Message

From: Armann, Steve [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A0E0EA7A009D4D75BC7BEA58747CCF9E-SARMANN]
Sent: 6/15/2018 4:46:37 PM
To: Maldonado, Lewis [Maldonado.Lewis@epa.gov]; Scott, Jeff [Scott.Jeff@epa.gov]
CC: Fong, Alison [fong.alison@epa.gov]
Subject: Attorney Client Confidential - FW: NERT

Attorney Client / Ex. 5

From: Yalen, Robert (USANYS) [mailto:Robert.Yalen@usdoj.gov]
Sent: Friday, June 15, 2018 9:33 AM
To: Luzecky, Hollis <Luzecky.Hollis@epa.gov>; Roberts, Robert <Roberts.Robert@epa.gov>; Maldonado, Lewis <Maldonado.Lewis@epa.gov>; Armann, Steve <Armann.Steve@epa.gov>
Cc: Alan.Tenenbaum@usdoj.gov
Subject: FW: NERT

Attorney Client / Ex. 5

From: Jay A. Steinberg, President <trustee.president@lepetomaneinc.com>
Sent: Thursday, June 14, 2018 12:29 AM
To: Tenenbaum, Alan (ENRD) <Alan.Tenenbaum@usdoj.gov>
Cc: Yalen, Robert (USANYS) <RYalen@usa.doj.gov>; Andrew Steinberg <andrew.steinberg@lepetomaneinc.com>; toneill@foley.com
Subject: NERT

Alan:

The purpose of this email is to bring you current with reference to the AMPAC/Endeavour matter. While I feel that you have a general idea of the facts and circumstances involved, I want to make sure that you have all the relevant information.

As we previously discussed, on March 3, 2017, NDEP ordered NERT to treat perchlorate in impacted groundwater extracted from the Las Vegas Wash as part of the Southern Nevada Water Authority's construction of erosion control structures at the Sunrise Mountains and Historic Lateral Weirs (the "Weirs Project"). On March 23, 2017, Endeavour LLC submitted its Shallow Zone Capture Assessment to NDEP, which concluded that some of the perchlorate- contaminated groundwater originating from the former PEPCON site was not being captured by the groundwater treatment system operated by Endeavour, and that some of that contaminated groundwater is being captured and treated by the groundwater treatment system operated by NERT.

On November 7, 2017, NERT informed AMPAC and Endeavour that NERT was evaluating the amount of perchlorate-contaminated groundwater from the PEPCON site that may be treated by NERT, and that due to the location of the Weirs Project in the Las Vegas Wash, it was anticipated that some of the perchlorate-contaminated groundwater that NERT would treat as part of the Weirs Project may be from the PEPCON site. NERT reserved the right to seek reimbursement from, or payment by, AMPAC and Endeavoiur of the costs associated with the construction of the Weirs Project, as well as costs associated with the treatment of NERT's GWETS and any final remedy. NERT has discussed the potential treatment of perchlorate from the PEPCON site with the Department of Defense, Region 9 and NDEP. NERT has not submitted any of the WEIRS Project costs to the DOD for reimbursement, but reserved its right to submit Weirs Project costs to DOD in the future.

On January 3, 2018, NERT began treating the water as part of the Weirs project and anticipates discontinuing treatment in connection with the completion of the Weirs Project by October 2018. On April 26, 2018, Ramboll, one of NERT's consultants, presented the results of its investigation of the origins of perchlotrate-contaminated groundwater, to NERT, NDEP and Region 9. Ramboll concluded that most, and perhaps all, of the perchlorate treated from the Sunrise Mountain Weir and a portion of the perchlorate treated from the Historic Lateral Weir, originated at the PEPCON site. On June 7, 2018, Ramboll presented the results of its investigation to Endeavour and NDEP and Region 9 attended the meeting. NERT advised Endeavour that Endeavour and AMPAC would have to pay their share of the Weirs Project costs due to NERT's treatment of perchlorate that originated at the PEPCON site. NERT agreed that it would not pursue any action against Endeavour and AMPAC until July 9, 2018, but it will take all actions necessary to recover appropriate costs incurred by NERT that relate to NERT's treatment of the perchlorate that originated at the PEPCON site.

We have previously discussed, the Trust will not pursue litigation without advising you first. The amount of money involved in this controversy is considerable, and if NERT is unable to resolve this through negotiation, it will have no alternative but to litigate the matter.

I will keep you advised of the status of the negotiations.

Thanks.

Jay A. Steinberg, not individually, but solely as

President of the Environmental Response Trust Trustee

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