1073942 - R8 SDMS

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8
1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
http://www.epa.gov/region08

3/22

Paul – Your copy

Ref: EPR-ER

CERTIFIED MAIL
RETURN RECEIPT R

03

March 22, 2007

Mel and Lerah Parker
PO Box 609
Libby, Montana 59923

Dear Mr. and Mrs. Parker:

Between late October 2006 and February 2007 you have sent several letters to a variety of EPA personnel working on the Libby Asbestos Site. This response is intended as a response to all previous letters. Generally, these letters have requested that EPA once again respond to your concerns about the date of completion of response actions on the Screening Plant ("Property") and the Agency's issuance of a Notice of Availability (NOA) to you on June 16, 2006. At issue with this date is the continued payment of the relocation stipend that you have received since July 2000 pursuant to the Reimbursement Agreement of March 2001 ("Agreement"). In short the EPA's position has not changed since the letter we sent you on October 27, 2006 and our numerous discussions prior to that. The NOA of June 2006 is in effect. In accordance with the terms of the Agreement, plus the two month extension the EPA allowed you in hopes of resolving your concerns, the relocation stipend ended with the last payment in February 2007.

To explain further, EPA issued you a NOA on June 16, 2006. EPA did so in accordance with Paragraph 1.A of the Reimbursement Agreement, which states "EPA shall provide a "Notice of Availability of Property" to the Owner upon completion of the response actions at the Screening Plant." The Reimbursement Agreement says nothing about the "Owner" having a role in the issuance of the NOA. It has been and continues to be EPA's position that all response actions at the Property were completed prior to June 16, 2006. As a result, and as you correctly indicate in your letter of November 3, 2006, your relocation allowance should have ended on December 16, 2006 in accordance with Paragraph 1.C. of the 2001 Reimbursement Agreement.

However, soon after EPA issued the NOA, you raised a variety of concerns about the restoration of your property. After further discussion, it was agreed that all but two of these items were resolved prior to the NOA. The two items that remained matters of contention related to the percentage of Kentucky Bluegrass in the grass cover on the Property and the pressure in a potable water line. EPA has previously indicated to you that it has met the requirements of the restoration plan for reseeding and coverage of your property. Specifically, the restoration plan, at your request, specified a seed mix which included 30% Dandy Perennial Ryegrass, 10% Creeping Red Fescue, and 60% Kentucky Bluegrass. For the grass cover to be considered successful it the plan stated that the area seeded shall have a minimum of 10 seedlings per square

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foot over the Property. The seed mix used did in fact meet the required specification, as did the final grass cover. Completion of this restoration task occurred prior to the NOA. EPA never promised the individual survival of the Kentucky Bluegrass. Kentucky Bluegrass requires high amounts of water, and is better suited to more temperate climates such as Kentucky. Given our restoration team's expertise we would have never included Kentucky Bluegrass in the seed mix of our own volition, and we did so only because you insisted. We were not surprised when the Kentucky Bluegrass did not survive as well as the other grasses included in the mix. Nonetheless, in the spirit of compromise the EPA took the extra step of a second seed application of Kentucky Bluegrass this past fall. Frankly, the EPA does not expect this seeding to do well without extraordinary care on your part, and we provide no guarantees regarding the long-term survival of the Kentucky Bluegrass. Even though EPA agreed to provide this further reseeding to allay your concerns on the matter, it does not change the fact that the requirements of the restoration plan were met prior to the NOA.

As to the second issue, EPA conducted an evaluation of the waterline in question, including the hiring of an independent plumber to evaluate your issue. These evaluations showed that the problem was not caused by EPA's installation, but rather by activities that were performed after EPA had completed work. EPA informed you of this finding last summer, as well as in our letter of October 27, 2006. Consequently, it remains our position that this and all restoration activities on the Property were completed in compliance with the restoration plan prior to the NOA. As has been true since June of 2006, you may continue your rebuilding activities as you see fit, being aware of the cautions stated in the NOA.

Since all restoration activities were completed prior to the NOA, there has been NO modification to any provision of the Agreement. EPA has not only met all the terms of the two reimbursement agreements, but even moved beyond them in a good faith effort to resolve issues that you have brought up. This has included the payment of approximately $1.4 million in property reimbursement, *$150,000 in relocation stipend (including over $3500 in payment* beyond the required date), as well as a host of other benefits that were not contemplated in the agreements. Perhaps most important, EPA has taken a property that was completely contaminated by a highly toxic form of amphibole asbestos and spent millions of dollars to restore it to a beautiful piece of land without any liability to you. EPA has met its legal and moral obligations and more. EPA cannot provide any further monetary or response action assistance. We consider the matter of your property restoration and the issuance of the NOA to be closed.

Sincerely,

Paul R. Peronard
Libby Project Team Leader

Matthew Cohn
Acting Deputy Director
Legal Enforcement Program

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Sent To Mel and Lerah Parker

Street, Apt. No.; or PO Box No. P O Box 609

City, State, ZIP+4 Libby, MT 59923

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