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MEMORANDUM

SUBJECT: Litigation Hold Instructions
United States v. Goodrich Corp. et al., Case No. CV 10-824 SJO (JEMx) (C.D. Cal.), and related cases

DATE: MAY 14 2010

FROM: Nancy J. Marvel, Regional Counsel

TO: Jane Diamond, Director, Superfund Division

The United States Environmental Protection Agency (EPA or Agency) is a party in the above case and therefore will preserve any potentially relevant information, including electronically stored information (ESI), hard copies of documents, and tangible things, pertaining to the above-referenced case in anticipation of actual or potential preservation obligations. This case involves claims brought by the United States under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Resource Conservation and Recovery Act (RCRA) in connection with the B.F. Goodrich Superfund Site (Site), in Rialto, California. Specifically, the United States has asserted a CERCLA cost recovery claim against several entities for past response costs EPA has incurred at the Site, pursuant to section 107 of CERCLA, and has sought a declaratory judgment pursuant to section 113(g) of CERCLA, that the defendants are liable for all of EPA's future response costs, and an injunction under section 7003 of RCRA against several of the defendants.

What Must Be Preserved

The information that must be preserved includes ESI[1], hard copies of documents, and tangible things (e.g. laboratory samples, specimens, and photographs) (collectively, "Potentially Relevant Information") related to the subject matters set forth below, including privileged information.

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1 ESI includes, but is not limited to, computer files of any type (e.g. word processing documents, e-mail messages, spreadsheets, calendar entries, images, floppy disks, CDs, DVDs, and flash memory media, including USB drives and memory cards for cameras and cell phones). ESI includes not only information stored on EPA computers and network drives, but also can include information stored on home computers, personal laptop computers, personal digital assistants (PDAs) such as Palm Pilots and Blackberries, and mobile phones, if used for EPA work.

- All Potentially Relevant Information pertaining to the current and past ownership of, and current and past operations at the Site;

- All Potentially Relevant Information pertaining to the treatment, handling, management, disposal, storage or transport of hazardous waste or substances to or from the Site, and the release or threat of release of hazardous substances at the Site;

- All Potentially Relevant Information pertaining to the identification of the Site as a facility under CERCLA or RCRA;

- All Potentially Relevant Information pertaining to any inspection, sampling or investigation of the Site by EPA;

- All Potentially Relevant Information pertaining to whether there is or was an imminent and substantial endangerment to health or the environment at or due to activities at the Site;

- All Potentially Relevant Information pertaining to whether the disposal of waste or a release at the Site has impacted or will impact soils at the Site or groundwater under the Site;

- All Potentially Relevant Information pertaining to enforcement considerations related to the Site and remedial or removal options related to the Site;

- All Potentially Relevant Information relating to costs incurred by the United States related to the Site;

- All Potentially Relevant Information relating to the listing of the B.F. Goodrich Superfund Site on the National Priorities List;

- All Potentially Relevant Information relating to perchlorate; and

- All Potentially Relevant Information relating to the above-referenced case.

The Duty to Preserve Potentially Relevant Information

Because federal case law imposes or may impose an obligation on EPA and its employees to preserve potentially relevant information, **you personally must take appropriate steps to preserve such information that is in your possession, custody, or control.** You must preserve this information even if it otherwise could be destroyed, deleted or overwritten in the normal course of Agency operations. If information that is subject to a litigation hold is destroyed, a court in some circumstances may impose sanctions, including, but not limited to, adverse inferences against the Agency, monetary sanctions, exclusion of evidence, and/or dismissal of the case.

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What You Need to Do

It is your responsibility to ensure that any material related to the subject matter of the litigation that is within your custody or control is preserved and not destroyed, even if the policy or practice of your office would normally dictate otherwise. At a minimum, you must take the following steps with respect to the above-described Potentially Relevant Information:

1. Do not delete, throw out, shred, or otherwise destroy Potentially Relevant Information.

2. Maintain relevant ESI, including, but not limited to: word processing documents, spreadsheets, data in databases[2], and incoming and outgoing e-mails.

