UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of:	)	Docket No. CERCLA-HQ-2017-0001
	)	
AUGUST MACK ENVIRONMENTAL, INC.,	)	Before Chief Administrative Law Judge
	)	Susan L. Biro
Requestor.	)	

AUGUST MACK ENVIRONMENTAL, INC.'S RESPONSE IN OPPOSITION TO RESPONDENT'S MOTION TO DISMISS AND MEMORANDUM IN SUPPORT OF RESPONDENT'S MOTION TO DISMISS

Requestor, August Mack Environmental, Inc. ("AME"), by counsel, respectfully submits this Response in Opposition to Respondent's Motion to Dismiss and Memorandum in Support of Respondent's Motion to Dismiss (Respondent's Motion to Dismiss and its Memorandum in Support of Respondent's Motion to Dismiss are collectively the "Motion to Dismiss"). AME's Request for Hearing establishes a prima facie case that AME is entitled to payment from the Hazardous Substance Superfund (the "Fund"), and the Respondent Environmental Protection Agency ("EPA" or the "Agency") has failed to meet the heavy burden required to dismiss this matter. AME only seeks payment for work it performed subject to EPA's approval. In its Motion to Dismiss, EPA relies on a literal "form" over substance and ignores its own regular and explicit approval of AME's work, which work specifically benefited the BJS Site and the Agency. EPA's refusal to pay AME from the Fund is merely an attempt by the Agency to avoid paying for work for which it would have otherwise been required to pay. Nothing in EPA's Motion to Dismiss adequately refutes the well-pled allegations in AME's Request for Hearing, and the Motion to Dismiss must be denied.

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I. Introduction

For over three and a half years, AME worked on the environmental cleanup and restoration of the Big John's Salvage – Hoult Road Superfund Site in West Virginia (the "BJS Site"). AME served as the supervising contractor at the BJS Site after being selected by Vertellus Specialties, Inc. ("Vertellus"), one of the potentially responsible parties, which selection was approved by EPA. In this role, AME performed significant work – including remedial design, sampling and investigation, project management, and construction – carrying out EPA's mission to protect human health and the environment and cleaning up the BJS Site. The cost of this work forms the basis for AME's Response Claim for Payment from the Hazardous Substance Superfund (the "Claim"). Vertellus failed to compensate AME for the work performed at the BJS Site and eventually Vertellus filed for bankruptcy. Prior thereto, however, Vertellus and the other potentially responsible parties delivered substantial funds to the Agency to assure that the work being performed by AME and others would continue if Vertellus failed to complete its obligations under the Consent Decree.

This Tribunal must deny EPA's Motion to Dismiss because AME's Request for Hearing demonstrates that AME is entitled to payment. First, AME's Claim is eligible for payment from the Fund under CERCLA. AME constantly communicated with EPA, and EPA reviewed, revised, and ultimately approved all of AME's proposed work before AME took any action. Although not all CERCLA preauthorization regulations applied to AME in this situation, EPA's approval of every action undertaken by AME at the BJS Site constitutes preauthorization for purposes of submitting a claim to the Fund. EPA's arguments to the contrary elevate form over substance. Second, EPA is not precluded from approving the Claim because AME's claim in the Vertellus bankruptcy case is not an action to recover costs within the meaning of CERCLA.

EPA's actions directly clash with CERCLA's goal of obtaining quick and effective clean ups of contaminated sites at the expense of parties responsible for the contamination. By refusing to pay AME for the work it performed at the BJS Site, EPA is essentially requiring AME to pay costs associated with cleaning up a site AME did not contaminate. EPA cannot have it both ways. Since it has already accepted the benefits of AME's work, it must approve AME's Claim. To not do so would unjustly enrich EPA at AME's expense.

II. Standard of Review

A request for hearing can be dismissed "on the basis of failure to establish a prima facie case or other grounds which show no right to relief on the part of the Requestor." 40 C.F.R. § 305.27(a). This provision is nearly identical to that found at 40 C.F.R. § 22.20(a), and AME, like EPA, looks to administrative decisions interpreting this similar provision for guidance on the applicable standard of review.

