Message

From: Otis, Andrew [Andrew.Otis@lockelord.com]
Sent: 10/31/2018 1:39:28 PM
To: Chalfant, Mark [Chalfant.Mark@epa.gov]
Subject: RE: Anaconda/CFAC--RI/FS Schedule Modification
Attachments: AOC Mod-RIFS Work Plan Schedule_2018.10.29_Draft_LL2.DOCX; AOC Mod-RIFS Work Plan Schedule_2018.10.29_Draft_LL v EPA original.PDF

Mark,

Attached are CFAC's suggested changes to the second amendment of the AOC in a clean version and a redline against the version that you sent to me. Please call me if you have any questions would like to discuss.

Best regards,

Andrew

Andrew Otis
Locke Lord LLP
Brookfield Place
200 Vesey, 20th Floor
New York, NY 10281
212-912-2816 Direct
646-786-4116 Fax
917-612-7321 Mobile
andrew.otis@lockelord.com
View My BIO I Connect on LinkedIn I Visit lockelord.com

From: Chalfant, Mark [mailto:Chalfant.Mark@epa.gov]
Sent: Monday, October 29, 2018 4:42 PM
To: Otis, Andrew
Subject: RE: Anaconda/CFAC--RI/FS Schedule Modification

Andrew:
Sorry I meant to fix that. Thanks for catching the numbering mistake. In the model, the paragraph cross-reference is to the immediately preceding paragraph (114a). I fixed it in the attached revised draft.
Mark

Mark A.R. Chalfant
Senior Enforcement Attorney | Office of Enforcement, Compliance and Environmental Justice | U.S. EPA Region 8
National Administrative Litigation Co-Coordinator | Office of Civil Enforcement | U.S. EPA Headquarters
Work: 303.312.6177 | Fax: 303-312-6953 | chalfant.mark@epa.gov

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From: Otis, Andrew <Andrew.Otis@lockelord.com>
Sent: Monday, October 29, 2018 2:34 PM
To: Chalfant, Mark <Chalfant.Mark@epa.gov>
Subject: RE: Anaconda/CFAC--RI/FS Schedule Modification

Mark,

Thanks for this. This work except for the reference to paragraph 117 in new paragraph 114b.. Paragraph 117 of the 2015 AOC relates to community involvement. Did you mean paragraph 115?

Best regards,

Andrew

Andrew Otis
Locke Lord LLP
Brookfield Place
200 Vesey, 20th Floor
New York, NY 10281
212-912-2816 Direct
646-786-4116 Fax
917-612-7321 Mobile
andrew.otis@lockelord.com
View My BIO I Connect on LinkedIn I Visit lockelord.com

From: Chalfant, Mark [mailto:Chalfant.Mark@epa.gov]
Sent: Monday, October 29, 2018 4:25 PM
To: Otis, Andrew
Subject: RE: Anaconda/CFAC--RI/FS Schedule Modification

Andrew:
I've taken a run at incorporating the model language into the amendment template. To keep the original paragraph numbering from the 2015 AOC, I numbered the two new paragraphs from the model as paragraphs 114a and 114b. Paragraphs 113 and 115 remain unchanged. That way we preserve the original paragraph numbering the 2015 AOC. Does that work for you?
Mark

Mark A.R. Chalfant
Senior Enforcement Attorney | Office of Enforcement, Compliance and Environmental Justice | U.S. EPA Region 8
National Administrative Litigation Co-Coordinator | Office of Civil Enforcement | U.S. EPA Headquarters
Work: 303.312.6177 | Fax: 303-312-6953 | chalfant.mark@epa.gov

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From: Otis, Andrew <Andrew.Otis@lockelord.com>
Sent: Monday, October 29, 2018 1:46 PM
To: Chalfant, Mark <Chalfant.Mark@epa.gov>
Subject: RE: Anaconda/CFAC--RI/FS Schedule Modification

Mark,

Thanks. The modification provisions of the 2015 AOC are in Article XXIX "EFFECTIVE DATE AND SUBSEQUENT MODIFICATION" which includes paragraphs 113-115.

Paragraph 113 addresses effective date. I don't think that we want to remove or replace that paragraph.

Are you proposing that paragraph 1 of your email below becomes a new paragraph in that Article?

Paragraph 114 addresses amendment of the AOC. Are you proposing that it be replaced by paragraph 2 in your email below?

