Ex. 5 - Deliberative Process

From: Moffatt, Brett
Sent: Thursday, July 30, 2015 1:12 PM
To: Peter Candy
Cc: Michelle Ricker; Chad Hathaway; Albright, David; Dermer, Michele
Subject: RE: FOIA EPA-R9-2015-006163 (Fruitvale Oil Field)

Peter,

I am directing my reply to you, as the FOIA requester and attorney for Hathaway LLC, and am copying Chad Hathaway and Michelle Ricker. EPA has released its paper records responsive to your March 25, 2015 FOIA request, but has not conducted an email search. If EPA had issued any permits for the Texaco/Alon and San Joaquin Refinery injection wells, they should have been in the paper files that we reviewed.

We estimate that a search for emails responsive to this FOIA request will cost $4500, and potentially take until December 2015 to complete. These estimates are based on rough assumptions about the time required to conduct this type of email search and the potential scope of the search results. Email searches that go back more than a few years are currently taking a month or more to process (they are not handled at Region 9). Region 9 staff then need to review the results for relevance and releasibility. Search results can include hundreds or thousands of emails that are not responsive to the request.

I am available to discuss the matter if you have questions. Otherwise, to do a search we need an assurance of payment for up to $4500 in costs. We also need agreement on the response date, which we estimate to be December 4, 2015.

Finally, I am not the FOIA rep for Region 9, but any questions specific to this FOIA will be referred back to me, or to our Water Division.

Brett

Brett Moffatt

US EPA, Region 9

(415) 972-3946

From: Chad Hathaway [mailto:chathaway@hathawayllc.com]
Sent: Wednesday, July 22, 2015 2:06 PM
To: Moffatt, Brett
Cc: Michelle Ricker; Peter Candy; Albright, David; Dermer, Michele; Nikki Gramian; Vince Fong
Subject: Re: FOIA EPA-R9-2015-006163 (Fruitvale Oil Field)

Brett,

If a new cost estimate needs to be generated please do so. How do you suggest we revise the

already established scope pertaining to emails and all communications pertaining to the listed projects?

Lastly are you the designated FOIA representative for D-9 or is there someone else we need to communicate with?

Chad Hathaway

Hathaway LLC

661-393-2004o

661-393-2009f

661-201-7716c

www.hathawayllc.com

On Jul 22, 2015, at 1:48 PM, Moffatt, Brett <Moffatt.Brett@epa.gov> wrote:

Michelle,

Thank you for sending the documents. As these and other documents show, the State permitted injection wells in the Fruitvale Field in the past and, at one point, the RWQCB mistakenly believed that certain formations within the Fruitvale Field had been administratively exempted. Both EPA and the State also considered requests to permit injection wells (as either Class V or Class I) in these formations. However, EPA has searched its files relating to the Texaco or San Joaquin Refinery Management injection wells and permit requests and found no record of EPA having issued a UIC permit for any of these wells.

At this point, we have responded to this FOIA request with respect to the paper files in EPA's possession. We have not done an email search since, as I mentioned earlier, this

would require us to develop a new cost estimate request a further assurance of payment from you, and the search and review process will take months to complete. Also, I am not sure that EPA's email archive covers much of the relevant time period.

We need to complete this FOIA request - either by agreeing that EPA's full release of responsive paper records has satisfied the request, or by reaching agreement on the scope, timing and assurance of payment for an additional search of email records.

Please let me know if wish to discuss the matter. I will busy or out of the office until Wednesday, July 29, but checking email when possible.

Thank you,

Brett

Brett Moffatt

US EPA, Region 9

(415) 972-3946

From: Michelle Ricker [mailto:mricker@hathawayllc.com]
Sent: Thursday, July 16, 2015 10:27 AM
To: Moffatt, Brett; Chad Hathaway
Cc: Peter Candy; Albright, David; Dermer, Michele; Nikki Gramian
Subject: RE: FOIA EPA-R9-2015-006163 (Fruitvale Oil Field)

Brett,

Please find attached to this email the following documents:

?□□□□□□□□ A letter, dated September 12, 2003, from EPA Region 9 which discusses the Equilon's request to re-designate its Class V injection wells as Class I non-hazardous. In that letter, EPA acknowledges that the wells operate as Class V. The application in question includes the wells in Section 27 and the well in Section 23.

