Message

From: Chalfant, Mark [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C1D644333F94EA2AFF756BE6469E5AD-CHALFANT, MARK]
Sent: 11/13/2015 4:29:52 PM
To: Vranka, Joe [vranka.joe@epa.gov]; Miller, Johanna [Miller.Johanna@epa.gov]
CC: Cirian, Mike [Cirian.Mike@epa.gov]; Wilder, Scott [Wilder.Scott@epa.gov]; Peterson, Cynthia [Peterson.Cynthia@epa.gov]; Madigan, Andrea [Madigan.Andrea@epa.gov]
Subject: FW: Revised Draft AOC as of 11/13/2015
Attachments: Col_Falls-CERCLA_AOC-RIFS_11-13-2015.docx

Joe and Johanna,
Just keeping you in the loop on Anaconda/CFAC. Mike Cirian gave the company's corporate representative a "heads up" about the matters discussed in the email last night. Please let me know if you have any questions.
Thank you.
Mark

From: Chalfant, Mark
Sent: Friday, November 13, 2015 9:17 AM
To: 'Otis, Andrew D.'
Cc: Cirian, Mike; Wilder, Scott
Subject: Revised Draft AOC as of 11/13/2015

Mr. Otis:

Attached please find a revised redline version of the draft administrative settlement agreement for the remedial investigation/feasibility study, which I am providing in preparation for the parties' November 18, 2015 meeting. EPA is appreciative of Glencore's and CFAC's good faith efforts to negotiate the administrative settlement agreement and detailed RI/FS work plan. I understand that the parties are close to finalizing the RI/FS work plan, and we wish to conclude settlement negotiations.

With respect to CFAC's request that EPA approve the Superfund Alternative approach, the agency continues to have internal discussions about the merits of finalizing the listing of the site on the National Priorities List (NPL) versus utilizing the Superfund Alternative approach. We do not anticipate that EPA management will reach a final decision in the near future.

As a path forward, EPA's negotiating team proposes that the parties finalize the administrative settlement agreement – including the detailed RI/FS work plan– with the understanding that EPA will continue to assess the merits Superfund Alternative approach. The agency is not expected to finalize NPL listing earlier than fall, 2016. If the parties can finalize the AOC now to begin implementation of the RI/FS, evidence of CFAC's continuing cooperation in addressing the site may help to inform EPA management's final decision regarding the Superfund Alternative approach.

EPA hopes to conclude our settlement negotiations during our November 18th meeting. In an effort to quickly conclude negotiations, EPA is willing to agree to eliminate the past response cost provision from the draft administrative settlement agreement if the parties can reach final agreement on settlement terms by next Friday, November 20th. The reason for this deadline is that I will be out of the office for two weeks starting Tuesday, November 24th and will not be back in the office until Tuesday, December 8th. We would strongly prefer not have this matter languish during my absence from the office.

After considering EPA's proposed path forward and the agency's proposed resolution of the outstanding administrative settlement agreement items below, please let me know if CFAC considers this deadline not to be feasible. I look forward to speaking with you on November 18th. Please do not hesitate to call me if you have any questions in the meantime.

Thank you.
Mark
303-312-6177

EPA's Proposed Resolution of Outstanding AOC Items

Page 11
Paragraph 43 (Off-Site Shipment)
As we discussed during our last call, EPA is not comfortable with the opening to paragraph 43 which CFAC has proposed, particularly in view of the fact that the plan and schedule for disposal of SPM have not been finalized with the Montana Department of Environmental Quality. We are proposing a new subparagraph 43.c which hopefully addresses both parties' interests. EPA requests that CFAC provide a copy of the plan and schedule for disposal of SPM once they have been finalized with the State.

Page 16
Paragraph 55 (Sampling)
EPA agrees to CFAC's request to add the term, "validated," to subparagraph 55.a to be consistent with the reporting requirements in paragraph 45 (Progress Reports). As we discussed, the EPA remedial project manager would appreciate the company's cooperation in giving the agency a "heads up" about unusual sampling results prior to CFAC receiving validated results.

Page 19
Paragraph 66 (Natural Resource Damages)
Per our previous discussions, EPA has added a new paragraph regarding natural resource damages which is necessary if the agency ultimately approves CFAC's request to utilize the Superfund Alternative approach. This provision is required in administrative settlement agreements by the Department of Justice, and inclusion of this provision would eliminate the need to amend the administrative settlement agreement should EPA approve CFAC's request to utilize the Superfund alternative approach at a later date.

Page 20
Paragraph 69 (Dispute Resolution)
The parties have had extended discussions regarding dispute resolution. EPA has made significant concessions in a number of areas in negotiating the terms of the proposed settlement. The dispute resolution provision in the national model is one that the agency feels strongly about adhering to the national model language.

Page 20
Paragraph 71.a (Stipulated Penalties)
EPA has eliminated reference to stand-alone human health and risk assessments to be consistent with the RI/FS work plan.

Page 24
Paragraph 82 (Payment of Past Response Costs)
EPA agrees to eliminate the past response cost provision from the AOC for RI/FS provided that the parties can reach final agreement on the terms of the settlement by November 20th. The agency has provided back-up cost documentation to Atlantic Richfield Company, and reserves the right to pursue either potentially responsible party for recovery of past response costs in the future.

Page 32
Paragraph 112 (Integration/Appendices)
CFAC previously agreed to provide EPA a revised map to attach to the AOC as Appendix B (draft RI/FS work plan, Figure 1).

Page 33
Paragraph 117 (Community Involvement)
Per our previous discussions, EPA has added a new paragraph to the AOC regarding community involvement which is also necessary if the agency ultimately approves CFAC's request to utilize the Superfund alternative approach. Inclusion of this provision would eliminate the need to amend the administrative settlement agreement should the Superfund alternative approach be approved by EPA at a later date.

All
Final Document QA
The parties need to do a final check regarding section and paragraph numbering.

Mark A.R. Chalfant
Attorney
Legal Enforcement Program
Office of Enforcement, Compliance and Environmental Justice | U.S. EPA Region 8
303.312.6177 | chalfant.mark@epa.gov

This email is for the intended recipient only and may contain material that is privileged and/or confidential. If you believe you have received this email in error, please notify the sender. Thank you.