

Message

From: Kelly, Albert [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=08576E43795149E5A3F9669726DD044C-KELLY, ALBE]
Sent: 10/9/2017 2:30:33 PM
To: rich.gold@hklaw.com
Subject: Re: PH baseline sampling - EPA comments on draft WP and SOW

I am headed back to D.C. Available for a call. Perhaps we could meet this afternoon or in the morning
Sent from my iPad

> On Oct 7, 2017, at 10:53 AM, "rich.gold@hklaw.com" <rich.gold@hklaw.com> wrote:

>
> Interestingly you were not copied on emails markup of the work plan. It removes any possibility that the data will impact the remedy selected by the ROD and is inconsistent not only with what you have been saying but also what Michelle has made clear several times. The Pre-RD group will have to decide what to do on the EPA proposal on its call Tuesday at 5. We should catch up before then. Peter is in town for WH infrastructure mtg Tuesday starting Monday am fyi. I'm available all weekend. This is purely Sean and Cami. We are two weeks out from losing the opportunity to get in the water this year. Rich

>
> Rich Gold | Holland & Knight
> Practice Group Leader
> Public Policy & Regulation Group
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>
> Begin forwarded message:

>
> From: "Peter Saba" <psaba@schn.com<mailto:psaba@schn.com>>
> To: "Gold, Richard (WAS - X77143)" <rich.gold@hklaw.com<mailto:rich.gold@hklaw.com>>, "Schweitzer, Howard" <HSchweitzer@cozen.com<mailto:HSchweitzer@cozen.com>>
> Subject: FW: PH baseline sampling - EPA comments on draft WP and SOW

>
> PRIVILEGED AND CONFIDENTIAL / JOINT DEFENSE COMMUNICATION / ATTORNEY CLIENT WORK PRODUCT

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> We did receive the EPA comments on the work Plan at 5 PM today. As per our concern, at first look my view is that they are going to be very problematic with the group. I am going to forward my email to the group that I sent to try to put these comments in context, keep the group calm and suggest a path forward. But even I am very skeptical that we can bridge the fundamental difference in objectives between the Region 10 staff (implement the ROD as issued, obtain base-line data for long-term monitoring of remedy effectiveness) and the Pre-RD Group (obtain data to support a more cost-effective remedy to the extent that the data warrants). This is the core issue, and I can see these comments being the final straw that everyone says that we have been wasting our time, that Region 10 staff remain unchecked, and that even if we get agreement on getting the data, staff will come up with every reason they can not to utilize it to modify the remedy so we will have also wasted over \$17 million.

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> I am providing the attachments with the EPA comments not because I expect you to go through them in any detail, but just so you have a flavor. Data that will be collected by this effort will be much better and more current than the data EPA used to come up with their ROD, but based on these comments such data cannot be used for anything beyond setting the baseline for long-term monitoring. Here are some excerpts:

>
> Intro, Page 1 [A Good Start]

>
> · Commented [A10]: EPA's objectives differ from many of those identified by the Pre-RD Group in this work plan. Some of Pre-RD objectives are not ROD required or consistent with EPA's objectives and planned evaluations.

>
> · Commented [A11]: Technology assignments can be evaluated during design phase but not with limited data to be collected under the PDI.

>
> Data Use Objectives, pp. 4-5

>
> · Commented [A14]: EPA's objectives differ from many of those identified by the Pre-RD Group in this work plan. Some of Pre-RD objectives are not ROD required or consistent with EPA's objectives and planned evaluations.

