Message

From: Manzanilla, Enrique [Manzanilla.Enrique@epa.gov]
Sent: 8/28/2018 10:35:57 PM
To: Herrera, Angeles [Herrera.Angeles@epa.gov]; Maldonado, Lewis [Maldonado.Lewis@epa.gov]; Minor, Dustin [Minor.Dustin@epa.gov]; Loftin, Rachel [Loftin.Rachel@epa.gov]
CC: Lyons, John [Lyons.John@epa.gov]
Subject: Fwd: RID Remedial Action

FYSA

Sent from my iPhone

Begin forwarded message:

> **From:** "Strauss, Alexis" <Strauss.Alexis@epa.gov>
> **Date:** August 28, 2018 at 3:34:06 PM PDT
> **To:** "Manzanilla, Enrique" <Manzanilla.Enrique@epa.gov>
> **Cc:** "Lyons, John" <Lyons.John@epa.gov>, "Maldonado, Lewis" <Maldonado.Lewis@epa.gov>
> **Subject: RID Remedial Action**

> > **From:** "Kimball III, David P." <DPK@gknet.com>
> > **Date:** August 28, 2018 at 3:20:06 PM PDT
> > **To:** "cabrera.misael@adeq.gov" <cabrera.misael@adeq.gov>
> > **Cc:** "'kadams@az.gov'" <kadams@az.gov>, "Kennedy, Michael K." <MKK@gknet.com>
> > **Subject: RE: Update on Implementation of ADEQ-approved RID Remedial Action**
> >
> > Director Cabrera:
> >
> > Given Senator McCain's passing, please consider the response deadline set in our August 17, 2018 email to be extended to September 6, 2018. It is our understanding that the State may have made the decision to transfer the WVBA WQARF Site to EPA, but as indicated in our August 17, 2018 email, more formal procedures are required to effectively transfer the Site. We would like to meet before the September 6 deadline to understand what actions have been or will be taken to effect the State's final decision.
> >
> > Best Regards,
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> > David P. Kimball, III
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> > **From:** Kimball III, David P.
> > **Sent:** Friday, August 17, 2018 3:07 PM
> > **To:** 'cabrera.misael@azdeq.gov' <cabrera.misael@azdeq.gov>
> > **Cc:** kadams@az.gov; Kennedy, Michael K. <MKK@gknet.com>
> > **Subject:** Update on Implementation of ADEQ-approved RID Remedial Action
> >
> > Director Cabrera:
> >
> > The Roosevelt Irrigation District (RID) has singularly and valiantly waged a decade-long, multi-million dollar battle to address the massive and widespread groundwater contamination impacting the West Van Buren Water Quality Assurance Revolving Fund

Site (WVB Site). The WVB Site is the largest groundwater contaminant plume in Arizona and, as declared by the Arizona Department of Environmental Quality (ADEQ), "presents an immediate and substantial endangerment to the public health or the environment." Pursuant to ADEQ's oversight and approvals, RID has designed, developed and partially implemented a necessary and cost-effective remedial action that assures protection of public health and the environment, controls migration of the groundwater contaminant plume, and treats the contaminated groundwater to enable the maximum beneficial use of the water. ADEQ has confirmed that the ADEQ-approved RID remedial action is in compliance with Arizona's mandatory remedial action criteria and meets Arizona's applicable water quality standards. RID has been successful despite having its efforts met at every juncture with intense, self-serving resistance by the polluters of the WVB aquifer. Without swift and decisive action by the State of Arizona, public health, environmental protection, maximum beneficial use of the waters of the State and compliance with applicable water quality standards are at risk. This letter is offered as a summary of critical events that warrant this immediate call to action by the State of Arizona.

The State of Arizona, in an April 24, 2018 letter, has requested that the Environmental Protection Agency (EPA) "evaluate expanding the western boundary of the Motorola 52nd Street Superfund (M52) Site to include certain portions of the [WVB Site]." Despite that request, given the State of Arizona's February 2017 determination that "the State of Arizona can no longer accept delays" and that ADEQ already has approved RID's remedial action as "reasonable, necessary and cost-effective" to address the WVB groundwater contamination that "presents an immediate and substantial endangerment to the public health or the environment," the State of Arizona remains legally obligated to take additional measures to expedite EPA action at the WVB Site. *See* ADEQ's 2010, 2013 and 2015 approvals of RID's groundwater remedial actions pursuant to Ariz. Rev. Stat. (ARS) § 49-282.06 and Ariz. Admin. Code R18-16-413 and ADEQ's 2013, 2014 and 2015 WQARF reimbursement approvals pursuant to ARS § 49-282(E)(11).

