1081261 - R8 SDMS

"Elmer, Mark (ENRD)" <MElmer@ENRD.USDOJ.GOV>
06/07/2006 10:19 AM

To jfognani@fognanilaw.com
cc soneil@fognanilaw.com, Peggy Livingston/ENF/R8/USEPA/US@EPA, "Elmer, Mark (ENRD)" <MElmer@ENRD.USDOJ.GOV>
bcc
Subject RE: Noranda Settlement

John,

(1) I'm ok adding Falconbridge and Noranda Mining and their successors. If you want to specifically name any affiliates, we can consider those, but I am uncomfortable defining Settling Defendant by reference to the general term "affiliates," as it is vague and ambiguous.

(2) We have made changes to background section consistent with your comments.

(3) If you provide me with the name and address of a person to receive notices relating to the decree per Section XIII and the name and title of the corporate official signing on behalf of Settling Defenant, I will add these items to the draft decree, and then resend it to you for signature.

Thanks,

Mark

-----Original Message-----
From: jfognani@fognanilaw.com [mailto:jfognani@fognanilaw.com]
Sent: Tuesday, June 06, 2006 4:51 PM
To: Elmer, Mark (ENRD)
Cc: soneil@fognanilaw.com
Subject: Noranda Settlement

Mark - I received the correspondence today via facsimile. Please consider the following:

As the released parties I suggest using "Falconbridge Limited, Noranda Mining Inc. and their Affiliates and Successors."

In addition, we would like to add the following sentence in the background section for the Noranda Consent Decree:

"By entering into this Consent Decree, the mutual objective of the Parties is to resolve the claims of the United States against Settling Defendant for Past Response Costs, subject to the reservation of rights in Paragraph 14, by allowing Settling Defendant to make a cash payment as described herein."

Fin ally, we should change the title to "Partial Consent Decree" and made changes to the first paragraph to clarify that Complaint only seeks relief pursuant to Section 107 for past costs (as opposed to 106 and/or future costs).

This avoids the problem of having a consent decree that settles something less than the entire case.

Let me know your thoughts when you have a chance. Best regards. John