Message

From: Frank C. Pavia [fpavia@HarrisBeach.com]
Sent: 8/18/2016 4:06:22 PM
To: Ludmer, Margo [ludmer.margo@epa.gov]; Doyle, James [Doyle.James@epa.gov]
CC: 'Bob Ventre (rdventre@outlook.com)' [rdventre@outlook.com]; 'Mark Nicotra (mnicotra@salina.ny.us)' [mnicotra@salina.ny.us]
Subject: Lower Ley Creek Subsite, AOC CERCLA No. 02-2016-2014
Attachments: Final RD SOW Lower Ley Creek.pdf; Moody's Rating.pdf; Town of Salina - 2015 DRAFT FS (2).pdf

Margo and James,

Attached is the submission that the Town is mailing today regarding the local government financial test set forth in 40 CFR § 258.74(f), in compliance with the financial assurance provisions of Article XXVI of the Lower Ley Creek Subsite AOC.

If you have any questions, please contact my office.

Frank

Frank C. Pavia
Partner

HARRIS BEACH PLLC

ATTORNEYS AT LAW
99 Garnsey Road
Pittsford, NY 14534
585.419.8709 Direct
585.419.8815 Fax
585.419.8800 Main
Website | Bio | Add to Contacts

practiceGREEN
Save a tree. Read, don't print, emails.

From: Frank C. Pavia
Sent: Wednesday, August 17, 2016 10:29 AM
To: 'Ludmer, Margo'
Cc: Bob Ventre (rdventre@outlook.com); Mark Nicotra (mnicotra@salina.ny.us)
Subject: RE: Final RD SOW for Lower Ley Creek

Margo,

The Town is in the process of preparing a written submission that we believe will meet the financial assurance requirements set forth in 40 CFR § 258.74(f). We hope to have that submission completed and ready for EPA's review by tomorrow morning.

We nevertheless have a couple of questions regarding the submission. First, should that submission be prepared to your attention? Should the submission be filed with you? If no is the answer to both of these questions, can you please confirm the appropriate EPA representative?

Lastly, should the submission not meet EPA's satisfaction, and the Town decides to purse the alternative option of an escrow account, can you please confirm whether EPA would be willing to provide the Town an extension of time to set up the account and submit its confirmation to EPA?

Thank you.

Frank

Frank C. Pavia
Partner

HARRIS BEACH PLLC

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From: Ludmer, Margo [mailto:ludmer.margo@epa.gov]
Sent: Friday, August 05, 2016 5:11 PM
To: Frank C. Pavia
Subject: RE: Final RD SOW for Lower Ley Creek

Frank,

Following up on our call from this morning, EPA requests that the Town first pursue a 40 C.F.R. § 258.74(f) demonstration in satisfaction of the financial assurance requirements of the Lower Ley Creek RD AOC. Please let me know if the Town is able to make such a demonstration. If not, EPA would consider the Town's use of an escrow account as a financial assurance mechanism. This alternative would require the preparation of an escrow agreement, which we can discuss.

Margo B. Ludmer
Assistant Regional Counsel
U.S. EPA
Office of Regional Counsel, Region 2
NY/Caribbean Superfund Branch
(212) 637-3187

From: Frank C. Pavia [mailto:fpavia@HarrisBeach.com]
Sent: Tuesday, August 02, 2016 10:09 AM
To: Ludmer, Margo <ludmer.margo@epa.gov>
Cc: Mark Nicotra (mnicotra@salina.ny.us) <mnicotra@salina.ny.us>; Bob Ventre (rdventre@outlook.com) <rdventre@outlook.com>; 'Jeannie Ventre' <JVentre@salina.ny.us>; Charney, Lauren <Charney.Lauren@epa.gov>; John Sroka (jsroka@haylor.com) <jsroka@haylor.com>
Subject: RE: Final RD SOW for Lower Ley Creek

Thank you Margo.