3. Take affirmative steps to prevent destruction of any Potentially Relevant Information that has been transferred to a Federal Records Center or any other location.

4. Refrain from transferring any applicable Potentially Relevant Information to a Federal Records Center or any other location unless one of the ORC attorneys referenced below has been consulted and agrees that the Potentially Relevant Information will be adequately preserved after being transferred and is not needed in its present location for purposes of the litigation.

5. Before any computer or electronic system is retired or upgraded, or before an old computer or hard drive is retired or reimaged, contact one of the ORC attorneys referenced below so that (s)he can ensure that we retain access to the information after the retirement or upgrade.

6. Contact one of the ORC attorneys referenced below if there are any staffing changes in your office that affect the case, such as the retirement of people who have done work related to the case or the addition of new people working on matters relating to the case.

7. Treat non-identical copies of documents (word processing files, spreadsheets, etc.) as if they were unique and save, at a minimum, the latest version and all versions that were shared with others. Please contact one of the ORC attorneys to determine which other intermediate drafts (e.g. drafts containing tracked changes), if any, to save.

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2 You should take steps to ensure that appropriate "metadata" (internal computer data) is retained with the ESI. If you do not understand what this involves, please call Michele Benson at (415) 972-3918 or Steve Berninger at (415) 972-3909. Also, the failure to update certain critical databases that support the Agency mission, but which contain relevant ESI, can adversely impact ongoing business operations. You should expeditiously identify for the lead attorney handling this matter, Michele Benson, any critical databases to determine what steps, if any, need to be taken to ensure the preservation of relevant data without adversely disrupting ongoing operations.

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8. If potentially relevant ESI has not been preserved, then immediately contact one of the ORC attorneys referenced below. Under some circumstances, IT staff may be able to retrieve information.

9. Maintain Potentially Relevant Information in an orderly, readily retrievable manner, keeping confidential and/or privileged information separate from publicly releasable information, and be prepared to provide materials subject to this litigation hold for review and/or production as needed for case development, settlement discussions, alternative dispute resolution, preparation of privilege logs, discovery, pretrial activities, and trial.

10. You may move the Potentially Relevant Information to an existing archive within the e-mail system if that archive exists on a network hard drive and will not be subject to accidental deletion. If you do not know if your archive meets these criteria, or if you need to create an archive, do not delete or move anything, and contact one of the ORC attorneys, who will obtain assistance for you.

11. If you need to work with any information subject to this hold, you must create a copy of the original, preserve the original and work from the copy. Note that opening an electronic document can change the document's metadata. You must take appropriate steps to, if practicable, create your copy without changing the document's metadata. If you are unsure how to do this, contact one of the ORC attorneys referenced below, who will obtain assistance for you.

12. Please review the list of recipients of this Litigation Hold. If you are aware of other people not listed who have worked or are working on this case/matter, or whom you otherwise believe may have custody or control of potentially relevant information, immediately contact one of the ORC attorneys referenced below.

In the future, you may receive additional instructions for producing this information. In the meantime, please create an archive or folder of all of your responsive e-mails on a network hard drive. All file and print data (e.g. Word documents) should also be placed in a folder on a network hard drive. You are hereby advised that you are not to destroy Potentially Relevant Information related to this matter until you are notified that this litigation hold request has been removed.

Thank you in advance for your cooperation in this matter. If you have any questions regarding which materials should be preserved or how they should be preserved, please do not hesitate to contact the assigned ORC attorneys, Michele Benson, at (415) 972-3918, or Steve Berninger, at (415) 972-3909. As stated above, you will be notified again when these materials no longer need to be preserved.

cc: Michele Benson, Assistant Regional Counsel
Steve Berninger, Assistant Regional Counsel
Jamie MacAyeal, U.S. Department of Justice

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