To: Jaffess, Sharon[jaffess.sharon@epa.gov]; El-Zein, Jason[el-zein.jason@epa.gov]; Borries, Samuel[borries.samuel@epa.gov]
From: Durno, Mark
Sent: Fri 1/24/2014 7:44:30 PM
Subject: RE: Quick Question ENFORCEMENT CONFIDENTIAL

Chiefs,

I had a long talk with Fran Burns in R3 today. Here are some highlights – I'll explain more next week:

- R3 responded independently (they were not called in by the locals or state); however, they have an excellent reputation with West Virginia due to their outposted office in Wheeling, so, their participation was most welcome.

- EPA participated in UC and provided technical assistance – particularly regarding assessment and monitoring.

- Since this was not a hazardous substance or oil, CERCLA and OPA did not apply for enforcement purposes; however, we did have response authority via pollutant/contaminant designation.

o Notably, the State had strong enforcement capability under their operating permit with the facility.

o Also – we could do an AOC in these circumstances but not a UAO (under CERCLA)

- R3 considered using CWA 311 (c) authority for enforcement if needed, but didn't have a "field order" mechanism to do rapid enforcement.

o To the best of our knowledge, only R6 has developed field orders for CERCLA/CWA situations

o We also discussed the need for NOFI's under CERCLA to put RP's on notice (similar to how we do for OPA)

- R3 felt strongly that their communication success was largely due to their presence on the ground – they had access to all relevant site information. In hind sight, they would have liked to have a water person on the ground with the OSCs.

- R3 has an Action Memo drafted – just in case we need to take over.

- We (R5) should re-energize the effort to establish rapid enforcement tools, like we have under OPA. In addition, we should look at the real possibilities of establishing field order boiler-plates for rapid enforcement in emergencies under CERCLA/CWA. This may be a good issue to cue up with the national RM's.

For responding to the RA, I recommend the following:

The removal program, in addition to our field work on the Ohio River, has been coordinating with Region 3 about the overall response and enforcement process on the Elk River case. Due to the limitations under traditional response authorities (CERCLA and OPA), the Region was considering issuing CWA 311 orders if necessary. The State's enforcement program, under the facilities' operating permit, gave Unified Command the leverage needed to force rapid action by the RP. Region 5 has asked Region 3 to present this case study during our annual training in March. Region 5's removal and enforcement programs will review this case and recommend potential actions to enhance our enforcement options during situations like this.

Have a good weekend.

Mark Durno

U.S. EPA Region 5 / Emergency Response Branch

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From: Jaffess, Sharon
Sent: Wednesday, January 22, 2014 5:24 PM
To: Renninger, Steven; Durno, Mark
Cc: El-Zein, Jason; Borries, Samuel
Subject: RE: Quick Question ENFORCEMENT CONFIDENTIAL
Importance: High

I got ahead of myself; of course there is no Action Memo since it is an ER! But, in any case, does R3 have an enforcement document or information to share with us on the status of the RP, its relationship with Rose Coal; insurer information, etc.?

Sharon J. Jaffess, Chief

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From: Jaffess, Sharon
Sent: Wednesday, January 22, 2014 4:07 PM
To: Renninger, Steven; Durno, Mark
Cc: El-Zein, Jason; Borries, Samuel
Subject: Quick Question ENFORCEMENT CONFIDENTIAL

Steve and Mark,

The RA brought up some questions today at the senior staff meeting (Joe Dufficy attended for Rick). Based on Joe's notes, I think her questions must be with respect to her wanting to ensure that we are ready for any future response actions via our enforcement mechanisms we might have to take regarding the WV spill in the Region or to enforcement actions related to other statutes (e.g., EPCRA, SPCC, CWA).

I think you, Steve R, might already have some of this information from Region 3's OSCs, Dennis Matlock and Melissa Linden. In any case, it relates to the corporate information on Freedom Industries and its ability to pay, its insurers, and other potentially connected corporate entities such as Rosebud Coal.

(I tried to get it myself on OSC.net but I couldn't get the Action Memo and what I really need, Region 3's Enforcement Addendum with information on Freedom Industries).

All this to say, Steve, do you have a copy of Region 3's enforcement addendum --- or, if you

don't have it, can you ask your colleagues to send it to me (or, do you know who the R3 attorney is that can share their research and findings with us, in case we need it? I don't want to task our staff and attorneys to do the same inquiries, ability to pay analyses, etc. that clearly, Region 3 has already done or is already doing.

I have a few contacts in R3 – but, since you are working with them, Steve, you may already have this information in your file.

Thanks!

Sharon

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