Frank C. Pavia
Partner

HARRIS BEACH PLLC

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Pittsford, NY 14534
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585.419.8800 Main
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p r a c t i c e G R E E N
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From: Ludmer, Margo [mailto:ludmer.margo@epa.gov]
Sent: Tuesday, August 02, 2016 10:05 AM
To: Frank C. Pavia
Cc: Mark Nicotra (mnicotra@salina.ny.us); Bob Ventre (rdventre@outlook.com); 'Jeannie Ventre'; Charney, Lauren
Subject: RE: Final RD SOW for Lower Ley Creek

Frank,

A sample surety bond and accompanying guidance can be found at the following link: https://cfpub.epa.gov/compliance/models/view.cfm?model_ID=554.

EPA will also accept as financial assurance a demonstration that the Town satisfies the requirements of 40 C.F.R. Part 258.74(f), as applicable.

Margo B. Ludmer
Assistant Regional Counsel
U.S. EPA
Office of Regional Counsel, Region 2
NY/Caribbean Superfund Branch
(212) 637-3187

From: Frank C. Pavia [mailto:fpavia@HarrisBeach.com]
Sent: Tuesday, August 02, 2016 9:52 AM
To: Ludmer, Margo <ludmer.margo@epa.gov>
Cc: Mark Nicotra (mnicotra@salina.ny.us) <mnicotra@salina.ny.us>; Bob Ventre (rdventre@outlook.com) <rdventre@outlook.com>; 'Jeannie Ventre' <JVentre@salina.ny.us>
Subject: RE: Final RD SOW for Lower Ley Creek

Margo,

Any leads on the surety bond form? Thank you.

Frank

Frank C. Pavia
Partner

HARRIS BEACH PLLC

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585.419.8800 Main
Website | Bio | Add to Contacts

p r a c t i c e G R E E N
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From: Ludmer, Margo [mailto:ludmer.margo@epa.gov]
Sent: Thursday, July 28, 2016 5:09 PM
To: Frank C. Pavia
Cc: Mark Nicotra (mnicotra@salina.ny.us); Bob Ventre (rdventre@outlook.com); 'Jeannie Ventre'
Subject: RE: Final RD SOW for Lower Ley Creek

Frank,

I am looking into this and will get back to you shortly. Please note that I will be out of the office tomorrow, but will return Monday, August 1.

Best regards,
Margo

Margo B. Ludmer
Assistant Regional Counsel
U.S. EPA
Office of Regional Counsel, Region 2
NY/Caribbean Superfund Branch
(212) 637-3187

From: Frank C. Pavia [mailto:fpavia@HarrisBeach.com]
Sent: Thursday, July 28, 2016 4:24 PM
To: Ludmer, Margo <ludmer.margo@epa.gov>
Cc: Mark Nicotra (mnicotra@salina.ny.us) <mnicotra@salina.ny.us>; Bob Ventre (rdventre@outlook.com) <rdventre@outlook.com>; 'Jeannie Ventre' <JVentre@salina.ny.us>
Subject: RE: Final RD SOW for Lower Ley Creek

Margo,

As you may know, we represent the Town of Salina in the Lower Ley Creek AOC matter. Our client is facing some significant challenges regarding the AOC's financial assurance requirements. Recently, the NY State Comptroller's Office has directed the Town that it cannot secure a letter of credit for its share of the financial assurance.

At this point, the Town is pursuing a surety bond option. Toward expediting that effort, could you share with us a form surety bond that EPA has determined to be accepted? If none exists, the Town will be pursuing a standard commercial surety bond from a "grade A" surety.

Your help on this would be greatly appreciated. Thank you.

Frank

Frank C. Pavia
Partner

HARRIS BEACH PLLC

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From: Ludmer, Margo [mailto:ludmer.margo@epa.gov]
Sent: Friday, July 22, 2016 10:28 AM
To: Kevin Murphy; Joseph A. Gregg; McCreary, Jean; David W. Nunn; Frank C. Pavia; Ispentchian, Julia; Trimarchi, Peter; McFadden, Kathleen M UTCHQ; JDavis@hblaw.com; Gengel, Gary (NY; lmona@hblaw.com; rstamey@syrgov.net; JBarry@syrgov.net; lmona@barclaydamon.com; DBaker@barclaydamon.com; RCAPOZZA@barclaydamon.com; haustin@hancocklaw.com; Gravelding, Mark; JDavis@barclaydamon.com; LoriTarolli@ongov.net; Bridget.Reineking@lw.com; BenjaminYaus@ongov.net; Wolski, John G UTCHQ; Enfonde, Elaine; James R. Campbell; Erickson, Michael; Cridge, Todd
Cc: Doyle, James; Singerman, Joel; Tames, Pam; Charney, Lauren
Subject: Final RD SOW for Lower Ley Creek

Attached is the final RD SOW for the Lower Ley Creek OU, as approved by EPA.

