



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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Denver, Colorado 80202-1129
Phone 800-227-8917
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DEC 08 2016

Ref: 8TMS-G

Mr. Joe Kerby, County Manager
La Plata County
1101 East 2nd Avenue
Durango, Colorado 81301

Re: La Plata County Gold King Mine Cooperative Agreement #V96836201

Dear Mr. Kerby:

This letter is intended to convey the U.S. Environmental Protection Agency's (EPA) final decision on the reimbursement of allowable costs associated with La Plata County's cooperative agreement application submitted on January 13, 2016. Pursuant to that agreement, and a cooperative agreement through the Colorado Department of Public Health and Environment, the EPA has reimbursed the County \$377,267.65 for allowable pre-award response activities. To promote maximum transparency and provide La Plata County with a meaningful opportunity to avail itself of the EPA's dispute process, the attachments contain the specific costs that were disallowed and the Agency's bases for the disallowance.

The EPA would like to express its appreciation to the La Plata County for its support and involvement in the GKM release response. The dedication and commitment demonstrated by your staff, management and leadership have been exemplary. The EPA recognizes that this effort did not occur without an increased workload to staff and management and, on behalf of the EPA, I wish to express our gratitude for the La Plata County's support and involvement in this response.

If you have any questions about this letter, please contact Sarah Hulstein, Grants Specialist, at (303) 312-6014 or by email at hulstein.sarah@epa.gov, or Cinna Vallejos, Grants Project Officer, at (303) 312-6376 or by email at vallejos.cinna@epa.gov.

Sincerely,

A handwritten signature in blue ink that reads "James A. Hageman".

James A. Hageman
Program Director
Grants/Audit/Procurement Program

Enclosures: Attachment A and Attachment B

cc: Cinna Vallejos, EPA R8
Sarah Hulstein, EPA R8

Attachment A

Cooperative Agreement

On January 13, 2016, La Plata County submitted an Application for Assistance to the U.S. Environmental Protection Agency. The application requested pre-award costs of \$249,224¹ for expenses incurred responding to the Gold King Mine release, and future expenses of \$2,499,974 to implement its proposed work plan activities through August 5, 2025.

On March 25, 2016, the County and the EPA entered into a cooperative agreement under the authority of section 104(d)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and implementing regulations at 40 C.F.R. part 35, Subpart O, for the County's allowable expenditures directly related to activities in support of the EPA's response efforts to the Gold King Mine release. That cooperative agreement was intended to reimburse La Plata County for the allowable pre-award costs it incurred in support of the EPA's removal response activities, and for the costs it incurred in participating in the tour of Superfund sites in November 2015. To accomplish that objective, Region 8 secured deviations from various applicable regulatory provisions to allow it to reimburse affected entities for pre-award costs up to 180 calendar days prior to the signed award. In total, the EPA has reimbursed the County for \$179,475.45 for a variety of allowable pre-award response activities under this cooperative agreement. The EPA has disallowed the remainder of the requested pre-award costs as unallowable, totaling \$47,387, and all of the future costs for the reasons described in greater detail below. See Attachment B.

General Provisions

As a threshold matter, a cost is allowable under a federal award if necessary and reasonable for the performance of the award and allocable to the award. 2 CFR 200.403. A cost is reasonable if it doesn't exceed that which a prudent person under the circumstances at the time would incur. 2 C.F.R. § 200.404. Finally, a cost is allocable to a particular award if the goods or services involved are chargeable or assignable to that award in accordance with relative benefits received. This standard is met if the cost is incurred specifically for the award, benefits both the award and other work of the entity, and can be distributed in proportions using reasonable methods, and is necessary to the overall operation of the entity and is assignable in part to the award. 2 C.F.R. § 200.405.

The CERCLA defines removal response costs as costs for the cleanup or removal of released hazardous substances from the environment including costs for such actions that may be necessary in the event of the threat of release of hazardous substances into the environment; such actions that may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances; the disposal of removed material; or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare of the United States or to the environment, which may otherwise result from a release or threat of release . 42 U.S.C. § 9601(23).

In addition to the general regulatory provisions governing the use of funds, and the specific requirements applicable to Superfund cooperative agreement, codified at 40 C.F.R. part 35, Subpart O, removal costs under a Superfund cooperative agreement must also comply with the cost principles for grants in 2 C.F.R. Part 200, Subpart E.

¹ This figure does not reflect the actual invoiced pre-award costs. Therefore the amount of disallowed costs will not reflect the difference between this figure and the reimbursed amount.

Disallowed Costs

Insufficient Documentation

In accordance with generally applicable regulations affecting the reasonableness and allowability of costs, they must be adequately documented (2 C.F.R. § 200.403(g)) and must be reasonable (2 C.F.R. § 200.404). In addition, 2 C.F.R. § 430(i) related to compensation for personnel expenses, specifically provides that awards for salaries and wages must be based on records that accurately reflect the work performed. In that regard, Attachment B reflects \$3,361.75 in personnel costs that were disallowed because the description of the activities performed to support those claimed expenses submitted to the EPA were redacted and, therefore, the EPA was unable to determine the connection between the claimed expense and any eligible response activity.

The EPA notes that the Incident Command Center was closed as of October 31, 2015. With respect to the reimbursement request of \$24,110 for personnel expenses incurred after that date, the amount of \$23,610 is disallowed. However, for costs incurred after this date, to the extent that the EPA was able to determine that the costs were incurred as a result of direct involvement in allowable removal response activities, they were reimbursed. For example, personnel expenses incurred while working directly on the cooperative agreement were reimbursed. Where the EPA could not make that determination based on the information provided, the costs were disallowed.

With respect to the request for reimbursement for meals reflected in Attachment B, the EPA disallowed those costs for which the EPA could not make a determination that the cost was directly related to allowable response activities. Accordingly, the remaining \$1,201 is disallowed.

