From: Gervais, Gregory
To: Jill Grant; Kelly Wright (kwright@sbtribes.com); susanh@ida.net
Cc: Fonseca, Silvina; Virginia Monsisco (vmonsisco@sbtribes.com); Bill Bacon (bbacon@sbtribes.com); McDonnell, Kimberlee
Subject: RE: Independent Review Phase 2
Date: Tuesday, November 17, 2015 10:31:47 AM

Kelly, Susan and Jill,

Thank you again for your patience. Silvina and I needed to wait for Jim Woolford (our HQ office director) and Rick Albright (Region 10's Environmental Cleanup Office director) to talk about ANL's draft report findings for Phase 1. We were able to meet with Jim last week to find out the results of his discussion with Rick, and to get his direction on how to proceed. Jim reported that Rick and he agree that in light of ANL's draft Phase 1 findings and presentations, and the independent review framework and commitments EPA leadership made to the Tribes, follow on independent review activities are appropriate. (Note that I am using "Phase 2" terminology in this email to mean follow on activities, however some of the possible next steps may be within the traditional CERCLA remedy decision process). Jim indicated that he made a commitment to Rick to pursue and provide funding needed to perform Phase 2 activities. Jim and Rick indicated that they want their respective staff teams at HQ and Region 10 to identify potential Phase 2 activities as informed by the conclusions provided by ANL's report, such as further consideration of key Conceptual Site Model gaps and further ETT evaluation. As described below, we will not be prepared to meet with you to discuss and agree upon next steps until February 2016.

Jim and Rick also indicated they expect that the Phase 2 activities would be developed to also support selection of the final remedy for the FMC OU. The HQ-Region 10 interaction would enable EPA to consider and identify options for how and where to plan for Phase 2 activities to dovetail into the formal CERCLA remedy selection process. As such, roles and responsibilities of EPA HQ and Region 10 also need to be clarified. Once we've performed this internal EPA discussion, we will re-engage the Tribes to discuss the specific next steps, how to perform them, and the Phase 2 schedule. While I know you are motivated to have these EPA-SBT Phase 2 discussions right away, EPA is not yet ready to do so given the above direction from Jim and Rick. Silvina and I will contemplate Jim and Rick's direction, review the Tribes' and EPA's written comments sent to ANL, and evaluate ANL's response/handling of the comments in the final Phase 1 report. ANL responses to comments related to the Conceptual Site Model data gaps and more details on specific ETT's will greatly inform the identification and planning of Phase 2 activities. As such, EPA would like the Tribes and EPA to receive any additional ANL information in the final report related to the CSM deficiencies to enable further Phase 2 ETT evaluation, as well as more details on characterization approaches to safely collect additional data.

Through Mike Adam, EPA's contract Project Office, we have asked ANL for their timeline for completion of the final Phase 1 report and the companion Response to Comments report. ANL responded Monday afternoon that they plan to deliver these reports before 12/25/2015. However, ANL's team leader has not received verification from his team members on their ability to meet that completion date. Therefore, additional delays may cause ANL to deliver the report the first week of January (i.e., 1/8/2016). I do not think EPA will be prepared to meet with you before February 2016 to discuss and plan the next steps, due to the expected delivery date for the final report and EPA's

need to conduct further internal discussions. We recommend that we look for EPA and the Tribes to meet in February 2016 to discuss Phase 2. In the meantime, we recommend that you revisit your Phase 2 proposal and consider identifying the Tribes' highest priorities as they relate to technical activities to further evaluate ETT's (e.g., particular technologies and OU locations (areas and volumes) upon which to focus the potential CSM improvements and ETT detailed evaluation).

Finally, we reviewed Jill's email and the Tribes' Phase 2 proposal discussion regarding urgency/timing concerns over IRODA implementation and FMC's proposed redevelopment within the RA-G area. Jill's email included FMC's redevelopment submittal. When Silvina and I checked in with Jim, he indicated that he did not think the ANL draft report findings were a trigger for immediate issuance of a stop work order to FMC for IRODA and UAO implementation. Silvina and I discussed your concerns with Jonathan Williams and Beth Sheldrake last week. Region 10 indicated that the IRODA contemplates and allows for redevelopment within the proposed area, which the IRODA indicated would include a gamma cap (1 feet of clean soil to block gamma radiation from underlying material) and a portion of the groundwater extraction system. Jonathan and Beth said that generally FMC's submittal was consistent with the IRODA as well as the 2013 UAO, however they would have comments and that they discussed their draft comments with the Tribes and Idaho DEQ late last week. Jonathan and Beth reiterated that Region 10 considers all aspects of the IROA, including any redevelopment, to be interim and that IRODA implementation would not preclude a final remedy that may include future selection of one or more ETTs. Based on Jill's email to me Monday afternoon, it appears that Region 10's comments on FMC's redevelopment documents may address your immediate concerns regarding redevelopment construction schedule. Given that the implementation of the IRODA is within the Region's authority, the Tribes should continue to raise these concerns to Region 10 in writing.

Please let Silvina and me know if you have questions or concerns. Please also let us know if we can proceed with scheduling a February 2016 Phase 2 planning meeting.

