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GLENCORE MEETING WITH DEPUTY REGIONAL ADMINISTRATOR
AND SENIOR EPR/ECEJ MANAGEMENT (2/3/2016)
Columbia Falls Aluminum Reduction Plant Superfund Site, Montana

RA ACTION REQUESTED: Informational only in preparation for PRP-requested meeting w/ DRA and senior Superfund program management.

External Messages:
- If EPA decides to list the Site on the NPL it will not be listed on the NPL before fall of 2016.
- CFAC will begin the RI in the spring of 2016. Until a decision is made on listing, CFAC will be conducting the RI/FS pursuant to the AOC.
- CFAC has asked that EPA consider implementing the Superfund Alternative (SA) approach in lieu of finalizing the listing. EPA management is considering this request. In the meantime, EPA appreciates Glencore's cooperation in proceeding with the RI/FS pursuant to the AOC to define nature and extent of contamination.

NPL Listing Status
- On 3/26/15, EPA proposed the Site for listing on the NPL. Public comment closed 6/2/15. EPA received 77 comments.
- Gov. Bullock, the Columbia Falls Mayor and City Council, and Sen. Tester supported listing at the time of the proposed listing; Rep. Zinke opposed. CFAC and ARCO opposed listing.
- HQ has reviewed public comments, and has determined that the Site still qualifies for listing. HQ is preparing the response to comments to finalize the proposed listing. The listing is on hold until the Region provides input to HQ regarding the finalization of the listing.

Superfund Alternative Approach
- During negotiations for the AOC for the RI/FS, Glencore requested that EPA utilize the SA approach. The parties agreed that our first priority was to finalize the AOC to initiate the RI/FS. EPA's negotiating team committed to raising Glencore's request to EPA management after AOC negotiations were concluded.
- HQ has issued SA approach guidance, which contains threshold eligibility criteria (9/28/12).

Possible Questions for Glencore:
- 1. Glencore is not a signatory to the AOC. ***What assurance can you offer that Glencore is committed to cleaning up the Site through RD/RA given that Glencore's subsidiary, CFAC, is largely a defunct corporate entity?***
- 2. This is a multi-party site and the other PRP has declined to participate in the RI/FS. ***Is Glencore willing to solely fund RD/RA in the event that ARCO continues to refuse to participate in the investigation and cleanup of the Site?***
- 3. It is a matter of public record that Glencore and the Montana DEQ came to an impasse before EPA became involved. The Governor is on record in support of listing the Site. ***How does Glencore plan to work with the State in the future given that the State is entitled to substantial and meaningful involvement in the remedial process under the NCP?***

SA Approach

Guidance

- HQ has issued guidance to ensure that Regions follow the practices normally followed at NPL sites: 1) using the same response techniques, standards and guidance and achieving comparable cleanup levels, 2) ensuring that states, natural resource trustees and community have the same opportunity for involvement as that provided at NPL sites, 3) and ensuring EPA's enforcement posture is equivalent to its enforcement posture at NPL sites.

Threshold Eligibility Criteria

- **Listing Eligibility** -- Site contaminants are significant enough that the Site would be eligible for listing on the NPL (*i.e.*, Hazard Ranking Score (HRS) ≥ 28.5),
- **Anticipated Remedial Action** -- A long-term response (*i.e.*, a remedial action) is anticipated at the Site, and
- **Cooperative PRP** -- There is a willing, capable PRP who will negotiate and sign an agreement with EPA to perform the investigation or cleanup.

