1902054 - R8 SDMS

Ackerman, Joyce

From: Jonathan H. Steeler <JSteeler@sennlaw.com>
Sent: Tuesday, October 17, 2017 4:40 PM
To: Piggott, Amelia; Ackerman, Joyce; jason.king@coag.gov; 'Kevin Olson'
Cc: rdean@stratuscompanies.com; 'Dave Stewart'
Subject: Stratus Redtail Ranch
Attachments: EPA Drum Removal Procedure Outline - v2 - 20171017.pdf

Amelia:

Following up on our call of yesterday, I want to reiterate that Stratus Redtail Ranch, LLC is prepared to undertake a removal action of the drums and liquid within the drums at the Stratus Property. I have attached a conceptual outline of the proposed removal action. If the foregoing is acceptable, we will turn this into a plan that can be attached to an AOC to be entered into between EPA and Stratus. On Friday 10/13, you also requested a copy of the results of the latest round of site investigations. This information will be forwarded to you and Joyce Ackerman under separate cover later this week or at the beginning of next week at the same time that it is submitted to the State of Colorado.

We understand from your email of October 13th, that EPA is concerned about site security and the potential for leakage from the drums. To address security issues, my client is prepared immediately to install fencing around the areas where the investigation has indicated that drums are present. Please advise if EPA would like this for Stratus to proceed with fencing. With regard to the potential for ongoing leakage from the drums, the investigations to date has not revealed any evidence that the drums are leaking. Notwithstanding the foregoing, Stratus believes that the work can be accomplished by the end of November at the earliest and mid-December at the latest. The timing somewhat depends upon our ability to negotiate a removal plan and an acceptable AOC.

You have indicated that due to the lack of available EPA resources, that we simply use the model AOC. Could you please forward the same to me ASAP? While we understand the Agency's desire to use the model, in view of the unwillingness of IBM, clearly a PRP, to participate in any sort of discussion, we request that the AOC provide Stratus with contribution protection, at least with respect to the work being proposed. As an innocent landowner who performed all appropriate inquiry prior to acquisition, I believe my client should be protected against claims by IBM or other PRPs given its willingness to step up and perform the drum removal. We would also like to discuss EPA waiving its ability to recover oversight costs from Stratus. Oversight costs, if any, should be sought from other PRPs who, to date, have done nothing towards site clean-up. Stratus has expended approximately $500,000 at this site while PRPs have spent nothing.

In addition, we would like to discuss possible assurances from EPA regarding Stratus' innocent landowner status so as to provide my client comfort that it will be treated consistently with its limited involvement at this site. While not a condition of doing the work, we would like to discuss the same as well as any assistance EPA can provide with regard to other PRPs. These discussions can certainly be done after the drum removal AOC is finalized and the removal effort is completed. As I indicated in our telephone call, on Wednesday of last week, I was advised by counsel for IBM that at this time IBM had no interest in participating in any further discussions regarding the site. Accordingly, It is likely that my client will commence litigation against IBM in the near term. I have copied counsel for IBM with this email and if the foregoing statement is an incorrect characterization of IBM's position, I am sure counsel will correct that position.

I have copied Jason King with this email and I assume he will provide copies to the various folks at CDPHE. My client will be sharing this email with the Town of Erie as well. We believe that it is important that EPA, the State and the Town are all on the same page during the removal action.

Thank you for your efforts. I look forward to hearing from you regarding a path forward. Jon

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ACEC
MEMBER

MEMORANDUM

To: Jon Steeler
Cc: Richard Dean
From: Dave Stewart
Date: October 16, 2017
Subject: Drum Removal Project
Project No.: 4844-001

Jon, as requested, I have contacted two different remediation firms for the removal of the drums and the liquid solvent. We contacted Clean Harbors and ACT Environmental (formally PSC) and both agreed on the procedure for drum removal:

1. The drums locations have been identified through an electro-magnetic (EM) survey. This EM survey was performed on the entire Work Area.
2. Once the EM survey was completed, a backhoe was utilized to uncover several of the drums. The drums were sampled at the site. The solvent was determined to have MEK, toluene and several other organic solvents.
3. The site will be fenced and safety protocol will be instituted to meet the regulatory agency requirements. The safety protocol will include the following:
    a. Site safety plan for the work area
    b. Fencing for non-authorized entry to the site
    c. Contractor staging area
    d. Drum secondary containment for the new drums receiving the waste
    e. Spill kits on site to prevent any spills leaving the work area
    f. Environmental monitoring at the site for personal protection and air quality. While we have submitted an APEN for this work, it falls below the limit for obtaining an air permit based on the current knowledge of the solvents on site.
4. In consultation with the remediation companies, it was determined that the best approach is the following:
    a. The drums will be uncovered by a backhoe
    b. Once the drums are uncovered, the remaining excavation will be completed by hand
    c. If the drums are not found upright (to date, all drums uncovered have been upright), then they will be moved to an upright position.
    d. Each drum will be inspected for leaks. If a drum is leaking, then the liquid will be removed in the immediate area of the drum with spill protection. If possible, the drum will be placed into an over pack drum. Otherwise the material will be moved to the disposal drum immediately.
    e. Each drum will be opened through the bung
    f. A flexible hose will be inserted into each drum
    g. An air diaphragm pump, which will be grounded to prevent static electricity, will be used to transfer the solvent to a new DOT drum for transportation to Clean Harbors incineration
    h. Once the drums are empty, they will be stabilized to remove explosive gases, for disposal with the solvent drums above

i. The soil surrounding the drums will also be tested to determine if this material should be disposed of along with the solvent drums
j. The soil will be tested to determine the concentrations prior to backfilling
k. Each drum will be inspected for identification labels

5. A final report will be provided to the regulatory agencies that will document the disposition of the solvent, drums and soil.