration of hazardous substances left behind (PCBs and asbestos contaminated materials). (Remedy; an \$18,000 entombment to prevent occupancy or migration of hazardous material) This contamination was also located within a building.

How do these findings and remedies ever rise to any consideration under the CERCLA statute. When reviewing the thorough report prepared by Weston Solutions, a multitude of photographs were supplied. Although, all of them revealed ugly, partially demolished buildings; only four of the photos revealed any of the issues noted in the three points sighted above. A multitude of photographic evidence with minimal relevance to the findings.

Accountability

Accountability is found in the PA/FI procedure. It is where, accountability begins in a CERCLA assessment. At every juncture in this procedure where Magnate sought accountability, it was thwarted, denied or rejected. When Magnate sought a site evaluation to discuss the findings of the RI/FS, with all the appropriate people, who were well aware of the environmental concerns and (non- concerns) of the site, at the last minute, the site meeting was moved to DEQ office miles away. At this meeting, instead of discussing the evidence, we discussed the allegations and shuffled papers. My environmental representatives from WECI, who had overseen the previous abatement, were dumbfounded. Whereas, we had asked for the meeting to clarify the evidence found, qualify it, and determine a reasonable remedy; no remedy was discussed or considered; just a presentation of "letters of liability". At every attempt to meet EPA's rather vague cleanup remedy, WECI or Magnate could not find any willing environmental contractors to enter into this "quagmire". After many attempts to hire contractors, even WECI decided to bail ship. Once Magnate saw the inevitability of EPA's entry to cleanup, Magnate sought reasonable accountability, by granting conditional access. The conditions would have in no way impeded or obstructed their mission to remediate. It would have only provided Magnate sought a small amount of protection from further unwarranted actions and to hold EPA accountability to the mission that they say that they sought. All conditions to conditional access

were rejected, summarily. There was never going to be any accountability or due process in any of the actions sought by this EPA/OSC.

Predicate

When no “cause” is sought, no procedure followed, no accountability granted, and no scale of proportionment considered; one might ask, “What was the predicate to initiate such an investigation?”.

Violations

Failure to reveal, notify or to conceal original complaint originator.

Failure to conduct a Preliminary Assessment / Site inspection with findings that would ever lead to, and be used to develop a Hazard Ranking System (HRS) score to determine the CERCLA status of the site.

Failure to notify the public as to the “danger” to the public created by the “Hazardous” site.

Failure to consider or determine the “Cause” of the “Hazardous Waste”

Failure to consider and investigate the “third party” defense once presented.

Failure to respond to F.O.I.A. request of November 30, 2018. (attached)

Cancelling of a requested meeting to review, qualify and dispute evidentiary findings of the investigation.

Failure to comply with the limitations as to remediation and response actions found in (3) (b):

(3) Limitations on Response.—The President shall not provide for a removal or remedial action under this section in response to a release or threat of release—

(A) of a naturally occurring substance in its unaltered form, or altered solely through naturally occurring processes or phenomena, from a location where it is naturally found;

(B) from products which are part of the structure of, and result in exposure within, residential buildings or business or community structures; or

(C) into public or private drinking water supplies due to deterioration of the system through ordinary use.

(4) Exception to Limitations.—

Notwithstanding paragraph (3) of this subsection, to the extent authorized by this section, the President may respond to any release or threat of release if in the President's discretion, it constitutes a public health or environmental emergency and no other person with the authority and capability to respond to the emergency will do.

Whereas, Area #5 and Area # 10, are clearly within a building, the contamination was part of the building, the exposure was solely within the building with no evidence of migration substantiated and certainly no emergency existing; EPA has certainly exceeded its own authority.

To date, EPA has failed to disclose and or concealed the scope of work, bid procedures, contractor's credentials, and the final cost for just compensation. This is a violation of 103-(d)-2.

At the completion of the response action, on June 3, 2019, Magnate received a call from the OSC, Myles Bartos to inform Magnate as to the final walk through with all the state and local officials. The OSC told Magnate that the meeting was scheduled for June 6th at 11:00. However, the meeting was actually scheduled for June 5th at 11:00. I happen to be at the site on the 5th, only to find the walk through in progress at the exclusion of Magnate. At the end of the walk through, Magnate inquired as to being misled as to the date of this meeting. No response! This is just another example of the OSC/EPA concealing the record from Magnate.

An attempt to recover costs via a perfection of lien for a nonspecific amount without specified compensation certainly is a violation of due process. It is also a violation of Virginia statute 43-25. To perfect a lien without a judgement is also a violation of due process. Attached is Magnates Summation of its case presented.

Magnate also contends that the Order in Aid of Access states; (4) EPA requested access to the site; (5) and consent to enter was not granted, thereby satisfying the prerequisites for EPA's entry and access to the Site under Section 104(c) of CERCLA , 42 U.S.C. 9604 (e), is erroneous.

