Message

From: pizarro, luis [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=82DDA7A144D8467090A578BF730493F7-LPIZARRO]
Sent: 8/24/2017 7:50:36 PM
To: Steven R. Ruby [sruby@baileyglasser.com]
CC: Sam A. Hrko [shrko@baileyglasser.com]; John Ailes [JAiles@baileyglasser.com]; Patricia.A.Hickman@WV.GOV [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d7a87c4a47914d29a7d8c76273bcaf49-Patricia.A.]; Weissbart, Erich [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e361d2f1f04641e49ca63c81a2e2f4ee-EWeissba]; Briggs-Steuteville, Sheila [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=61c9af18b5b947f9a64c9086269200a0-Sbrigg02]; Sharon F. Iskra [SIskra@baileyglasser.com]
BCC: Ajl, Diane [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2901e72e0d194a8caf8b4691c74dc407-Dajl]; Ferrell, Mark [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8ccaf8c895c8426e9b5c274d26b7f833-Ferrell, Mark]; Rose, Kenneth [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eb0c0deb313a4ea584511a54385c0c5a-Rose, Kenneth]
Subject: RE: Dow statements to federal judge
Attachments: 20170823150548.pdf

Mr. Ruby:

Below are EPA's clarification to the matters you raised in the enclosed letter. The letter requested confirmation that

1) *the United States Environmental Protection Agency (EPA) has not approved any proposed corrective measures for groundwater contamination at either UCC plant or the University's property;*

EPA has not yet selected a final remedy for the Facility. EPA will announce its selection of a final remedy in a Final Decision and Response to Comments (Final Decision), after it has met all of the necessary public participation requirements, including providing a forty-five (45) day public comment period on its proposed remedy.

2) *the EPA has not approved the placement of an environmental covenant on the University property: and*

EPA anticipates that groundwater use restrictions addressing Facility-related groundwater contamination, including the impacted groundwater that has migrated offsite, will be elements of a proposed remedy for the Facility. EPA also anticipates that those use restrictions necessary to prevent human exposure to contaminants at the Facility will be implemented through enforceable Institutional Controls such as an Environmental Covenant. Consequently, EPA has directed UCC to consider including Institutional Controls as part of its remedy evaluation which will be submitted to EPA in a revised Corrective Measures Proposal. While EPA anticipates that use restrictions will be included in the final remedy for the Facility, EPA has not selected a final remedy for the Facility. As stated above, EPA will do so only after all of the public participation requirements are met.

3) the EPA's approval of investigative report or technical memoranda by UCC as part of its site investigation do not indicate that the EPA has approved any corrective measure for the UCC plan or the University's property.

EPA approval of the investigative or characterization report does not constitute remedy selection or approval. An EPA approval of an investigative or characterization report for a Facility documents that EPA determined that the work performed was consistent with the work that was proposed and that, based on the information submitted in the report, EPA agreed with the conclusions of the report. Investigative and characterization reports may provide the basis upon

which a remedy proposal is made, however, as stated above, EPA will not select a final remedy until all of the public participation requirements are met.

Luis A. Pizarro
Associate Director
Office of Remediation, LCD
US EPA Region 3
215 814 3444

From: Steven R. Ruby [mailto:sruby@baileyglasser.com]
Sent: Wednesday, August 23, 2017 3:08 PM
To: pizarro, luis <pizarro.luis@epa.gov>
Cc: Sam A. Hrko <shrko@baileyglasser.com>; John Ailes <JAiles@baileyglasser.com>; Patricia.A.Hickman@WV.GOV; Weissbart, Erich <Weissbart.Erich@epa.gov>; Briggs-Steuteville, Sheila <Briggs-Steuteville.Sheila@epa.gov>; Sharon F. Iskra <SIskra@baileyglasser.com>
Subject: RE: Dow statements to federal judge

Luis,

Please see the attached letter. Given our deadline, as I mentioned, we would be grateful for a quick response.

Best regards,
Steve

Steven R. Ruby
Bailey & Glasser LLP
T: 304.345.6555

From: pizarro, luis [mailto:pizarro.luis@epa.gov]
Sent: Wednesday, August 23, 2017 9:10 AM
To: Steven R. Ruby <sruby@baileyglasser.com>
Cc: Sam A. Hrko <shrko@baileyglasser.com>; John Ailes <JAiles@baileyglasser.com>; Patricia.A.Hickman@WV.GOV; Weissbart, Erich <Weissbart.Erich@epa.gov>; Briggs-Steuteville, Sheila <Briggs-Steuteville.Sheila@epa.gov>; Sharon F. Iskra <SIskra@baileyglasser.com>
Subject: RE: Dow statements to federal judge

Steve:

We can be available at 10:30 or 3:00 pm today.

Luis A. Pizarro
Associate Director
Office of Remediation, LCD
US EPA Region 3

215 814 3444

From: Steven R. Ruby [mailto:sruby@baileyglasser.com]
Sent: Tuesday, August 22, 2017 8:38 PM
To: pizarro, luis <pizarro.luis@epa.gov>
Cc: Sam A. Hrko <shrko@baileyglasser.com>; John Ailes <JAiles@baileyglasser.com>; Patricia.A.Hickman@WV.GOV; Weissbart, Erich <Weissbart.Erich@epa.gov>; Briggs-Steuteville, Sheila <Briggs-Steuteville.Sheila@epa.gov>; Sharon F. Iskra <SIskra@baileyglasser.com>
Subject: Dow statements to federal judge

Luis,

Dow has now made statements to a federal judge that contradict Erich's April email and our recent call. Specifically, Dow claims that Erich recently told Dow that the University's contaminated groundwater is fine as it is. This contradicts the statement in Erich's email that groundwater must be restored to drinking water standards absent an alternative state characterization. We plan to alert the judge to Dow`s misrepresentations as soon as possible.

I'd like to talk tomorrow about the facts we're relating to the judge. Are you and Erich available?

Steve

Steven R. Ruby

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