

01/10/2013

EPA ENGINEER, CPT. ANDY SMITH; E-MAIL STATING NOA RESULTS:

We are returning from the December holidays slowdown. And now I need to shift gears to turn my attention back to Burlington Hill.

As a courtesy I want to let you know that a few days ago we got final results from our EPA lab which show actinolite in some of the samples. This does not mean there is any cause for alarm.

In light of how quickly we initially responded, I want to temper any expectations you may have. EPA needs to formulate our next phase with state and local officials. In other words, you won't see much activity in your neighborhood anytime soon.

I will of course keep you informed. Understand that we have not yet gotten back to state and local officials on anything at this point. So I would ask for some discretion on your part in terms of sharing this information, as I would prefer state and local officials hear from us first.

Thank you for your patience.

V/r
Andy Smith

Andrew M. Smith, P.E., CHMM
CAPT, US Public Health Service

03/13/2013

EPA ENGINEER, CPT. ANDY SMITH; E-MAIL OF THE SITE RECONNAISSANCE REPORT:

Attached is the report Julie prepared of our visit. I appreciate your patience. The report confirms presence of naturally occurring asbestos but cannot say anything definitive regarding public exposure and risk. That was not the purpose of our visit.

The process now is for state agencies to take the lead and set up a meeting to discuss Burlington Hill and these other sites in Brad's report. Part of the discussion will be regarding authority's state and federal agencies have to address this question. There is a two-step process to any site of concern that is being assessed: 1) what is the public exposure and associated risk? And 2) what can be done about it? Next, what resources do we have available to answer these questions? Finally, do we dedicate our limited resources on Burlington Hill first? Or does Burlington Hill get in the back of the line?

These are not easy questions to answer.

V/r
Andy Smith

04/23/2014

EPA ENGINEER, CPT. ANDY SMITH STATES THAT THE EPA LACKS AUTHORITY TO ADDRESS NOA REMOVAL; EXCERPTS AS FOLLOWS:

ASSESSMENT DECISION

Naturally occurring asbestos (NOA). CERCLA (Superfund) limits EPA at section 104 (a)(3)(A):

1. **LIMITATIONS ON RESPONSE.**-The President *shall not* provide for a removal or remedial action under this section in response to a release or threat of release-(A) of a naturally occurring substance in its unaltered form, or altered solely through naturally occurring processes or phenomena, from a location where It Is naturally found:

Burlington Hill appears to be a site of NOA, however. It may have been disturbed through historical mining and more recently, residential development.

EPA hosted a meeting with a collection of Federal, state, County, and local agencies on August 14, 2013. See the attached agenda and roster. The purpose of the meeting was for the various parties to present their authorities as well as areas in which they lack authority to address NOA. The meeting also allowed EPA to inform the state of Washington that EPA was not going to take a removal action on the Burlington Hill site nor do any site characterization. Nevertheless, EPA has offered to coordinate further meetings and discussions between the agencies that would lead to a policy statement on how public health will be protected through a combination of regulation, permitting, and public outreach.

Based on the information collected and observations made on the site visit, EPA has referred the site to the Washington State Department of Ecology so that they consider if the site requires further Investigation or clean up. The state may address this site or request federal support as needed.

EPA has determined that the Burlington Hill site is not a good candidate for removal action due to the **CERCLA NOA** limitations.

Through this Decision Memo. EPA is not recommending further action by the Emergency Management Program.

V/r

Andy Smith

10/29/2014

DECLARATION OF JILL SMITH IN SUPPORT OF CITY'S RESPONSE TO MOTION FOR PRETRIAL INJUNCTION; EXCERPTS OF ATTORNEY JILL SMITH "CHERRY PICKING" AND PLAYING "WORD GAMES" REGARDING ANDY SMITH'S E-MAILS; AS FOLLOWS:

Before the EPA issued its final draft, it had actually prepared a draft report, containing much more significant "recommendations." In fact, in the margins, the EPA employee who edited the draft suggested removing the recommendations, stating, "We should talk about these." They will "freak people out." Ultimately, the EPA removed those recommendations from its final report, and made only a recommendation to limit disturbance in the area of Location 1-not near plaintiff's home.

Another example of the EPA's non-panicked level of response is contained in an email between the lead EPA engineer, Cpt. Andy Smith, and plaintiff's attorney. In it, the EPA said, "a few days ago we got final results from our EPA lab which show actinolite in some of the samples. This does not mean there is any cause for alarm."

During 2013 and 2014, the EPA nonetheless conducted a series of collaborative meetings, EPA hosted (*only (1) meeting*) to decide on the appropriate level of response. It included a large number of specialists in public health and safety.

Ultimately, the EPA concluded its involvement in Burlington Hill without taking any further action, and *deferred* to the more local, state-based agencies. In its "wrap-Up" report, dated April 23, 2014, it stated, "EPA has determined that the Burlington Hill site is not a good candidate for removal action due to the **CERCLA NOA** limitations.