Whereas the prerequisite to be satisfied by (5) and consent was not granted, it would be necessary for this to be true, Magnate had offered complete access to the site with minimal conditions, that would not have hindered the response in any way. The conditions sought would have only provided Magnate with a small amount of accountability. To make a misrepresentation as to "consent not granted" in order to satisfy the necessary prerequisite is to perpetrate a fraud upon the court.

Magnate further contends that in order to use Section 104 (c) of CERCLA, that EPA must be in compliance with statute. Where as the access sought to Area # 5 and Area # 10, lie within in a building and the contamination was part of those building and that there was no emergency; EPA exceeded the authority granted by failing to respect the limitations not granted. To not reveal this to the court, is to perpetrate a fraud upon the court.

Magnate further contends that the statement contained in the Order in Aid of Access; **EPA's request for access is not "arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law"** is false; if it was otherwise not in accordance with the law. Having sited the lack of accordance with law (compliance), this statement is a prevarication.

Current Action

Magnate has recently had the "neutral party" EPA hearing before Joseph Lisa, that Magnate was entitled to. The hearing gave Magnate an excellent opportunity to make its case. Magnate's summation is attached along with two FOIA requests in need of response.

UNITED STATES ENVIRONMENTAL PROTECTION
AGENCY REGION 1111650 Arch Street
Philadelphia, Pennsylvania 19103-2029

VIA HAND DELIVERY

December 31, 2019

U.S. EPA-REGION 3-RHC

FILED -13DEC2019SAM10:25

Joseph J. Lisa (3RC00)
Regional Judicial and Presiding Officer
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103

Re: Magnate, LLC Site, Edinburg, Shenandoah County,
Virginia: Lien Proceeding CERC 03-2019-0120LL

Dear Presiding Officer Lisa:

Having reviewed the transcript, and despite a few small typos and word selections, Magnate is satisfied with the transcript going forward as the record. Though we do not agree with a number of assertions that Mr. Goldman makes; it is irrelevant to the case at hand. So please allow me this opportunity to make my summation.

Summation

Magnate asserts that EPA has no reasonable basis to perfect the lien, due to Virginia state statute 43-25 that requires three basic elements to perfect a lien within its jurisdiction; amount certain, stated compensation for amount certain and 90 days to file from completion of work to be compensated for.

EPA does not meet any of these requirements. These requirements by the state of Virginia are there to assure "due process" to both parties involved. The lien that EPA wishes to perfect, will just be another attempt to skirt the justice that due process provides.

Magnate contends that the OSC/EPA usurped the authority of the President of the United State of America, abused it and exceeded it. Now, EPA wants to do the same to the Commonwealth of Virginia.

Furthermore, when I asked of Mr. Goldman what effect that the lien on two parcels would have on the other four parcels, it was not to seek his counsel; but to ask his perspective as the counsel for EPA. I know my lawyer's position and I know my position is quite knowledgeable, but I wanted to know what options he had considered. I am somewhat satisfied with Mr. Goldman's explanation. So let me make these suppositions in order give perspective to EPA's position : Peradventure, EPA perfects the lien, which without a judgement in a federal court that renders EPA no closer to any compensation (which is what this is all about) than they are today. In a courtroom where "due process" is the only consideration, the burden of proof falls upon EPA and Magnate is presumed innocent until proven guilty (to be the PRP). EPA under these circumstances would be foolhardy to ever appear in court. On the other hand, EPA perfects the lien for an amount uncertain with no judgement certain and Magnate, in the words of Mr. Goldman, is free to do whatever it pleases. I am not sure what planet he has been living on, but here is a reality check. E-P-A are the "scarlet letters" of commercial and industrial real estate. Just the fact that EPA was ever concerned about the property, is enough the scare even the bravest away. With the perfection of the lien, no bank or financial institution will ever touch the property. No reasonable party will ever invest in a property with the EPA cloud over it. No reasonable leasee will ever want to be subject to what I've gone through, and no lawyer will ever allow their client to be subject to the negative consequences that the uncertainty of this lien poses. I have a contract pending for a lease option sale of one of my parcels. Neither my lawyer or the other party's lawyer will be a party to the lease option until this lien goes away. And the cloud of EPA will linger, making the property effectively "condemned", if not "condamned".

So, the perfection of the lien gets EPA no closer to compensation, violates Virginia state law, and creates a cloud of uncertainty that will only

destroy the property for all intensive purposes. And for all intensive purposes, the perfecting of the lien will be FUTILE in obtaining the stated purpose of COMPENSATION.