SA Approach Pros	
Site Meets Threshold Criteria	The Site meets the 3 threshold criteria for using the SA approach: 1. **Listing Eligibility** -- Site contaminants (cyanide, fluoride, metals) meet HRS score of 28.5. Contamination appears to be limited to on-site at this time. 2. **Anticipated Remedial Action** -- Based on preliminary information, a long-term response is anticipated subject to confirmation through RI/FS. 3. **Cooperative PRP** – Glencore has been cooperative, including efficient and productive negotiations, developing detailed RI/FS work plan, and timely meeting obligations since AOC signed (*e.g.*, SAPs, work plan, HASPs and staffing).
Resource Savings	Using SA approach would conserve limited program resources by maintaining productive EPA-Glencore relationship.
Community Good Will	The Columbia Falls community is the western gateway to Glacier National Park, and some community members are concerned about potential NPL stigma, which may impact the tourism industry. Some community members favor postponing decision to finalize listing now that EPA has negotiated an AOC for the RI/FS.
Responsiveness to PRP Request	Glencore has asked EPA to consider the SA approach due to concern about NPL listing stigma, potential redevelopment complications, and desire to maintain cooperative working relationship. Adopting SA approach would help maintain productive EPA – Glencore relationship.
Community Support	The community supported listing during the public comment period to encourage Glencore to clean up and redevelop the Site. Community sentiment has shifted since EPA entered into the AOC for the RI/FS. The Mayor and County Commissioner now oppose listing. EPA needs to have follow-up discussion w/ the Governor's Office and Montana DEQ to gauge their support for the SA approach.
Delegation Support	Sen. Tester's office was supportive of proposing the Site to the NPL. Sen. Tester's office has asked for additional information about the SA approach, and a follow-up call is scheduled for 2/4/16.
Availability of RI Sampling Data	Delaying making a decision on listing until fall, 2016, will allow EPA to make a more informed decision about listing based on Glencore's level of cooperation. Additional information on the extent of contamination will become available once initial RI sampling is completed.

SA Approach Cons	
Region 8 Experience with SA Approach	Region 8 has never formally adopted the SA approach for an NPL-caliber site. The Kennecott sites are *de facto* SA approach sites under a 1995 EPA-State of Utah-Kennecott MOU, however, that designation predates the SA approach guidance. Region 8 has not designated any NPL-caliber sites as SA approach sites since the issuance of the guidance.
SA Approach Litigation Risk	The SA approach could be challenged in federal court as inconsistent with the NCP. This is a litigation risk b/c there is a recalcitrant PRP (ARCO). If this issue were raised by the recalcitrant PRP, it likely would delay cleanup.
Non-Availability of Superfund Remedial Monies	If both Glencore and ARCO become unwilling or unable to perform RD/RA, the Region would not be able to tap Superfund remedial monies to implement the remedy selected in the ROD until HQ reinstituted the NPL listing process, which may delay the cleanup.
Multi-Party Site Complications	There are two principal PRPs. Glencore's subsidiary, CFAC, as the current property owner/operator, has agreed to carry out the RI/FS. The other party, ARCO, the past owner/operator, declined to participate in RI/FS negotiations. Glencore may have litigation risk in bringing a contribution action against ARCO because a PRP's contribution rights under CERCLA at a SA approach site has never been litigated.
Limited Scope of Existing Agreement	The AOC w/ CFAC only goes through the RI/FS. If EPA does not finalize listing and Glencore (as well as ARCO) becomes unwilling or unable to carry out the RI/FS and/or RD/RA, EPA would have to reinstitute the NPL listing process which may delay cleanup once EPA selects the remedy in a ROD.
Glencore/CFAC Financial Viability	The signatory to the AOC for the RI/FS is CFAC, not CFAC's parent company, Glencore. CFAC is largely a defunct entity since the aluminum reduction plant was closed. Glencore has publicly said it "stands behind" the AOC, however, the parent company's statements are not legally binding. Moreover, as a multi-national commodity trading company, Glencore is experiencing a depressed commodity market. However, Glencore has aggressively taken action to reduce its income-to-debt ratio, reducing its overall debt from $30B to $21.3B by the end of 2015. It plans to further reduce debt to $18-$19B by the end of 2016. (Reuters (12/10/15)).
EPA – State Relationship	The Governor of Montana and Montana DEQ supported listing the Site. The Governor's support for the SA approach would need to be confirmed prior to EPA management adopting the SA approach.
Glencore – DEQ Relationship	Glencore has a strained relationship with the Montana DEQ. Before the State referred the Site to EPA, negotiations broke down between the State and the company resulting in acrimonious public comments. Under a separate state administrative process, CFAC's contractors is in the process of demolishing industrial buildings on-site and removing spent potliners.
Financial Assurance for RD/RA	EPA proposed conservative $4M figure for the RI/FS in the AOC. Although Glencore was not a signatory to the AOC, as CFAC's parent company, Glencore did not balk at this figure and agreed to provide a liquid form of FA (letter of credit). EPA will need to secure additional FA for RD/RA at the time of RD/RA consent decree negotiations, however, this is true whether the Site is listed or designated as a SA approach site.