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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

FILED
EPA REGION VIII
HEARING CLERK

In the Matter of:)

10,000 Havana SUPERFUND SITE)
Henderson, Colorado)

CERCLA
Docket No. CERCLA-08-2011-0012

Bernard (Leo) Long,)

Respondent)

Proceeding Under Section 104(e) of the)
Comprehensive Environmental Response,)
Compensation, and Liability Act,)
42 U.S.C. § 9604(e))
_____)

**ADMINISTRATIVE ORDER TO COMPEL
COMPLIANCE WITH AN INFORMATION REQUEST
AND ACCESS TO DOCUMENTS**

JURISDICTION

1. This order to compel compliance with an information request and access to documents related to this request is issued pursuant to the authority vested in the United States by Section 104(e) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9604(e). This authority has been duly delegated to the Regional Administrator of the United States Environmental Protection Agency (EPA) and re-delegated jointly to the supervisors of the Legal and Technical Enforcement Programs.

FINDINGS OF FACT

Respondent

2. The Respondent, Bernard “Leo” Long (Respondent) is an individual who resides in Colorado.

The Site

3. The 10,000 Havana Superfund Site (Site) is in a mixed residential/agricultural area in Henderson, Adams County, Colorado. The Site is an approximately 10-acre residential lot containing two houses and a firewood business. The Site was also previously used for the scavenging and demolition of a dozen mobile homes and the storage of waste chemicals.

4. On May 13, 2010, EPA Region 8 received a request for assistance from the Colorado Department of Health and the Environment (CDPHE). CDPHE, in conjunction with Commerce City officials, had been investigating the improper demolition of several mobile homes at the Site. Over the course of the investigation, CDPHE observed 20-30 abandoned containers of potential waste chemicals. On November 5, 2008, CDPHE issued a compliance notice to property owner Cricket Mascarenas. The notice directed Mrs. Mascarenas to properly dispose of the material. Mrs. Mascarenas indicated that she was financially incapable of undertaking the directed actions.

5. On May 20, 2010, EPA’s On-Scene Coordinator (OSC) Paul Peronard, and two personnel from EPA’s Superfund Technical Assistance and Response Team (START) contractor, met with representatives from CDPHE and Commerce City. The conducted a joint Removal Site Evaluation (RSE). During the RSE, several bulk solid samples were collected from the demolition debris and evaluated for asbestos content. In addition, samples were

collected from 20 containers which were subjected to basic hazard categorization testing on-Site. After correlating the hazard categorization information with the labeling on the containers, it was determined that a variety of chemicals were on-Site. The first group was flammable liquids; the second, used oil; the third, acidic aqueous solutions. Many of the containers showed signs of previous spills or leaks, and the areas around the containers were visibly stained. EPA conducted a time-critical removal action in June 2010.

Noncompliance with the Information Request

6. On or about July 13, 2010, EPA sent a certified letter, return receipt requested, to the Respondent pursuant to 42 U.S.C. § 9604(e), requesting that the Respondent furnish certain information to EPA (the Information Request). A copy of the Information Request is attached as Attachment A.

7. According to the U.S. Post Office return receipt, the Respondent did not sign for the letter. On or about May 15, 2011, EPA sent a copy of the Information Request via FedEx. According to FedEx, Respondent signed for the letter on May 19, 2011.

8. In the Information Request, EPA requested information relevant to one or more of the following:

- (A) The identification, nature, and quantity of materials which have been or are generated, treated, stored, or disposed of at a vessel or facility or transported to a vessel or facility;
- (B) The nature or extent of a release or threatened release of a hazardous substance or pollutant or contaminant at or from a vessel or facility; or
- (C) Information relating to the ability of a person to pay for or to perform a cleanup.

The Information Request also notified the Respondent that EPA could seek penalties for failure to comply with the Information Request and that the Respondent could contact certain individuals at EPA (whose telephone numbers and addresses were provided) if the Respondent had questions or concerns regarding the Information Request. The questions contained in the information request will allow EPA to identify other materials stored at the Site, determine the nature or extent of threatened releases of hazardous substances or pollutants or contaminants, and determine whether or not Respondent has the ability to pay past response costs at the Site.