Paragraph 115 states that no informal advice amends the AOC and that AOC can only be amended through formal modification. Are you proposing that paragraph 3 in your email below replaces paragraph 115?

Best regards,

Andrews

Andrew Otis
Locke Lord LLP
Brookfield Place
200 Vesey, 20th Floor
New York, NY 10281
212-912-2816 Direct
646-786-4116 Fax
917-612-7321 Mobile
andrew.otis@lockelord.com
View My BIO I Connect on LinkedIn I Visit lockelord.com

From: Chalfant, Mark [mailto:Chalfant.Mark@epa.gov]
Sent: Monday, October 29, 2018 2:59 PM
To: Otis, Andrew
Subject: RE: Anaconda/CFAC--RI/FS Schedule Modification

Andrew:
I'm thinking we state in the AOC amendment that the parties agree to substitute the model RI/FS AOC language for the Modification paragraphs in the 2015 agreement. I recommend that we copy & paste the model language into the actual AOC amendment so the record is clear in case the model changes in the future.
Mark

Mark A.R. Chalfant
Senior Enforcement Attorney | Office of Enforcement, Compliance and Environmental Justice | U.S. EPA Region 8
National Administrative Litigation Co-Coordinator | Office of Civil Enforcement | U.S. EPA Headquarters
Work: 303.312.6177 | Fax: 303-312-6953 | chalfant.mark@epa.gov

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From: Otis, Andrew <Andrew.Otis@lockelord.com>
Sent: Monday, October 29, 2018 12:50 PM
To: Chalfant, Mark <Chalfant.Mark@epa.gov>
Subject: RE: Anaconda/CFAC--RI/FS Schedule Modification

Mark,

Thanks. This is helpful. I like these concepts but wanted to make sure that I understood how the amendment would work with the current AOC before discussing it with the client. Is it intended that these paragraphs would replace paragraphs 114 and 115 of the current AOC?

Best regards,

Andrew

Andrew Otis
Locke Lord LLP
Brookfield Place
200 Vesey, 20th Floor
New York, NY 10281
212-912-2816 Direct
646-786-4116 Fax
917-612-7321 Mobile
andrew.otis@lockelord.com
View My BIO I Connect on LinkedIn I Visit lockelord.com

From: Chalfant, Mark [mailto:Chalfant.Mark@epa.gov]
Sent: Monday, October 29, 2018 2:27 PM
To: Otis, Andrew
Subject: RE: Anaconda/CFAC--RI/FS Schedule Modification

Andrew:
We are amenable to changing the Modification provision in the AOC to reflect the model RI/FS AOC language, which reads as stated below. Please let me know if you have any questions.
Thank you.
Mark

MODEL LANGUAGE:

I. MODIFICATION

1. EPA's Project Coordinator may modify any plan or schedule or the SOW in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of EPA's Project Coordinator's oral direction. Any other requirements of this Settlement may be modified in writing by mutual agreement of the parties.

2. If Respondent seeks permission to deviate from any approved work plan or schedule [or the SOW], Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondents may not proceed with the requested deviation until receiving oral or written approval from EPA's Project Coordinator pursuant to Paragraph 117.

3. No informal advice, guidance, suggestion, or comment by EPA's Project Coordinator or other EPA representatives regarding any deliverable submitted by Respondents shall relieve Respondents of their obligation to obtain any formal approval required by this Settlement, or to comply with all requirements of this Settlement, unless it is formally modified.

Mark A.R. Chalfant
Senior Enforcement Attorney | Office of Enforcement, Compliance and Environmental Justice | U.S. EPA Region 8
National Administrative Litigation Co-Coordinator | Office of Civil Enforcement | U.S. EPA Headquarters
Work: 303.312.6177 | Fax: 303-312-6953 | chalfant.mark@epa.gov

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From: Otis, Andrew <Andrew.Otis@lockelord.com>
Sent: Thursday, October 25, 2018 9:37 AM
To: Chalfant, Mark <Chalfant.Mark@epa.gov>
Subject: RE: Anaconda/CFAC--RI/FS Schedule Modification

Sure.

