

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the Matter of:

August Mack Environmental, Inc.,

Requestor.

Docket No. CERCLA-HG-2017-0001

REQUESTOR'S INITIAL PREHEARING EXCHANGE

Pursuant to the Prehearing Order Office of Administrative Law Judges ("OALJ"), Requestor August Mack Environmental, Inc. ("AME"), through counsel, submits the following Initial Prehearing Exchange:

a. *List of Witnesses.* Requestor's witnesses include:

1. *Mr. Geoffrey Glanders:* Mr. Glanders is the president and owner of Requestor August Mack Environmental, Inc. ("AME"). He is expected to testify as a fact witness regarding Requestor's work at the Big John's Salvage Superfund Site (the "Site") and the financial hardship the company suffered when the agency wrongly refused to reimburse AME for more than \$2.5 million in response costs AME incurred performing agency-approved remedial work at the Site. Mr. Glanders is also expected to testify as an expert witness regarding AME's compliance with the NCP. In accordance with the OALJ's prehearing order, a resume of Mr. Glanders is being

submitted herewith. Mr. Glanders may be contacted through counsel for Requestor.

2. *Mr. Joel Ruselink:* Mr. Ruselink is a Senior Geologist for AME and has worked with the company for more than 22 years. Mr. Ruselink is expected to testify as a fact witness regarding the agency-approved remedial work AME performed at the Site. Mr. Ruselink may be contacted through counsel for Requestor.
3. *Mr. Andrew Tennyson:* Mr. Tennyson is the Senior Chemistry Manager at AME and has worked for the company for more than 8 years. Mr. Tennyson is expected to testify as a fact witness regarding the agency-approved remedial work AME performed at the Site. Mr. Tennyson may be contacted through counsel for Requestor.
4. *Mr. Bryan Petriko:* Mr. Petriko is the Vice President and Principal Environmental Engineer for AME. Mr. Petriko is expected to testify as a fact witness regarding the agency-approved remedial work AME performed at the Site. Mr. Petriko may be contacted through counsel for Requestor.
5. *Mr. Eric Newman:* Mr. Newman is the Remedial Project Manager at USEPA Region 3 and is a member of the agency's Superfund and Hazardous Site Cleanup Divisions. EPA designated Mr. Newman as its Remedial Project Manager and Project Coordinator regarding the work AME performed at

the Site. Mr. Newman will be examined as a fact witness on his express approval and oversight of the work AME performed at the Site.

6. *Mr. Thomas Bass*: Mr. Bass is or was an employee of the West Virginia Department of Environmental Protection (“WVDEP”). WVDEP designated Mr. Bass as its Project Coordinator regarding the work AME performed at the Site. Mr. Bass will be examined as a fact witness on his express approval and oversight of the work AME performed at the Site.
7. *Mr. Jason (Jake) McDougal*: Mr. McDougal is a Program Manager for the Division of Land Restoration at the West Virginia Department of Environmental Protection. Mr. McDougal will be examined as a fact witness on the work AME performed at the Site.
8. *TechLaw, Inc.*: Employees and representatives (former and current) of TechLaw, Inc., including, but not limited to, Joe Carter. TechLaw is an oversight consultant that EPA used at the BJS Site. Representatives of TechLaw and/or Joe Carter will be fact witnesses and will testify regarding their relationship with EPA, work at the BJS Site, review of AME's work, and recommendations relating to AME's work.
9. Any witness listed by EPA on its witness list.
10. Any person deposed in this matter.

11. Any witness necessary to authenticate or lay the foundation of any document or its exhibit to be offered into evidence.
12. Any witness hereinafter identified in the discovery process having information relevant to this case.
13. Any witness needed for rebuttal or impeachment purposes.
14. AME reserves the right to identify additional individuals as discovery progress.

b. ***List of All Exhibits.***

1. RX 1: 01.12.2017 Krieg Devault LLP Letter to Ms. Bonnie Pugh, Esq. at Region 3 EPA.
2. RX 002 - 9.13.13 Field Sampling Plan ("FSP")
3. RX 003 - 12.23.13 Sampling and Analysis Plan ("SAP), Proposed Amendment 1
4. RX 004 - 03.07.14 FSP Amendment #2
5. RX 005 - 4.25.2014 FSP Amendment
6. RX 006 - 4.30.2014 FSP Amendment - Table 4
7. RX 007 - 07.25.14 SAP Amendment FINAL
8. RX 008 - 07.28.14 SAP Amendment FINAL
9. RX 009 - 8.15.2014 Quality Assurance Project Plan ("QAPP") Amendment #1
10. RX 010 - Pace Analytical, Inc.'s ("Pace") Quality Assurance Manual
11. RX 011 – Pace's Chain of Custody ("COC") form
12. RX 012 – Pace's COC Instructions

