Message

From: Peter Racher [pracher@psrb.com]
Sent: 7/31/2020 12:45:00 AM
To: Bwinder [bwinder@mcmillan-mcgee.com]
CC: Norman Bernstein [nwbernstein@nwbllc.com]; Ohl, Matthew [ohl.matthew@epa.gov]; David Rountree [drountree@mcmillan-mcgee.com]; Andrew A Gremos [agremos@ramboll.com]; Gary Wealthall [GWealthall@geosyntec.com]; Julie Konzuk [JKonzuk@geosyntec.com]; Shannon L. Kelley [skelley@parlee.com]
Subject: RE: Sampling Request
Attachments: 2020_07_30 REDLINED Third Site Limited Access Agreement.docx; 2020_07_30 CLEAN Third Site Limited Access Agreement.docx; Attachment to Third Site Limited Access Agrmt.pdf

Mr. Winder, we have reviewed and agreed to some but not all of the revisions you requested for the Limited Access Agreement. See the attached redlined version. If McMillan still wishes access to Third Site to observe the ongoing sampling and to perform ERH preventative maintenance, please sign the attached "clean" version of the Limited Access Agreement and return a signed copy to Norm and me. We will sign and return a fully executed copy to you. Thank you.

Peter Racher

From: Bwinder [mailto:bwinder@mcmillan-mcgee.com]
Sent: Thursday, July 30, 2020 9:46 AM
To: Peter Racher
Cc: Norman Bernstein; Ohl, Matthew; David Rountree; Andrew A Gremos; Gary Wealthall; Julie Konzuk; Shannon L. Kelley
Subject: Re: Sampling Request

Mr. Racher,

Please disregard the previous version that was sent to you and use this one instead that has been updated.

Cheers,

Brent

On Jul 30, 2020, at 7:36 AM, Bwinder <bwinder@mcmillan-mcgee.com> wrote:

Mr. Racher,

Please see our comments and suggested revisions after consultation with our attorney and engineer in the field.

Cheers,

Brent
<Access agreement (C6542340) - BW.DOCX>

On Jul 29, 2020, at 3:48 PM, Peter Racher <pracher@psrb.com> wrote:

Mr. Winder, please see the attached access agreement and attachment. Let Norm and me know if this meets with your approval, and if so either Norm or I will sign promptly.

Peter Racher
Plews Shadley Racher & Braun LLP

From: Bwinder [mailto:bwinder@mcmillan-mcgee.com]
Sent: Wednesday, July 29, 2020 12:39 PM
To: Norman Bernstein
Cc: Ohl, Matthew; David Rountree; Peter Racher; Andrew A Gremos; Gary Wealthall; Julie Konzuk; Shannon L. Kelley
Subject: Re: Sampling Request

Mr. Bernstein,

Thank you for your opinion. My opinion, on the other hand, is that there is chemical mass outside of the treatment zone that is inhibiting our ability to achieve the contractual goals. This is the reason why we are performing the sampling program. We look forward to the results with great anticipation.

I am still waiting for the access agreement - which I still believe to be wholly unnecessary and a complete overreaction given the innocence of Mr. Rountree's suggestion. Again, we are committed to doing the right thing for the project and the EPA and would like to protect our interests. Please have Mr. Racher send over the access agreement as soon as possible.

Cheers,

Brent

On Jul 28, 2020, at 11:31 AM, Norman Bernstein <nwbernstein@nwbllc.com> wrote:

Mr. Winder

I am not available today, but Peter Racher is preparing a draft. MM's contract only allows access for MM's initial installation and its operation of the ERH system. The ERH failed to achieve its cleanup objectives, is shut down, and the system is not now being operated.

Norm Bernstein

On Tue, Jul 28, 2020 at 1:22 PM Bwinder <bwinder@mcmillan-mcgee.com> wrote:

> Mr. Bernstein,
>
> Can I expect some text from you anytime soon that outlines your proposed access agreement conditions? Perhaps you can also indicate why we need this special provision given that our contract allows us access to the site.
>
> Cheers,
>
> Brent
>
> On Jul 27, 2020, at 4:16 PM, Bwinder <bwinder@mcmillan-mcgee.com> wrote:

Mr. Bernstein,

Safety issues crop up all of the time on active drilling sites where there are numerous obstacles and eyes that are untrained to possible pitfalls. This should be considered on daily tailgate briefings - as is the standard on sites such as this.

Please send over your suggested text for an access agreement at your earliest convenience.

Cheers,

Brent

On Jul 27, 2020, at 4:07 PM, Norman Bernstein <nwbernstein@nwbllc.com> wrote:

Mr. Winder

We know of no safety concerns except that Mr. Rountree has suggested temporarily suspending electric power to the ERH system. We have agreed to that. Please have your counsel contact the Trustees regarding an access agreement limited to preventative maintenance.

Norm Bernstein

On Mon, Jul 27, 2020 at 6:01 PM Bwinder <bwinder@mcmillan-mcgee.com> wrote:

Mr. Bernstein,

Your selection of text from Mr. Rountree's email was taken completely out of context when referenced to the entirety of the note. Clearly, the first paragraph states a recommendation and the second references a proposal. And the Trust's reaction is to have our personnel removed? Incredible.