?□□□□□□□□ The EPA Notice of Violation and Settlement Terms to Texaco for improper disposal of hazardous waste in non-hazardous disposal wells. Item 17 of the NOV states that "[w]astewater generated by Respondent's refinery operations at the Facility is discharged into several Class V underground injection wells pursuant to Waste Discharge Requirements (Order No. 91-102)."

?□□□□□□□□ The Central Valley RWQCB Staff Report for the adoption of Order No. 91-102, in which RWQCB staff states that the Santa Margarita, Chanac, and Etchegoin formations have already been exempted from the USDW classification pursuant to Federal regulations.

?□□□□□□□□ A DOGGR Permit to Conduct Well Operations for drilling SJRM WD-1 (API No. 03003015), which designates the well as a Class V injection well and is dated September 9, 1994.

I remember some other documentation that may be pertinent, but these are what I had quickly at hand. I will send you the others as I can find them in the information that we received from the Water Board.

Thank you,

Michelle

From: Moffatt, Brett [mailto:Moffatt.Brett@epa.gov]
Sent: Tuesday, July 07, 2015 4:05 PM
To: Chad Hathaway
Cc: Michelle Ricker; Peter Candy; Albright, David; Dermer, Michele; Nikki Gramian
Subject: RE: FOIA EPA-R9-2015-006163 (Fruitvale Oil Field)

Chad,

From a review of our files, this appears to be the case. If you have any documents which show otherwise – and which were not included in our FOIA response – we are interested in seeing them.

Thank you,

Brett

Brett Moffatt

US EPA, Region 9

(415) 972-3946

From: Chad Hathaway [mailto:chathaway@hathawayllc.com]
Sent: Tuesday, July 07, 2015 10:40 AM
To: Moffatt, Brett
Cc: Michelle Ricker; Peter Candy; Albright, David; Dermer, Michele; Nikki Gramian
Subject: Re: FOIA EPA-R9-2015-006163 (Fruitvale Oil Field)

Brett,

Are you positive EPA never issued UIC permits for those two wells?

Chad Hathaway

Hathaway LLC

661-393-2004o

661-393-2009f

661-201-7716c

www.hathawayllc.com

On Jul 6, 2015, at 2:23 PM, Moffatt, Brett <Moffatt.Brett@epa.gov> wrote:

Hi Michelle,

For the two injection wells you identify, Texaco (Alon) "WI-1" and San Joaquin Refinery Management "WD 1," we have found no records of EPA having issued a final UIC permit (Class V or otherwise). The records released in response to the FOIA request indicate only that EPA considered UIC permit requests, and that DOGGR and/or the Central Valley RWQCB may have authorized injection. We would like to know more about the documents obtained from the Central Valley RWQCB that suggest EPA issued UIC permits for either of these wells.

I will also clarify that EPA's June 25, 2015 response to your FOIA request was broader than I had stated in my June 23, 2015 email to Peter Candy. The set of documents that I reviewed and approved for release to FOIA Online was a complete set of the Region 9 paper files that had been collected to respond to your original request. Therefore, I expect that the only remaining releasable records that are responsive to your original request are emails (if any).

As noted in my June 23 email, it will probably take months for EPA to search and review all potentially responsive emails, and we will need to generate a new cost estimate for this work. In light of the this information, if you still want EPA to search emails, we should have a call to discuss the scope of the search, as well as the information you have indicating that EPA had issued UIC permits for the Alon and San Joaquin Refinery wells.

Please let me know if you want to set a time for a call.

Brett

Brett Moffatt

US EPA, Region 9

(415) 972-3946

From: Michelle Ricker [mailto:mricker@hathawayllc.com]
Sent: Monday, July 06, 2015 8:52 AM
To: Moffatt, Brett
Cc: Peter Candy; Chad Hathaway; Albright, David; Dermer, Michele; Nikki Gramian
Subject: RE: FW: FOIA EPA-R9-2015-006163 (Fruitvale Oil Field)

Good morning, Brett.

Please see my email from last Thursday. This is the list of information that we still need. We understand that conducting an email search is quite an extensive process. However, copies of the Class V injection permits for the two wells located in Section 23, T29S, R27E, MDBM should have been included with the data already provided on the FOIA Online site.

As previously discussed, we still want all of the data in our FOIA request from March; at this time, some documents are more important than others. In providing the list below, we hope to aid EPA staff and focus their efforts on information that is easily obtainable. Please feel free to contact me with any questions.

