

JUL 21 2009

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIAClerk, U.S. District and
Bankruptcy Courts

BILLY R. TYLER,

Petitioner,

v.

EPA ADMINISTRATOR,

Respondent.

Civil Action No. **09 1347**MEMORANDUM OPINION

This matter comes before the Court on review of petitioner's application to proceed *in forma pauperis* and his *pro se* petition for a writ of mandamus. The Court will grant the application and deny the petition.

Petitioner alleges that he lives on a "contaminated superfund site in Omaha, Nebraska," and that he "suffers from arrested mental development due to extreme lead poisoning" caused by contaminants in the soil. Pet. at 2. He demands "a writ of mandamus compelling respondents to use the 'superfund' money to remove the diaspora of holocaust of lead contamination off of" the site. *Id.* at 1.

Mandamus relief is proper only if "(1) the plaintiff has a clear right to relief; (2) the defendant has a clear duty to act; and (3) there is no other adequate remedy available to plaintiff." *Council of and for the Blind of Delaware County Valley v. Regan*, 709 F.2d 1521, 1533 (D.C. Cir. 1983) (en banc). The party seeking mandamus has the "burden of showing that [his] right to issuance of the writ is 'clear and indisputable.'" *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 289 (1988) (citing *Bankers Life & Cas. Co. v. Holland*, 346 U.S. 379, 384

(1953)). Where the action petitioner seeks to compel is discretionary, he has no clear right to relief and mandamus therefore is not an appropriate remedy. *See, e.g., Heckler v. Ringer*, 466 U.S. 602, 616 (1984).

Petitioner does not establish any of these elements. He fails to demonstrate his clear right to relief, the respondents' clear duty to expend funds as petitioner requests, and the lack of any other adequate remedy. Because the petition does not state a claim upon which mandamus relief may be granted, the petition will be denied.

An Order consistent with this Memorandum Opinion will be issued separately on this same date.

A handwritten signature in black ink, appearing to read "David M. Roberts", written in a cursive style.

United States District Judge

Date: 7-16-09