Miscellaneous

The County sought reimbursement of \$1,308 in connection with costs it incurred for an appreciation lunch at Zia Taqueria for GKM responders. In accordance with 2 C.F.R. § 200.438, costs of entertainment, including social activities, are unallowable unless they have a programmatic purpose *and* are authorized in the budget or with prior written approval of the awarding agency. Accordingly, these costs, are disallowed. See in Attachment B, Miscellaneous.

In addition, the Agency has disallowed the requested \$29.72 for windshield wipers. The Agency was unable to determine that the cost was allocable to any allowable response activity. See Miscellaneous in Attachment B.

Future Work

The cooperative agreement application also included a request to engage in a number of future activities from FY 2016 through FY 2030. Those future activities included developing and implementing a real-time river monitoring system, developing a future mine-related event response plan, investigating the feasibility of Superfund designation, community outreach and data dissemination, and a public education campaign.

These requests for future costs are disallowed as not allocable to this cooperative agreement because the agreement was entered into to reimburse the County for the pre-award costs it incurred in supporting the EPA's response efforts.

Appeal Process

In accordance with 2 C.F.R. § 35.6770, the dispute process applicable to this decision is set forth in 2 C.F.R. part 1500, subpart E. Specifically, in accordance with 2 C.F.R. § 1500.14, the County may dispute this Agency decision by filing an appeal electronically within 30 calendar days from the date this Agency decision is electronically transmitted to you. The appeal must be transmitted via email to the EPA Region 8 Disputes Decision Official (DDO), Richard D. Buhl, at buhl.riek@epa.gov, with a copy to James A. Hageman, Action Official, at hageman.james@epa.gov, within this 30-calendar day period.

The appeal must include the following:

- (1) An electronic copy of the disputed Agency decision.
- (2) A detailed statement of the specific legal and factual grounds for the appeal including electronic copies of any supporting documents.
- (3) The specific remedy or relief sought under the appeal.
- (4) The name and contact information, including email address, of the designated point of contact for the appeal.

If you require a time extension to file the appeal, you may submit by electronic means a written request for the extension to the DDO (with a copy to the Action Official) before the expiration of the 30-day period. The DDO may grant a one-time extension of up to 30 calendar days when justified by the situation.

LaPlata County
Gold King Mine Release
CA #V96836201

Expense	Amount Requested (associated with unallowed costs)	Amount Determined Unallowable	Date	Description
Payroll				
Personnel Services pre 10/31	\$8,279.80	\$3,361.75	10/17 - 10/30/2015	Payroll expense for Kathleen Lyon, Christina Heydinger, and Sheryl Rogers.
Subtotal Pre 10/31	\$8,279.80	\$3,361.75		
Personnel Services post 10/31	\$3,914.95	\$3,626.78	10/31 - 11/13/2015	Payroll expense for Joseph Kerby, Joanne Spina, Kathleen Lyon, Christina Hedinger, Sheryl Rogers, Todd Weaver, Diane Sorensen, Belinda Villanueva, Thomas Mcnamara.
Personnel Services post 10/31	\$6,535.19	\$6,499.52	11/14 - 11/27/2015	Payroll expense for Joanne Spina, Kathleen Lyon, Christina Hedinger, Sheryl Rogers, Diane Sorensen, Belinda Villanueva, Kimberly Wiggins, Thomas Mcnamara.
Personnel Services post 10/31	\$13,074.08	\$13,074.08	11/28 - 12/11/2015	Payroll expense for Joseph Kerby, Joanne Spina, Kathleen Lyon, Christina Hedinger, Sheryl Rogers, Belinda Villanueva, Kimberly Wiggins, Thomas Mcnamara.
Personnel Services post 10/31	\$586.18	\$410.61	12/12 - 12/25/2015	Payroll expense for Joseph Kerby, Christina Hedinger, Sheryl Rogers.
Subtotal Post 10/31	\$24,110.40	\$23,610.99		
Total Payroll	\$32,390.20	\$26,972.74		
Fringe	\$11,012.67	\$9,843.97	10/17 - 12/25/2015	Fringe associated with unallowable payroll expense from 10/17 - 12/25/2015.
Total	\$11,012.67	\$9,843.97		
Fuel (SF Tour)				
Pagosa Auto Parts Inc	\$29.72	\$29.72	11/11/2015	Repair to windshield wipers (La Plata County 2008 Chevy Tahoe) (Not eligible)
Total	\$29.72	\$29.72		
Meals				
Hot Tomatoes	\$70.50	\$70.50	8/18/2015	Only visa bill (executive session lunch re: EPA)
Steamworks Brewing Company	\$14.95	\$14.95	8/20/2015	Sheryl Rogers (public meeting) (includes gratuity)
Carver Brewing Company	\$41.34	\$41.34	8/21/2015	Lunch meeting between Gwen Lachett & Sheryl Rogers (includes gratuity)
Serious Texas BBQ	\$517.00	\$517.00	8/22/2015	No details provided
Dominio's Pizza	\$237.86	\$237.86	8/24/2015	No details provided
Schlottzsky's	\$319.96	\$319.96	8/26/2015	No details provided
Subtotal	\$1,201.61	\$1,201.61		
Miscellaneous				
Zia Taqueria	\$1,308.50	\$1,308.50	10/19/2015	Gold King Thank you Lunch
Total	\$2,510.11	\$2,510.11		
Indirect Costs				
Indirect Costs	\$8,984.39	\$8,030.94		Ineligible - unrelated to response. Indirect costs associated with unallowable payroll expense from 10/17 - 12/25/2015.
Total	\$8,984.39	\$8,030.94		
Grand Total	\$54,927.09	\$47,387.48		