To: Alan.Tenenbaum@usdoj.gov[Alan.Tenenbaum@usdoj.gov]
Cc: Roeschenthaler, Michael J.[MRoeschenthaler@mcguirewoods.com]; Schuster, Scott E.[SSchuster@mcguirewoods.com]; Alter, Jason P.[jalter@mcguirewoods.com]; sthompson@barth-thompson.com[sthompson@barth-thompson.com]; jeffrey.Sands@usdoj.gov[jeffrey.Sands@usdoj.gov]; Van Eaton, Josh (ENRD)[Josh.Van.Eaton@usdoj.gov]; Call, Gary (USAWVS)[Gary.Call@usdoj.gov]; Eiseman, Robin[Eiseman.Robin@epa.gov]
From: Freedlander, Mark E.
Sent: Wed 1/22/2014 1:10:46 PM
Subject: Re: In re Freedom Industries, No. 14-20017 (RGP)

There will be at some point this morning. We did not actually get back to our offices until after 2:00 am this morning following the hearings. Regards. MEF

Mark E. Freedlander
McGuireWoods LLP
625 Liberty Avenue
23rd Floor
Pittsburgh, PA 15222-3142
412.667.7928 (Direct Line)
412.667.7967 (Direct FAX)
mfreedlander@mcguirewoods.com

This e-mail may contain confidential or privileged information. If you are not the intended recipient, please advise by return e-mail and delete immediately without reading or forwarding to others.

On Jan 22, 2014, at 8:09 AM, "Tenenbaum, Alan (ENRD)" <Alan.Tenenbaum@usdoj.gov> wrote:

Is there a revised Order that we can review? Thanks. Alan.

Sent Using U.S. DOJ/ENRD BES 5 Server

From: Freedlander, Mark E. [mailto:MFreedlander@mcguirewoods.com]
Sent: Tuesday, January 21, 2014 12:36 PM
To: Tenenbaum, Alan (ENRD)
Cc: Roeschenthaler, Michael J. <MRoeschenthaler@mcguirewoods.com>; Schuster, Scott E. <SSchuster@mcguirewoods.com>; Alter, Jason P. <jalter@mcguirewoods.com>; sthompson@barth-thompson.com <sthompson@barth-thompson.com>; Sands, Jeffrey (ENRD); Van Eaton, Josh (ENRD); Call, Gary (USAWVS); Eiseman, Robin <Eiseman.Robin@epa.gov>
Subject: Re: In re Freedom Industries, No. 14-20017 (RGP)

Alan. We have not yet had the opportunity to ask but will do so. If we get to that point we will request affirmation from counsel to lender who is copied on this communication. Regards. MEF

Mark E. Freedlander

McGuireWoods LLP
625 Liberty Avenue
23rd Floor
Pittsburgh, PA 15222-3142
412.667.7928 (Direct Line)
412.667.7967 (Direct FAX)
mfreedlander@mcguirewoods.com

This e-mail may contain confidential or privileged information. If you are not the intended recipient, please advise by return e-mail and delete immediately without reading or forwarding to others.

On Jan 21, 2014, at 12:23 PM, "Tenenbaum, Alan (ENRD)" <Alan.Tenenbaum@usdoj.gov> wrote:

Has the lender signed off on the language as well? Thanks.

From: Roeschenthaler, Michael J. [mailto:MRoeschenthaler@mcguirewoods.com]
Sent: Tuesday, January 21, 2014 12:14 PM
To: Tenenbaum, Alan (ENRD)
Cc: Freedlander, Mark E.; Schuster, Scott E.; Alter, Jason P.; sthompson@barth-thompson.com; Sands, Jeffrey (ENRD); Van Eaton, Josh (ENRD); Call, Gary (USAWVS); Eiseman, Robin
Subject: Re: In re Freedom Industries, No. 14-20017 (RGP)

Alan,

Reserving all of the debtor's rights with respect to the nature and extent of the EPA's claims/obligations, this language is acceptable.

Is our condition acceptable?

Mike Roeschenthaler

On Jan 21, 2014, at 12:02 PM, "Tenenbaum, Alan (ENRD)" <Alan.Tenenbaum@usdoj.gov> wrote:

Counsel:

The United States on behalf of EPA has some concerns about the Debtor's Motion for Financing. EPA is still reviewing the emergency motion and reserves all of its rights but wishes to raise certain objections and propose clarifying language below that would resolve these particular objections for purposes of the interim order. EPA reserves all rights as to objections raised by other parties and as to the final hearing on financing. In addition, EPA would like to know whether the proposed interim budget provides for the full performance of all work required by West Virginia's administrative order. Here is the clarifying language:

"Nothing in this Order or the DIP Documents shall relieve the Debtor of any obligations under federal, state or local police or regulatory laws or under 28 U.S.C. § 959(b). Nothing in this Final Order or the DIP Documents shall impair or adversely affect any claim of any governmental unit with respect to any insurance proceeds for liabilities under environmental laws to the extent not permitted by applicable law. As to the United States, any State or municipality and any of the foregoing's respective agencies, departments or agents, nothing in this Final Order or the DIP Documents shall discharge, release or otherwise preclude any valid right of setoff or recoupment that any such entity may have. Nothing in the Order or the DIP Documents impairs or adversely affects any right of a governmental unit under financial assurance instruments provided by the Debtor to comply with non-bankruptcy law."

Add to paragraph 27: "except that this Paragraph shall apply to environmental liabilities only so long as the actions of the [lender parties] do not constitute, within the meaning of 42 U.S.C. § 9601(20)(F), actual participation in the management or operational affairs of a vessel or facility owned or operated by the Debtor, or otherwise cause lender liability to arise or the status of control, responsible person, owner, or operator to exist under applicable federal, state, or local law."

Please advise whether this language can be added to the Interim Order if the Court is willing to approve an interim order. Thank you.

Alan Tenenbaum

National Bankruptcy Coordinator

Department of Justice

Environmental Enforcement Section

P.O. Box 7611

Ben Franklin Station

Washington, DC 20044

(202) 305-5310 (cell)