



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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DEC 08 2016

Ref: 8TMS-G

Ms. Liane Jollon, Executive Director
San Juan Basin Health Department
281 Sawyer Drive
Durango, CO 81301

Re: San Juan Basin Health Department Gold King Mine Cooperative Agreement #V96836401

Dear Ms. Jollon:

This letter is intended to convey the U.S. Environmental Protection Agency's (EPA) final decision on the reimbursement of allowable costs associated with the San Juan Basin Health Department (SJBHD) Gold King Mine (GKM) cooperative agreement application submitted on January 22, 2016. Pursuant to that agreement, and a cooperative agreement through the Colorado Department of Public Health and Environment (CDPHE), the EPA has reimbursed the SJBHD \$77,131 for allowable pre-award response activities. To promote maximum transparency and provide the SJBHD 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 SJBHD 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 SJBHD'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 22, 2016, the San Juan Basin Health Department submitted an Application for Federal Assistance to the U.S. Environmental Protection Agency. The application requested pre-award costs of \$42,395.09 for expenses incurred responding to the Gold King Mine release, and future expenses of \$385,089.91 to implement its proposed work plan activities through January 31, 2017.

On March 25, 2016, the SJBHD 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 City's allowable pre-award costs directly related to activities in support of the EPA's response efforts to the GKM release. That cooperative agreement was intended to reimburse the SJBHD 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 led by the EPA 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 SJBHD \$77,131¹ for a variety of allowable pre-award response activities. As reflected in Attachment B, the EPA has disallowed the remainder of the requested pre-award costs as unallowable, totaling \$13,995, 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 Federal 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 Federal grants in 2 C.F.R. Part 200, Subpart E.

¹ This amount also reflects a payment made through EPA's cooperative agreement with CDPHE before SJBHD submitted this application to EPA.

Disallowed Costs

The EPA reimbursed the SJBHD all requested costs incurred prior to October 31, 2015, and all requested costs associated with the SJBHD's participation in the tour of Superfund sites in November 2015. As of October 31, 2015, the GKM Incident Command Center had closed. For costs incurred after that date, the EPA had insufficient information and was unable to determine that the costs were incurred as a result of direct involvement in allowable removal response activities. Therefore, those costs, as reflected in Attachment B, in the amount of \$13,995.74, were disallowed.

The cooperative agreement application also included a request for funding for a number of future activities through January 31, 2017. The SJBHD application describes these activities as public communication and outreach, environmental health, emergency preparedness and response, and possible NPL designation. These costs are not allocable to this cooperative agreement because the agreement was entered into to reimburse SJBHD for the pre-award costs it incurred in supporting the EPA's removal-response efforts, and costs associated with SJBHD's participation in the tour of Superfund sites in November 2015. Accordingly, these costs were disallowed.

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 SJBHD 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.rick@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.