Thank you,

Michelle R Ricker

Project Manager/ Procurement Lead

Hathaway LLC

4205 Atlas Ct|Bakersfield, CA 93308

Office: (661)393-2004

Cell: (661)378-0030

www.hathawayllc.com

From: Nikki Gramian [mailto:nikki.gramian@nara.gov]
Sent: Monday, July 06, 2015 6:57 AM
To: Michelle Ricker
Cc: Peter Candy; Chad Hathaway; Albright, David; Dermer, Michele
Subject: Re: FW: FOIA EPA-R9-2015-006163 (Fruitvale Oil Field)

Michelle,

If you would please direct your request to Mr. Moffatt directly and cc me. I also saw Mr. Hathaway's email which I would like to respond to by either having a phone conversation about the FOIA process or send you a short email explaining the process. Let me know if we can have a discussion about his email concerning the estimated date of completion that was missed.

Nikki Gramian
Deputy Director of OGIS

(202) 741-5772

On Thu, Jul 2, 2015 at 8:48 PM, Michelle Ricker <mricker@hathawayllc.com> wrote:

Nikki,

Per our email exchange last week, we have completed our review of the documents already posted to the FOIA Online site. Upon review, we still require the following documents:

- Copies of the Class V UIC permits for Texaco's "WI-1" (now operated by Alon Bakersfield Property, Inc.) and San Joaquin Refinery Mangement's "WD 1," both located in Section 23, Township 29S, Range 27E, MDBM. It is our understanding, based upon review of the documents obtained from the Central Valley Regional Water Quality Control Board, that approval of Class V injection was issued by the EPA for both of these wells.

- Communications between the US EPA and DOGGR, including letters, memos, emails, notes from meetings, and records of phone conversations, pertaining to the permit status of these two wells.

- Communications between the US EPA and DOGGR, including letters, memos, emails, notes from meetings, and records of phone conversations, pertaining to the exemption status of the Santa Margarita formation in the Fruitvale Field.

- Communications between the US EPA and State Water Resources Control Board, including letters, memos, emails, notes from meetings, and records of phone conversations, pertaining to the permit status of these two wells.

- Communications between the US EPA and State Water Resources Control Board, including letters, memos, emails, notes from meetings, and records of phone conversations, pertaining to the exemption status of the Santa Margarita formation in the Fruitvale Field.

- Communications between the US EPA and Central Valley Water Quality Control Board, including letters, memos, emails, notes from meetings, and records of phone conversations, pertaining to the permit status of these two wells.

- Communications between the US EPA and Central Valley Water Quality Control Board, including letters, memos, emails, notes from meetings, and records of phone conversations, pertaining to the exemption status of the Santa Margarita formation in the Fruitvale Field.

Thank you very much for helping us in obtaining this information. Please feel free to contact me with any questions that you may have. We understand that there is a considerable volume of FOIA requests; however, we still require the information listed above.

Once again, we appreciate your help and responsiveness in this matter.

Sincerely,

Michelle R Ricker

Project Manager/ Procurement Lead

Hathaway LLC

4205 Atlas Ct|Bakersfield, CA 93308

Office: (661)393-2004

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www.hathawayllc.com

From: Nikki Gramian [mailto:nikki.gramian@nara.gov]
Sent: Thursday, June 25, 2015 9:55 AM
To: Michelle Ricker
Subject: Re: FW: FOIA EPA-R9-2015-006163 (Fruitvale Oil Field)

Excellent! I can then close your request on our end since things are moving on their end. I wont issue a formal response to you since we all have worked through email and the agency has been in communications with you all.

Thank you Michelle and please feel free to come to us if you have any additional concerns.

Regards,

Nikki Gramian
Deputy Director of OGIS

(202) 741-5772

On Wed, Jun 24, 2015 at 4:04 PM, Michelle Ricker <mricker@hathawayllc.com> wrote:

> Nikki,
>
> Peter Candy and I both received further clarification from Brett Moffatt. He said that the documents from our narrowed request should be available at FOIA Online today. Once we review those documents, we will determine which specific documents we would need to get the information that we are seeking.
>
> Thank you,
>
> Michelle

From: Nikki Gramian [mailto:nikki.gramian@nara.gov]
Sent: Wednesday, June 24, 2015 10:00 AM
To: Michelle Ricker
Subject: Re: FW: FOIA EPA-R9-2015-006163 (Fruitvale Oil Field)

Hi Michelle,

Were you able to get clarification of the email Mr. Moffatt sent you below?