Andrew Otis
Locke Lord LLP
Brookfield Place
200 Vesey, 20th Floor
New York, NY 10281
212-912-2816 Direct
646-786-4116 Fax
917-612-7321 Mobile
andrew.otis@lockelord.com
www.lockelord.com

From: Chalfant, Mark [mailto:Chalfant.Mark@epa.gov]
Sent: Thursday, October 25, 2018 11:37 AM
To: Otis, Andrew
Subject: RE: Anaconda/CFAC--RI/FS Schedule Modification

Yes, I would be, but let me make sure Andrea is on board with that change. I'll get back to you. Mark

Mark A.R. Chalfant
Senior Enforcement Attorney | Office of Enforcement, Compliance and Environmental Justice | U.S. EPA Region 8
National Administrative Litigation Co-Coordinator | Office of Civil Enforcement | U.S. EPA Headquarters
Work: 303.312.6177 | Fax: 303-312-6953 | chalfant.mark@epa.gov

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From: Otis, Andrew [mailto:Andrew.Otis@lockelord.com]
Sent: Thursday, October 25, 2018 9:36 AM
To: Chalfant, Mark <Chalfant.Mark@epa.gov>
Subject: RE: Anaconda/CFAC--RI/FS Schedule Modification

Thanks, Mark. I think that your suggestion regarding the RPM being given the authority to change the schedule makes sense. I've discussed the idea with John and he likes it. Would you be open to including that concept in this amendment to this AOC?

Andrew Otis
Locke Lord LLP
Brookfield Place
200 Vesey, 20th Floor
New York, NY 10281
212-912-2816 Direct
646-786-4116 Fax
917-612-7321 Mobile
andrew.otis@lockelord.com
www.lockelord.com

From: Chalfant, Mark [mailto:Chalfant.Mark@epa.gov]
Sent: Thursday, October 25, 2018 10:12 AM
To: Otis, Andrew
Subject: RE: Anaconda/CFAC--RI/FS Schedule Modification

Andrew,

No worries. Here's what I believe is the final Word version of the AOC amendment. For future cases, it may be more efficient to enter into an AOC which gives the EPA Remedial Project Manager the discretion to modify the workplan schedule at the request of the AOC respondent. This would eliminate the need to prepare and file a formal AOC amendment. We have the flexibility to negotiate either type of arrangement with a potentially responsible party. Thanks for preparing the amendment.
Mark

Mark A.R. Chalfant
Senior Enforcement Attorney | Office of Enforcement, Compliance and Environmental Justice | U.S. EPA Region 8
National Administrative Litigation Co-Coordinator | Office of Civil Enforcement | U.S. EPA Headquarters
Work: 303.312.6177 | Fax: 303-312-6953 | chalfant.mark@epa.gov

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From: Otis, Andrew [mailto:Andrew.Otis@lockelord.com]
Sent: Thursday, October 25, 2018 8:04 AM
To: Chalfant, Mark <Chalfant.Mark@epa.gov>
Subject: RE: Anaconda/CFAC--RI/FS Schedule Modification

Mark,

Thanks for the reminder. Understood. If you send me word copy of the AOC First Amendment I will draft and send for your review.

Best regards,

Andrew

Andrew Otis
Locke Lord LLP
Brookfield Place
200 Vesey, 20th Floor
New York, NY 10281
212-912-2816 Direct
646-786-4116 Fax
917-612-7321 Mobile
andrew.otis@lockelord.com
www.lockelord.com

From: Chalfant, Mark [mailto:Chalfant.Mark@epa.gov]
Sent: Thursday, October 25, 2018 9:59 AM
To: Otis, Andrew
Subject: Anaconda/CFAC--RI/FS Schedule Modification

Andrew:
Thanks for your VM msg. yesterday. Mike Cirian has informed me that he and Mr. Stroiazzo have tentatively agreed to an RI/FS schedule modification. As you may recall, in 2017, we modified the RI/FS schedule appended to the 2015 AOC. We will need to follow the same process this time, which entails preparing a formal amendment to the AOC and having the Assistant Regional Administrator and the Program Director sign off on the schedule modification. Attached are the documents we used in 2017. I just need to confirm with Andrea Madigan that the CERCLA delegations have not changed since 2017. Happy to discuss by phone.
Thanks,
Mark

Mark A.R. Chalfant
Senior Enforcement Attorney | Office of Enforcement, Compliance and Environmental Justice | U.S. EPA Region 8
National Administrative Litigation Co-Coordinator | Office of Civil Enforcement | U.S. EPA Headquarters
Work: 303.312.6177 | Fax: 303-312-6953 | chalfant.mark@epa.gov

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