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> · Commented [A15]: Technology assignments can be evaluated during design phase but not with limited data to be collected under the PDI.
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> · Commented [A16]: [Refining the Food Web Model] Achieving this goal is not the intent of the PDI. Concentrations that were estimated using the FWM should not be recalculated.
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> · Commented [A17]: [Human Health Risks; Background Conditions] Not relevant for this phase of sampling.
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> Evaluating Background, p. 13 with same comment on p. 14
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> · Commented [A19]: Evaluation of background concentrations is beyond the scope of this phase of work. Primary purpose for data collection in Downtown and Upriver Reaches is for comparison to site concentrations using an equivalency analysis.
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> Can only evaluate natural recovery going forward from 2018 sampling; evaluation of any recovery since 2004 not valid - p. 15
>
> · Commented [A21]: The primary purpose is to collect an unbiased baseline data set to enable comparison to future unbiased sediment sampling data collected under long-term monitoring to evaluate natural recovery. A comparison of 2018 surface sediment data from reoccupied 2004 sample locations with previously collected 2004 samples is statistically invalid because 108 of 428 surface sample locations are biased samples. A valid statistical approach for evaluating MNR for the Site must be based on a comparison of unbiased surface sediment data (i.e., 2018 baseline data and future sediment sampling data collected under long-term monitoring) to evaluate natural recovery.
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> · Commented [A22]: The work plan and Table 8 states that the surface sediment data will be used to evaluate natural recovery changes since 2004. Although a comparison of 2018 surface sediment data reoccupying 2004 sample locations (biased data) with previously collected 2004 samples may indicate natural recovery trends, it is statistically invalid. A valid statistical approach for evaluating MNR for the Site must be based on a comparison of unbiased surface sediment data (i.e., 2018 baseline data and future sediment sampling data collected under long-term monitoring) to evaluate natural recovery.
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> Data Evaluation Section 3.3, p. 28 - 29 [Specifically referenced in the Agreement-In-Principle]
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> · Commented [A40]: Many of the work elements described below represent revisiting the RI/FS and will result in significant delay in remedy implementation.
>
> · Commented [A41]: Many of the evaluation statements in this section are beyond the scope of this phase of work and not consistent with or support the ROD's data needs or objectives. Without using the data quality objective process to fulfill a specific data need of the ROD's decision framework, the outcomes of these evaluations will be ancillary to and not directly influence remedial decision making.
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> · Commented [A42]: The ROD states that sediment data will be used to delineate remedy areas; not fish trends and "background loading".
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> · Commented [A43]: RAL curves presented in the ROD should not be revised.
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> · Commented [A44]: The proposed plan is not sufficient for recalculating SWACs because not all of the 428 surface sediment samples are unbiased.
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> · Commented [A45]: Fish tracking results should not be used to refine the extent and segmenting of the river. The primary objective for the fish acoustic tracking study is to establish the home range of the species used in long-term biological monitoring to inform the degree to which that species can be associated with remedial outcomes.
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> · Commented [A46]: Primary purpose for upstream sediment sampling is to collect samples over time to develop "equivalency"-- determining incoming load or sediment quality that would dictate what cleanup with natural recovery could achieve. PDI will not obtain sufficient data to evaluate current background concentrations.
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> · Commented [A47]: Detailed sampling results obtained for remedial design will be needed to update active remedial footprints. The surface and subsurface sediment samples collected during the PDI will not be sufficient to define SMAs--but can assist in developing the SMA locations to be further defined through additional sampling as part of remedial design.
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> · Commented [A48]: These evaluations are not the intent of the PDI. Concentrations that were estimated using the FWM should not be recalculated. Fish tissue data can be used to inform fish advisories but not calculate fish consumption risks.

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> . Commented [A49]: The primary purposes for this AOC/SOW are to collect data for Pre-RD SMA delineation, which will assist with allocation and to collect baseline data to establish existing site conditions for long-term monitoring. Notably, technology assignments within SMAs are based on other information components (e.g. erosion/deposition, slope, propeller wash) that are not entirely informed by Pre-RD SMA delineation and baseline sampling and more appropriate for the design phase that is outside this AOC/SOW.

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> From: Ebright, Stephanie [mailto:EBRIGHT.STEPHANIE@EPA.GOV]
> Sent: Friday, October 06, 2017 4:59 PM
> To: Peter Saba <psaba@schn.com<mailto:psaba@schn.com>>; Loren R. Dunn (LDunn@bdlaw.com<mailto:LDunn@bdlaw.com>) <LDunn@bdlaw.com<mailto:LDunn@bdlaw.com>>; greg.christianson (greg.christianson@morganlewis.com<mailto:greg.christianson@morganlewis.com>) <greg.christianson@morganlewis.com<mailto:greg.christianson@morganlewis.com>>; Karen TRAEGER (karen.traeger@external.total.com<mailto:karen.traeger@external.total.com>) <karen.traeger@external.total.com<mailto:karen.traeger@external.total.com>>; J.W. Ring (JWRing@ringbenderlaw.com<mailto:JWRing@ringbenderlaw.com>) <JWRing@ringbenderlaw.com<mailto:JWRing@ringbenderlaw.com>>; Christine L. Hein (CHein@ringbenderlaw.com<mailto:CHein@ringbenderlaw.com>) <CHein@ringbenderlaw.com<mailto:CHein@ringbenderlaw.com>>; richard.george (richard.george@pgn.com<mailto:richard.george@pgn.com>) <richard.george@pgn.com<mailto:richard.george@pgn.com>>
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> Subject: PH baseline sampling - EPA comments on draft WP and SOW

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> SETTLEMENT COMMUNICATION

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> Hi all,
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> Please see attached comments from EPA on the Pre-RD Group's draft Work Plan as well as the SOW.
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> Thanks,
> Stephanie

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> Stephanie Ebright, Assistant Regional Counsel
> U.S. Environmental Protection Agency, Region 10
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> <PH-Pre-RD SOW-RLSO_10-6-17.docx>