Nikki Gramian
Deputy Director of OGIS

(202) 741-5772

On Tue, Jun 23, 2015 at 7:42 AM, Nikki Gramian <nikki.gramian@nara.gov> wrote:

> Michelle, I have an all day meeting outside of my office today. Please respond to mr. Brett's email. My reading of his email is that EPA will produce the requested records first then the remaining records will be processed. But please verify this with him.
>
> On Jun 22, 2015 6:21 PM, "Michelle Ricker" <mricker@hathawayllc.com> wrote:
>
>> Nikki,
>>
>> Thank you very much for following up with me.
>>
>> In our phone conversation on June 12, 2015, I had asked if it was possible to obtain specific documents sooner than the estimated completion date of July 2, 2015. The list that I sent you was not intended to fully replace the original FOIA request. With regard the specific documents listed in my email, waiting until July 2nd (when all the documents would be available) was not a desirable option for us. We understand that EPA staff have already spent

time to fulfill the original request. That time has not been squandered, as we would still like to obtain the documents listed in the original FOIA request from Peter Candy.

Please let me know if you have any further questions.

Thank you,

Michelle Ricker

From: Nikki Gramian [mailto:nikki.gramian@nara.gov]
Sent: Monday, June 22, 2015 12:13 PM
To: Michelle Ricker
Subject: Fwd: FW: FOIA EPA-R9-2015-006163 (Fruitvale Oil Field)

Hi Michelle,

Did you get the attached email? Kindly advise.

Nikki Gramian
Deputy Director of OGIS

(202) 741-5772

---------- Forwarded message ----------
From: **Moffatt, Brett** <Moffatt.Brett@epa.gov>
Date: Fri, Jun 19, 2015 at 7:48 PM
Subject: FW: FOIA EPA-R9-2015-006163 (Fruitvale Oil Field)
To: "pcandy@hbsb.com" <pcandy@hbsb.com>

Cc: "mricker@hathawayllc.com" <mricker@hathawayllc.com>, Nikki Gramian <nikki.gramian@nara.gov>

Mr. Candy,

You may be aware that Chad Hathaway has been in contact with the US Office of Government Information Services (OGIS) regarding this FOIA request. OGIS informs us that in these conversations, Mr. Hathaway narrowed the request to the following records:

A copy of the UIC permit issued by the EPA for "Red Ribbon WD1" (API No. 02978664)

A copy of the UIC permit issued by the EPA for "Red Ribbon WD2" (API No. 029788999)

A copy of the UIC permit issued by the EPA for San Joaquin Refinery Management's "WD-1" (API No. 03003015)

A copy of the UIC permit issued by the EPA for "Red Ribbon WD 3" (API No. 03009732)

A copy of the Aquifer Exemption granted for the Santa Margarita formation within the Fruitvale Field for the purposes of Class I and Class V injection. If the Santa Margarita was determined to not require an Aquifer Exemption, according to the SDWA requirements, please provide a copy of documents supporting same.

Water quality data for the formation water of the Santa Margarita in the Fruitvale Field.

EPA will be responding to this narrowed request as soon as possible, most likely by the end of next week. Please be advised that EPA had already spent a substantial amount of time searching for records related to the original FOIA request, which will be included in the fee invoice at the conclusion of this FOIA request.

Please let me know if you have any questions.

Brett

Brett Moffatt

US EPA, Region 9

(415) 972-3946

From: Moffatt, Brett
Sent: Friday, May 29, 2015 12:31 PM
To: 'pcandy@hbsb.com'
Cc: Johnson, Ivry
Subject: FOIA EPA-R9-2015-006163 (Fruitvale Oil Field)

Mr. Candy,

This is to inform you of the status of your FOIA, and to request an extension of time for EPA to complete its search and release the non-exempt responsive records.

Our FOIA office processed your FOIA request on April 14, 2015, and followed up with an estimated cost for responding to the FOIA and request for an assurance of payment. EPA received notice of your assurance of payment on May 12, 2015. However, this was a day or two before our Water Division staff moved out of their offices because of renovations to our building, and they were not aware that the assurance had been received. In any event,

potentially relevant files had already been placed into temporary storage, and our Water Division staff currently cannot access older records. Staff will be returning in a few weeks, but will need additional time to search for the requested records.

Because of these unusual circumstances, EPA requests an extension of time to July 2, 2015 to respond to your FOIA. Please let me know if this is acceptable, or if you have any questions.

Thank you for your understanding,

Brett

Brett Moffatt

Office of Regional Counsel (ORC-2)

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