Thank you,

Margo B. Ludmer
Assistant Regional Counsel
U.S. EPA
Office of Regional Counsel, Region 2
NY/Caribbean Superfund Branch
(212) 637-3187

From: Kevin Murphy [mailto:KMurphy@WladisLawFirm.com]
Sent: Thursday, July 21, 2016 5:04 PM
To: Ludmer, Margo <ludmer.margo@epa.gov>; Joseph A. Gregg <jagregg@eastmansmith.com>; McCreary, Jean <JMcCreary@nixonpeabody.com>; David W. Nunn <dwnunn@eastmansmith.com>; Frank C. Pavia <fpavia@HarrisBeach.com>; Ispentchian, Julia <Julia.Ispentchian@nationalgrid.com>; Trimarchi, Peter <ptrimarchi@nixonpeabody.com>; McFadden, Kathleen M UTCHQ <Kathleen.McFadden@UTC.COM>; JDavis@hblaw.com; Gengel, Gary (NY <Gary.Gengel@lw.com>; lmona@hblaw.com; rstamey@syrgov.net; JBarry@syrgov.net; lmona@barclaydamon.com; DBaker@barclaydamon.com; RCAPOZZA@barclaydamon.com; haustin@hancocklaw.com; Gravelding, Mark <Mark.Gravelding@arcadis.com>; JDavis@barclaydamon.com; LoriTarolli@ongov.net; Bridget.Reineking@lw.com; BenjaminYaus@ongov.net; Wolski, John G UTCHQ <John.Wolski@utc.com>; Enfonde, Elaine <EEnfonde@nixonpeabody.com>; James R. Campbell <jrc@e-emi.com>; Erickson, Michael <Michael.Erickson@arcadis.com>; Cridge, Todd <Todd.Cridge@arcadis.com>
Cc: Doyle, James <Doyle.James@epa.gov>; Singerman, Joel <Singerman.Joel@epa.gov>; Tames, Pam <Tames.Pam@epa.gov>; Charney, Lauren <Charney.Lauren@epa.gov>
Subject: RE: Signed Lower Ley Creek RD AOC

Margo:

Thank you for the fully executed copy of the AOC. Please circulate to the above distribution list and the undersigned a copy of the approved RD SOW.

Kevin C. Murphy

The Wladis Law Firm, P.C.
P.O. Box 245, Syracuse, NY 13214
6312 Fly Road, East Syracuse, NY 13057

P 315/445-1700
F 315/251-1073
kmurphy@wladislawfirm.com

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From: Ludmer, Margo [mailto:ludmer.margo@epa.gov]
Sent: Thursday, July 21, 2016 4:56 PM
To: Joseph A. Gregg; McCreary, Jean; David W. Nunn; Frank C. Pavia; Kevin Murphy; Ispentchian, Julia; Trimarchi, Peter; McFadden, Kathleen M UTCHQ; JDavis@hblaw.com; Gengel, Gary (NY; lmona@hblaw.com; rstamey@syrgov.net; JBarry@syrgov.net; lmona@barclaydamon.com; DBaker@barclaydamon.com; RCAPOZZA@barclaydamon.com; haustin@hancocklaw.com; Gravelding, Mark; JDavis@barclaydamon.com; LoriTarolli@ongov.net; Bridget.Reineking@lw.com; BenjaminYaus@ongov.net; Wolski, John G UTCHQ; Enfonde, Elaine; James R. Campbell; Erickson, Michael; Cridge, Todd
Cc: Doyle, James; Singerman, Joel; Tames, Pam; Charney, Lauren
Subject: Signed Lower Ley Creek RD AOC

All,

Please find attached for your receipt the Lower Ley Creek Administrative Order on Consent for Remedial Design, which has been signed by EPA. A hard copy version of the order will be mailed to each Respondent. Please contact me with any questions.