A motion to dismiss under 40 C.F.R. § 22.20(a) is "[a]nalogous to a motion to dismiss for failure to state a claim upon which relief may be granted under the Federal Rules of Civil Procedure ('FRCP') (Rule 12(b)(6)) . . . [and] may be considered against the same standard." *In the Matter of Hanson's Window and Constr., Inc.*, Order Denying Respondent's Motion to Dismiss and Granting Complainant's Motion to File Amended Complaint, Docket No. TSCA-05-2010-0012, 2010 WL 5093890, at *3 (OALJ Dec. 1, 2010). Thus, this Tribunal regularly looks to the FRCP and federal case law for guidance regarding motions to dismiss. *See, e.g., id.* This practice has been approved by the Environmental Appeals Board. *In re B&L Plating, Inc.*, 11 E.A.D. 183, 188 n.10 (EAB 2003).

Applying the FRCP, in order to survive a motion to dismiss, a request for hearing must "state a claim to relief that is plausible on its face." *In the Matter of Mercury Vapor Processing Techs., Inc., a/k/a River Shannon Recycling, and Kelly*, Orders on Respondents' Motion to Dismiss with Prejudice for Lack of Fair Notice and Convoluted Regulations and Complainant's Motion to Strike, Docket No. RCRA-05-2010-0015, 2011 WL 3503522, at *2 (OALJ July 14, 2011) (quoting *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (quoting *Iqbal*, 129 S.Ct. at 1949). In ruling on a motion to dismiss, "all factual allegations in the complaint should be presumed true, and all reasonable inferences therefrom should be made in favor of the [Requestor]." *Id.* at *3 (quoting *In re Commercial Cartage Co.*, 5 E.A.D. 112, 117 (EAB 1994)). Additionally, "[a] Rule 12(b)(6) motion to dismiss does not resolve contests surrounding facts [or] the merits of a claim . . . ." *Tobey v. Jones*, 706 F.3d 379, 387 (4th Cir. 2013) (internal quotation marks and citation omitted). Finally, a Request for Hearing "need only 'give the [Respondent] fair notice of what the . . . claim is and the grounds upon which it rests.'" *Id.* (second alteration in original) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).[1]

III. Argument

AME's Request For Hearing sufficiently alleged (and its evidence at hearing will unequivocally show), that EPA regularly monitored, regulated, and in some cases even directed, the very work for which AME now seeks payment in this proceeding. EPA never once objected to the quality or timeliness of AME's work, and to date EPA's effort to prevent payment relies

[1] Additionally, "in the event dismissal appears to be appropriate, dismissal of a complaint should ordinarily be without prejudice." *In the Matter of Mercury Vapor Processing Techs., Inc.*, Orders on Respondents' Motion to Dismiss, 2011 WL 3503522, at *3 (quoting *In re Commercial Cartage Co.*, 5 E.A.D. at 117)).

solely on ill-fitted procedural rules. The reality is that EPA, like AME, never had reason to anticipate Vertellus' bankruptcy filing. This is not a case of AME neglecting to comply with applicable rules. This is a case where EPA hopes to exploit Vertellus' bankruptcy filing to achieve a windfall for itself.

A. The Request for Hearing shows that AME obtained approval of all work completed at the BJS Site and completed this work within the scope of EPA's approval.

EPA's primary argument in its Motion to Dismiss is that AME did not obtain preauthorization to conduct work at the BJS Site because it failed to submit a specific form application for preauthorization, and therefore AME's work could not have been within the scope of any preauthorization. (Motion to Dismiss, pp. 6-9.) This argument places procedure over substance and does not stand up to scrutiny. First, AME could not submit a form application for preauthorization because the form application was a dead letter – it is not available having expired over 22 years ago. The historical form referred to by EPA instructs applicants to send the completed form to a nonexistent office. In addition, AME did not have the necessary intent required by the regulations EPA cites prior to completing its work rendering those regulations inapplicable. Third, despite the inapplicability of the regulations, AME did in fact receive actual preauthorization from EPA for all its work consistent with the form. Finally, AME completed its preauthorized work within the scope of that preauthorization.

1. AME was not required to submit an expired form "application for preauthorization" prior to performing work at the BJS Site.