Date	Expense Payroll	Amount Requested (includes amount paid thru PO w/CDPHE)	PO w/CDPHE	SF Tour	Amend 1	Amount Determined Unallowable	Description
11/1 - 11/30/2015	Brian Devine	\$3,212.06	\$0.00	\$0.00	\$521.18	\$2,690.88	SF Tour hours 23 hrs were paid @ \$22.66/hr (SF Tour hours were calculated based on the Final Itinerary provided by SJBHD). Remaining hours were post-ICC closure and not allocable to the response.
11/1 - 11/30/2015	Claire Ninde	\$186.36	\$0.00	\$0.00	\$0.00	\$186.36	7 hrs @ \$26.62/hr. Post ICC closure; not allocable to the response.
11/1 - 11/30/2015	Flannery O'Neil	\$149.48	\$0.00	\$0.00	\$0.00	\$149.48	5 hrs @ \$29.90/hr. Post ICC closure; not allocable to the response.
11/1 - 11/30/2015	Liane Jollon	\$1,621.31	\$0.00	\$0.00	\$1,038.91	\$582.40	SF Tour hours 23 hrs were paid @ \$45.17/hr (SF Tour hours were calculated based on the Final Itinerary provided by SJBHD). Remaining hours were post-ICC closure and not allocable to the response.
11/1 - 11/30/2015	Claire Macpherson	\$287.77	\$0.00	\$0.00	\$0.00	\$287.77	12 hrs @ \$23.99/hr. Post ICC closure; not allocable to the response.
11/1 - 11/30/2015	Lesley Marie	\$810.83	\$0.00	\$0.00	\$793.73	\$17.20	(SF Tours hours 23 @ \$34.51/hr (SF Tour hours were calculated based on the Final Itinerary provided by SJBHD). Remaining hours were post ICC closure; not allocable to the response.
12/1 - 12/31/2015	Brian Devine	\$2,991.12	\$0.00	\$0.00	\$0.00	\$2,991.12	132 hrs @ \$22.66/hr. Post ICC closure; not allocable to the response.
12/1 - 12/31/2015	Liane Jollon	\$143.93	\$0.00	\$0.00	\$0.00	\$143.93	4 hrs @ \$35.98/hr. Post ICC closure; not allocable to the response.
01/01 - 01/31/2016	Brian Devine	\$2,945.80	\$0.00	\$0.00	\$0.00	\$2,945.80	130 hrs @ \$22.66/hr. Post ICC closure; not allocable to the response.
01/01 - 01/31/2016	Claire Ninde	\$47.45	\$0.00	\$0.00	\$0.00	\$47.45	2.5 hrs @ \$18.98/hr. Post ICC closure; not allocable to the response.
01/01 - 01/31/2016	Flannery O'Neil	\$174.53	\$0.00	\$0.00	\$0.00	\$174.53	4.5 hrs @ \$38.78/hr. Post ICC closure; not allocable to the response.
	Subtotal	\$12,570.74	\$0.00	\$0.00	\$2,353.87	\$10,216.92	
	Fringe						
08/05 - 09/30/2015	Fringe for Aug & Sep 2015	\$9,751.01	\$9,751.01	\$0.00	\$0.00	\$0.00	Fringe % per employee ranges from 9% to 43.30%
10/01 - 10/31/2015	Fringe for Oct 2015	\$1,169.29	\$1,169.29	\$0.00	\$0.00	\$0.00	Fringe % per employee ranges from 9% to 36.98%
11/1 - 11/30/2015	Fringe	\$1,169.11	\$0.00	\$0.00	\$576.90	\$592.21	Fringe - SF Tour only. Post ICC closure; not allocable.
12/1 - 12/31/2015	Fringe	\$325.90	\$0.00	\$0.00	\$0.00	\$325.90	Ineligible - unrelated to response
1/1 - 1/31/2016	Fringe	\$330.47	\$0.00	\$0.00	\$0.00	\$330.47	Ineligible - unrelated to response
	Subtotal	\$12,745.78	\$10,920.30	\$0.00	\$576.90	\$1,248.58	
	Miscellaneous Expenses						
11/1 - 11/30/2015	Claire Ninde	\$1.80	\$0.00	\$0.00	\$0.00	\$1.80	Cell phone stipend taxable is not allocable to the response.
11/1 - 11/30/2015	Liane Jollon	\$12.64	\$0.00	\$0.00	\$0.00	\$12.64	Cell phone stipend taxable is not allocable to the response.
11/1 - 11/30/2015	Lesley Marie	\$7.56	\$0.00	\$0.00	\$0.00	\$7.56	Cell phone stipend taxable is not allocable to the response.
11/1 - 11/30/2015	Claire Ninde	\$0.80	\$0.00	\$0.00	\$0.00	\$0.80	Cell phone stipend taxable is not allocable to the response.
12/1 - 12/31/2015	Liane Jollon	\$1.58	\$0.00	\$0.00	\$0.00	\$1.58	Cell phone stipend taxable is not allocable to the response.
12/1 - 12/31/2015	Liane Jollon	\$51.00	\$0.00	\$0.00	\$0.00	\$51.00	Mileage reimbursement is Post ICC closure; not allocable to the response.
1/1 - 1/31/2016	Claire Ninde	\$0.20	\$0.00	\$0.00	\$0.00	\$0.20	Cell phone stipend taxable
	Subtotal	\$75.58	\$0.00	\$0.00	\$0.00	\$75.58	
	Media Expenses						
October Ads	Durango Herald	\$231.50	\$231.50	\$0.00	\$0.00	\$0.00	EPA releases
11/1/2015	Media	\$120.00	\$0.00	\$0.00	\$0.00	\$120.00	Community Event at La Plata County Fairgrounds is not allocable to the response.
	Subtotal	\$351.50	\$231.50	\$0.00	\$0.00	\$120.00	
	Travel & Miscellaneous						
11/1/2015 - 11/30/2015	November Fleet Usage	\$65.00	\$0.00	\$0.00	\$0.00	\$65.00	\$0.52/mile (Superfund Site Tour usage)
12/1 - 12/31/2015	Printing	\$20.65	\$0.00	\$0.00	\$0.00	\$20.65	Business Cards for Brian Devine is not allocable to the response.
12/1 - 12/31/2015	Postage	\$52.97	\$0.00	\$0.00	\$0.00	\$52.97	Fed-Ex Packet to CDPHE is not allocable to the response.
12/1 - 12/31/2015	Flannery O'Neil	\$3.00	\$0.00	\$0.00	\$0.00	\$3.00	Parking Ft. Lewis is not allocable to the response.
12/1 - 12/31/2015	December Fleet Usage	\$47.32	\$0.00	\$0.00	\$0.00	\$47.32	\$0.52/mile is not allocable to the response.
1/1 - 1/31/2016	Out of Town	(\$143.00)	\$0.00	\$0.00	(\$143.00)	\$0.00	Superfund Double Pay Credit (for rental car on SF Tour)
	Subtotal	\$45.94	\$0.00	\$0.00	-\$143.00	\$188.94	
	Indirect Costs						
11/1 - 11/30/2015	Indirect Cost Expense	\$1,384.15	\$0.00	\$0.00	\$580.75	\$803.40	Indirect Cost Expense - SF Tour Only
12/1 - 12/31/2015	Indirect Cost Expense	\$658.75	\$0.00	\$0.00	\$0.00	\$658.75	Ineligible - unrelated to response
1/1 - 1/31/2016	Indirect Cost Expense	\$633.57	\$0.00	\$0.00	\$0.00	\$633.57	Ineligible - unrelated to response
	Subtotal	\$2,676.47	\$0.00	\$0.00	\$580.75	\$2,145.72	
	Grand Total	\$28,466.01	\$11,151.80	\$0.00	\$3,318.47	\$13,995.74	