Thank you,
Margo

Margo B. Ludmer
Assistant Regional Counsel
U.S. EPA
Office of Regional Counsel, Region 2
NY/Caribbean Superfund Branch
(212) 637-3187

From: Joseph A. Gregg [mailto:jagregg@eastmansmith.com]
Sent: Wednesday, July 20, 2016 11:22 AM
To: Ludmer, Margo <ludmer.margo@epa.gov>
Cc: Doyle, James <Doyle.James@epa.gov>; McCreary, Jean <JMcCreary@nixonpeabody.com>; David W. Nunn <dwnunn@eastmansmith.com>; Frank C. Pavia <fpavia@HarrisBeach.com>; Kevin Murphy <KMurphy@WladisLawFirm.com>; Ispentchian, Julia <Julia.Ispentchian@nationalgrid.com>; Trimarchi, Peter <ptrimarchi@nixonpeabody.com>; McFadden, Kathleen M UTCHQ <Kathleen.McFadden@UTC.COM>; JDavis@hblaw.com; Gengel, Gary (NY <Gary.Gengel@lw.com>; lmona@hblaw.com; rstamey@syrgov.net; JBarry@syrgov.net; lmona@barclaydamon.com; DBaker@barclaydamon.com; RCAPOZZA@barclaydamon.com; haustin@hancocklaw.com; Gravelding, Mark <Mark.Gravelding@arcadis.com>; JDavis@barclaydamon.com; LoriTarolli@ongov.net; Bridget.Reineking@lw.com; BenjaminYaus@ongov.net; Wolski, John G UTCHQ <John.Wolski@utc.com>; Enfonde, Elaine <EEnfonde@nixonpeabody.com>; James R. Campbell <jrc@e-emi.com>;

Erickson, Michael <Michael.Erickson@arcadis.com>; Cridge, Todd <Todd.Cridge@arcadis.com>
Subject: RE: LLC AOC Timing of Final AOC Execution [ES-LEGAL.FID1587432]

Ms. Ludmer: In follow up to my email last Friday, attached is the conforming signature page of Syracuse China Company for the referenced AOC. I will mail the original of same to you. Joe

---

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From: Joseph A. Gregg [mailto:jagregg@eastmansmith.com]
Sent: Friday, July 15, 2016 11:56 AM
To: Ludmer, Margo <ludmer.margo@epa.gov>
Cc: Doyle, James <Doyle.James@epa.gov>; McCreary, Jean <JMcCreary@nixonpeabody.com>; David W. Nunn <dwnunn@eastmansmith.com>; Frank C. Pavia <fpavia@HarrisBeach.com>; Kevin Murphy <KMurphy@WladisLawFirm.com>; Ispentchian, Julia <Julia.Ispentchian@nationalgrid.com>; Trimarchi, Peter <ptrimarchi@nixonpeabody.com>; McFadden, Kathleen M UTCHQ <Kathleen.McFadden@UTC.COM>; JDavis@hblaw.com; Gengel, Gary (NY <Gary.Gengel@lw.com>; lmona@hblaw.com; rstamey@syrgov.net; JBarry@syrgov.net; lmona@barclaydamon.com; DBaker@barclaydamon.com; RCAPOZZA@barclaydamon.com; haustin@hancocklaw.com; Gravelding, Mark <Mark.Gravelding@arcadis.com>; JDavis@barclaydamon.com; LoriTarolli@ongov.net; Bridget.Reineking@lw.com; BenjaminYaus@ongov.net; Wolski, John G UTCHQ <John.Wolski@utc.com>; Enfonde, Elaine <EEnfonde@nixonpeabody.com>; James R. Campbell <jrc@e-emi.com>; Erickson, Michael <Michael.Erickson@arcadis.com>; Cridge, Todd <Todd.Cridge@arcadis.com>
Subject: RE: LLC AOC Timing of Final AOC Execution [ES-LEGAL.FID1587432]

Ms. Ludmer: Per various discussions with your office, attached are pdf copies of signature pages to the referenced AOC signed by Carrier Corporation, Cooper Crouse-Hinds, LLC, National Grid, Syracuse China Company, Onondaga County, City of Syracuse and Town of Salina. You will note that the signature page signed by Syracuse China does not look like the others and we will attend to getting you a conforming copy next week when Ms. Kovach, that company's General Counsel, returns to the office. Hard copies of all original signature pages are being sent to you via Fed X for Monday delivery.