Silence can be telling, and EPA's refusal to directly reference the unreadable, long-expired form it historically required for an application for preauthorization is significant. While EPA's regulations contain a procedure for requesting preauthorization to conduct work, all

available information is that EPA no longer follows this practice. EPA's own "Application for Preauthorization of CERCLA Response Action" expired by its own terms on December 31, 1994 – ***over 22 years ago***. (The form is designated as "Form 2075-3" at 40 C.F.R. § 307.22(a)(2) and incorporated directly into the regulations as Appendix A to 40 C.F.R. Pt. 307.) In fact, other than the barely legible form included within the Code of Federal Regulations, AME was unable to locate any version of the form.[2] Clearly if EPA's practice regarding preauthorization is a common practice, it would not be impossible to find and complete the form.

What is more, even if EPA's actual preauthorization form could be located, it cannot be complied with in accordance with its own instructions. The form's instructions state that completed forms must be submitted for approval to the attention of the "Director of the Office of Emergency and Remedial Response." *Id.* However, that office no longer even exists. It has been replaced by the Offices of Site Remediation Enforcement and of Superfund Remediation and Technology Innovation, both of which claim to either manage or implement CERCLA. With respect to the preauthorization form, however, neither office provides any information or reference to the form or related applications for preauthorization.[3, 4] EPA's reliance on

[2] An extensive electronic search for the form on the EPA's own website cannot locate the form. The same is true for the claim form contained at 40 C.F.R. Pt. 307, App. B.

[3] *See About the Office of Enforcement and Compliance Assurance (OECA): Office of Site Remediation Enforcement (OSRE)*, US EPA, https://www.epa.gov/aboutepa/about-office-enforcement-and-compliance-assurance-oeca (last visited Sept. 26, 2017); *About the Office of Land and Emergency Management: Office of Superfund Remediation and Technology Innovation (OSRTI)*, US EPA, https://www.epa.gov/aboutepa/about-office-land-and-emergency-management#osrti (last visited Sept. 26, 2017).

[4] The Office of Superfund Remediation and Technology Innovation (OSRTI) is located within the Office of Land and Emergency Management (OLEM). OLEM is the new name for the Office of Solid Waste and Emergency Response (OSWER). *OSWER to OLEM*, US EPA, https://www.epa.gov/aboutepa/oswer-olem (last visited Sept. 26, 2017). The Office of Emergency and Remedial Response (OERR) – where the completed forms are supposed to be sent – apparently used to be part of OSWER. *See* Risk Assessment Guidance for Superfund: Volume 1 – Human Health Evaluation Manual Supplement to Part A: Community Involvement in Superfund Risk Assessments, US EPA (March 1999), https://hero.epa.gov/hero/index.cfm/reference/download/reference_id/664509 (showing guidance from OERR after an OSWER cover page). Thus, it would seem that the functions of the Office of Emergency and Remedial Response would now be housed in OLEM (possibly OSRTI), but there is no positive indication of that anywhere on EPA's website or in publicly available documents.

compliance with the preauthorization regulations represents a proverbial "rabbit hole" and AME had no way to comply.

2. AME was not required to submit a form "application for preauthorization" because it did not intend to submit a claim to the Fund at the time.

Even if EPA's form for preauthorization of work were readily available, AME was not required to submit such a preauthorization form. EPA's "preauthorization" regulations found at 40 C.F.R. § 307.22 do not apply to AME. As stated in AME's Request for Hearing, the plain language of the regulation requires that a person must first *intend to submit a claim* before being required to submit an application for preauthorization. Here, AME never had an "intent" to submit a claim when it began work at the BJS Site– a fact that EPA continues to ignore. Rather, AME "intended" to be paid by Vertellus or from the $37 million EPA controlled and had amassed to pay for work at the BJS Site through contributions made by Vertellus and others.

Indeed, it is clear that both AME and EPA expected Vertellus, the Performing Defendant under the Consent Decree, to complete the work and neither party expected Vertellus to enter bankruptcy before the work at the BJS Site was complete. In fact, in the Consent Decree, EPA stated: "Based on the information presently available to EPA, EPA believes that the Work will be properly and promptly conducted by [the] Performing Defendant if conducted in accordance with the requirements of this Consent Decree and its appendices." (Ex. A to the Claim, Consent Decree at p. 5, ¶ Q.) Given that EPA did not foresee Vertellus' bankruptcy (even with its authority to obtain Vertellus' financial information (*see* Ex. A to the Claim, Consent Decree at pp. 34-35, ¶ 29(e); pp. 36-37, ¶ 31)), there is no reason to believe that AME could have expected it. Because both EPA and AME expected Vertellus to pay for the work at the BJS Site, AME had no reason to submit an application for preauthorization to conduct work.

