

Detterman, Mark, Env. Health

From: Michael Lamphere [mlamphere@lampherelaw.com]
Sent: Tuesday, May 13, 2014 2:18 PM
To: Detterman, Mark, Env. Health
Cc: pelco1969@sbcglobal.net; erik.oehlschlager@errg.com
Subject: RE: Reply - Fuel Leak Case No. R00003069 and GeoTracker Global 10 T1000002519 / Case: In re Apex Refrigeration / Our File #8203

Thank you, Mark! We'll see how they respond.

Sincerely,
Michael O. Lamphere

LAMPHERE LAW OFFICES
900 Larkspur Landing Circle, Suite 179
Larkspur, CA 94939
Phone: 415-461-9727
Fax: 415-461-9725
Email: mlamphere@lampherelaw.com

The information contained in this electronic mail transmission is confidential and intended to be sent only to the stated recipient of the transmission. It may therefore be protected from unauthorized use or dissemination by the attorney-client and/or attorney work-product privileges. If you are not the intended recipient or the intended recipient's agent, you are hereby notified that any review, use, dissemination, distribution or copying of this communication is strictly prohibited. You are also asked to notify us immediately by telephone at the above stated number and to delete this transmission with any attachments and destroy all copies in any form. Thank you in advance for your cooperation.

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

From: Detterman, Mark, Env. Health [mailto:Mark.Detterman@acgov.org]
Sent: Tuesday, May 13, 2014 2:05 PM
To: 'ayanez@waterboards.ca.gov'
Cc: erik.oehlschlager@errg.com; pelco1969@sbcglobal.net; Michael Lamphere
Subject: RE: Fuel Leak Case No. R00003069 and GeoTracker Global 10 T1000002519 / Case: In re Apex Refrigeration / Our File #8203
Importance: High

Hi Adriana,

I wanted to followup on the denial of this claim. I am the Alameda County Environmental Health (ACEH) Local Oversight Program (LOP) case worker for the site (which you know as Claim 020064). I am not sure why the first page of the Notice of Responsibility (NOR) that was uploaded to Geotracker and to the ACEH webpage for this case does not include the APEX Refrigeration Corp. sheet; however, if you will note on page two of the NOR (entitled Attachment A - Responsible Parties Data Sheet), two parties are listed as RPs; both Pellegrini and Apex. On page two, are the four definitions the State requires to be used to identify an RP. On page three of the NOR that is on Geotracker, each party is identified by the appropriate definition(s). APEX is again identified on that page (page three). Because APEX purchased the assets of Pellegrini, it is the surviving corporation of the two.

I have also attached a copy of the last three directive letters (DIRs), and one enforcement letter. Each is addressed to Pennie Barger at both companies due to the structure of the sale of the assets of Pellegrini to APEX. The only directive letter that does not is the June 29, 2011 letter (also attached), which was incorrect and corrected in the four subsequent letters.

Additionally, my electronic case files indicates that APEX should have received the first page of the NOR, as my Word version contains the certified mail number associated with the letter. I would guess that for some reason it was not copied when it was converted to a PDF format. The USPO website does not allow a search for a certified letter this old, as we have attempted to determine what happened from that end as well.

Finally, I do not have a record of a December 9, 2010 NOR. It is not in our database system, or on our webpage, nor on Geotracker. The only NOR that I have record of is the one dated June 15, 2011, which has been uploaded to Geotracker. If the earlier 2010 NOR existed, ACEH considers the 2011 NOR to be the correct one (also attached)

Will APEX need to go through the entire appeals process to rectify this situation? Because the appeal process only exists for 30 days after April 18, or this Sunday, what is your best advice? Can this be handled informally, or is it best to handle formally and involve Lisa Babcock? I would like to allow this site to progress to closure as quickly as possible. If you have questions, please let me know. My contact information is below.

Thanks for your attention,

Mark Detterman
Senior Hazardous Materials Specialist, PG, CEG Alameda County Environmental Health
1131 Harbor Bay Parkway
Alameda, CA 94502
Direct: 510.567.6876
Fax: 510.337.9335
Email: mark.detterman@acgov.org

PDF copies of case files can be downloaded at:

<http://www.acgov.org/aceh/lop/ust.htm>

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

From: Michael Lamphere [mailto:mlamphere@lampherelaw.com]
Sent: Tuesday, May 13, 2014 11:19 AM
To: Detterman, Mark, Env. Health
Cc: erik.oehlschlager@errg.com; pelco1969@sbcglobal.net
Subject: RE: Fuel Leak Case No. R00003069 and GeoTracker Global 10 T1000002519 / Case: In re Apex Refrigeration / Our File #8203
Importance: High

<<2014-4-18.L.Yanez (SWRCB) to Barger re Claim Denial.pdf>> Dear Mr. Detterman:

As you know, I'm the attorney for Apex Refrigeration regarding our UST cleanup project, Fuel Leak Case No. R00003069 and GeoTracker Global 10 T1000002519. This is a critically important matter for which we need your assistance immediately.

Attached is the 4-18-14 claim denial letter from the State UST Cleanup Fund. Without these funds, my client cannot pay for this cleanup. Consequently, it is imperative that we reverse this denial and get the fund to accept Apex's claim.

As you'll see from the denial letter, the SWRCB has unfortunately gotten off track on who the "Responsible Party" (RP) is on this project. They reference the County's NOR of 12-1-2010, but fail to mention the County's subsequent NOR of 6-15-2011, which is also attached, which clearly states the RP is "APEX REFRIGERATION CORP".

Unfortunately, ACEH's letters/notices on this matter subsequently continued to confused the name of the RP with the former corporation name of "Pellegrini Refrigeration & Restaurant Equipment, Co." (PRRE), which no longer exists, and was specifically purchased by Apex in the 2002-2003 time frame. Title to the business property at 1550 Park Ave. also transferred from PRRE to Apex on 3-17-2003. See attached recorded "Corporation Grant Deed". And a "Conveyance And Assignment" was executed on 3-14-2003, transferring all of PRRE's assets, property and interests to Apex. See attached. Note: I was the attorney that handled the purchase and sale of PRRE to Apex back in 2002-2003.

I think it would be very helpful if you could issue a letter to all parties, including the SWRCB, and to amend any filings with the County and/or GeoTracker, which clarifies this RP issue and confirms that the only RP currently on this cleanup project is "APEX REFRIGERATION CORPORATION", the successor corporation of PRRE, and which also does business as "PELCO" and "PELCO SALES AND SERVICE".

Please let me know immediately if you can do the above and, if so, provide me with the requested letter/filings as soon as possible since we need to appeal this claim denial on/before May 18, 2014. If the above is not possible, please call me to discuss.

Sincerely,
Michael O. Lamphere

LAMPHERE LAW OFFICES
900 Larkspur Landing Circle, Suite 179
Larkspur, CA 94939
Phone: 415-461-9727
Fax: 415-461-9725
Email: mlamphere@lampherelaw.com

The information contained in this electronic mail transmission is confidential and intended to be sent only to the stated recipient of the transmission. It may therefore be protected from unauthorized use or dissemination by the attorney-client and/or attorney work-product privileges. If you are not the intended recipient or the intended recipient's agent, you are hereby notified that any review, use, dissemination, distribution or copying of this communication is strictly prohibited. You are also asked to notify us immediately by telephone at the above stated number and to delete this transmission with any attachments and destroy all copies in any form. Thank you in advance for your cooperation.

Your message is ready to be sent with the following file or link attachments:

2014-4-18.L.Yanez (SWRCB) to Barger re Claim Denial.pdf

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.