Message

From: Ludmer, Margo [ludmer.margo@epa.gov]
Sent: 4/27/2016 2:25:21 PM
To: David W. Nunn [dwnunn@eastmansmith.com]
CC: Doyle, James [Doyle.James@epa.gov]; 'Kevin C. Murphy (KMurphy@WladisLawFirm.com)' [KMurphy@WladisLawFirm.com]
Subject: RE: LLC AOC [ES-LEGAL.FID1587432]

David,

Jim and I would prefer to discuss Paragraph 88 of the AOC by phone. Could we schedule a conference call with the PRPs for this afternoon or tomorrow morning? We could address EPA's proposed changes to Subparagraph 65(a) during this call, as well. If a conference call cannot be scheduled by tomorrow morning, then we will instead prepare an email to all parties on the two AOC paragraphs at issue.

Thank you for your assistance in moving this process along.

Margo

From: David W. Nunn [mailto:dwnunn@eastmansmith.com]
Sent: Tuesday, April 26, 2016 6:00 PM
To: Ludmer, Margo <ludmer.margo@epa.gov>; 'Kevin C. Murphy (KMurphy@WladisLawFirm.com)' <KMurphy@WladisLawFirm.com>
Cc: Doyle, James <Doyle.James@epa.gov>
Subject: RE: LLC AOC [ES-LEGAL.FID1587432]

Margo,

Thank you for the email. At this juncture, I believe the fastest way to move things forward is for EPA to provide to all PRPs its responses to both Subparagraph 65(a) and Paragraph 88. Kevin and I would be happy to disseminate EPA's responses to the other parties, and coordinate a global PRP response to EPA, but are not in a position to answer for any other parties without going through this step first. Alternately, if you feel that it would be more helpful to speak directly with all parties first, we can arrange a conference call this week.

David

From: Ludmer, Margo [mailto:ludmer.margo@epa.gov]
Sent: Tuesday, April 26, 2016 2:07 PM
To: David W. Nunn; 'Kevin C. Murphy (KMurphy@WladisLawFirm.com)'
Cc: Doyle, James
Subject: RE: LLC AOC [ES-LEGAL.FID1587432]

David and Kevin,

In response to the PRPs' comments, EPA proposes the attached changes to Subparagraph 65(a) of the Lower Ley Creek AOC. Please let us know your availability to discuss Paragraph 88 of the order. Jim and I can speak between now and 5:30pm today.

Thank you,
Margo

Margo B. Ludmer

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From: David W. Nunn [mailto:dwnunn@eastmansmith.com]
Sent: Friday, April 22, 2016 3:15 PM
To: Ludmer, Margo <ludmer.margo@epa.gov>; Doyle, James <Doyle.James@epa.gov>
Cc: 'Kevin C. Murphy (KMurphy@WladisLawFirm.com)' <KMurphy@WladisLawFirm.com>
Subject: LLC AOC [ES-LEGAL.FID1587432]

Margo and Jim,

Arcadis and the PRPs' technical representatives had a constructive discussion with Pam and Joel earlier this week about outstanding technical issues. Arcadis will be sending Pam a revised SOW by the end of today, and an updated "matrix of questions" regarding delineation of project boundaries early next week. We are hopeful that EPA will find the SOW revisions to be acceptable.

Additionally, attached for your review is a revised AOC which the PRP representatives are prepared to recommend to their clients assuming outstanding SOW issues are satisfactorily resolved. The only red-lining in the AOC is in paragraphs 65(a) and 88. The PRP representatives are willing to recommend all other changes in the AOC consistent with Jim's verbal feedback received on our last conference call.

With respect to the two remaining AOC issues, please note the following:

Paragraph 65(a): The PRPs discussed at length EPA's desire to include reimbursement of its past response costs as a pre-condition to the PRPs being entitled to reimbursement under a future RA Consent Order. EPA's position on this issue has never been understood by the PRPs because this language belies the fact that EPA can make its own decisions at any time about the timing, nature, and amount of reimbursements to itself from the GM special account, and the issue of when it seeks to reimburse itself is independent of the PRPs' future reimbursement rights outlined in Paragraph 65. Given this fact, and given the inability to reach agreement on acceptable language in this paragraph, the PRPs propose to simply remove this precondition from the AOC.

Paragraph 88: The PRPs believe the sentence they propose to be added to paragraph 88 is a simple and reasonable clarification of their reservation of rights that is not inconsistent with EPA's interpretation of the interplay between the applicable Covenants Not to Sue and Reservations of Rights in the AOC but provides greater express certainty. The language proposed is not unique (it has been used in other AOCs), and having clear reservation of rights language in paragraph 88 is important to the PRPs given the many uncertainties associated with LLC, nearby subsites, and potential liability issues.

Please let us know if EPA accepts the SOW changes proposed by Arcadis and these final two changes to the AOC. Thank you.

David

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