Additionally, AME had no reason to seek preauthorization from EPA to conduct work and submit a claim to the Fund because such preauthorization procedure presumes the EPA will pay for the work directly from the Fund, and the Consent Decree provided ample funding to ensure the work at the BJS Site was completed. As noted in the Request for Hearing, the Consent Decree established two trust funds – the distribution of which EPA controlled – with a combined value of $16,056,000, and also required a $10,500,000 irrevocable letter to fund remediation of the BJS Site be issued. (Ex. A. to the Claim, Consent Decree, at pp. 35, 46-47.) In addition, EPA also established a Special Account for the BJS Site under the Consent Decree – which EPA also controlled – which required Vertellus to directly pay $11,000,000 into that account to be used to cover removal costs. (*Id.* at p. 50.) Vertellus would have been able to use these funds to pay AME directly had EPA not required payment into the Special Account. However, since the funds were "to be retained and used to conduct or finance response activities at or in connection with the BJS Site, or to be transferred by EPA to the [Fund]" (*Id.*), AME had no reason to expect that EPA would refuse to use those funds to pay it. Indeed, EPA previously used those funds to pay AME's invoices submitted to Vertellus. With EPA controlled site-specific funding totaling $37,556,000, over one-third which came directly from Vertellus, AME expected that its costs would be paid regardless of what happened to Vertellus. Given this site-specific funding from Vertellus, AME had no reason to submit an application for preauthorization prior to conducting work at the BJS Site. Indeed, it was EPA's unexpected and arbitrary refusal to reimburse AME from the funds provided by Vertellus for use at the site which forced AME to submit its Claim against the Fund.

Finally, EPA would not have preauthorized reimbursement from the Fund before AME performed the work because at that time Vertellus was apparently still viable and EPA's decision

to sequester the site-specific funding had not been made. If AME had been able to submit the form for preauthorization, it is clear that EPA would have directed AME to Vertellus for payment, which EPA had vetted and approved as the Performing Defendant under the Consent Decree. As such, any attempt to submit the forms would have been futile, and the law does not require a party to undertake a futile act.

Despite the inapplicability of certain portions of the preauthorization regulations, AME's actions still fulfilled the purposes of those regulations. As EPA states, preauthorization "is necessary for proper Fund management to ensure that Fund monies be available for the most urgent priorities." (Motion to Dismiss, p. 4.) Form or no form, EPA was always apprised of the work being performed by AME that would have been the subject of a preauthorization form had one been required. The record is replete with numerous regular correspondence between AME and EPA so that whatever work was being approved was known to and approved by EPA prior to its undertaking. EPA possessed all the information necessary to carry out its duties to ensure that the Fund be used "for the most urgent priorities." Indeed, as shown below, it did carry out these duties by approving AME's work. By insisting on adherence to an outdated form and inapplicable procedures rather than the substance of information it possessed, EPA unjustly and erroneously elevates form over substance.

3. EPA preauthorized all work AME completed.

EPA preauthorized AME's work at the BJS Site through the procedure outlined in the Consent Decree rather than via its long-expired forms. The Consent Decree prescribed a specific procedure for submitting work to the EPA for preapproval and certification. (Ex. A to the Claim, Consent Decree, ¶ 10 at pp. 19- 23 (addressing "Work to Be Performed") and § IX at pp. 31-33 (addressing "EPA Approval of Plans and Other Submissions").) For instance, AME was

required to submit a removal design work plan and a quality assurance plan to EPA for the Agency's approval. (*Id.* at pp. 19-20; 24-25.) AME also had to submit written reports to EPA on the progress of the work at the BJS Site. (*Id.* at pp. 29-31.) AME followed these requirements and EPA approved and certified all its work. (Request for Hearing, pp. 13-15, ¶¶ 38-49.) Having refused to approve AME's Claim, EPA is now in the enviable position of having the necessary work performed and keeping all the money, surely an instance of unjust enrichment and a windfall for the Agency.

