Message

From: Sivak, Michael [Sivak.Michael@epa.gov]
Sent: 7/17/2020 10:31:31 PM
To: Smeraldi, Josh [Smeraldi.Josh@epa.gov]
Subject: FW: EPA response regarding changes in FS

We are going to review the FS, correct? Your note doesn't say we won't be reviewing it, just that we expect this version to have EPA's edits accepted without further negotiation. I'm not sure how he concluded that we won't be reviewing what they submit.

Michael Sivak

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From: Ken Bird <kbird@woodardcurran.com>
Sent: Friday, July 17, 2020 5:53 PM
To: Smeraldi, Josh <Smeraldi.Josh@epa.gov>; Krall, Scott M <skrall@ppg.com>
Cc: Sivak, Michael <Sivak.Michael@epa.gov>; Reilly, WilliamJ <Reilly.WilliamJ@epa.gov>
Subject: RE: EPA response regarding changes in FS

Josh –

Thank you for your email. I was surprised, given the process we had agreed upon, to see that EPA's position is now that it will not be reviewing the FS we intend to submit today. At EPA's direction, PPG and Woodard & Curran revised the FS to respond to EPA's comments from July 10 and July 14. Given the material technical issues raised, EPA's refusal to review the revised FS is an arbitrary and capricious action that would warrant dispute resolution.

We plan to submit the revised FS today in accordance with the schedule EPA set in its July 10 email, and appreciate and anticipate EPA's review and comments. If EPA declines to review the revised FS, please be advised PPG intends to invoke dispute resolution.

Thank you,
Ken

From: Smeraldi, Josh <Smeraldi.Josh@epa.gov>
Sent: Friday, July 17, 2020 2:44 PM
To: Krall, Scott M <skrall@ppg.com>; Ken Bird <kbird@woodardcurran.com>
Cc: Sivak, Michael <Sivak.Michael@epa.gov>; Reilly, WilliamJ <Reilly.WilliamJ@epa.gov>
Subject: EPA response regarding changes in FS

Hi Scott and Ken,

EPA appreciates PPG reaching out to discuss the FS earlier today. Based on our conversation, PPG is proposing certain changes to the FS that are inconsistent with EPA's June 23, 2020 conditional approval of the FS, which stipulated that the FS was approved provided that EPA's markup and comments were incorporated. After the conditional approval, in the spirit of working cooperatively, EPA re-reviewed the FS, at PPG's request, and on July 10 submitted to PPG a new markup.

At this time, EPA is not accepting any additional changes to the FS that EPA sent to PPG on 7/10. Should PPG have additional concerns or disagree with EPA's edits or comments, PPG may submit those concerns as comments during the public comment period and EPA will respond to those concerns in the responsiveness summary.

Please let EPA know immediately whether PPG will incorporate all of EPA's July 10 comments into the FS. If PPG does not accept EPA's comments, EPA will consider its other options under paragraph 41 of the settlement agreement.

Thanks,

Josh

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Josh Smeraldi, Ph.D. Env. Eng
EPA Region 2 Superfund and Emergency Management Division
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