We continue to work in good faith and in the best interests of safety for all of the site personnel. Please instruct your agents to allow Mr. Rountree and our technician back on site immediately. Alternatively, consider halting the sampling plan in the interests of safety while the attorneys work out the access agreement as I have no concept of how long this will take.

Cheers,

Brent

Brent Winder
Vice-President
McMillan-McGee Corp.

Direct: 403.569.5103
Cell: 403.589.8726
Fax: 403.272.7201

Visit us at www.mcmillan-mcgee.com

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On Jul 27, 2020, at 3:46 PM, Norman Bernstein <nwbernstein@nwbllc.com> wrote:

Mr. Winder

Because Mr. Rountree misrepresented the purpose of MM being at the site as ***not*** including sampling and in his email to EPA earlier today sought EPA's permission do such sampling ("MM proposes to sample with a peristaltic pump and Teflon(tn) tubing...") the Trustees directed the removal of MM's personnel until a written agreement as to access satisfactory to the Trust is negotiated. We stand ready to allow limited MM access for preventative maintenance. Please have your counsel contact the Trust regarding negotiating the terms of such access.

Norman W. Bernstein

On Mon, Jul 27, 2020 at 5:08 PM Bwinder <bwinder@mcmillan-mcgee.com> wrote:

Mr. Ohl,

My apologies for this email but I thought that you should know that I have just received a report from David Rountree that he and one of our other technicians have been ordered off the site by Mr. Bernstein's agents.

To set the record straight please note the following:

1. Mr. Bernstein is incorrect in his inference that Mc2 is conducting sampling. Mr. Rountree is not conducting any sampling but had merely made a recommendation to sample in particular wells.
2. Mr. Rountree and our technician were there to protect the equipment and to perform some maintenance on said equipment. It has been on site for nearly two years now and is due for some regularly scheduled maintenance.
3. Mr. Rountree has been facilitating the sampling plan by moving wires, re-configuring junction boxes, and keeping all lines properly labeled in the electrode well field. This has allowed for better, and safer access of the drilling rig. Further, he has made some safety recommendations as the sampling equipment may come in close proximity to a live electrical transformer.
4. Mr. Bernstein is also incorrect in his assessment of the purpose of the sampling and that it relates only to the vertical and horizontal distribution of the "ERH cell". As per the EPA-approved sampling plan, this drilling event includes areas that are outside of the "ERH cell". It is further noted that the recommended sampling points were outside of the "ERH cell".

Again, I am sorry to trouble you with this email but I did want to make you aware of the situation during this sampling event. We are there to assist with a safe and proper implementation of the plan and to get to the bottom of the source of rebound at the site. Any damage that occurs as a consequence of these reckless actions will result in Mc2 seeking immediate compensation from the Trust.

Please let me know if you have any questions.

Cheers,

Brent

On Jul 27, 2020, at 12:57 PM, Norman Bernstein <nwbernstein@nwbllc.com> wrote:

Mr. Rountree

MM has no access agreement and when MM last week requested access, you assured the Trustees that it was ***only*** for preventative maintenance and that MM would ***not*** conduct sampling. See the attached. Therefore MM has no right to conduct any such sampling.

As to whether such sampling if carried out by Geosyntec would assist in furthering the purpose of the sampling plan to delineate the vertical and horizontal distribution of contaminants in the ERH cell, that is a question Geosyntec is reviewing and will respond to under separate cover.

Norman W. Bernstein, Trustee

On Mon, Jul 27, 2020 at 8:38 AM David A. Rountree <drountree@mcmillan-mcgee.com> wrote:

Gents,
Mc2 recommends that, in addition to the groundwater sampling performed previously and ongoing at Third Site, that a sample be collected from the sump of monitoring wells P-1 and P-2. The sump is a 1-foot section of the well at the very bottom, from 40 feet BGS to 41 feet BGS, that is not screened and is capped on the bottom (see attached well construction diagram). We believe that it would be useful to see what concentrations and/or separate contaminant phases exist at this dead-end segment at the very bottom of the well. Note that high concentrations and/or separate phases of chlorinated solvents will have a higher density than uncontaminated water, and would definitely settle in the bottom of the well if a separate phase, and may settle there if dissolved in high concentrations. This information would be useful to compare between P-1 (contaminated) and P-2 (remediated), as well as for observing if there is any difference between conditions within P-1 and the adjacent soil and groundwater.
Mc2 proposes to sample with a peristaltic pump and Teflon(tm) tubing from the very bottom of the well sump. No purging would be conducted, as the purpose of the sampling would be to observe conditions within the well as opposed to the surrounding aquifer.
Please review and advise. We would like to obtain these data during this field event.
Cheers,
--
David A. Rountree
McMillan-McGee Corp
Direct: +1 (403) 569-5116
Mobile: +1 (403) 921-0848
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"The best way out is always through." - Robert Frost

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<Emails with Rountree re Access 7-22-2020.pdf>

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<2020_07_29 Third Site Limited Access Agreement.docx><Attachment to Third Site Limited Access Agrmt.pdf>