Federal law authorizes EPA "to act, consistent with the [federal] National Contingency Plan [NCP], to ... provide for remedial action ... or take any other response measure consistent with the NCP which the President deems necessary to protect the public health or welfare or the environment ... [w]henever (A) any hazardous substance is released or there is a substantial threat of such a release into the environment, or (B) there is a release or substantial threat of release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare." 42 U.S.C. § 9604(a). However, pursuant to 42 U.S.C. § 9604(c), "[EPA] shall not provide any remedial actions pursuant to this section **unless the State in which the release occurs first enters into a contract or cooperative agreement with [EPA]**." Federal law also requires that EPA "**shall consult with the affected State ... before determining any appropriate remedial action to be taken** pursuant to the authority granted under subsection (a) of this section," including the "key component of the EPA/state partnership [which] shall be the communication of potential federal and state ARARs [applicable, relevant and appropriate requirements]." 42 U.S.C. § 9604(c), 40 C.F.R. § 300.515(d).

Pursuant to these federal procedures and given that the ADEQ-approved RID groundwater remedial action (i) was independently adopted by ADEQ in its own 2014 WQARF evaluation report as the prudent remedial course of action for the WVB Site, (ii) has been deemed "necessary" by ADEQ to address the massive and widespread groundwater contamination that "presents an immediate and substantial

endangerment to the public health or the environment" and (iii) has been deemed by a federal judge to be substantially compliant with the federal NCP, the State of Arizona should formally request a contract or cooperative agreement with EPA to expedite the ADEQ-approved RID groundwater remediation. Similarly, the State of Arizona should inform EPA in writing that Arizona's aquifer classification in ARS § 49-224(B), as noted in ADEQ's April 24, 2018 letter to EPA, the aquifer water quality standards in ARS §§ 49-221(A, D) and 49-223(A), and the mandatory remedial action criteria in ARS § 49-282.06 are ARARs that must be achieved under any EPA remedial action under CERCLA. **These State of Arizona actions should be initiated immediately.**

Consistent with the State's instruction to avoid any further delays, RID has been communicating with EPA on procedures to accelerate the ADEQ-approved and NCP-compliant RID groundwater remedial action. As discussed in the attached RID response to EPA, RID proposes that EPA concur with the ADEQ-approved and NCP-compliant RID groundwater remedial action, as EPA did at the adjacent federal M52 Site, to expedite the remediation and save American and Arizona taxpayers from having to fund the remedial action. Instead of the State of Arizona seeking its own cooperative agreement with EPA as discussed above, which requires specific assurances from a state, the State of Arizona could request that EPA concur with the ADEQ-approved and NCP-complaint remedial action, allowing RID's public-private partnership to expeditiously fund the remedial action. Such action by the State would clearly support and is consistent with its February 2017 determination that "the State of Arizona can no longer accept delays at the ... WVB Site." This would allow the largest groundwater contaminant plume in Arizona to be expeditiously cleaned up without additional cost or administrative action by the State.

However, if the State declines to take any of the above actions to expedite EPA oversight and remediation, then, at the very least, the State of Arizona should agree to provide immediate funding to fully implement and operate the ADEQ-approved groundwater remedial action. The State of Arizona has a mandatory obligation to fund the WVB Site cleanup. According to State law and ADEQ's own acknowledgements, the State is responsible for at least twenty-five (25) percent of the costs incurred to address the WVB groundwater contamination under the WQARF program. The State of Arizona has delayed any payment of such funds which would enable full implementation of the ADEQ-approved RID groundwater remedial action. Additionally, the State of Arizona should “expedite the processing and issuance” of an administrative groundwater withdrawal permit “to facilitate the prompt conduct of [ADEQ] approved remedial actions” as mandated in ARS § 49-290.01.A. As discussed in prior communications, the State of Arizona has delayed implementation of the ADEQ-approved RID groundwater remedial action and increased the financial liability for Arizona's taxpayers as a result of the Arizona Department of Water Resources’ interpretations and newly minted conditions for an administrative groundwater withdrawal permit, which ADWR has historically and routinely issued to implement ADEQ-approved or EPA-approved remedial actions for the past 30-years.

The time has now come for the State to act in accordance with its own February 2017 proclamation that "the State of Arizona can no longer accept delays at the ... WVB Site." It is no longer acceptable that the WVB aquifer has not been addressed to comply with Arizona's aquifer classification or aquifer water quality standards and that the local community within the WVB Site continues to be directly exposed to releases of TCE and other toxic chemicals, which are not allowed in other communities, especially when ADEQ already has approved RID's remedial action to address those concerns. RID can no longer ignore, delay, avoid or deny meetings with elected officials or interested

stakeholders (as it has) about the WVB groundwater contamination that ADEQ has consistently and repeatedly determined "presents an immediate and substantial endangerment to the public health or the environment." RID's desire to maintain its decade-long cooperation with the State in developing and implementing the ADEQ-approved RID remedial action makes it difficult to address requests for public information when the State of Arizona continues to be indecisive in facilitating the prompt conduct of the ADEQ-approved RID remedial action.

We respectfully request that the State of Arizona respond by August 31, 2018 identifying what actions the State will be taking to expedite the groundwater remediation at the WVB Site in accordance with state or federal law. We remain willing to meet and discuss the various options discussed herein and to address any questions you may have.

Best Regards,

David P. Kimball, III

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