13. RX 013 – Pace’s Product Book dated 11.09.2012
14. RX 014 – Pace’s Product Book
15. RX 015 - Standard Operating Procedure (“SOP”), Core Collection and Processing
16. RX 016 - SOP, Headspace Analysis of Soil Samples
17. RX 017 - SOP, Decontamination
18. RX 018 - SOP, Sample Packaging Shipping and COC
19. RX 019 - SOP, Data Reduction Validation and Reporting
20. RX 020 - SOP - Vibracore Collection and Processing
21. RX 021 – Multi Water Quality Checker U-50 Series, Instruction Manual
22. RX 022 – 4.30.2013 App. E Cover Sheet
23. RX 023 - Multi Water Quality Checker U-50 Series, Instruction Manual
24. RX 024 - Multi Water Quality Checker U-50 Series, Instruction Manual
25. RX 025 - Photovac FID
26. RX 026 - ProActive SS-Monsoon Manual
27. RX 027 - Rae Systems MiniRAE 3000 User's Guide
28. RX 028 - Appendix F combined
29. RX 029 - Change in Scope
30. RX 030 - Example Boring Logs
31. RX 031 - Groundwater Purge Record
32. RX 032 - Sediment Sampling Log
33. RX 033 - Soil Sampling Log
34. RX 034 - Surface Water Sampling Worksheet

35. RX 035 - Primary Draft BJS QAPP Tables
36. RX 036 - Primary Draft BJS QAPP Tables
37. RX 037 - 09.5.2014 QAPP
38. RX 038 - 9.05.14 QAPP
39. RX 039 - QAPP Fig 1 (organization chart)
40. RX 040 - QAPP Fig 1 (organization chart)
41. RX 041 - Figures flysheet
42. RX 042 - Red lined - 09.05.13 QAPP
43. RX 043 - Red lined - 09.12.2013 QAPP
44. RX 044 - Red Lined - Primary Draft BJS QAPP Tables
45. RX 045 - Red Lined - Primary Draft BJS QAPP Tables
46. RX 046 - Red Lined QAPP Fig 1 (organization chart)
47. RX 047 - Red Lined QAPP Fig 1 (organization chart)
48. RX 048 - Tables flysheet
49. RX 049 - 10.31.2014 FSP Amendment DRAFT
50. RX 050 - 11.07.2014 SAP Amendment
51. RX 051 - 11.07.2014 SAP Amendment
52. RX 052 - EPA Approval of SAP Amendment 5 BJS 11-17-14
53. RX 053 - Table 4.1 FSP Amendment (for CSX)
54. RX 054 - Table 4.1 - Summary By Media
55. RX 055 - 5.15.2015 FSP#6
56. RX 056 – 2015.06.15 FSP#6 Executive Summary
57. RX 057 – 2015.06.15 Revised FSP#6

58. RX 058 - 2015.06.15 QAPP
59. RX 059 - 2015.06.15 Revised FSP (Redline)
60. RX 060 - 2015.09.04 FSP#7 (Compiled)
61. RX 061 - 2015.09.04 FSP#7 Summary
62. RX 062 - 2015.09.04 Revised FSP (Redline)
63. RX 063 - 2015.09.04 Revised FSP (Redline)
64. RX 064 - Core Collection SOP
65. RX 065 - 2015.09.04 Drill Core Collection SOP (Redline)
66. RX 066 - Core Sample Location Log
67. RX 067 - Core Sample Locations Log
68. RX 068 - Sediment and Core Logs
69. RX 069 - Sediment Core Drilling Log
70. RX 070 - Sediment Core Log
71. RX 071 - 2015.09.02 Split-Spoon Soil Sampling SOP
72. RX 072 - Split-Spoon Soil Sampling SOP
73. RX 073 - SS Log - Excel Template
74. RX 074 - Slug Testing Form - draft
75. RX 075 - Slug Testing SOP - Draft
76. RX 076 - Slug Testing SOP
77. RX 077 – Figure 3-15
78. RX 078 – Figure 3-19 - Proposed Upland Sampling Locations
79. RX 079 - 2015.09.04 FSP Amendment #7
80. RX 080 - Table 4.2 Mon River Revised