But here is one last scenario to consider in your attempt at cost recovery. Say a third party wanted the property. And they used your lien and my financial condition, and the EPA "cloud" in order to own the property. And, that third party used a tax sale to get it. They can be assured that they would be the only bidder due to the EPA cloud. And at a tax sale even your lien goes away. EPA gets nothing. It may seem farfetched, but that third party has been present from day one until that infamous June 5th meeting that excluded me from the record and had three representatives of that "third party" present, for no apparent reason.

Furthermore, Magnate will be filing a complaint with the Inspector General of the Environmental Protection Agency. The complaint will include complaints of lack of predicate, lack of process, lack of determination of cause, failure of OSC to execute procedures with "due process", and will cite multiple violations of 103(a)2 by the OSC. This complaint will include FOIA requests in order to complete the record that has been, to date, concealed from Magnate. Magnate will be taking this action, no matter your decision. This injustice must end!

Please let me know if Your Honor seeks additional or different support for my statement.

Regards, Darryl W. Bates

cc: Brad Pollack, Esquire
cc: Andrew S. Goldman

**FOIA REQUEST
OF
MYLES BARTOS
OSC AT EPA**

November 30, 2018

- 1) When initially contacted by DEQ & Doli, was it by phone, email or postal service?**
- 2) Which persons of these agencies actually made contact?**
- 3) Did either state the cause for their concerns?**
- 4) Did either offer any history of the property?**
- 5) Did either notify you as to their history with the property; in particular, their involvement with a previous large scale abatement project at the site, that they oversaw?**
- 6) Would such information be deemed essential to your investigation?**
- 7) Did they offer any evidence as to the need for an EPA investigation?**
- 8) On the November 11th, 2016 telephone call by Myles Bartos to Darryl Bates, did you not state that the reason for the four and a half month delay in delivering report of the previous EPA investigation was a computer problem?**
- 9) Did you also state that the report was inconclusive and that was the reason for the request for further investigation?**

10) Did you make contact with any person at DEQ or DOLI or any other local agency, the week before November 11th phone call?

11) What evidence did you discover on second investigation that was not discovered on the first investigation in May?

12) Who made the decision to move the on site meeting to DEQ's office in Harrisonburg, and what reason did they give for the change of venue?

13) When asked to consider other verifiable evidence for consideration; did you not decline, stating that he was limited to quantitative at the exclusion of all other evidence.

14) Is this a policy of the OSC or the policy of EPA? And if so recite code or regulation.

15) When offered a three point cleanup proposal by Magnate, it was dismissed summarily. Please cite EPA regulation that supports dismissing of partial cleanup and/or containment.

16) When offered a conditional access to the property, you stated that EPA does not accept conditional access. Please cite statute that states non-acceptance of partial access that in no way, hinders, impedes or obstructs the cleanup cited as the cause of this action.

17) Magnate requests photographic evidence of pile #3, showing: time, place and condition of friable piece of asbestos found. Magnate, further requests the friable piece of asbestos retrieved by OSC for forensic analysis by independent laboratory, in order to ascertain the possibility of being from the original #3 pile.

**FOIA REQUEST
OF
MYLES BARTOS
OSC AT EPA
by
Magnate, LLC
January 20, 2020**

On June 5, 2019, EPA had a meeting at 11:00 a.m. with two representatives of DEQ, and three representatives of Shenandoah County. Please respond to the following questions.

Please identify all parties and their positions at the meeting.

What was the purpose of this meeting?

What determinations were made at the meeting?

Why was Magnate excluded from the meeting by telling Magnate that the meeting was scheduled for June 6th, the following day?

Were the participants of the meeting aware of the exclusion of Magnate from the meeting?

Why did county official leave abruptly once Magnate discovered and approached the meeting?

Damages

The “Scarlett Letters” of commercial or industrial property are “EPA”. Once you become an EPA SuperFund site; No financial institution will ever finance a sale and no prospective purchaser with assets, will ever put those assets at risk. EPA is more scary than the FBI, CIA, IRS and ATF, put together. At every attempt, by Magnate, to get help from the environmental community; every consultant or contractor disappeared or vanished along with environmental savvy legal representation. EPA actions have destroyed the value of Magnate’s once valuable property without cause, with no cause even being sought. Magnate will have limited options to make his investors whole. None of the investors would have ever invested, knowing that an illegal ATF sting operation was in the offing.

The actions taken by OSC/EPA at area #10, (inside building) to seal off the building from occupancy were feckless, unnecessary, expensive, failed to accomplish the task of prevention, and left the building unuseable and unmarketable. These damages need to be remedied by restitution and restoration.

Conclusion

This complaint requires a full investigation! Magnate has all necessary documents to substantiate all claims made.

Thank You, Darryl W. Bates / Magnate, LLC @ darrylwbates@gmail.com