

Therriault, John

From: Webb, Carol
Sent: Wednesday, May 29, 2013 6:17 AM
To: Therriault, John
Subject: Please docket on COOL for PCB 12-35

 ORIGINAL

From: Phil Van Ness [mailto:pvanness@webberthies.com]
Sent: Tuesday, May 28, 2013 5:25 PM
To: Patrick Shaw; Davis, Thomas E.
Cc: Davis, Kyle; Webb, Carol
Subject: RE: Six M Corp/PCB 12-35 -- CWM Report

Dear Pat:

Given your “k’ching” response to my client’s insistence upon a new Access Agreement to deal with the 2006 LUST incident during our most recent teleconference call, I believe it is appropriate to step back and carefully articulate what my clients have and have not done and why they insist on a new Access Agreement. It must be remembered that the 2006 incident followed in the wake of a prior 10-year ordeal of interference, and neglect of my client’s property along with a protracted period of delay and non-compliance with the 1999 Access Agreement. It should also be remembered that the Access Agreement expressly applied solely to the 1996 incident. The insinuation that the McIlvains seek to wring unjust compensation from your client is indefensible. Rather, we submit the following are true:

1. The only opportunities for gain have been provided to your client and a string of incompetent consultants who have drained approximately one million dollars from the LUST Fund – and STILL have not completed remediation of the first incident. The compensation received by the McIlvains from the first incident for the loss of invaluable centuries-old trees, the incredible inconvenience of having to flee their home from gas fumes in the basement, the loss of use of virtually their entire yard for the entire time their children were growing up, was a mere pittance. More importantly, it was clearly insufficient to motivate your client or its consultants to speedily complete cleanup of the first incident, let alone avoid a second incident.
2. There is every reason to believe that the second [*i.e.*, 2006] incident has impacted and continues to impact the McIlvain property:
 - [a] Before the prior consultant discontinued sampling of the monitoring wells on the McIlvain property, it acknowledged to him [never in writing of course] that the well installed in 2006 at the northwest corner of the McIlvain residence [deep within the McIlvain property line] was ‘hot’ with contamination. That result almost certainly represented new contamination emanating from the 2006 incident, inasmuch as the alleged effort to clean up the 1996 incident included removal of tons of contaminated soil lying between the 6-M property and the McIlvain residence and replacement of same with presumably clean fill.
 - [b] Fig. 5 Estimated Groundwater Contamination Plume of CSD Phase IV CAP and Budget, dated 1/03/07, defines a new plume that includes and goes beyond the area which was allegedly cleaned up during the aforesaid great soil removal.
 - [c] There were no diesel fuel contaminants associated with the 1996 incident but there are diesel fuel contaminants associated with the 2006 incident.
 - [d] Finally, notwithstanding your client’s stated position, it has already drawn upon LUST Funds under the rubric of the 2006 incident, leaving your client something slightly less than another two million dollars to remedy the 2006 incident; k’ching indeed.
3. There is virtually no reason for the McIlvains [or your current consultants, for that matter] to place any reliance on the shoddy work done by your client’s prior consultants. As we have noted for years by now, the visible indicia of the actual property line appears at odds with the property line as ‘approximated’ by your client’s consultants in 2007; the

Mcllvains believe that if properly drawn, it will be apparent that some of the contaminated soils removed in the initial phase of the 2006 incident were in fact taken from the Mcllvain property. If the Mcllvains are wrong, it would be simple to prove it by ordering up an accurate survey, which is long overdue. To confirm the questionable performance by your client's earlier consultants, and the need for a definitive re-do of the property lines and the relative locations of the various wells, borings and excavations, one need only mention a few obvious errors apparent on the face of just the first "Site Layout" map, including:

- [a] a Scale alleging 1" = 60' is positioned near the bottom of the page about three inches to the left of a graphic scale showing one inch actually equals 50 feet;
- [b] two separate MW-9s are shown, one near the southwest corner of the Mcllvain residence and the other near the northwest corner of the residence;
- [c] the previously-mentioned lack of a definitive and properly – designated [and critically important in this case] property line separating the service station property from the Mcllvain property;
- [d] the subtle 'migration' of monitoring wells [e.g., MW-2A] to the west somewhat, judging from earlier maps, as if trying to show that the well is located on your client's side of the property line. Moreover, the Site Layout map simply omits any reference to the location of the recovery wells, the Test Trench or the recovery trench used earlier.

4. The Mcllvains have never stated that the terms they articulated as desirable in a second Access Agreement covering the 2006 incident were take-it-or-leave-it. The fact is that your client has failed, even once, to suggest or propose any alternative or compromise terms and instead has insisted against all the evidence either that the second incident is a 'republication' of the first incident or, contrary to logic and grammar, that the first Access Agreement was some sort of unlimited license to roam upon the Mcllvain property in response to subsequent pollution releases.