81. RX 081 - Table 5.1 South
82. RX 082 - Table 5.2 UT1A
83. RX 083 - Table 5.3 ET
84. RX 084 - Table 5.4 WT
85. RX 085 - Table 5.5 UT2
86. RX 086 - Table 5.6 Geotech
87. RX 087 - Tables Combined
88. RX 088 - 2015.09.04 QAPP (Redline)
89. RX 089 - 2015.09.04 QAPP
90. RX 090 - 1 -Slug Testing Form
91. RX 091 - BJS QAPP Tables (SAP7 Revision)
92. RX 092 - Table 2 - Uplands
93. RX 093 - 2015.09.30 (Redline) DRAFT (Internal)
94. RX 094 - 2015.09.30 (Redline) DRAFT - Original
95. RX 095 - 2015.09.XX FSP #8 (Redline) DRAFT
96. RX 096 - 2015.10.02 FSP#8 (redline)
97. RX 097 - 2015.10.2 SOP - Stilling Well Installation
98. RX 098 - 2015.10.2 SOP - Stilling Well Installation
99. RX 099 - Costs for Stream Well Siting
100. RX 100 - Drive Point Installation Notes
101. RX 101 - 4AE4C0C0
102. RX 102 - Costs for Volume Reduction
103. RX 103 - Elutriate Volume Estimate

104. RX 104 - Figure 2
105. RX 105 - Figure 3-20
106. RX 106 - Standard Elutriate Test Methods
107. RX 107 - 2015.09.04 FSP Amendment #7
108. RX 108 - FSP#8 Proposed River Cores
109. RX 109 - Table 6.1 - Drill Rig Core Rationale
110. RX 110 - Table 6.2 - River Hand Core Rationale
111. RX 111 - 2015.09.04 QAPP DRAFT
112. RX 112 - 2015.10.07 QAPP (redline)
113. RX 113 - 2015.10.07 QAPP Amendment
114. RX 114 - HACH Residual Chlorine Testing Procedure
115. RX 115 - Slug Testing Form
116. RX 116 - Soil Boring EDD
117. RX 117 - Updated Drilling Log
118. RX 118 - Attachment F - Field Form FINAL
119. RX 119 - BJS QAPP Tables (SAP8 Revision)
120. RX 120 - QAPP Tables
121. RX 121 - Table 1
122. RX 122 - Table 5
123. RX 123 - 2016.03.01 (Redline) FSP #9
124. RX 124 - 2016.03.01 (Redline) FSP #9 BB Copy WIP
125. RX 125 - 2016.03.01 (Redline) FSP #9 DNU
126. RX 126 - 2016.03.01 (Redline) WIP BB Copy

127. RX 127 - 2016.03.01 (Redline) WIP
128. RX 128 - 2016.03.06 (Redline) WIP
129. RX 129 - 2016.03.25 FSP Amendment #9 (Redline) - FINAL
130. RX 130 - 1 Drill Core Collection, Processing, and Sampling SOP (Redline) FINAL
131. RX 131 - 2 Geophysical SOPs Combined
132. RX 132 - 3 SOP for CPT-FFP-VST
133. RX 133 - Appendix A Combined (FINAL)
134. RX 134 - Appendix A Combined FINAL
135. RX 135 - 2016.03.07 Drill Core Collection SOP DRAFT
136. RX 136 - Core Processing Log
137. RX 137 - Core Sample Location Log
138. RX 138 - Core Sample Locations Log
139. RX 139 - Sample Collection Log
140. RX 140 - Elutriate Jar testing field instructions -WIP-JS
141. RX 141 - Elutriate Study field instructions-WIP-JS
142. RX 142 - Hach DR-900 Free chlorine analysis
143. RX 143 - Hanna 93414 Operation manual
144. RX 144 - IKA-standing mixer operating instructions
145. RX 145 – Polymer Testing Procedures for Clarification Applications
146. RX 146 - SOP Electrical Resistivity Imaging (ERI) Geosyntec
147. RX 147 - SOP Multichannel Analysis of Surface Waters (MASW), Geosyntec
148. RX 148 - SOP Refraction Seismic, Geosyntec

