Message

From: Covington, Jeryl [Covington.Jeryl@epa.gov]
Sent: 5/25/2017 3:13:32 PM
To: Covington, Jeryl [Covington.Jeryl@epa.gov]
Subject: May 23, 2017 Conf. Call Notes (HI 44NO- and 45NO-16-R9)
Attachments: RE: Questions for Call with Earthjustice

4:15 p.m.

Conference call with complainants representative

ECRCO: Brittany M, Lilian, Debra McG, Kurt

Region 9: Richard Grow, Amy Miller, Katherine Taylor, Desean, Kerry, Tasha, Deldi

OGC: Adam Wilson, Mary, Calvin (Intern),

Earthjustice: Paul and Kiley

Request to record conversation: Affirmed by Earthjustice attendees

LD: provided background on the resolution process..
Paul: Understood that if ADR is engaged that the investigation is suspended. Raised concern about ADR since it could be long and drawn out. What is the time frame to see if ADR is an option?
LD: Noted concerns about the benefits that could be gained and the associated costs. Stated that ADR occurs with another office independent of ECRCO. Time and resources are invest and ECRCO receives updates on the progress.
Kiley: Noted that EPA has information on this complaint. Would complainants have access to the information?
LD: Noted that the information would not be available to the complainants. Stated that ECRCO is not leaning in the direction of ADR. Have not made a final decision and may suggest informal resolution.
Paul: Was not intending to suggest that ADR was a preference. Would appreciate an understanding of the practical distinction between the two types of resolution.
LD: Noted that informal resolution would finalize an investigation and would not result in the issuing of findings. Would enter into an informal agreement. The agreement anticipates what would have to occur to resolve the concerns. Participation differences between ADR and informal was explained. ECRCO is not involved in ADR. ECRCO does not enforce the ADR agreement. If the agreement is breeched, the complainants can refile the complaint. Based upon what the investigation identified, some specific provisions could resolve the complaint. Would touch base with the complainants and would get input on whether the resolution be amenable. Informal resolution method is widely used by other federal agencies.
Paul: Understand the principal distinctions and in the latter, the resolution is negotiated between the recipient and the agency. ADR is between the recipient and the complainants. What is the extent of the participation of the complainants? Does not want to return to the clients and explain the outcome.
LD: stated that the concerns of the complainants would be asked and considered in the resolution of the case through the informal process.
Paul: How would EPA respond if the outline of the resolution was presented and the complainants were not pleased if the draft was not acceptable. Where would we go from here?
LD stated that we would ask why the agreement was not acceptable. However, we would want to develop a resolution that is supportable. We start at what if we were to find a violation what would address the issue? We start there and then work backwards. Try to identify the most pressing issue on the community and addressing the big picture. We routinely look at the recipients non-discrimination program and this is one issue raised in your complaint. Cannot make a dent if the processes and procedures are not in place to address discrimination.

Questions:

BM: Have there been any changes in the program.
Paul: Not aware of any on the ground changes. Have seen reports and press conference about what they are going to do. No exact statement about what they are doing. Community disclosure is not viewed by the public as addressing the public's concern. Voluntary program is not state action but viewed and as an industry action.
BM: Have there been any informal discussion concerning this complaint? Paul: No
BM: Are the ag lands part of the native homelands? Paul: Some of them are. Not sure of the overlap between the various lands. The complaint involved leased lands that related to ADC as opposed to Dept. of Homelands. The lands are very close to the lands owned by ADC.
Kiley stated that that there is no overlap on Kaui on Moli Kie they are DHHL.
Paul provided clarification on the leased lands between the DHHL land and the ADC lands that are leased to the biotech company. DHHL are separate from ADC lands.
Amy clarified that the ownership of land is difficult to clarify and asked whether there are ownership maps available. EPA is trying to make distinction on the landownership.
Paul will try and get information on the land ownership and stated that EPA may have more information. Will be pleased to provide this information.
Kiley noted that the planning department has this information on the GIS. Can send the specific links. Noted that the western part of the state may be native lands.
Amy: Can you provide more details on the fishing land? Understood about the coastal lands. Is there a timeframe for fishing in relationship to the ag land use?
Paul will be pleased to ask client for details but understand that fishing occurs year around.
LD explained that follow-up will occur in our interviewing people with these experiences.
BM: Requested update on the CWA citizen suit.
Paul noted that the suit is on-going; the defendants' position has not changed.
Kiley wanted to know why EPA did not identify the drainage ditch in the accepted complaint. Is it included?
BM noted that the accepted issues were very broad and could include us to review other issues as well.
BM What type of resolution would be recommended?
Paul: What changes we would want to see? Would want to go back and speak with clients and could provide a few items; some are include in the complaint. Would want to see the department be more supportive in a meaningful way: buffers between the pesticide field and native HI. Buffers could be included in the leases. More buffer zones included in the areas of the applied areas throughout the state and not as a lease-by-lease basis and those protections implements. Particular pesticides being used and a current effort by physicians to ban a specific pesticide (chlorpyrifos). The Governor is mute on the issue. Separately would like to raise the lack of enforcement. The Department has claimed to increased their resources in this area. Do not know what those enforcement enhancements are. Confirming areas of contamination and would like to see on-going testing to see impact to residents and schools.
Kiley: ADC to get a CWA permit and a T6 compliance program.
Paul will follow-up with client and physicians to obtain other options.
BM: Inquiry- what time frames work bests due to 6-hour time change.
Paul difficult to commit to availability during business hours. Will press them for availability. Clients cannot take time off from work, is there some flexibility?
LD noted that there will be some flexibility.
BM shared that she would forward questions to Earthjustice and then prepare for the scheduling of interviews.

End of conference 5:12 p.m.