9. The Information Request required the Respondent to submit a complete and truthful response, including the provision of all relevant documents, to EPA within 10 days after the date of receipt. The Respondent failed to submit a complete response to the Information Request by this date.

10. The Respondent Bernard Leo Long leased the Site for a number of years. According to Information Request responses from other Potentially Responsible Parties (PRPs), the Respondent was responsible for bringing hazardous substances onto the Site.

11. On or about June 10, 2011, EPA sent a letter (the warning letter) to the Respondent via certified mail. On or about June 11, 2011, EPA sent the warning letter to Respondent via regular mail. The warning letter is attached as Attachment B. The warning letter required that the Respondent promptly submit a response to the Information Request within 10 days and again provided information about how to contact certain individuals at EPA if the Respondent had questions. EPA received the unclaimed certified copy of the Warning Letter back in the mail on July 6, 2011. EPA is unaware of whether or not Respondent received the regular-mail version of the warning letter.

12. To date, the Respondent has failed to comply with the Information Request.

DETERMINATIONS

13. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
14. Each substance listed in paragraph 5 above is a "hazardous substance" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
15. There has been a "release" or a threat of a release at the Site of "hazardous substances" into the "environment" within the meaning of Sections 101(8), 101(14), and 101(22) of CERCLA, 42 U.S.C. §§ 9601(8), (14) and (22).
16. The Respondent is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
17. The Respondent is a person who has or may have information relevant to any of the matters specified in the Information Request.
18. The information and documents requested in the Information Request are for one or more of the purposes of determining the need for, choosing, or taking response actions, or otherwise enforcing the provisions of Title I of CERCLA within the meaning of Section 104(e)(1) of CERCLA, 42 U.S.C. § 9604(e)(1).
19. The Respondent's failure to comply with the Information Request is a violation of CERCLA § 104(e), 42 U.S.C. § 9604(e).

ORDER

20. Within **ten (10) business days** after the effective date specified below, the Respondent shall provide EPA with a full and complete response, including copies of all documents requested directly or indirectly, to the entire Information Request.
21. The Respondent shall submit all responses and documents required by this order to:

Judith Binegar, 8ENF-RC
Technical Enforcement Specialist
U.S. EPA Region 8
1595 Wynkoop St.
Denver, CO 80202

22. Nothing herein limits or otherwise affects any right of the United States to gather information pursuant to applicable laws, regulations, or permits.

EFFECTIVE DATE

23. This Order is effective on the tenth business day after the date it is signed by EPA.

OPPORTUNITY TO CONFER

24. Within three business days after receipt of this Order, the Respondent may request a conference with EPA to be held no later than two days before the effective date of this Order. The conference may deal with any matter pertinent to this Order, including the determinations upon which the Order is based, the applicability of the Order to the Respondent, the appropriateness of any action the Respondent is ordered to take, or any other relevant and material issues regarding the Order. This conference is not an adversarial hearing and is not a formal proceeding to enforce or challenge the Order. The Respondent may appear in person or by attorney or other representative at the conference. The Respondent may also submit written comments or statements of position on any matter pertinent to this Order no later than the time of the conference, or no later than two days before the effective date of the Order if the Respondent does not request a conference. EPA will deem the Respondent to have waived its right to a conference or to submit written comments if the Respondent fails to request the conference, or to submit written comments, within the specified time period.

25. Any request for a conference or written comments should be submitted to:

Amelia Piggott, 8ENF-L
Enforcement Attorney

U.S. EPA Region 8
1595 Wynkoop St.
Denver, CO 80202
303.312.6410

ENFORCEMENT

26. Failure to comply with this Order within the time specified may subject the Respondent to judicial enforcement of this Order as well as civil penalties of up to \$37,500 for each day of noncompliance with the Information Request, and with this Order, or both pursuant to Section 104(e)(5) of CERCLA, 42 U.S.C. § 9604(e)(5).

MODIFICATION

27. This order may be amended or modified only by EPA in writing. Any such amendments or modifications shall be effective when signed by the Regional Administrator or his delegate.

SO ORDERED.