149. RX 149 - SOP Electrical Resistivity Imaging (ERI)
150. RX 150 - SOP Electrical Resistivity Imaging (ERI), Geosyntec
151. RX 151 - SOP for CPT-FFP-VST
152. RX 152 - SOP MASW
153. RX 153 - SOP MASW, Geosyntec
154. RX 154 - SOP Refraction Seismic
155. RX 155 - SOP Refraction Seismic, Geosyntec
156. RX 156 - Fig 3-21A Proposed Analytical Sampling Locations T2-20
157. RX 157 - Fig 3-21B Proposed Analytical Sampling Locations T21-40
158. RX 158 - Fig 3-22 Proposed Geotech Borings
159. RX 159 - Fig 3-22A Proposed Geotechnical Invest. Areas T2-20
160. RX 160 - Fig 3-22B Proposed Geotechnical Invest. Area T21-40
161. RX 161 - Fig 3-23 Proposed Geotech Borings (small)
162. RX 162 - Fig 3-23 Proposed Geotech Borings
163. RX 163 - Figures Combined (FINAL)
164. RX 164 - Figures Combined
165. RX 165 - FSP 9 Alt Cover with results
166. RX 166 - FSP 9 Proposed Borings
167. RX 167 - FSP #9 (Redline) DRAFT 2016.03.14
168. RX 168 - FSP#9 2016.03.11 (Redline) -DRAFT
169. RX 169 - FSP#9 2016.03.21 (Redline) - FINAL (Compared)
170. RX 170 - FSP#9 2016.03.21 (Redline) - FINAL
171. RX 171 - FSP#9 2016.03.24 (Redline) - FINAL

- 172. RX 172 - FSP
- 173. RX 173 - JAR FSP#9 2016 03 17 (Redline) DRAFT
- 174. RX 174 - JAR FSP#9 2016 03 21 (Redline) DRAFT
- 175. RX 175 - JAR Review – 2016.03.06 (Redline) WIP
- 176. RX 176 - 2016.03.01 (Redline) DNU
- 177. RX 177 - 2016.03.06 (Redline) -WIP
- 178. RX 178 - FSP #9 (Redline) - DRAFT 2016.03.14
- 179. RX 179 - FSP#9 2016.03.11 (Redline) -DRAFT
- 180. RX 180 - FSP#9 2016.03.21 (Redline) - DRAFT
- 181. RX 181 - FSP#9 2016.03.31 (Redline) -DRAFT
- 182. RX 182 - JAR Review – 2016.03.06 (Original)-WIP
- 183. RX 183 - JAR Review – 2016.03.06 (Redline) -WIP
- 184. RX 184 - Uplands FSP #9 Investigation Strategy
- 185. RX 185 - 2015.09.04 FSP Amendment #9
- 186. RX 186 - FSP Amendment #9
- 187. RX 187 - FSP#9 Proposed River Cores
- 188. RX 188 - FSP#9 Proposed Uplands Borings
- 189. RX 189 - FSP#9 Proposed Uplands Borings
- 190. RX 190 - Table 7.1 FSP#9 Proposed River Cores
- 191. RX 191 - Table 7.1 FSP#9 Proposed River Cores
- 192. RX 192 - Table 7.1 Proposed River Cores
- 193. RX 193 - Table 7.1 Proposed River Cores
- 194. RX 194 - Table 7.2 Uplands Geotech

195. RX 195 - Table 7.2 Uplands Geotech
196. RX 196 - Tables Combined (FINAL)
197. RX 197 - Tables Combined
198. RX 198 - TOC JAR Review 2016.03.06 (Redline) WIP
199. RX 199 - Uplands FSP #9 Investigation Strategy
200. RX 200 – 2016.03.11 QAPP (DRAFT)
201. RX 201 – 2016.03.22 QAPP (FINAL)
202. RX 202 – 2016.03.24 QAPP (FINAL)
203. RX 203 – 2016.03.24 QAPP (FINAL)
204. RX 204 – 2016.03.25 QAPP (FINAL)
205. RX 205 - 2016.03.25 QAPP Amendment #9 (Redline) - FINAL
206. RX 206 - 2016.03.31 QAPP (DRAFT)
207. RX 207 - 2016.03.31 QAPP (WIP)
208. RX 208 - 2016.03.31 QAPP (WIP-AT)
209. RX 209 - Core Processing Log
210. RX 210 - Sample Collection Log
211. RX 211 - DQO Worksheet Final
212. RX 212 – 2016.03.22 QAPP DRAFT
213. RX 213 – 2016.03.25 QAPP (FINAL) text
214. RX 214 - 2016.03.31 QAPP (DRAFT)
215. RX 215 - DQO Worksheet Final
216. RX 216 - QAPP (Redline) - DRAFT 2016.03.14
217. RX 217 - QAPP (Redline) - DRAFT 2016.03.14

