Appointment

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Sent: 2/23/2016 3:49:40 PM
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Subject: Conference Call with Senator Tester's Staff on CFAC
Location: Conference Line/Code / Ex. 6 / Mountains and Plains (9th Floor)

Start: 2/23/2016 11:00:00 PM
End: 2/23/2016 11:30:00 PM
Show Time As: Busy

Hi all,
Erik Nylund (Senator Tester's staff) would like a call to discuss the information Whitney sent him last week (re-attached below) and to discuss community outreach.

1. **Does the CFAC site qualify for the Superfund alternative approach?**

EPA is taking a hard look at the eligibility criteria for the Superfund Alternative Approach to determine whether the CFAC site meets the eligibility criteria. The agency is gathering additional information from CFAC to determine whether the CFAC site meets the eligibility criteria.

2. **If so, is the Alternative Approach a faster and better method than the traditional NPL/Superfund approach?**

The Superfund Alternative Approach may not result in a faster and better method than the traditional Superfund/NPL approach at the CFAC site. The Superfund Alternative Approach uses the same investigation and cleanup process and standards as if the site were listed on the NPL. The first phase of the remedial process --the remedial investigation/feasibility study-- is currently underway. The CFAC site has been proposed for NPL listing, and the Superfund Alternative Approach could delay cleanup if the potentially responsible party (ies) become unwilling or unable to perform work and EPA needs federal funding to implement the selected remedy.

3. **What are the advantages of the Alternative approach?**

Some responsible parties prefer that a site be addressed through the Superfund process without NPL listing and are willing to agree to use the same response techniques, standards, and guidance and to achieve comparable cleanup levels. The Superfund Alternative Approach provides EPA with a mechanism to accommodate this preference.

4. **What are the drawbacks of the Alternative approach?**

EPA has proposed the CFAC site for NPL listing, and the Superfund Alternative Approach could delay cleanup if the potentially responsible party (ies) become unwilling or unable to perform work and EPA needs federal funding to implement the selected remedy. EPA is prohibited by federal law from tapping federal Superfund

monies to pay for the cost of implementing the remedy at sites that are not listed on the NPL. As such, EPA would need to finalize the proposed rule to add the site to the NPL to access federal funding. In addition, EPA's rulemaking to add the list to the NPL could be challenged in federal court. These activities likely would delay cleanup.

5. Who makes the decision as to which approach is used? Is there public comment/input on this approach?

The decision to adopt the Superfund Alterative Approach will be made by the EPA, and is not subject to public comment. Although there is no formal public comment period, the agency is always willing to hear from the community and other interested parties. In making this decision, EPA would confer with the State of Montana.

6. If the alternative approach is selected and Glencore/CFAC "walks away" after testing is completed, what happens? Does EPA than have to start the NPL process all over or does it get listed and Superfund procedures started?

If EPA approved the Superfund Alternative Approach for the CFAC site, EPA would defer finalizing the proposed NPL listing. In order to finalize the listing at a later date if the potentially responsible party(ies) becomes unwilling or unable to perform work, EPA would need to respond to public comments on the proposed listing, address any concerns raised by such comments, and finalize the proposed rule to add the site to the NPL. In addition, EPA's final rule could be challenged in federal court. These activities likely would delay cleanup.

7. We were led to believe that the site was already listed on the NPL – please provide clarification on the process and where it currently stands?

A site is added to the NPL in accordance with a formal rulemaking process established by the Administrative Procedures Act. EPA published the proposed rule to add the CFAC site to the NPL on March 26, 2015, and established a public comment period. EPA received 77 public comments and has determined that the CFAC site qualifies for NPL listing. The site will be listed on the NPL only after EPA responds to public comments and publishes the final rule. EPA has committed not to list the site on the NPL any earlier than fall, 2016. For more information about the listing process, please visit the following web site:

http://www.epa.gov/superfund/about-superfund-cleanup-process#tab-2