Best,

Greg

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From: Jill Grant [mailto:jgrant@jillgrantlaw.com]
Sent: Thursday, November 05, 2015 5:20 PM

To: Gervais, Gregory <Gervais.Gregory@epa.gov>; Kelly Wright (kwright@sbtribes.com) <kwright@sbtribes.com>; susanh@ida.net; Virginia Monsisco (vmonsisco@sbtribes.com) <vmonsisco@sbtribes.com>; Bill Bacon (bbacon@sbtribes.com) <bbacon@sbtribes.com>
Cc: Fonseca, Silvina <Fonseca.Silvina@epa.gov>
Subject: RE: Independent Review Phase 2

Thanks for the update. We'll look forward to hearing from you next week.

From: Gervais, Gregory [mailto:Gervais.Gregory@epa.gov]
Sent: Thursday, November 05, 2015 4:56 PM
To: Jill Grant; Kelly Wright (kwright@sbtribes.com); susanh@ida.net; Virginia Monsisco (vmonsisco@sbtribes.com); Bill Bacon (bbacon@sbtribes.com)
Cc: Fonseca, Silvina
Subject: RE: Independent Review Phase 2

All,

Thanks for your patience. Silvina and I wanted to let you know that we have scheduled a de-brief with Jim Woolford early next week regarding his discussion with Rick Albright. His schedule hasn't allowed for us to meet with him this week. We will get back to you once we meet with him.

Best,

Greg

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From: Jill Grant [mailto:jgrant@jillgrantlaw.com]
Sent: Friday, October 30, 2015 3:06 PM
To: Gervais, Gregory <Gervais.Gregory@epa.gov>
Cc: Fonseca, Silvina <Fonseca.Silvina@epa.gov>; Kelly Wright (kwright@sbtribes.com) <kwright@sbtribes.com>; susanh@ida.net; Virginia Monsisco (vmonsisco@sbtribes.com) <vmonsisco@sbtribes.com>; Bill Bacon (bbacon@sbtribes.com) <bbacon@sbtribes.com>
Subject: RE: Independent Review Phase 2

Hi Greg,

Thanks for replying so quickly.

I'll talk to Kelly and Susan about the stop work issue, but I'm sure they'd appreciate it if you and Silvina relay the Tribes' concerns as well.

We'll look forward to hearing from you next week. Hope you have a good weekend in the meantime –

Jill

From: Gervais, Gregory [mailto:Gervais.Gregory@epa.gov]
Sent: Friday, October 30, 2015 2:40 PM
To: Jill Grant
Cc: Fonseca, Silvina; Kelly Wright (kwright@sbtribes.com); susanh@ida.net; Virginia Monsisco (vmonsisco@sbtribes.com); Bill Bacon (bbacon@sbtribes.com)
Subject: Re: Independent Review Phase 2

Jill,

Thanks for the note. We are still working the issues and alternatives planning. Silvina was unable to link up with Region 10 staff on FMC OU issues during her trip earlier in October. She and I were able to speak via phone when Beth Sheldrake and Jonathan Williams, and we should be speaking with them again in the next week. I know that Jim Woolford and Rick Albright just spoke regarding the site and independent review, and we will be getting a post-briefing from Jim next week to inform our next steps.

All that said, I am *not* aware that a stop work order from Region 10 to FMC regarding IROD-A implementation is imminent. I assume that the Tribes are expressing their concerns over the implementation work directly with R10. We can also relay them to R10 when we speak to them next.

Silvina and I will plan to get back to you by the middle of next week regarding your initial thoughts, where EPA HQ is at on our ideas for possible next steps with the independent review, and a concrete timeline for further discussions with the Tribes.

Best,

Greg

Sent from my mobile device

On Oct 30, 2015, at 12:35 PM, Jill Grant <jgrant@jillgrantlaw.com> wrote:

> Greg and Silvina,
>
> I'm emailing you on behalf of Kelly to forward the Tribes' proposal for Phase 2 of the Independent Review. We discussed on our call with you at the beginning of this month that we would exchange proposals for Phase 2 and we think we need to begin having this conversation. We're concerned that we haven't heard from you, as the Tribes would like to move forward with this phase of the

Independent Review.

The attached proposal is intended to start our discussion; we realize that we will need to work out the details with you. We do think there may be some urgency, because the Tribes recently learned that FMC is proposing an amendment to the IRODA/UAO to allow them to begin redevelopment activities at the site, even though their remedial actions have not been completed and their proposed redevelopment would take place where the groundwater treatment facility will be located and may interfere with plans for groundwater monitoring at the site. I have attached a copy of the proposed amendment and FMC's cover letter, in addition to the Phase 2 proposal.

The Tribes' Phase 2 proposal includes my initial assessment of whether the IRODA would need to be amended to carry out Phase 2, which was an issue raised on our call. You'll see that I think the ANL Report would provide the basis for making changes to the IRODA and UAO, and that the further site characterization/CSM work recommended by the ANL Report probably would not trigger an amendment but implementing any of the ETTs (which the Tribes would like) would. My assessment is based on the requirements for making changes to a final rather than an interim ROD. I assumed the requirements for revising an interim ROD would be the same, but I didn't research this issue.

We also are waiting to receive a report from you on Silvina's trip to Region 10, including the status of a stop work order. The stop work order seems all the more important in light of FMC's redevelopment plans. Also Greg, I think you were going to suggest some times for our next call on Phase 2.

We're looking forward to hearing from you.

Jill

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<2015-10-30 SBT Proposal for Phase 2 of the Independent Review.docx>

<2015-10-27 Addendum to FMC OU Prefinal RDR for RA-G Redevelopment Project.pdf>

<2015-10-27 FMC transmittal Addendum to Pre-Final RDR_Draft RAWP - Redevelopment in RA-G North.pdf>