- 218. RX 218 - BJS QAPP Table 1
- 219. RX 219 - BJS QAPP Table 2
- 220. RX 220 - BJS QAPP Tables (SAP9 Revision) - DRAFT
- 221. RX 221 - BJS QAPP Tables (SAP9 Revision)
- 222. RX 222 - Table 1 and 2
- 223. RX 223 - Tables combined
- 224. RX 224 - Core Sample Location Log
- 225. RX 225 - Core Sample Locations Log
- 226. RX 226 - Elutriate Jar testing field instructions -WIP-JS
- 227. RX 227 - Elutriate Study field instructions-WIP-JS
- 228. RX 228 - Hach DR-900 Free chlorine analysis
- 229. RX 229 - Hanna 93414 Operation manual
- 230. RX 230 - IKA-standing mixer operating instructions
- 231. RX 231 - polytest-clarification
- 232. RX 232 - FSP#10 2017 (Redline) -WIP
- 233. RX 233 - Table 7.1 FSP#10 Proposed River Cores
- 234. RX 234 - 2017 QAPP (DRAFT)
- 235. RX 235 - DQO Worksheet (SAP10 Revision)
- 236. RX 236 - BJS QAPP Tables (SAP10 Revision)
- 237. RX 237 - Coagulation and Flocculation Dosage Study-Draft
- 238. RX 238 - Coagulation and Flocculation Elutriate Study Draft
- 239. RX 239 - SOP for CPT-FFP-VST
- 240. RX 240 - 09.13.13 FINAL UARDWP

241. RX 241 - 2016.01.08 River Initial Design (FINAL-COMBINED)
[SUBMITTED] - Revised 01.11.16
242. RX 242 - Monongahela River Removal Design Work Plan ("RDWP")
09.13.2013
243. RX 243 – Monongahela River RDWP 08.28.2014
244. RX 244 – Uplands Area Preliminary Design 10.10.14
245. RX 245 - 08.15.14 QAPP Amendment (#1)
246. RX 246 - 08.15.2014 QAPP Amendment (#1)
247. RX 247 - Clean QAPP 09.05.14
248. RX 248 - Request for RDWP Amendment 01.22.16
249. RX 249 - Revised Uplands 60% Design Report 04.17.2015
250. RX 250 - 2014.09.26 Uplands Trip Report
251. RX 251 – Uplands Trip Report Amendment 06.25.2015
252. RX 252 - 2015.06.25 Uplands Trip Report Amendment FINAL
253. RX 253 – Uplands Trip Report Amendment FINAL
254. RX 254 - 2016.02.08 Uplands Trip Report Amend FINAL - Compiled
255. RX 255 - 2016.02.08 Uplands Trip Report Amend FINAL - Compiled
256. RX 256 – EPA/WVDEP Approval of SAP and QAPP, 10.08.15
257. RX 257 – EPA/WVDEP Designation of Supervising Contractor,
11.06.12
258. RX 258 – EPA/WVDEP Approval of SAP Amendment #7, 09.14.15
259. RX 259 – EPA/WVDEP Approval of SAP Amendment # 5, 11.17.14
260. RX 260 – EPA/WVDEP Approval of FSP #9 and QAPP #5, 05.05.16
261. RX 261 – EPA/WVDEP Approval of Monongahela River and
Uplands RDWPs, 6.25.13

- 262. RX 262 – EPA/WVDEP Approval of QAPP Amendment #1, 08.29.14
- 263. RX 263 – EPA/WVDEP Approval of SAP Amendment #1, 01.06.14
- 264. RX 264 – EPA/WVDEP Acceptance of Proposal to Amend RDWP, 02.01.16
- 265. RX 265 – EPA/WVDEP Approval SAP Amendment #6, 07.02.15
- 266. RX 266 – EPA/WVDEP Approval of SAP Amendment #4, 08.13.2014
- 267. RX 267 – EPA/WVDEP Approval of River Removal Preliminary Design, 05.06.15
- 268. RX 268 – EPA/WVDEP Notice of Deficiency Letter regarding River Removal Revised Preliminary Design, 3-31-15
- 269. RX 269 – WVDEP Comment Letter on Upland Design, 05.08.15
- 270. RX 270 – EPA/WVDEP letter regarding Sediment Quality Triad Sampling, 04.15.15
- 271. RX 271 – EPA/WVDEP Comments on Uplands Design Work Plan, 02.21.13
- 272. RX 272 – EPA/WVDEP Comments on Uplands Removal Intermediate Design, 06-03-15
- 273. RX 273 – EPA/WVDEP Comments on River Removal Preliminary Design, 10.30.14
- 274. RX 274 – EPA/WVDEP Comments Uplands Removal Preliminary Design, 12.03.14
- 275. RX 275 - Monthly EPA Status Report, 02.10.2014
- 276. RX 276 – Monthly EPA Status Report, 03.07.2014
- 277. RX 277 - Monthly EPA Status Report, 04.10.2014
- 278. RX 278 – REIC Sampling Report, 03.07.2014
- 279. RX 279 - Monthly EPA Status Report, 05.07.2014

