To: Lensink, Andy[Lensink.Andy@epa.gov]
From: Rauchway, Jon
Sent: Wed 4/24/2013 11:57:33 PM
Subject: Christian/Opportunity lawsuit
Kane.pdf
Pleus.pdf

Hello Andy:

We received the plaintiffs' expert disclosures last week in the Christian case. As expected, they intend to (1) mount a comprehensive attack on EPA's decision-making process and chosen remedy for the site, and (2) have their experts testify that they will conduct their own area-wide soils and groundwater remedy at the site.

Their soils remedy consists of the removal of the top 2 feet of soil in the Opportunity and Crackerville communities (650,000 tons in total) with transportation and disposal at a landfill in Spokane, WA. Their groundwater remedy includes the construction of "underground Passive Reactive Barrier (PRB) walls," one that they estimate will be "8,000-foot long, 15-foot deep and 3-foot wide up-gradient of Opportunity" as well as other, shorter PRB walls up gradient of Crackerville. All of this is described in the Kane report (I did not include all of the attachments because of size, let me know if you want to see them). The total cost of this remedy is estimated at $101 million (Kane Table 1). The plaintiffs will tell the court that they intend to perform this remedy, and ask for an award of damages in this amount to fund it.

The plaintiffs also served an expert report from toxicologist Richard Pleus entitled "Critique of the Final Baseline Human Health Risk Assessment for the Anaconda Smelter NPL Site, Anaconda, Montana (CDM 1996) and Reassessment of Soil Screening Levels for the Opportunity Community." This report, as the title indicates, criticizes EPA's risk assessment and soils action level for the Site. Pleus concludes that "My review of the U.S. EPA Superfund ROD for the Anaconda Company Smelter in Anaconda, MT (U.S. EPA, 1998a), the *Final Baseline Human Health Risk Assessment, Anaconda Smelter NPL Site, Anaconda, MT* (CDM, 1996) has found that their arsenic risk estimate and residential action level of 250 ppm is not appropriate." (Executive Summary at v). Pleus then conducts his own risk assessment and concludes that the action level should be 8 ppm.

I would like to discuss these reports with you after you have had a chance to review them. Thanks.

Jon

Jonathan W. Rauchway

Davis Graham & Stubbs llp

1550 Seventeenth Street, Suite 500

Denver, Colorado 80202

Tel: 303.892.7216

Fax: 303.893.1379

Cell: 303.903.3298

jrauchway@dgslaw.com

vcard

This email message, and its attachment(s), is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message.

In accordance with applicable U.S. Treasury Regulations we inform you that, unless expressly stated otherwise, any advice contained in this communication and any attachment hereto cannot be used either (i) to avoid penalties imposed under the Internal Revenue Code or (ii) for promoting, marketing, or recommending any transactions or matters addressed by such advice.