To: Roberts, Kris D.[kroberts@nd.gov]; todd.j.lindquist@usace.army.mil[todd.j.lindquist@usace.army.mil]; Harlon, William D III NWO[William.D.Harlon@usace.army.mil]; dglatt@nd.gov[dglatt@nd.gov]; Rockeman, Karl H.[krockema@nd.gov]; Haroldson, Marty R.[mharolds@nd.gov]; Wax, Peter N.[pwax@nd.gov]; johnpavlicek@garner-es.com[johnpavlicek@garner-es.com]; David Cawthon[dcawthon@cteh.com]; klawrence@cteh.com[klawrence@cteh.com]
Cc: Guy, Kerry[Guy.Kerry@epa.gov]
From: Peronard, Paul
Sent: Tue 8/5/2014 12:11:38 AM
Subject: RE:

Thanks Kris,

I think your e-mail accurately reflects the operational proposal we discussed this afternoon.

I know folks had some reservation regarding the legal authority and potential liability associated with the discharge of the water now captured in the LMRC. Under the implementing regulations of the Clean Water Act, specifically 40 CFR 122.3(d), a Federal On-Scene Coordinator is authorized to direct any discharge pursuant to a response conducted pursuant to the National Contingency Plan without an NPDES permit. Given the data and information in hand I would have the authority, and take the responsibility to direct this discharge. Under the current situation it would be my responsibility, after consultation with affected Federal, State, and Local stakeholders, to direct Red River Supply, via their contractor, to move the water to the US ACE pump station.

Although the US ACE is operating the pump station the onus of responsibility for directing this discharge would remain with EPA and myself. I don't want to bog down too much into the regulations but under the NCP the US ACE pump station would be considered part of the "Site" under 40 CFR part 300. Again, pursuant to 40 CFR 300.400(e) no Federal, State, or local permits would be required for on-site actions based on directions of the Lead Agency, which in this case is EPA.

I hope between Kris' e-mail and mine we have clarified what we think jointly are the next reasonable steps for the Site. Please take time to read these e-mails and get back to us with comments shortly.

paul

From: Roberts, Kris D. [mailto:kroberts@nd.gov]
Sent: Monday, August 04, 2014 5:50 PM
To: todd.j.lindquist@usace.army.mil; Harlon, William D III NWO; dglatt@nd.gov; Rockeman, Karl H.; Haroldson, Marty R.; Wax, Peter N.; johnpavlicek@garner-es.com; David Cawthon; klawrence@cteh.com
Cc: Peronard, Paul; Guy, Kerry
Subject:
Importance: High

All:

As per the video/audio conference we held this afternoon (Monday, August 04, 2014) at 15:00, and based on the chemical data received to date, and the Whole Effluent Toxicity test results from 5 points along the Little Muddy Relief Channel in Williston, North Dakota, below please review the plan for releasing the water in the isolated portion of the Little Muddy Relief Channel to the Missouri River System, through the US COE Williston Pump Station.

1. Discontinue pumping operations north of Broadway Ave, whose purpose was to create increased upper basin storage

2. Discontinue cutting riparian and emergent vegetation along the isolated portion of the Little Muddy Relief Channel

3. Remove and dispose that vegetation already cut, as per plan

4. Remove the remains of the earthen containment berms placed in the Little Muddy Relief Channel between Broadway Ave and the Burlington Northern Santa Fe railroad crossing, returning the channel to its previous profile

5. Remove the earthen berm north of Broadway Ave, but leave the supersack plug in place in the north side of the culvert under Broadway Ave

6. Allow the isolated section of the Little Muddy Relief Channel to rest until the dissolved oxygen level and the turbidity stabilize (24-48 hours)

7. Remove the isolation plug from the US COE office culvert, between the isolated waters and the Williston Marsh

8. Remove the plug from the culvert under Broadway Ave, allowing upper basin water to

enter the isolated reached of the channel, thus providing dilution and freshening of the water in the isolation zone

9. Remove a portion of the remaining isolation dike, allowing a slow mixing of the upstream isolated water with the larger water body upstream of the US COE office, and further slow mixing as the water then mixes with that coming from the Williston Marsh.

Please stand by for additonal documentation and authorization from US EPA On-Scene Coordinator, Paul Peronard.

Kris Roberts

Environmental Response Team Leader

ND Department of Health

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