- 280. RX 280 - Weekly Minutes, 04.08.2014
- 281. RX 281 - Weekly Minutes, 04.15.2014
- 282. RX 282 - Weekly Minutes, 04.22.2014
- 283. RX 283 - Weekly Minutes, 04.29.2014
- 284. RX 284 - Monthly EPA Status Report, 06.10.2014
- 285. RX 285 - Monthly EPA Status Report, 07.07.2014
- 286. RX 286 - Monthly EPA Status Report, 08.07.2014
- 287. RX 287 – July 2014 Attachments, Stakeholder Log.
- 288. RX 288 - Monthly EPA Status Report, 09.09.2014
- 289. RX 289 - Monthly Progress Report for September 2014, 10.08.2014
- 290. RX 290 – September 2014 Attachments, Stakeholder Log.
- 291. RX 291 - Monthly Progress Report for October 2014, 11.07.2014
- 292. RX 292 - Monthly Progress Report for November 2014, 12.10.2014
- 293. RX 293 - Monthly Progress Report for December 2014, 01.08.2015.
- 294. RX 294 - Monthly Progress Report for January 2015, 02.05.2015
- 295. RX 295 - Monthly Progress Report for January 2015, 02.09.2015
- 296. RX 296 - Monthly Progress Report for February 2015, 03.09.2015
- 297. RX 297 - Monthly Progress Report for March 2015, 04.10.2015
- 298. RX 298 - Monthly Progress Report for April 2015, 05.11.2015
- 299. RX 299 – Monthly Progress Report for May 2015, 06.08. 2015 Monthly
EPA Status Report (Fairmont)
- 300. RX 300 - May 2015 Attachments to Monthly EPA Status Report
- 301. RX 301 – July 8, 2015 Monthly EPA Status Report (Fairmont)

302. RX 302 – June 2015 Attachments to Monthly EPA Status Report
303. RX 303 – August 10, 2015 Monthly EPA Status Report (Fairmont)
304. RX 304 - 2015 July Status Report Addendum
305. RX 305 – Draft September 8, 2015 Monthly EPA Status Report (Fairmont)
306. RX 306 – September 8, 2015 Monthly EPA Status Report (Fairmont)
307. RX 307 - August 2015 Attachments to Monthly EPA Status Report.
308. RX 308 – October 8, 2015 Monthly EPA Status Report (Fairmont)
309. RX 309 – November 10, 2015 Monthly EPA Status Report (Fairmont)
310. RX 310 – December 9, 2015 Monthly EPA Status Report (Fairmont)
311. RX 311 – January 7, 2016 Monthly EPA Status Report (Fairmont)
312. RX 312 – February 10, 2016 Monthly EPA Status Report (Fairmont)
313. RX 313 – March 8, 2016 Monthly EPA Status Report (Fairmont)
314. RX 314 – April 6, 2016 Monthly EPA Status Report (Fairmont)
315. RX 315 – May 10, 2016 Monthly EPA Status Report (Fairmont) without attachments.
316. RX 316 – April 2016 Attachments to Monthly EPA Status Report, including Stakeholder Log, Meeting Minutes, Site Inspection Reports, and Site Map Showing upland Inspection Areas.
317. RX 317 – May 10, 2016 Monthly EPA Status Report (Fairmont)
318. RX 318 – June 10, 2016 Monthly EPA Status Report (Fairmont)
319. RX 319 – July 8, 2016 Monthly EPA Status Report (Fairmont)
320. RX 320 – August 7, 2016 Monthly EPA Status Report (Fairmont)

321. RX 321 – July 2016 Attachments to Monthly EPA Status Report, including Stakeholder Log, meeting minutes, Site Inspection Reports, and Site Map Showing Upland Inspection Areas.
322. RX 322: Consent Decree filed in the Northern District of West Virginia on October 10, 2012.
323. Any pleading or other paper filed with the Tribunal in Docket No. CERCLA-HQ-2017-0001.
324. Any document identified on EPA's exhibit list.
325. Any document, diagram, chart, or other information used, created, or relied upon by an expert in this case.
326. Any document identified through the discovery phase of this case.
327. Any pleading or document attributed to litigation or cases that are related to this matter.
328. Any deposition transcripts, video recordings of depositions, deposition exhibits, and written discovery requests and responses.
329. Any document necessary for impeachment or rebuttal.
330. AME reserves the right to identify additional exhibits as discovery progresses.

c. *Amount of Time Needed to Present Direct Case.* Requestor anticipates it will need three days to present its direct case. Services of an interpreter will not be required.

d. *Narrative Statement.*

The Fourth Circuit Court of Appeals has directed this Tribunal to determine whether AME “substantially complied with the preauthorization process.” *Order* at p. 15.

