To: Vince Angermeier[va@nijmanfranzetti.com]; Susan Franzetti[sf@nijmanfranzetti.com]; Jeff Featherstun[jfeather@psrb.com]; Stephen Studer[sstuder@KDLEGAL.com]; Jim Woodsmall[jwoodsmall@warrickandboyn.com]; Frank Deveau[fdeveau@taftlaw.com]; Dan Cory[dcory@psrb.com]; Jeff Claflin[jclaflin@psrb.com]; Arthur A. Vogel - Quarles & Brady LLP[arthur.vogel@quarles.com]; Don Kiesling[don.Kiesling@rexnord.com]; kgaskill@mlc-usa.com[kgaskill@mlc-usa.com]
Cc: Ashleigh.Morris@usdoj.gov[Ashleigh.Morris@usdoj.gov]; Quadri, Syed[quadri.syed@epa.gov]; Zaharoff, Josh[Zaharoff.Josh@epa.gov]; SThill@idem.IN.gov[SThill@idem.IN.gov]; PKASARAB@idem.IN.gov[PKASARAB@idem.IN.gov]
From: Krueger, Thomas
Sent: Fri 4/10/2015 3:45:44 PM
Subject: RE: Response to Lusher Site letter

I have not heard back from anyone other than Mr. Angermeier and from Mr. Studer's office about time conflicts. I therefore propose that we plan to have the call at 9:30 CDT/10:30 EDT on Tuesday, April 14. Please advise immediately if that time will not work for you. Otherwise, I look forward to talking with you all then.

Tom Krueger

From: Vince Angermeier [va@nijmanfranzetti.com]
Sent: Wednesday, April 8, 2015 10:26 AM
To: Susan Franzetti; Krueger, Thomas; Jeff Featherstun; Stephen Studer; Jim Woodsmall; Frank Deveau; Dan Cory; Jeff Claflin; Arthur A. Vogel - Quarles & Brady LLP; Don Kiesling; kgaskill@mlc-usa.com
Cc: Ashleigh.Morris@usdoj.gov; Quadri, Syed; Zaharoff, Josh; SThill@idem.IN.gov; PKASARAB@idem.IN.gov
Subject: RE: Response to Lusher Site letter

I'm available to participate in the conference call on April 14th, but have a conflict from 12-2pm CST.

Best regards

Vince Angermeier
Nijman Franzetti LLP

From: Susan Franzetti
Sent: Wednesday, April 08, 2015 10:05 AM
To: Krueger, Thomas; Jeff Featherstun; Stephen Studer; Jim Woodsmall; Frank Deveau; Dan Cory; Jeff Claflin; Arthur A. Vogel - Quarles & Brady LLP; Don Kiesling; kgaskill@mlc-usa.com; Vince Angermeier
Cc: Ashleigh.Morris@usdoj.gov; Quadri, Syed; Zaharoff, Josh; SThill@idem.IN.gov; PKASARAB@idem.IN.gov
Subject: RE: Response to Lusher Site letter

Dear Mr. Krueger: Thank you for your response. Because I will be leaving the country on vacation starting April 10, I've copied my associate Vince Angermeier on this e-mail so that everyone can include him on future communications as he will be participating in my stead on any call scheduled next week to discuss the Good Faith Offer Letter further.

Regards, Susan

Susan M. Franzetti
sf@nijmanfranzetti.com<mailto:sf@nijmanfranzetti.com>
(312) 251-5590

From: Krueger, Thomas [mailto:krueger.thomas@epa.gov]
Sent: Wednesday, April 08, 2015 9:19 AM

To: Jeff Featherstun; Stephen Studer; Jim Woodsmall; Frank Deveau; Dan Cory; Jeff Claflin; Arthur A. Vogel - Quarles & Brady LLP; Don Kiesling; kgaskill@mlc-usa.com<mailto:kgaskill@mlc-usa.com>; Susan Franzetti
Cc: Ashleigh.Morris@usdoj.gov<mailto:Ashleigh.Morris@usdoj.gov>; Quadri, Syed; Zaharoff, Josh; SThill@idem.IN.gov<mailto:SThill@idem.IN.gov>; PKASARAB@idem.IN.gov<mailto:PKASARAB@idem.IN.gov>
Subject: Response to Lusher Site letter

Dear Ms. Franzetti,

Thank you for your April 2, 2015 letter on behalf of a group of parties that received EPA's February 2, 2015 special notice letter.