5. Finally, the simple fact is that your client and/or its consultants have delayed the cleanup of the Mcllvain property for an extended period of time, ostensibly [and falsely] because the Mcllvains have prevented access to their property for purposes of the 1996 incident. The Mcllvains have NEVER barred access to their property for the purpose of monitoring or remediation of the 1996 incident. And as for accessing the Mcllvain property for purposes of the 2006 incident, any legitimate damages to be paid to the Mcllvains are compensable from the LUST Fund under the indemnification provisions of the Act; doing the right thing doesn't cost your client a cent. Moreover, any such indemnification payments would be subject to oversight by the IEPA and the Attorney General's Office. It is hard to avoid the belief that something other than a few reasonable conditions and a modest payment to the Mcllvains for the right to once again access their property to remedy a second release of contaminants onto their property is motivating your client to continue to drag its feet. Again, it would be passingly simple to disprove that belief by engaging in good faith discussions with the Mcllvains and making sincere efforts to get pollution from the 2006 incident cleaned up. The Mcllvains have no motive for dragging this out; they certainly do not relish having their property under an environmental cloud for another 17 years.

In light of the above, your statement that "the consultant is seeking to perform whatever work the Agency has or can approve that does not necessitate neighboring site access" is illogical and merely perpetuates an unnecessary delay. We urge your client to reverse course and get serious about fixing the problems it has caused.

Phillip R. Van Ness
Webber & Thies, P. C.
202 Lincoln Square
P.O. Box 189
Urbana, IL 61803-0189
Tel: 217/367-1126
Fax: 217/367-3752

Unless expressly stated otherwise above, (1) nothing contained in this message or materials "attached" hereto was intended or written to be used, can be used by any taxpayer or may be relied upon or used by any taxpayer for the purpose of avoiding penalties that may be imposed on the taxpayer under the Internal Revenue Code of 1986, as amended, (2) any written statement contained in this message relating to any Federal tax transaction or matter may not be used by any person to support the promotion or marketing of or to recommend any Federal tax transaction(s) or matter(s) addressed in this message, and (3) any taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor with respect to any Federal tax transaction or matter contained in this message.

The information contained in this message is privileged and/or confidential and is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited.

If you have received this communication in error, please delete immediately.

From: Patrick Shaw [mailto:shaw@mohanlaw.com]
Sent: Friday, May 17, 2013 3:51 PM
To: Phil Van Ness; Davis, Thomas E.
Cc: Kyle.Davis@Illinois.gov; Carol.Webb@Illinois.Gov
Subject: Re: Six M Corp/PCB 12-35 -- CWM Report

I have not been able to connect with the project engineer. I'll see what I can do next week. I did speak briefly with his supervisor, who confirmed my understanding that the consultant is seeking to perform whatever work the Agency has or can approve that does not necessitate neighboring site access. The recent report summarized stage 1 site investigation results and proposed stage 2 site investigation work to complete remaining on-site work. It will, of course, be the Agency's determination of whether such work should be performed. The supervisor reiterated to me the complexity and difficulty of taking over a site such as this with a lengthy history, multiple consultants, changing rules, etc.

As to the offsite conditions, after having reviewed the Agency file, I had expressed the intent to summarize our legal and factual positions concerning the site. I had thought that the report of stage 1 site investigation would have come quicker. I think it might be still useful to do this with an eye towards perhaps identifying the specific areas of dispute for purposes of reaching an agreed resolution or for purposes of a motion to the Board.

Phil, I intend to ask the engineer your query. I suspect he's been in the field.

Patrick

----- Original Message -----

From: [Phil Van Ness](#)
To: [Patrick Shaw](#) ; [Davis, Thomas E.](#)
Cc: [Kyle.Davis@Illinois.gov](#) ; [Carol.Webb@Illinois.Gov](#) ; [James McIlvain \(mcilvains2@frontier.com\)](#)
Sent: Friday, May 17, 2013 11:52 AM
Subject: RE: Six M Corp/PCB 12-35 -- CWM Report

Patrick:

I have just received the hard copy of the CWM report. Kindly advise if you have received any clarification from them as to their statement with the mixed-up Incident numbers and as to the east property line issue. It would be helpful to have that in hand during our teleconference on Monday. Thanks.

Phillip R. Van Ness
Webber & Thies, P. C.
202 Lincoln Square
P.O. Box 189
Urbana, IL 61803-0189
Tel: 217/367-1126
Fax: 217/367-3752

Unless expressly stated otherwise above, (1) nothing contained in this message or materials "attached" hereto was intended or written to be used, can be used by any taxpayer or may be relied upon or used by any taxpayer for the purpose of avoiding penalties that may be imposed on the taxpayer under the Internal Revenue Code of 1986, as amended, (2) any written statement contained in this message relating to any Federal tax transaction or matter may not be used by any person to support the promotion or marketing of or to recommend any Federal tax transaction(s) or matter(s) addressed in this message, and (3) any taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor with respect to any Federal tax transaction or matter contained in this message.

The information contained in this message is privileged and/or confidential and is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please delete immediately.