Date: 8/2/11

Matthew Cohn
Matthew Cohn
Supervisory Attorney
Legal Enforcement Program

Date: 7/12/11

Aaron Urdis / Acting
Kelcey Land
Director
Technical Enforcement Program

Attachment A



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

COPY

JUL 13 2010

Ref: 8ENF-RC

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Leo Long
10041 Joplin Street
Commerce City, Colorado 80022

Re: Request For Information Pursuant to Section 104 of
CERCLA for 10,000 Havana Site,
Commerce City, Adams County, Colorado

Dear Mr. Long:

The U.S. Environmental Protection Agency, Region 8, (EPA) is currently investigating the source, extent and nature of the release or threatened release of hazardous substances at or near the 10,000 Havana Site located at 10,000 Havana Street, Commerce City, Adams County, Colorado ("the Site" or "Property"). EPA has information indicating that you placed vacant mobile homes on the property some years ago. EPA is currently investigating the nature and extent of contamination and operations at the Site.

Pursuant to the authority of Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9604, as amended, you are hereby requested to respond to the Information Request (Request) set forth in Enclosure 1, attached hereto. EPA seeks your voluntary cooperation in this investigation. Your compliance with the Information Request is appreciated and is required by law. Please provide a complete and truthful response to this Information Request within ten (10) business days of receipt of this letter. Section 104 of CERCLA, 42 U.S.C. Section 9604, authorizes EPA to pursue penalties for failure to meet that deadline or failure to respond adequately. In addition, providing false, fictitious or fraudulent statements or representations may subject you to criminal penalties under 18 U.S.C. Section 1001.

This Information Request is not subject to the approval requirements of the Paperwork Reduction Act of 1980, 44 U.S.C. § 3501 et seq.

Your response to this request must be accompanied by a notarized certificate that is signed and dated by the person who is authorized to respond to this Request. The notarized certificate must state that the response submitted to EPA is complete and contains all documents and information responsive to this Request that are known to you following a complete and

**10,000 HAVANA SITE
INSTRUCTIONS FOR INFORMATION REQUEST**

1. Please provide a separate narrative response to each and every Question and subpart of a Question set forth in this Information Request.
2. Precede each answer with the number of the Question to which it corresponds.
3. If information or documents not known or not available to you as of the date of submission of a response to this Information Request should later become known or available to you, you must supplement your response to EPA. Moreover, should you find, at any time after the submission of your response, that any portion of the submitted information is false or misrepresents the truth, you must notify EPA of this fact as soon as possible and provide EPA with a corrected response.
4. For each document produced in response to this Information Request, indicate on the document, or in some other reasonable manner, the number of the Question to which it corresponds.
5. The information requested herein must be provided even though you may contend that it includes possible confidential information or trade secrets. You may, if you desire, assert a confidentiality claim covering part or all of the information requested, pursuant to Sections 104(e)(7)(E) and (F) of CERCLA, 42 USC 9604(e)(7)(E) and (F), Section 3007(b) of RCRA, 42 USC 6927(b), and 40 C.F.R. 2.203(b). To prove your claim for confidentiality you must provide the following information for each document for which confidentiality is claimed.
 - a. The portions of the information claimed to be entitled to confidential treatment;
 - b. The period of time for which confidential treatment is desired (e.g., until a certain date, until the occurrence of a specific event, or permanently);
 - c. Measures taken by you to guard against the undesired disclosure of the information to others;
 - d. The extent to which the information has been disclosed to others, and the precautions taken in connection therewith;
 - e. Pertinent confidentiality determinations, if any, by EPA or other federal agencies, and a copy of any such determinations or reference to them, if available; and

DEFINITIONS

The following definitions shall apply to the following words as they appear in this Enclosure 2:

