Message

From: Ludmer, Margo [ludmer.margo@epa.gov]
Sent: 4/14/2016 7:37:24 PM
To: David W. Nunn [dwnunn@eastmansmith.com]; Kaitlin.Wallace@lw.com; lmona@barclaydamon.com; JDavis@barclaydamon.com; kathleen.mcfadden@utc.com; Gary.Gengel@lw.com; fpavia@HarrisBeach.com; jmccreary@nixonpeabody.com; Joseph A. Gregg [jagregg@eastmansmith.com]; kmurphy@wladislawfirm.com; rstamey@syrgov.net; JBarry@syrgov.net; Luis.Mendez@ongov.net; rbaldwin@baslaw.com; LuisMendez@ongov.net; DBaker@barclaydamon.com; RCAPOZZA@barclaydamon.com; haustin@hancocklaw.com; ptrimarchi@nixonpeabody.com
CC: Doyle, James [Doyle.James@epa.gov]
Subject: RE: Lower Ley Creek RD AOC / Communication with Arcadis [ES-LEGAL.FID1587432]

Dear all,

EPA is appreciative of the below update from David Nunn. We recognize that the PRPs have lingering concerns regarding the sequencing of activities at the Upper and Lower Ley Creek Sites and will consider the written technical proposal prepared by Arcadis. We are hopeful that this proposal will help us to identify and quickly resolve our differing views on the coordination issue.

We are in disagreement, however, that the technical and legal RD issues are conjoined and that the two must be resolved concurrently. If the PRPs' technical concerns are determined to require revisions or additions to an RD document, it would be in the SOW, rather than the AOC, where such changes would be most appropriately made. Given the significant progress that has been made on the draft AOC, as acknowledged in the email below, EPA is optimistic that the draft order is nearly ready to be circulated for internal EPA approval and does not see why this process should be delayed due to the technical sequencing concerns. With this in mind, we ask that the PRPs provide their final comments on the draft AOC as soon as possible, rather than waiting until the technical proposal is submitted.

EPA understands that the coordination of a large PRP group has required a significant amount of time and effort to resolve the many complicated issues with respect to the RD for Lower Ley Creek. Nevertheless, EPA cannot allow the RD negotiations with the PRPs to be prolonged unnecessarily. It is essential that there be a quick turnaround from the PRPs with regard to the written technical proposal. If this is not the case, EPA will be forced reconsider its current approach at the Lower Ley Creek Site, in spite of the amount of work that has been put into the negotiations thus far. We will expect to receive the proposal the week of April 18 and ask that the PRPs submit the document as early in the week as possible.

Sincerely,

Margo B. Ludmer
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From: David W. Nunn [mailto:dwnunn@eastmansmith.com]
Sent: Monday, April 11, 2016 4:03 PM
To: Ludmer, Margo <ludmer.margo@epa.gov>
Cc: 'Kevin C. Murphy (KMurphy@WladisLawFirm.com)' <KMurphy@WladisLawFirm.com>; C906_190933 _ UTC _ Carrier Corporation _ Defend CERCLA claims re Ley Creek Email _C906_190933_ <{F1587432}.LEGAL@worksite.eastmansmith.com> <{F1587432}.LEGAL@worksite.eastmansmith.com>
Subject: RE: Lower Ley Creek RD AOC / Communication with Arcadis [ES-LEGAL.FID1587432]

Margo,

The PRPs instructed Arcadis last week to talk with Pam (which they did) and then the Group conferenced last Thursday to discuss the feedback obtained from her. While it sounds like the technical discussion was helpful in sharing views, Pam's responses did not alleviate the concerns raised by Arcadis and the PRPs regarding the sequencing and coordination of RD/RA activities between the Upper and Lower Ley Creek Sites. The PRPs therefore engaged in a focused discussion with Arcadis on the remaining technical issues of concern and options, taking into consideration the feedback obtained from Pam. At the end of this discussion, Arcadis was asked to prepare a proposal for EPA's consideration. This proposal is currently under preparation and will be discussed among the PRPs this Thursday.

The PRPs continue to believe that it is imperative that final agreement be concurrently reached with EPA on both the outstanding legal and technical RD issues that we have been diligently working to resolve. Because the technical discussions with Pam Tames did not yet resolve the issues of concern identified by Arcadis, the PRPs will not likely be in a position to provide a written technical proposal (with SOW revisions, if any) to EPA until the week of April 18. We would like to move faster, but frankly given the number of parties, divergent views, options under consideration, and the need for client briefing, we cannot respond any sooner. We will at the same time address any issues with the draft AOC, although we believe there is not much to discuss in that regard.

David