AME's point in providing this explanation is that a procedure existed for EPA to approve and certify all work conducted at the BJS Site. Contrary to EPA's characterization of this information, AME is not positing that the mere entry of the Consent Decree constituted preauthorization. (Motion to Dismiss, p. 7.) Rather, the procedures set in place by the Consent Decree provided the structure for the communications between AME and EPA. Those communications whereby EPA officials reviewed, commented on, and imposed changes to AME's planned work constitute the approval and preauthorization necessary for payment from the Fund. These communications established the terms and conditions of the preauthorization and provided EPA the ability to ensure that payments from the Fund go only to the most urgent priorities. By directing, reviewing, approving, and overseeing each and every remedial activity AME undertook at the BJS Site, EPA provided its preauthorization. EPA's refusal to approve AME's Claim despite its intimate knowledge of and involvement in all of AME's work at the BJS Site is arbitrary and capricious and has resulted in a severe injustice to AME.

4. AME completed its work within the scope of EPA's preauthorization.

EPA only briefly addresses the requirement that AME's work be within the scope of its preauthorization when it argues that, because there was no preauthorization, the work conducted

could not have been within its scope. EPA never squarely addresses the beneficial work AME actually conducted at the BJS Site. It has never refuted AME's position by arguing that the work performed by AME on behalf of Vertellus did not benefit the BJS Site, was unnecessary, did not add value to the cleanup efforts, or went beyond any approval by EPA of what work needed to be done at the BJS Site. To the contrary, the BJS Site and therefore EPA have benefited from AME's work despite EPA's unjust and arbitrary refusal to approve AME's Claim for that work. As shown above and in the Request for Hearing, EPA essentially preauthorized AME's work. Further, AME affirmatively stated that its work was within the scope of the approval it received from EPA, which has not been contested by EPA. (*See, e.g.*, Request for Hearing, pp. 13-15, ¶¶ 38-49; pp. 27-29.) This information, taken in the light most favorable to AME, along with the lack of any argument by EPA that the work AME actually performed was deficient or unnecessary, precludes the grant of EPA's Motion to Dismiss.

B. AME's claim in the Vertellus bankruptcy case does not preclude EPA from paying AME's Claim from the Fund.

EPA's other argument against paying AME's Claim from the Fund is that it "is statutorily prohibited from granting AME the relief it seeks in its Request for Hearing" based on AME's claim in the Vertellus bankruptcy case.[5] (Motion to Dismiss, p. 9.) CERCLA provides that "[n]o claim against the Fund may be approved or certified during the pendency of an action by the claimant in court to recover costs which are the subject of the claim." 42 U.S.C. § 9612(a). EPA's reliance on this provision in its Motion to Dismiss is misplaced for two reasons.

First, AME's claim in the Vertellus bankruptcy case is not a pending "action by the claimant . . . to recover costs." In bankruptcy cases, a claim "is deemed allowed, unless a party

[5] It is notable that this is the first time EPA has raised this argument in the eight months since AME submitted its Claim.

in interest . . . objects." 11 U.S.C. § 502(a). No party in interest has objected to AME's claim in the Vertellus bankruptcy case, so AME's claim is deemed allowed as a matter of law. Thus, the claim is not a pending action within the meaning of 42 U.S.C. § 9612(a). Further, a petition for relief in bankruptcy "operates as a stay, applicable to all entities, of . . . (6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case . . . ." 11 U.S.C. § 362(a)(6). Because of this prohibition on "any act to collect, assess, or recover" against Vertellus, AME's claim – which has been filed pursuant to the Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.* (the "Bankruptcy Code"), and is deemed allowed under the Bankruptcy Code – cannot constitute an action to recover costs from Vertellus. Various federal courts of appeal consistently have endorsed a similar position. *Ziino v. Baker*, 613 F.3d 1326, 1328-29 (11th Cir. 2010) (quoting *Matter of Mobile Steel Co.*, 563 F.2d 692, 700 (5th Cir.1977) (quoting *In re Kansas City Journal–Post Co.*, 144 F.2d 791, 803–04 (8th Cir.1944))) ("[T]he assertion of a claim in bankruptcy is, of course, not an attempt to recover a judgment against the debtor but to obtain a distributive share in the immediate assets of the proceeding."). Thus, AME's claim in the Vertellus bankruptcy case by definition is not the same as a standard civil suit for damages (to which the prohibition relied upon by EPA clearly was meant to apply), and CERCLA does not prohibit payment of AME's Claim from the Fund.