EPA and IDEM are encouraged by the group's ability to organize and respond to the special notice letter. We agree with the group's suggestion that EPA, IDEM and the group should meet promptly to identify and resolve the outstanding issues. We suggest a conference call as a first step and propose April 14 as a date where all of the EPA, IDEM and DOJ case team would be available. Please let us know if group representatives could be available for a 2-hour window sometime that day.

EPA and IDEM would like to confirm and/or clarify a few points to verify that they can consider this a good faith offer and begin working with the group to clarify the issues and wrap up the details.

1) Willingness to implement/finance the work – The letter states that the parties need additional time before they can make a representation regarding their financial ability to perform the work. EPA recognizes that some of the parties are smaller entities. However the work at issue here, assuming (for convenience) that it is funded equally by all eight parties, would cost the parties less than $400,000 each. EPA does not have any reason to believe that the parties cannot pay that amount as the cleanup costs are incurred over the course of the next 12 months or more. To the extent the parties obtain insurance coverage in that timeframe, it would further lessen the financial impact. EPA therefore requests a stronger statement of the parties' financial capability to perform the work if an agreement can be reached. If the parties are truly unable to fund or perform the work in the absence of insurance coverage, it may not make sense to continue further at this point.

2) Statement of willingness to pay oversight costs – The letter states the group's belief that a commitment to pay oversight costs would impose an undue burden on them because other PRPs may exist and may not be part of the settlement. EPA and IDEM oversight is a necessary element of the work covered by this agreement, and must be part of any commitment from the group. CERCLA imposes strict, joint and several liability on parties who may have contributed contamination now co-mingled in the groundwater plume. Additional parties may be subjected to contribution actions and/or may be subjected to "catch up" payments at subsequent phases of the project. EPA has indicated its willingness to consider deferring payment of past costs until subsequent phases of the process in recognition of the group's concerns, but a good faith offer must provide for oversight costs associated with the interim remedy.

3) A response to the proposed Consent Decree – The letter mistakenly states that EPA and IDEM have not yet provided the proposed Consent Decree. The proposed Decree was attached to the Feb. 2 special notice letter. Indeed, with the exception of the past cost and oversight cost issues, none of the concerns in the letter identify any potential issues with the provisions typically required by EPA and outlined in the existing draft decree. Especially because the parties are all represented by experienced Superfund practitioners, EPA and IDEM would expect that any concerns about the standard Decree provisions provided to the parties could be quickly identified and addressed. As EPA indicated at the March 17 meeting, it is willing to provide MS Word copies of the decree and SOW to the group to facilitate further discussion.

4) A response to the proposed Statement of Work – EPA and IDEM understand that the group wishes to pursue a variety of issues and concerns regarding the selected interim remedy. EPA and IDEM are eager to do so, and suggest that it may be useful for the group to identify their issues and concerns using

annotations to the draft SOW, so that the discussions can also focus on refining and finalizing the settlement documents.

Finally, in response to some of the group's discussion points:

1) EPA is willing to consider issuing additional notice letters and pursuing other appropriate mechanisms to encourage participation by other identified PRPs – either at this stage or at subsequent phases. EPA will act promptly on information provided by the group, but will not postpone negotiation deadlines for the interim remedy solely to let those efforts play out.

2) EPA and IDEM are willing to discuss further consideration and refinement of the remedial area and the vapor intrusion area of concern, and to include appropriate measures in the SOW and/or in the remedial design to be developed pursuant to the SOW. Indeed, EPA and IDEM are eager to pursue those discussions, and are optimistic that they can be quickly resolved. EPA does not, however, agree with the letter's implication that it has not carefully and appropriately established the scope of the groundwater plume and attendant vapor intrusion issues. The fact that further information gathering is needed to fully define and address the source areas that may be feeding that plume is separate from, and does not undermine, the plume delineation itself.

In order to confirm that the letter constitutes a good faith offer, and in order to keep moving forward under the existing negotiation timelines, EPA and IDEM ask that the group be prepared to respond to the points raised above, on or before the April 14 call.

We look forward to hearing from you.

Tom Krueger, U.S. EPA
Steve Thill, IDEM