Arkansas Community Correction

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May 26, 2016

Mark Potts
United States Environmental Protection Agency
Waste Enforcement Branch, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

RE: Notice of Noncompliance

Mr. Potts:

This letter is in response to the Notice of Noncompliance received by this agency regarding activities undertaken by the City of Pine Bluff as part of their Nuisance Abatement Demolitions, hereinafter referred to as the demolitions.

As referenced in your Notice of Noncompliance, the City of Pine Bluff (the City) entered into a Memorandum of Understanding with the Arkansas Department of Environmental Quality (ADEQ) for nuisance abatement demolition of residential dwellings subsequent to condemnation proceedings by the City. The MOU mandates best management practices, such as wetting of the residential structure during prior to and post demolition, as well as the proper means of transportation and disposal of the demolished material at a Class 1 landfill. The MOU also specifically states that the demolition fall under ADEQ CM 2008-2 (1-1-1 Rule).

The workers on site were individuals on probation or parole, as well as inmates of the Arkansas Department of Correction. The probationers and parolees were paid for their services by Mulligan Road, a non-profit organization. They were not paid by, nor were they employees of, the Arkansas Department of Community Correction (ACC). ACC is a state agency mandated by state statute to provide supervision over Arkansas probationers and parolees. As part of our statutorily mandated responsibilities, ACC had two individuals at the job sites to provide supervision over the probationers and parolees. Such was the extent of our involvement in the project.

Over the course of the past several months, no less than three telephone conferences were held regarding the demolitions, of which EPA officials, including Regional Manager Sam Coleman, were a part. Kevin Murphy, Chief Deputy Director for ACC, participated in the conferences and consistently emphasized how important it was for the regulatory officials to let us know what our responsibilities would be. In the beginning, many different regulations were discussed as

possibly applying to the project. Some information, including information regarding the Worker Protection Rule (WPR), was forwarded to the involved entities via email prior to the first telephone conference. Once it was agreed by all participants in the conferences, including ADEQ, EPA, the City and ACC, that the project would fall under the 1-1-1 Rule due to the nature of the condemned single family dwellings scheduled for demolition, Mr. Murphy continued to inquire as to the requirements and responsibilities of which the parties needed to be aware. The WPR was never mentioned by EPA in any of the telephone conferences, even though we continually asked whether there was anything else we need to do to make sure we were in full compliance with any applicable regulation(s), both federal and/or state.

The EPA failed to provide any guidance regarding the WPR after it was decided the project would fall under the 1-1-1 Rule, and that fact, coupled with our continued pleas for instructions regarding anything else we needed to know, resulted in the only conclusion that could be reached under the circumstances, that is, that the matters that were specifically discussed were the only regulations which would apply to the project. EPA officials totally failed to communicate to ACC any responsibilities we would have under the WPR when they were repeatedly given the opportunity to do so.

To respond specifically to each allegation in the Notice of Noncompliance, we offer the following:

Nos. 1-3 and 6-8: ACC would specifically state that these were the types of issues of which we should have specifically been informed when we repeatedly asked EPA officials for guidance regarding any other matters that would need to be addressed for the project. EPA officials remained silent and made no mention of the WPR during any of the telephone conferences.

Nos. 4 & 5: These issues were addressed in the MOU between the City of Pine Bluff and ADEQ. While outside the parameters of ACC's involvement with the project, ACC personnel on site can state with specificity that these matters were in fact accomplished.

Your letter directed that work on this valuable community undertaking to remove blighted homes via demolition cease. At the time we received the letter, we had in fact already voluntarily suspended work on the demolitions in order to assess the status of the scheduled activities and to formulate a plan for moving forward.

We would like to discuss this matter with you further at your earliest convenience. Please contact Kevin Murphy, Chief Deputy Director at 501-891-1429 or kevin.murphy@arkansas.gov for questions and to schedule the meeting.

Sincerely,

Sheila Sharp

Sheila Sharp
Director