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CFAC Answers to Columbia Falls City Council Questions Regarding NPL Listing

Q1. Does the CFAC site qualify for the Superfund alternative approach?

A1. Yes. The EPA criteria to qualify for the Superfund Alternatives Approach is for the site (i) to be eligible for being placed in the National Priority List; (ii) require a long term remedy; and (ii) have a Potentially Responsible Party ready, willing and able to address the site. The CFAC site meets all of these criteria.

Q2. If so, is the Alternative Approach a faster and better method than the traditional NPL/Superfund approach?

A2. Yes. As the EPA says on the Superfund Alternatives Approach (SAA) web page: "The SA approach can potentially save the time and resources associated with listing a site on the NPL. As long as a PRP enters into an SAA approach agreement with EPA, there is no need for EPA to list the site on the NPL (although the site qualifies for listing on the NPL)." See http://www.epa.gov/enforcement/superfund-alternative-approach.

The Administrative Order on Consent that CFAC entered into with EPA on November 30, 2015 qualifies as a SA approach agreement.

Q3. What are the advantages of the Alternative approach?

A3. The primary advantage is that the site **is not finally listed on the NPL** and thus does not have to be delisted when finally remediated to applicable standards. No site that has been placed on the NPL in Montana has ever been removed.

Q4. What are the drawbacks of the Alternative approach?

A4: There are none, really. Listing of the site on the NPL allows EPA to expend funds from the Superfund to clean the site up. If that becomes necessary, the site can always be listed on the NPL.

Q5. Who makes the decision as to which approach is used? (Guessing EPA) Is there public comment/input on this approach?

A5. The EPA headquarters makes the decision about whether to list a site on the NPL and the EPA regional office (in this case, Region 8) makes the decision about whether the site can participate in the Superfund Alternatives Approach. There is an opportunity for the public to comment regarding listing the site on the NPL.

Q6. 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?

A6: In the unlikely event that there is no responsible party to perform the clean up, EPA may have to re-list the site on the NPL in order to use federal Superfund money to remediate the site. At that time, the EPA should have all of the data that it needs to propose and finalize the site on

the NPL. This is a complicated rule making process but the EPA has demonstrated that it can be achieved in 12 months for this site.

Q7. 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?

A7: Placing the site on the NPL is a rule making process. That means that the site is not fully on the NPL until the EPA promulgates a final rule determining that the site is on the NPL. There are several steps in the rule making process. First, a site is proposed for listing on the NPL. The EPA then takes comments on that proposal. Based on those comments, the EPA determines whether the site qualifies for final listing on the NPL. If the EPA determines to proceed with NPL listing for the site, it promulgates a final rule listing the site on the NPL.

The EPA proposed to list the CFAC site on the NPL in March 2015. That proposal called for public comments on the EPA's proposed listing and its rationale as to why the site qualified for NPL listing. The EPA states that it received 77 comments on its proposal to list the CFAC site on the NPL. The EPA reviewed the comments and has determined that the site qualifies for NPL listing. However, the EPA has not yet determined whether to promulgate a final rule placing the site on the NPL.

Q8. Please provide any information you believe to assist in clarifying the information in the press and presented at the Jan. 21st meeting.

A8. The minutes for the February 1, 2016 City Council meeting state that "Mayor Barnhart expressed concern with the sudden introduction of the Superfund Alternative approach, noting that the information received earlier regarding the CFAC site and the NPL, would not have allowed the site to qualify for the alternative approach."

CFAC has been requesting that the site be considered under the EPA's Superfund Alternatives Approach since December 2014 and the site qualifies for the Approach.

The Council should remember that once the site is finally listed on the NPL, **it will likely never be removed.** Managing the CFAC Site under the SAA will allow the site to be addressed in the same way that it would be if listed on the NPL without the need to finalize the CFAC site on the NPL or try to remove the site from the NPL once it is sufficiently remediated to qualify for de-listing.

Here are some additional background information regarding NPL listed sites in Montana and the Superfund Alternatives Approach.

- There are 18 sites on the NPL in Montana; none have ever been removed from the list. Industrial reuse has not occurred at any Montana site that was finally listed on the NPL and has occurred on only one Montana Superfund site: The Burlington Northern Livingston Shop Complex, which was proposed for NPL listing in 1994 but the listing was never finalized.

- According to EPA, while multiple sites have and are undergoing community-based planning for reuse, actual re-use has occurred at a handful of sites and has included only government activity and recreation. These sites are:

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o Local government buildings and equipment at the Moat and Upper Tenmile Creek Mining Area sites

o Recreation at the Milltown Sediments and the Anaconda Company site.

- Only two of the 18 Montana NPL sites – Idaho Pole and Mouat Industries – have been designated by EPA as ready for reuse. The Town of Columbus constructed a building on the Mouat site, designated as ready for reuse in 2009. The Idaho Pole site was designated as ready for reuse in 2010 but has not been redeveloped.

- Other EPA Regions, such as Region 4 (20 sites) and Region 5 (31 sites or parts of sites) have used the Superfund Alternatives Approach to a much greater degree than Region 8 and with apparent success.

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