It is important to note that in reaching its decision, the Fourth Circuit threw out EPA’s

obsolete and illegal requirements contained at 40 C.F.R. § 307.22 that “a claimant submit an application for preauthorization before commencing a response action” and called into question the process EPA has used to deny legitimate claims against the Fund. *Order* at pp. 10, 13-14. The Fourth Circuit was quite clear on this point:

Put simply, the EPA should not arbitrarily fault August Mack for failing to strictly comply with the preauthorization process when the EPA itself has declared the required form obsolete. Indeed, because EPA Form 2075-3 is obsolete, *August Mack could not be required to seek preauthorization in the manner specified by EPA* and thus a substantial compliance standard is wholly appropriate and necessary.

Order at 14 (emphasis added).¹ With the obsolete and arbitrary preauthorization provisions stripped from 40 C.F.R. § 307, Subpart B, the costs AME seeks are without question eligible for reimbursement from the Fund. That is, those costs were “necessary costs pursuant to § 307.11” and AME’s response action was “conducted in a manner consistent with the NCP.” 40 C.F.R. § 307.21(b)(3)-(4).

Moreover, in addition to satisfying what remains of EPA’s preauthorization process, AME’s costs also satisfy the intent of the preauthorization process EPA promulgated.² When the agency published its proposed rule adding the preauthorization

¹ The Fourth Circuit’s opinion can be read to imply that the court believed AME could satisfy its burden of demonstrating substantial compliance with EPA’s remaining preauthorization requirements. In fact, the court said nothing about what AME must show to demonstrate substantial compliance, but instead directed that: “On remand, EPA is entitled to dispute and litigate August Mack’s compliance and any Superfund reimbursement that might be awarded.” *Order* at 15.

² Indeed, the text of CERCLA nowhere requires a party seeking reimbursement from the Fund to receive EPA’s prior approval or preauthorization. Moreover, there is no chronological requirement in the federal

process, it identified four objectives for preauthorization. *See* 54 Fed. Reg 37892-01, at *37898 (Sept. 13, 1989). Those objectives are: (1) ensuring appropriate use of the Fund, (2) ensuring that response actions do not create environmental hazards; (3) ensuring response actions are consistent with the NCP; and (4) assuring that response actions are done with EPA approval and are reasonable and necessary. *Id.*; *see also Order* at p. 13. The work AME performed under the Consent Decree met these objectives, which lends additional support to AME's position, including that its request for payment from the Fund should be granted in its entirety. 42 U.S.C. § 9611(a)(2).

At hearing or through dispositive motions, AME will present multiple lines of evidence to demonstrate its substantial compliance with the remaining preauthorization requirements and EPA's express objectives for preauthorization. These lines of evidence are thoroughly discussed in AME's January 12, 2017 letter to Ms. Bonnie Pugh, Esq. at EPA Region III regarding "Response Claim for Payment from the Hazardous Substance Superfund, Big John's Salvage – Hoult Road Superfund Site, EPA ID: WVD054827944" which is provided as RX 1. These lines of evidence are also discussed in AME's Request

statute. Rather, Congress only required approval under the NCP: "Payment of any claim for necessary response costs incurred by any other person as a result of carrying out the national contingency plan ... Provided, however, That such costs must be approved under said plan and certified by the responsible Federal official." 42 U.S.C. § 9611(a)(2). EPA's invention of "preauthorization" or prior approval through rulemaking was an unauthorized and ultra vires act. *See generally City of Arlington, Tex. v. F.C.C.*, 569 U.S. 290, 291 (2013) ("for agencies charged with administering congressional statutes, both their power to act and how they are to act is authoritatively prescribed by Congress, so that when they act improperly . . . what they do is ultra vires."); *Louisiana Public Service Com'n v. F.C.C.*, 476 U.S. 355, 374 (1986) ("an agency literally has no power to act . . . unless and until Congress confers power upon it.").

for Hearing that was filed on March 9, 2017. (Req. for Hrg, pp. 7-16.) AME specifically incorporates said factual background and supporting documents from its January 17, 2017 letter and its Request for Hearing as if fully stated herein.

