From: Michael Chun
To: Deborah Hilsman/R10/USEPA/US@EPA
Cc: Rob Rau/R10/USEPA/US@EPA; sue@rhsmith.com
Subject: RE: Smitty's AOC Missed Deadline
Date: 08/25/2010 09:39 AM

Rob,

1) a brief description of the current status of the project

AEG completed the push probe subsurface investigation at locations offsite and inferred down gradient and cross gradient of the former Smitty Conoco (Spirit Gas Station - the Site) on July 14, 2010. We've confirmed that the inferred direction of groundwater migration differs from previous assumptions made by others at this Site. This difference in direction may indicate that groundwater direction may fluctuate seasonally or flows to the east-northeast as opposed to the previous assumptions of to the southeast. The findings from the push probe subsurface investigation include: a) TPH has migrated offsite to the east; and b) the dissolved gasoline petroleum hydrocarbons plume is at least approximately 250 feet laterally.

2) Our planned next step forward

AEG needs to conduct supplemental remedial investigation in order to characterize the offsite extent of the dissolved TPH plume to the east. Areas to be investigated will include the City of Toppenish's right-of-way and private properties. AEG will need to obtain the right-of-entry to these areas; obtaining right-of-entry at some locales may pose a problem to an expedited schedule. We will provide a map to the EPA showing recommended locales for the supplemental phase of work. AEG is in the process of exploring potential locales for further subsurface investigation. Similar to the first phase of offsite subsurface investigation, both soil and groundwater media will be explored during the secondary phase.

Subsequent to this phase of work, monitoring wells will need to be constructed and professionally surveyed in order to assess the groundwater flow direction throughout 4 consecutive quarters to evaluate the representative migration direction/pattern. In addition, AEG will also explore the historical usages at the adjoining Mexican restaurant (to the east of the Site) to ascertain whether a retail gasoline station or other commercial entities which uses petroleum products had operated at this parcel.

3) a tentative schedule for submitting the CAP to EPA for approval

Due to the continuation of subsurface investigation to further the understanding of the dissolved TPH plume, AEG would highly recommend presenting all data and findings in one complete report. AEG will submit a draft CAP to EPA for review upon completion of the Supplemental Remedial Investigation Report which will present the findings, conclusions, and recommendations from both phases of subsurface investigation. The tentative schedule for the draft CAP will depend upon the field dates for the second phase of subsurface investigation. AEG will provide suggested dates to EPA and will proceed as soon as possible depending on right-of-entries.

The completion of a draft CAP will depend heavily on the findings of the Supplemental Remedial Investigation; however, it is typically produced after the installation of monitoring wells. AEG highly recommends waiting until the completion of at least 2 quarterly groundwater events (to determine a representative direction of groundwater migration) prior to producing the draft CAP. The locations and extent of the impacted areas offsite (as verified by representative groundwater analytical results from established groundwater monitoring wells) will be necessary to carry out the tasks for a CAP.

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-----Original Message-----
From: Hilsman.Deborah@epamail.epa.gov
[mailto:Hilsman.Deborah@epamail.epa.gov]
Sent: Thursday, August 19, 2010 12:41 PM
To: sue@rhsmith.com
Cc: Michael Chun; Rau.Rob@epamail.epa.gov
Subject: Re: Smitty's AOC Missed Deadline

Sue,

This follows-up on Rob Rau's conversation with you and your consultant, Mike Chun, earlier this week concerning the missed deadline for submitting a proposed Corrective Action Plan for EPA's approval as required in paragraph 6.2 of the Administrative Order on Consent ("AOC" or "Order"). As Rob has informed you, Carlo Bertani has left EPA and Rob has taken Carlo's place as the EPA Project Coordinator for the AOC. All notifications and submissions to EPA should now be sent to Rob and

paragraph 15.1 of the AOC should be revised to reflect the following contact information for him:

Rob Rau, LUST Coordinator
U.S. EPA Region 10
Office of Compliance and Enforcement
Groundwater Unit; UST/LUST Program
1200 6th Avenue, Suite 900, OCE-082
Seattle, WA 98101
206-553-6285
rau.rob@epa.gov

As indicated in paragraph 6.2 of the AOC, you were required to submit a Corrective Action Plan ("CAP") for EPA approval within 120 days of the effective date of the Order. The effective date of the Order was April 19, 2010, and therefore, the CAP was due on August 16, 2010. Rob indicates from his discussions with you and Mike Chun, that there may be legitimate reasons for the delay in submitting the CAP and EPA is willing to consider a revised schedule, but in order to do so, we need the following information from you. By Monday, August 23rd, please email to Rob and copy me on the email the following information:

1) a brief description of the current status of the project
2) your planned next step forward
3) a tentative schedule for submitting the CAP to EPA for approval

As you are aware, paragraph 16.1 of the AOC describes the stipulated penalties that EPA can demand for failure to comply with any term or condition of the AOC. At this time, EPA is more concerned with having the work completed in the timely manner. Paragraph 22.1 of the AOC allows the parties to mutually agree to modifications of the AOC, but EPA must receive information to support any modification and, in the future, we want to receive advance notification that a due date will not be met along with the reasons why. For now, providing the information listed above in a timely manner is imperative.

Please contact Rob or me with questions. We look forward to receiving your response by Monday, August 23rd.

Deborah E. Hilsman
Assistant Regional Counsel