

AME charges that EPA acted in “bad faith” during the Court ordered settlement discussions of September 20, 2021 by “not having a client representative present with authority to settle this matter” and “without a substantive response” to AME’s two prior demands. EPA hereby affirms that it has acted in good faith during the settlement conference, in accordance with the Court’s Order pertaining to settlement (See Order @ 2) and in compliance with 40 C.F.R. Section 305.25 (Informal settlement; voluntary agreement).

AME presented its first post-litigation settlement demand to the Department of Justice (DOJ) on February 19, 2021. Thereafter, DOJ presented the demand to EPA, and EPA – after careful consideration of the demand and consultation with the appropriate EPA offices and DOJ – rejected the demand. DOJ conveyed Respondent’s rejection to Attorney Sugarman via email on or about February 22, 2021. Thereafter, on September 16, 2021, just prior to the settlement conference, Attorney Sugarman provided counsel with AME’s second post-litigation settlement demand to EPA, which was not materially different from the first demand. Attorneys Cohan and Swenson attended the subject settlement conference on behalf of EPA with authority to respond to the renewed September 16, 2021 demand and to engage in settlement discussions with AME. Based on the posture of the litigation and consideration of AME’s demands by the appropriate EPA offices and DOJ, Attorneys Cohan and Swenson only had authority to reject the demand, and, bring back to EPA for further consideration any offer AME made to compromise AME’s “prayer for relief” set forth in its Amended Complaint.

Notwithstanding the above recitation of the facts, if the Court believes it would be appropriate to order another settlement conference, EPA requests that AME provide EPA, prior to such settlement conference, a settlement demand demonstrating an intent to compromise its claim.

Respectfully Submitted on Behalf of EPA's Claims Official,

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CERTIFICATE OF SERVICE

I certify that the foregoing EPA Response to AME's Preliminary Statement in the *Matter of August Mack Environmental, Inc.*, Docket No. CERCLA-HQ-2017-00001, was filed and served on the Chief Administrative Law Judge Susan L. Biro this day through the Office of Administrative Law Judge's E-Filing System.

I also certify that an electronic copy of EPA's Preliminary Statement was sent this day by e-mail to the following e-mail addresses for service on Requestor's counsel: Bradley Sugarman @ bsugarman@boselaw.com; Philip Zimmerly @ pzimmerly@boselaw.com; and Jackson Schroeder @ jschroeder@boselaw.com.

Date

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