Thank you and Jim for your assistance in finalizing these negotiations. Please call with any questions or comments. Joe

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From: Ludmer, Margo [mailto:ludmer.margo@epa.gov]
Sent: Tuesday, May 31, 2016 5:50 PM
To: Kevin Murphy <KMurphy@WladisLawFirm.com>
Cc: David W. Nunn <dwnunn@eastmansmith.com>; Doyle, James <Doyle.James@epa.gov>
Subject: RE: LLC AOC [ES-LEGAL.FID1587432] -- Timing of Final AOC Execution

Kevin,

Based on the information provided in your email, EPA finds acceptable the July 15, 2016, date proposed by the PRPs for the release of the executed signature pages.

Attached to this email you will find a slightly revised version of the RD AOC for PRP review, approval, and signature. This version of the order has gone through EPA's internal review process and received all necessary concurrences, with the exception of the concurrence of the AOC signatory (the Director of the Emergency and Remedial Response Division). As is EPA's standard procedure, the order will be submitted to the signatory for final review and execution once EPA has received all signature pages from the PRPs.

The revisions to the order were minor and we expect that the PRPs will find them acceptable. In Paragraph 68 of the AOC, the phrase "it shall notify EPA . . . of its objection(s)" was revised to "they shall notify EPA . . . of their objection(s)," and "Respondent's" was changed to "Respondents'" for consistency. A similar change was made in the second sentence of Paragraph 71 ("if it intends . . ." became "if they intend . . ."). Lastly, at the end of Paragraph 98, EPA inserted a new sentence directing the PRPs to submit originals of financial assurance documents to EPA.

Certainly do not hesitate to email me with any questions or concerns. Jim and I can also be available for a call.

Thank you,

Margo B. Ludmer

Assistant Regional Counsel
U.S. EPA
Office of Regional Counsel, Region 2
NY/Caribbean Superfund Branch
(212) 637-3187

From: Kevin Murphy [mailto:KMurphy@WladisLawFirm.com]
Sent: Friday, May 27, 2016 3:09 PM
To: Ludmer, Margo <ludmer.margo@epa.gov>
Cc: David W. Nunn <dwnunn@eastmansmith.com>; Doyle, James <Doyle.James@epa.gov>
Subject: RE: LLC AOC [ES-LEGAL.FID1587432] -- Timing of Final AOC Execution

Margo:

Regarding the proposed July 15, 2016 date for the PRPs to provide to USEPA all executed signature pages: first, the PRPs have expressed a very strong internal preference not to release any one signature page until all signatures pages are received and can be provided at one time.

With respect to the Town of Salina, the Town only meets two days per month to go over the regular business of the Town. The proposed AOC, along with the PRPs' cost assessment, will be officially presented to the Town Board on June 13th. They will need several weeks to deliberate on the proposed settlement, as well as receive input from the Town's comptroller on the Town's financial capability to meet the cost assessments. Given those requirements and the intervening July 4th holiday weekend, the Town Board will likely consider the proposal and take a vote at its July 5th meeting, but may have to push it out even further.

Regarding Onondaga County, the required procedure is to request in month #1 that an item be placed on the Legislature's agenda in month #2. In month #2 the item must be presented to each of the Legislature's Committees that has jurisdiction over the issue in question. Assuming the matter passes through committee, it can be brought to the full Legislature for a vote in month #3. We commenced the described process earlier this month and the AOC is on the agenda. Committee meetings are scheduled for June and a vote likely will take place on July 5, 2016, but that is not a certainty. Please note, the AOC was previously placed on the agenda and has had to be withdrawn. I also must point out that if a final AOC with full USEPA sign-off is not available for review by the Committees, the Committees very well may hold the issue until a final fully-approved AOC is available for review and discussion. Any delay at the Committee phase will likely result in an additional month of time to process the AOC through the approval process. Technically, the draft provided earlier this month was required to be a final, fully-approved AOC to even get on the agenda.