Second, even if this Tribunal does not find the statutory and case law noted above dispositive, EPA's argument is not a basis for dismissing AME's Request for Hearing. It would only provide a basis to stay this tribunal's review of the matter until the Vertellus bankruptcy case is concluded. The provision just states that a claim cannot be "approved or certified during the pendency" of an action to recover the same costs in court. 42 U.S.C. § 9612(a). This provision shields the Fund from claimants seeking double recovery, but it does not provide a

basis to *deny* claims. The statutes related to the Oil Spill Liability Trust Fund ("OSLTF") include a nearly-identical provision in their claims procedures. 33 U.S.C. § 2713(b)(2) ("No claim of a person against the Fund may be approved or certified during the pendency of an action by the person in court to recover costs which are the subject of the claim."). The reconsideration of a denial of a claim to the OSLTF was stayed pending the outcome of litigation in Oregon state court in at least one case. *See Rick Franklin Corp. v. U.S. Dep't of Homeland Sec.*, Civil No. 06-1647-SU, 2008 WL 337978, at *4 n.5 (D. Or. Feb. 4, 2008). In a similar manner, if this Tribunal finds that AME's claim in the Vertellus bankruptcy case precludes the approval or certification of the Claim, it should stay rather than dismiss these proceedings.

C. EPA's actions in this matter, including its denial of AME's Claim and continued refusal to approve the Claim, are directly opposed to CERCLA's purposes.

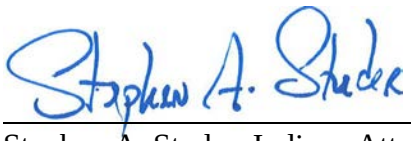
EPA's initial denial of AME's Claim and its continued efforts to prevent payment of the Claim are directly opposed to the established purposes of CERCLA. CERCLA was enacted "in response to the serious environmental and health risks posed by industrial pollution." *Burlington N. & Santa Fe Ry. Co. v. U.S.*, 556 U.S. 599, 602 (2009). It "was designed to promote the timely cleanup of hazardous waste sites and to ensure that the costs of such cleanup efforts were borne by those responsible for the contamination." *Id.* (citations and internal quotation marks omitted). *See also* Motion to Dismiss, p. 3 (CERCLA's "overriding purpose is to protect and preserve public health and the environment by facilitating the expeditious and efficient cleanup of hazardous waste sites . . . while at the same time placing the ultimate financial responsibility for cleanup on those responsible for hazardous wastes." (internal quotation marks and citations omitted)). Thus, the primary purposes of the statute are to: (1) obtain quick cleanup of contaminated sites and (2) require responsible parties to pay for cleaning up contamination they

cause. *See Chubb Custom Ins. Co. v. Space Systems/Loral, Inc.*, 710 F.3d 946, 968 (9th Cir. 2013). "Because CERCLA is a comprehensive remedial statutory scheme, . . . courts must construe its provisions liberally to avoid frustrating the legislature's purpose." *Axel Johnson, Inc. v. Carroll Carolina Oil Co.*, 191 F.3d 409, 416 (4th Cir. 1999) (citations and internal quotation marks omitted). EPA's denial of AME's Claim and continued refusal to approve the Claim clearly frustrate the purposes of CERCLA not only by delaying (perhaps indefinitely) response actions at the Site, but also by requiring AME – an innocent party – to bear the costs of cleaning up a site it did not contaminate.

IV. Conclusion

AME's work benefited the BJS Site, it was necessary work, it added value to the cleanup efforts, and all the work AME performed was approved by EPA. Now EPA refuses to pay the Claim from the Fund. AME's Claim is eligible for payment from the Fund, and nothing precludes such payment. For these reasons, as detailed above, AME respectfully requests that this Tribunal deny Respondent EPA's Motion to Dismiss and grant all other just and proper relief in the premises.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that the foregoing Notice of Appearance was filed with the Headquarters Hearing Clerk this day through the Office of Administrative Law Judges' E-Filing System. Electronic service on the Presiding Officer is thus deemed completed by that e-filing. I further certify that an electronic copy of the Notice of Appearance was sent this day by electronic mail (e-mail) to the following individuals:

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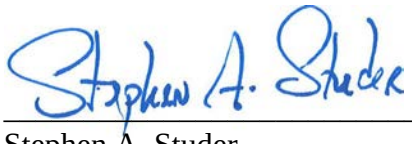

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Dated: September 29, 2017

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