1. For purposes of this Request, the term "you" or "Respondent" shall mean the addressee of this Request.
2. The term "CERCLA" means the Comprehensive Environmental Liability Response, Compensation and Liability Act, and can be found at volume 42, United States Code (U.S.C.), Section 9601 et seq.
3. The term "hazardous substance" shall have the same definition set forth in Section 101(14) of CERCLA, and includes any mixtures of such hazardous substances with any other substances, including petroleum products.
4. The term "Site" or "Property" means that property located at 10,000 Havana Street, Commerce City, Colorado.
5. The term "person" shall have the same definition as in Section 101(21) of CERCLA: an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, State municipality, commission, political subdivision of a State, or any interstate body.
6. The term "owner or operator" shall have the same definition as that contained in Section 101(20) of CERCLA.
7. The term "pollutant or contaminant" shall have the same definition set forth in Section 101(33) of CERCLA, and includes any mixtures of such pollutants and contaminants, with any other substances, including petroleum products.
8. The term "hazardous waste" shall have the same definition set forth in Section 1004(5) of RCRA.
9. The term "materials" shall mean all substances that have been generated, treated, stored, or disposed of or otherwise handled at or transported to the Property, including but not limited to all hazardous substances, pollutants and contaminants, hazardous wastes, as defined above.
10. The term "identify" means, with respect to a natural person, to set forth the person's name, present or last known business address and business telephone number, present or last known home address and home telephone number, and present or last known job title, position or business.

QUESTIONS

1. Identify the person(s) answering these questions on behalf of Respondent.
2. For each and every question contained herein, identify all persons consulted in the preparation of the answer.
3. For each and every question contained herein, identify documents consulted, examined, or referred to in the preparation of the answer or that contain information responsive to the question and provide accurate copies of all such documents.
4. Identify the owner(s) and the operator(s) of the property located at 10,000 Havana Street, Commerce City, Colorado.
5. Explain your relationship with Cricket Mascarenas, and how long you have known Mrs. Mascarenas.
6. Identify and provide any contract previously entered into with Mrs. Mascarenas or Mr. Mascarenas.
7. State the nature of your past or present operations on the Property.
8. Did you operate a business from the Property? If so, state the nature of that business. Provide copies of all documents showing the delivery of any materials to or from the Property.
9. Did you place any mobile homes on the Property? If so, please identify when and how many mobile homes were placed on the Property, and provide any documentation related to mobile home storage or disposal on the Property.
10. Describe what was done to each mobile home after it was placed on the Property, including where each mobile home was placed and any change made to the structure of a mobile home.
11. Identify any other person who stored, destroyed or disposed of any mobile homes on the Property.
12. Identify the owner(s) of any mobile home on the Property, and provide any documentation relating to ownership.
13. Please identify each person who granted permission to place any mobile home on the Property, and provide documentation, if any, of that permission.
14. Identify any other person conducting operations on the Property, and describe the other operations and when they occurred.
15. Identify any truck maintenance that occurred on the Property, and the methods of disposal for

NOTARIZED CERTIFICATE

I, _____, having been duly sworn and being of legal age, hereby state:

1. I am the person authorized by _____ to respond to the Environmental Protection Agency's (EPA's) request for information concerning the 10,000 Havana Site located in Commerce City, Colorado.
2. I have made a complete and thorough review of all documents, information, and sources relevant to the request.
3. I hereby certify that the attached response to EPA's request is complete and contains all information and documents responsive to the request.

(Signature)

(Name)

(Title)

(SEAL)

Subscribed and sworn to me
this _____ day of _____, 2010.

Notary Public

My Commission Expires _____
My address is _____

Attachment B



UNITES STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

JUN 09 2011

Ref: 8 ENF-L

Mr. Bernard Leo Long
4566 West 87th Place
Westminster, CO 80031

Re: 10,000 Havana Information Request

Dear Mr. Long,

This letter is being sent as a follow-up to the 104(e) Information Request EPA sent you. The Information Request dealt with your involvement with the 10,000 Havana site in Commerce City, Colorado. Leo Long signed for the Information Request on May 19, 2011. EPA has not received a response to the request, and now the request is past due. Failure to provide a response to the Information Request within the next 10 business days may result in penalties or other enforcement. You should immediately contact Judith Binegar at 303.312.6606, or have an attorney contact Amelia Piggott at 303.312.6410 to inform EPA of the date by which the response will be provided.

Sincerely,

A handwritten signature in cursive script that reads "Judith Binegar".

Judith Binegar
Technical Enforcement Specialist

cc: Amelia Piggott, EPA



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