Lastly, the issue of a non-final and non-fully-USEPA-approved draft is an issue for all parties. Virtually every PRP's protocol to secure signatures is to have a final executable copy with no possibility of any changes.

Time between the 5th and 15th of July is needed because there is no guarantee the Town or the County will hold a vote on July 5, and if for some reason not all the PRPs elect to participate, the participating PRPs may need to address internal issues before releasing the signature pages.

I trust the above will satisfy your request for more detail. If this is something we need to discuss, please do not hesitate to propose a call with me and David Nunn.

Kevin C. Murphy
The Wladis Law Firm, P.C.

P.O. Box 245, Syracuse, NY 13214
6312 Fly Road, East Syracuse, NY 13057

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From: Ludmer, Margo [mailto:ludmer.margo@epa.gov]
Sent: Monday, May 23, 2016 2:58 PM
To: Kevin Murphy
Cc: David W. Nunn; Doyle, James
Subject: RE: LLC AOC [ES-LEGAL.FID1587432]

Kevin,

EPA finds the PRPs' requested edits to the Lower Ley Creek RD AOC to be acceptable. Please find attached an updated copy of the order, which may be forwarded to the entire PRP group. In addition to accepting the changes proposed by the PRPs, EPA updated the caption of the AOC so as to mirror the captions of other recent Region 2 orders. Please note that the AOC is subject to further government review as it is still making its way through EPA's internal review process.

We are comfortable with your proposal to designate an internal escrow agent to deliver the full set of executed PRP signature pages to EPA after all such signature pages have been secured. However, EPA requests that the signature pages be delivered to the agency no later than June 30, 2016. We recognize that the PRPs are constrained by their respective internal review and approval procedures. If EPA's request cannot be accommodated, please provide specifics as to why more time is needed.

Many thanks,
Margo

Margo B. Ludmer
Assistant Regional Counsel
U.S. EPA
Office of Regional Counsel, Region 2
NY/Caribbean Superfund Branch
(212) 637-3187

From: Kevin Murphy [mailto:KMurphy@WladisLawFirm.com]
Sent: Friday, May 13, 2016 4:23 PM
To: Ludmer, Margo <ludmer.margo@epa.gov>
Cc: David W. Nunn <dwnunn@eastmansmith.com>; Doyle, James <Doyle.James@epa.gov>
Subject: RE: LLC AOC [ES-LEGAL.FID1587432]

Margo:

The PRP Group has reviewed both the execution draft of the proposed AOC and the accompanying SOW. There are no requested or suggested changes to the SOW.

I have attached a redline of the draft AOC, which shows the PRPs requested edits. The redline includes an explanatory note for each request or category of request. In sum, the requests fall into the following categories: the correct legal name for the Respondents; the deletion of East Plaza, LLC from the list of Respondents; a proposed cut and paste from the definition section of the AOC to ¶12 for the purpose of keeping the subject wording identical; the deletion of any reference to the no longer applicable defined terms "RD Costs" (¶65) or "Future RD Response Costs" (¶93), and one or two typo-like corrections.

On receipt of a final execution copy from you, David and I will forward the proposed AOC to each of the PRPs for distribution, review, and execution by the respective clients. If acceptable to EPA, we propose that the PRPs designate an internal escrow agent who will secure copies of the executed AOC from each of the PRPs and on receipt of a full set of signatures, release and deliver a full set of executed signature pages to the Agency.

As you might expect, each of the clients has its own required internal review and approval process and the government PRPs are each required to follow well-established docketing, legislative review, public notice and public comment requirements before voting to approve entry into and execution of the AOC on behalf of each respective government. Given the applicable rules and notice requirements, the full set of executed agreements should be available for delivery to EPA no later than Friday, July 15, 2016.

The PRPs have already discussed post-execution timing issues and remain confident that with the timely submission, approval and turnaround of SOW submissions Arcadis will in the field this season.

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