



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

FEB 08 2017

Bradley R. Sugarman, Esq.
1302 North Meridian Street
Suite 300
Indianapolis, Indiana 46202

Dear Mr. Sugarman:

The United States Environmental Protection Agency (EPA) has reviewed your January 12, 2017 letter addressed to Bonnie Pugh, Esq. EPA has examined the facts surrounding this matter, consulted Regional management and EPA headquarters subject matter experts and determined that August Mack Environmental, Inc. (AME) has failed to meet the requirements in 40 C.F.R. § 307.22 to submit a claim to the Fund for the work it performed at the Big John's Salvage-Hoult Road Site (BJS Site).

Claims against the Fund are limited to preauthorized response actions. *See* CERCLA §§ 111(a)(2) and 112(b). Specifically, 40 C.F.R. § 307.22(a) provides that "No person may submit a claim to the Fund for a response action unless that person notifies the Administrator of EPA or his designee prior to taking such response action and receives preauthorization by EPA." Moreover, any person intending to submit a claim to the Fund must fulfill three requirements, including submitting an application for preauthorization to the Administrator or his designee. AME never submitted an application for preauthorization to EPA for the work it was to perform at the BJS Site; therefore, EPA has determined that it must deny AME's claim to the Fund.

EPA's correspondence and communications with AME regarding the work performed by AME at the Site do not constitute preauthorization for purposes of 40 C.F.R. § 307.22. Subsection (j) of that provision states, "Unless otherwise specified and agreed to by EPA, the terms, provisions, or requirements of a court judgement, Consent Decree . . . or any other consensual agreement with EPA requiring a response action do not constitute preauthorization to present a claim to the Fund." AME's only involvement at the BJS Site has been as a contractor retained by Vertellus Specialties, Inc. (Vertellus) to perform work pursuant to the Consent Decree in *United States v. Exxon Mobile et al.*, Civil Action No. 1: 08CV 124 (2012) (CD). EPA correspondence and communications with AME have been solely regarding AME's role as Vertellus' Supervising Contractor at the BJS Site for purposes of conducting the work required by the CD. The CD does not constitute preauthorization and EPA never specified otherwise.

Lastly, had AME submitted an application for preauthorization to EPA, a grant of preauthorization would have had to be memorialized in a Preauthorization Decision Document (PDD) as



required by 40 C.F.R. § 307.23(a). That section states, “EPA shall review each preauthorization application and will notify the applicant of the decision to grant or deny preauthorization. Decisions to grant preauthorization will be memorialized in a PDD.” *Id.* EPA did not issue a PDD for the BJS Site. For the reasons set forth above, EPA is denying your claim for payment from the Fund.

Please note that I am now handling the BJS Site on behalf of EPA. If you have any additional questions concerning this matter, you may reach me at 215-814-2643.



Susan T. Hodges,
Senior Assistant Regional Counsel

Cc: Karen Melvin, Director, HSCD
Cyndy Mackey, Director, OSRE
Deniz Ergener, OSRE
Eric Newman, RPM