Message

From: Chalfant, Mark [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C1D644333F94EA2AFF756BE6469E5AD-CHALFANT, MARK]
Sent: 7/18/2017 8:21:44 PM
To: McCaffrey, Shawn [Mccaffrey.Shawn@epa.gov]
CC: Cirian, Mike [Cirian.Mike@epa.gov]
Subject: FW: Anaconda/CFAC Oversight Bill Issue
Attachments: EPA BIll #2781726S0036 Jul 2017.pdf

Deliberative Process; Attorney Client / Ex. 5 & Law Enforcement/ Ex. 7(a)

From: Otis, Andrew D. [mailto:aotis@curtis.com]
Sent: Tuesday, July 18, 2017 1:24 PM
To: Chalfant, Mark <Chalfant.Mark@epa.gov>
Cc: Hogue, Matthew <Hogue.Matthew@epa.gov>
Subject: RE: Anaconda/CFAC Oversight Bill Issue

Mark,

Thanks for following up.

I had intended to resolve this issue with you informally so this email is not intended to contest payment of Future Response Costs pursuant to paragraph 85 of the Administrative Settlement Agreement and Order on Consent for Remedial Investigation/Feasibility Study ("AOC") but is to provide you with the additional information requested in your email below. Furthermore, Columbia Falls Aluminum Company, LLC ("CFAC") reserves its rights under the AOC, including but not limited to the right to contest payment of Future Response Costs as provided therein.

CCA believes that the invoice sent by Karren Johnson to CFAC and dated July 6, 2017 (EPA Bill # 2781726S0036), a copy of which is attached to this email for your reference, contains $13,492.56 in costs that do not fall under the definition of "Future Response Costs" in the AOC and therefore are not recoverable by EPA under the AOC.

Under Section XIX, Payment of Response Costs, Paragraph 83, Payments of Future Response Costs, CFAC is liable to pay to EPA all Future Response Costs not inconsistent with the NCP.

Future Response Costs are defined in paragraph 10 of the AOC as including "all costs, including but not limited to, direct and indirect costs, that the United States incurs in: (i) reviewing or developing plans, report and other deliverables submitted pursuant to the Settlement Agreement; (2) overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement, including but not limited to , payroll costs, travel costs, laboratory costs;....."

All of the costs listed in the definition cannot be incurred until the after the Effective Date of the AOC. The Effective Date of the AOC is, according to paragraph 113, the date "that the Settlement Agreement is signed by the Regional Administrator or his/her delegate."

Although when a cost is "incurred" is not defined in the AOC or EPA Guidance, EPA complies with standards issued by the Federal Accounting Standards Advisory Board (FASAB). The 2016 FASAB Handbook defines Obligations Incurred as, among other things, amounts of services received in one period that are payable in that or a future period. Thus costs

are "incurred' by EPA for purposes of the definition of "Future Response Costs" in the AOC when they receive a voucher from a contractor for such costs.

The EPA signed the AOC on November 30, 2015 which is the Effective Date. Therefore, costs incurred, i.e. for which EPA received vouchers, prior to November 30, 2015 are costs incurred prior to the Effective Date of the AOC, cannot be Future Response Costs pursuant to the AOC, and therefore should not be recoverable by EPA. Furthermore, if such direct costs are not recoverable by EPA under the AOC, indirect costs associated with such direct costs should also not be recoverable under the AOC.

EPA received the following vouchers for the following services rendered from the following contractors in the following amounts with the following associated indirect costs prior to November 30, 2015:

CDM Federal Programs Corp, Voucher No: B07200, date: 11/20/15, Site Direct Amount: $7,027.35, indirect amount: $3,969.05, Total: $10,996.4
Toeroek Associates, Voucher No: 3, date: 11/13/17, Site Direct Amount: $1,551.9, indirect amount: $876.51, Total: $2,428.41
Weston Solutions, Voucher No. TO04-29, date: 11/20/15, Site Direct Amount: $41.07, indirect amount: $26.68, Total $67.75

Total: $13,492.56.

Thus, CFAC believes that $13,492.56 of costs in EPA's invoice dated July 6 are not recoverable by EPA and would request that EPA issue a new invoice without those costs included.

Let me know if you have any questions or would like to discuss.

Best regards,

Andrew

Andrew D. Otis
Partner

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From: Chalfant, Mark [mailto:Chalfant.Mark@epa.gov]
Sent: Tuesday, July 18, 2017 2:25 PM
To: Otis, Andrew D.

Cc: Hogue, Matthew
Subject: Anaconda/CFAC Oversight Bill Issue

Mr. Otis:
Thank you for your voicemail message this morning. I am sorry I missed your call. I appreciate your bringing the oversight billing issue to my attention. I would be happy to discuss this matter with you. But I would like to take you up on your offer to email me additional information about the item which appears to predate the effective date of the November, 2015 AOC for the Remedial Investigation and Feasibility Study so we can have informed discussion. I look forward to your response. I will be in the office through Thursday of this week.
Mark

Mark A.R. Chalfant
Acting Deputy Assistant Regional Administrator | 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
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