In short, EPA constantly interacted with AME regarding its work at the BJS Site and reviewed, authorized, and approved AME's work at the BJS Site before it took place. This includes, but is not limited to, (1) over 30 monthly status reports reflecting EPA input on and concurrence with the work AME conducted, including minutes of biweekly teleconferences with the EPA regarding the scope and schedule of the work; (2) a dozen letters from the EPA approving various phases of the work, such as approval of sampling plans, QAPPs and remedial designs; (3) six comment letters from the EPA which demonstrate the EPA's critical review and approval of each phase of the work done by AME; and (4) dozens of submittals from AME directly to the EPA as requested for the EPA's review and approval.

Here, EPA's constant interaction with AME and approval of its work establishes that AME substantially complied with the preauthorization process. For example, EPA approved and authorized AME as the "Supervising Contractor" for the BJS Site. (RX 257.) Further, AME submitted its Removal Design Work Plan to EPA for review, public comment, and approval. (RX 261.) EPA also reviewed, authorized, and approved all of AME's investigation and design work. (RX 256, RX 258-267.) In sum, at every step of the cleanup process, EPA authorized and approved the work performed by AME before it

was actually performed, demonstrating that AME substantially complied with the preauthorization process. (RX 256-267.)

Finally, failing to reimburse AME for the work performed at the Site is unfair and unjust under the facts of this case, frustrates the purpose of CERCLA by requiring an innocent party (AME) to bear the costs of cleaning up a site it did not contaminate, and would create a chilling effect that discourages the involvement of innocent environmental consultants in cleanups, especially small businesses like AME. This should be avoided.

Respectfully submitted,




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Certificate of Service

I certify that the foregoing was filed and served on the Chief Administrative Law Judge Biro on October 22, 2021, through the Office of Administrative Law Judge's e-filing system, and that a copy of this document was also served on opposing counsel at the following e-mail addresses: cohan.benjamin@epa.gov and Swenson.erik@epa.gov.



Bradley R. Sugarman



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Geoffrey is the President and Principal Hydrogeologist for August Mack Environmental, Inc. Stationed in the Indiana office, he specializes in the evaluation, regulatory negotiation, and implementation of practical, alternative strategies to address environmental remediation and compliance issues. He has more than 30 years of experience regarding subsurface investigation and remediation, emission estimation, point and fugitive source permitting, air pollution control technologies as well as regulatory negotiation for such industries as utilities, primary metals, chemical, printing, glass, foundry, paper

and automotive. He has an active working knowledge of RCRA, CERCLA, and the Clean Air Act as well as innovative technologies for site remediation.

Project Experience:

- Assessed more than 1,000 sites undergoing acquisition, divestiture or refinancing including contaminated areas, wetlands, polychlorinated biphenyl (PCBs), lead-based paint, underground storage tanks (USTs), hazardous waste areas, radon, archeological/historical sites, wastewater discharges, air emissions and cultural resources.
- Investigated hundreds of sites to determine the nature and extent of contamination. Contaminated media included soil, groundwater, vegetation, air and building materials. Contaminants of concern included petroleum, solvents, acids, caustics, heavy metals, cyanides, PCBs, sulfides, salts, asbestos, polycyclic aromatic hydrocarbons (PAHs), coal tar, pesticides, and herbicides. Established risk-based clean up levels for numerous organic and inorganic contaminants.
- Designed and implemented remedial investigations for petroleum and solvent contamination associated with leakage of USTs. Prepared corrective action plans for state agency approval; supervised removal activities; developed risk-based cleanup levels for soil and groundwater contamination; and, designed remediation activities involving soil vapor extraction and groundwater remediation.

Education & Certifications:

- Bachelor of Science, Indiana University, Geology
- 40-Hour Hazardous Waste Site Operations (HAZWOPER) Training, OSHA and current 8-Hour Hazardous Waste Site Operations (HAZWOPER) Refresher Training, OSHA
- Licensed Professional Geologist- IN

Expertise:

- Industrial/Brownfield Site Redevelopment
- Resource Conservation and Recovery Act (RCRA) Permitting, Closure and Corrective Action
- Regulatory Negotiations
- Risk-based Clean-up Level Establishment and Assessments
- Delineation/Remediation of Contaminated Soil and Groundwater
- Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) Investigations, Feasibility Studies and Remediation
- Strategic Compliance Planning
- Expert Witness Testimony

Professional Experience:

August Mack Environmental, Inc.
President, Principal Hydrogeologist
1988-Present

ATEC Associates, Inc.
Manager, Environmental Services Division
1985-1988

Geraghty & Miller, Inc.
Hydrogeologist
1984-1985

URS Engineering, Inc.
Staff Specialist
1982-1984