To: Herrera, Angeles[Herrera.Angeles@epa.gov]
From: Greg Lovato
Sent: Fri 1/20/2017 12:28:37 AM
Subject: FW: Anaconda NPL Deferral - EPA/BLM/NDEP/ARC

Angeles, Is EPA alright with me sending out the following in response to your e-mail below? I would plan to reply to all.

Thanks,
Greg

Angeles,

Thank you for the follow-up communication. Based on the December 14 meeting, NDEP understood that EPA maintained the position that it cannot, in a deferral agreement, agree to enter into a consent decree and at some future time provide federal covenants. However, NDEP was left with the impression that through deferral the possibility of obtaining federal covenants was not foreclosed and that there was a process by which EPA could, in the future, enter into a consent decree which would allow for covenants if the remedies developed, selected, and implemented are CERCLA protective.

Please let us know if this is consistent with EPA's position.

-----Original Message-----
From: Herrera, Angeles [mailto:Herrera.Angeles@epa.gov]
Sent: Thursday, January 19, 2017 10:48 AM
To: Greg Lovato
Cc: Jeryl Gardner; Collins, Jim; Minor, Dustin; Gallery, Patricia A; Maldonado, Lewis; David Davis (drdavis@blm.gov); Seter, David; Johnson, Brian S; Jeff R. Collins; Micheline N. Fairbank; Frederick J. Perdomo; Ball, Harold; Gene Seidlitz (gseidlit@blm.gov); rthomas@blm.gov; bamme@blm.gov; Cohen, Adam (Adam.Cohen@dgslaw.com); Block, Nathan; Kryska, Eric G; nathalie.doherty@sol.doi.gov
Subject: RE: Anaconda NPL Deferral - EPA/BLM/NDEP/ARC

Greg:

I communicated EPA's response to the draft schedule by email on January 11. This is to respond to the discussion of federal covenants in Brian Johnson's email of January 11. EPA will not agree in a deferral agreement to enter a consent decree and provide federal covenants at some future time. We have confirmed this position with the U.S. Department of Justice. DOJ expressed unqualified support for EPA's position. This affirmation of EPA's position on federal covenants was communicated to ARC on January 17 in a call between Nathan Block and Jim Collins.

The limited role of EPA in a deferral to state authorities at the conclusion of the deferral cleanup is set out clearly in the 1995 EPA guidance on deferral. After the state certifies the response action complete and EPA agrees, EPA confirms in writing that the site response has been completed. EPA will then remove the site from CERCLIS and the site will not be further considered for NPL listing unless EPA receives new information of a release or potential release at the site that poses a significant threat to human health or the environment. These actions by EPA define the limits of EPA's post- completion commitments in a deferral agreement.

On the other issue raised in Brian Johnson's email, I agree that it is important to resolve EPA's past cost claims and the status of existing EPA orders as part of the deferral process, and we anticipate working with ARC to discuss these issues soon.

Thanks,

Angeles