From:	Sheldrake, Beth
To:	Thomas, Sally; Werntz, James; Zokan, Jim; Wilson, Wenona; Helm, Nancy; Todd, Bill; McGowan, Michael; Moore, Joanne; Boyd, Andrew
Cc:	McDonnell, Kimberlee
Subject:	Lepic FOIA FW: Question
Date:	Tuesday, October 14, 2014 12:25:24 PM

FYI – I'm not sure who Rick may have bcc'd, but see his response below to concerns raised by Kelly Wright.

Beth Sheldrake | **Unit Manager**
U.S. Environmental Protection Agency | Region 10
Office of Environmental Cleanup
Superfund Site Cleanup Unit #1
p: 206.553.0220 | **c: 206.890-1827** | sheldrake.beth@epa.gov

From: Albright, Rick
Sent: Saturday, October 11, 2014 12:14 PM
To: Kelly Wright
Cc: Woods, Jim; Allnutt, David; billy@curyungtribe.com; Anderson-Carnahan, Linda; Chase, JoAnn; Binder, Jonathan; McLerran, Dennis; Williams, Jonathan; Sheldrake, Beth; susanh@ida.net; Virginia Monsisco; Arnold Appeney; FHBC; Tony Galloway; Casper Appenay; Ladd R. Edmo; Angelo Gonzales; Bill Bacon; Jill Grant; Douglas.Tanner@deq.idaho.gov; Bruce Olenick
Subject: RE: Question

Kelly:

Thank you for the emails you sent me and several others at EPA earlier this week. Your e-mails expressed concerns regarding the October 4, 2014, proposed revisions to the FMC Dust Control and Air Monitoring Plan (DCAMP) to address the screening and crushing of slag. You also expressed frustration with EPA's position, as documented in recent letters to the Tribes, with respect to further Government to Government consultation related to the current grading phase construction activities at the FMC OU. As stated in our recent letters, EPA engaged in extensive Government to Government consultation with the Tribes prior to issuing both the 2012 Interim Record of Decision Amendment (IRODA) and the 2013 Unilateral Administrative Order (UAO). That being said, Region 10 is open to engaging in further Government to Government consultation with the Tribes, as discussed at the end of this email.

EPA continues to be committed to involving the Tribe in a meaningful way in all aspects of the FMC OU activities, including reviewing FMC submittals under the 2013 UAO to implement the 2012 IRODA. At this point in the cleanup process, engaging in technical discussions and reviewing and commenting on the various deliverables required under the UAO is the best way for the Shoshone-Bannock Tribes to provide input into the development of these plans. In fact, the Tribes' Cooperative Agreement with EPA for the FMC OU provides significant funding for such engagement. Further, we continue to encourage the Tribes to observe construction activities and

engage in direct discussions surrounding those activities, including raising concerns to EPA's Remedial Project Manager, as necessary.

The onsite use of slag for capillary break material in the evapotranspiration caps was anticipated in the 2010 Supplemental Feasibility Study (SFS), is consistent with the IRODA, and is described in the grading phase RD/RA documents approved by EPA on September 5, 2014. The grading phase RD/RA documents required by the UAO were originally submitted to EPA and the Tribes in March 2014. EPA requested comments from the Tribes to augment our own comments on that submittal and FMC responded to comments received by revising the submittal in June 2014 and again in July 2014. On September 5, 2014, EPA approved the documents with directed modifications to address EPA and Tribal comments provided to FMC in August.

The 30% design for the evapotranspiration caps is outlined in Section 5.0 of the approved Engineering Design Submittal and the dimensional specifications for the capillary break material are outlined in detail in Appendix C, Construction Specifications Section 0222 Earthwork and Grading. To achieve the required design specifications, FMC's contractor has determined that screening and crushing of the slag material will be required. Per the Federal Air Rule for Indian Reservations in Idaho, Oregon, and Washington set forth in 40 CFR Part 49 (FARR 2005) and as required by the approved RD/RA documents, the proposed initiation of this activity necessitates a revision to the DCAMP to address this new potential source of particulate emissions.

Accordingly, EPA will be reviewing the proposed DCAMP revisions to ensure they are consistent with the overall approved DCAMP and thus protective of human health and the environment. It is my understanding that EPA asked for the Tribes comments on the revised DCAMP on or before October 17, 2014, and those comments, along with EPA's and IDEQ's, will be passed along to FMC to addressed in a subsequent revision to the DCAMP. Please provide comments to Jonathan Williams, the EPA Remedial Project Manager with whom you have been working the past few months. Only after EPA's approval of the revised DCAMP will the screening and crushing operation be allowed to commence.

The DCAMP, as approved on September 5, 2014, sets forth an overall project goal of "zero visible emissions," specifies engineering controls to minimize fugitive dust, and requires an air monitoring program with triggers for additional dust control measures. Trigger levels for the air monitoring program were evaluated against risk-based levels protective for the most directly exposed on-site worker and assumed all particulate matter came from contaminants of concern identified at the FMC OU. The approved DCAMP is fully consistent with FARR requirements.

Upon request from the Fort Hall Business Council, Dennis McLerran and/or I can be available to consult by telephone with Tribal leaders about how EPA and the Tribes can best work together to ensure the interim remedy is designed and constructed as outlined in the IRODA and required by the UAO. Please ask the appropriate Tribal leader to contact me to set up a consultation by teleconference at a mutually agreeable time as soon as practical. Given that construction work is currently underway per the UAO, which compels FMC to take action in order to reduce known human and environmental exposures, I would assume the Tribal Business Council would want such a consultation to take place sooner rather than later.

Sincerely,

Rick

From: Kelly Wright [mailto:kwright@sbtribes.com]
Sent: Monday, October 06, 2014 10:09 AM
To: Allnutt, David; Anderson-Carnahan, Linda; billy@curyungtribe.com; Albright, Rick
Cc: Woods, Jim
Subject: Question
Importance: High

How is it that a Sovereign Nation asks twice for a Government to Government Consultation and is denied? I thought we all had to comply with rules and regulations so where and how do Executive Orders fit in to play? In 2000, President Clinton passed this Executive Order and 2014 EPA Region 10 does not abide by it.

Region 10 is in the process of spreading contamination across the two Operable Units at Eastern Michaud Flats which are both in the CERCLA cleanup. Slag is being used throughout the FMC Operable Unit and now going as far as a revision request to EPA for crushing and screening slag, a radioactive and chemical contaminate. Regardless of the effort to suppress dust, Idaho has wind and they blow around impacting our resources.

EPA claims that this was addressed in the IRODA Government to Government Consultation. If this was truly the case how is it that we are being asked for a revision to the document?

EPA told the Tribes during the IRODA visit that they would continue to support Government to Government Consultations, now we are simply told that was covered in the IRODA visit and we are in the RD process which is a step further down the road.

Lastly, what happened to the **"Trust Responsibility"?** In 1868, the Fort Bridger Treaty was signed between the federal government, the Shoshoni and Bannock Tribes. With this peace treaty, Tribal member were provided with specific treat rights which can only be utilized by members living within the exterior boundaries of the Fort Hall Reservation. These Treaty Rights include hunting, fishing, gathering and performing cultural ceremonies on unoccupied lands of the federal government. Today, our resources are continuously being impacted by contaminates limiting the usage.

One more important aspect is that there is a ban on use of slag for roadways in Idaho and on the Reservation so how can EPA come in a violate this protocol?

I feel it is importance for someone to provide me with a better answer to these questions that have been asked by Tribal Policy Makers.
Please respond.
Kelly C. Wright

Environmental Waste Management Program Manager
Shoshone Bannock Tribes