

Message

From: Opalski, Dan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8B5ED6410D934BF699A008A252791A55-OPALSKI, DAN]
Sent: 10/9/2017 4:25:51 PM
To: Peter Saba [psaba@sch.n.com]
CC: Bilbrey, Sheryl [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=45612dba9a7f4a718d12e27feec7590f-Bilbrey, Sh]; Kelly, Albert [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=08576e43795149e5a3f9669726dd044c-Kelly, Albe]; Woolford, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9a70358e7660435cbe6afa87b7b9b71b-Woolford, James]; Mackey, Cyndy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b2f2b414786040ee8d75a21fa1c04a9b-Mackey, Cyndy]; Gustavson, Karl [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=242318f48f264976aeeb0008f0a44210-Gustavson, Karl]; Sheldrake, Sean [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d16e2780a4094bba82daaa5283a71572-Sheldrake, Sean]; Cora, Lori [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c8850941bf1540c796559dce75c2f5ee-Cora, Lori]; Ebright, Stephanie [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6fe08cfbe17940aabd4d999a19eada04-Ebright, Stephanie T.]; Zhen, Davis [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2a43e2ddfd444abbb0329c0a17d06ec9-Zhen, Davis]; Ingemansen, Dean [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=80449989b40b42ec8202ed034c75b237-Ingemansen, Dean]; Loren R. Dunn (LDunn@bdlaw.com) [LDunn@bdlaw.com]; greg.christianson (greg.christianson@morganlewis.com) [greg.christianson@morganlewis.com]; richard.george (richard.george@pgn.com) [richard.george@pgn.com]; Karen TRAEGER (karen.traeger@external.total.com) [karen.traeger@external.total.com]; J.W. Ring (JWRing@ringbenderlaw.com) [JWRing@ringbenderlaw.com]; Christine L. Hein (CHein@ringbenderlaw.com) [CHein@ringbenderlaw.com]; Pirzadeh, Michelle [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2ae309e0a52a42cd847709b39bc2239a-Pirzadeh, Michelle]
Subject: Re: Portland Harbor - Sample Locations Issue

Peter —

Even as we try to work through scheduling challenges, It is important for us to know where things stand among the Pre-RD group on the sample locations issue. Without resolution of that item, we may very likely not be prepared to discuss further the other outstanding matters. Please advise as soon as practicable.

Sent from my iPhone

On Oct 6, 2017, at 4:34 PM, Peter Saba <psaba@sch.n.com> wrote:

Sheryl,

Unfortunately, Thursday will not work for the Pre-RD Group, and we would propose to keeping our meeting on Wednesday. As we had previously noted, we are flexible as to the time on Wednesday.

Not all of our the group members would be available on Thursday, we had already scheduled our internal group call for Tuesday to prepare for Wednesday, and the group had set aside all of Wednesday to meet on the Portland Harbor pre-RD sampling (including for purposes of meeting on the responses to our RFP for the sampling work as we have been working in parallel on that so that we can mobilize contractors to do the work as soon as the AOC, SOW and Work Plan are finalized and get in the river to start sampling this year). In addition, we are concerned that if we do not meet to discuss the comments

until Thursday, there will be little time left in the week to move forward on next steps from that discussion.

Peter

From: Bilbrey, Sheryl [mailto:Bilbrey.Sheryl@epa.gov]
Sent: Friday, October 06, 2017 2:43 PM
To: Peter Saba <psaba@schm.com>; Opalski, Dan <Opalski.Dan@epa.gov>
Cc: Kelly, Albert <kelly.albert@epa.gov>; Woolford, James <Woolford.James@epa.gov>; Mackey, Cyndy <Mackey.Cyndy@epa.gov>; Gustavson, Karl <Gustavson.Karl@epa.gov>; Sheldrake, Sean <sheldrake.sean@epa.gov>; Cora, Lori <Cora.Lori@epa.gov>; Ebright, Stephanie <EBRIGHT.STEPHANIE@EPA.GOV>; Zhen, Davis <Zhen.Davis@epa.gov>; Ingemansen, Dean <Ingemansen.Dean@epa.gov>; Loren R. Dunn (LDunn@bdlaw.com) <LDunn@bdlaw.com>; greg.christianson (greg.christianson@morganlewis.com) <greg.christianson@morganlewis.com>; richard.george (richard.george@pgn.com) <richard.george@pgn.com>; Karen TRAEGER (karen.traeger@external.total.com) <karen.traeger@external.total.com>; J.W. Ring (JWRing@ringbenderlaw.com) <JWRing@ringbenderlaw.com>; Christine L. Hein (CHein@ringbenderlaw.com) <CHein@ringbenderlaw.com>; Pirzadeh, Michelle <Pirzadeh.Michelle@epa.gov>
Subject: RE: Portland Harbor - Sample Locations Issue

Peter,

We'll be sending the work plan comments later today and propose we talk on Thursday, 10-1 pm (rather than Wednesday). This will allow us to convene a TCT meeting on either Tuesday or Wednesday next week.

Please let me know if that works for you all

Sheryl

From: Peter Saba [mailto:psaba@schm.com]
Sent: Thursday, October 05, 2017 5:37 PM
To: Opalski, Dan <Opalski.Dan@epa.gov>
Cc: Kelly, Albert <kelly.albert@epa.gov>; Woolford, James <Woolford.James@epa.gov>; Mackey, Cyndy <Mackey.Cyndy@epa.gov>; Gustavson, Karl <Gustavson.Karl@epa.gov>; Sheldrake, Sean <sheldrake.sean@epa.gov>; Cora, Lori <Cora.Lori@epa.gov>; Ebright, Stephanie <EBRIGHT.STEPHANIE@EPA.GOV>; Bilbrey, Sheryl <Bilbrey.Sheryl@epa.gov>; Zhen, Davis <Zhen.Davis@epa.gov>; Ingemansen, Dean <Ingemansen.Dean@epa.gov>; Loren R. Dunn (LDunn@bdlaw.com) <LDunn@bdlaw.com>; greg.christianson (greg.christianson@morganlewis.com) <greg.christianson@morganlewis.com>; richard.george (richard.george@pgn.com) <richard.george@pgn.com>; Karen TRAEGER (karen.traeger@external.total.com) <karen.traeger@external.total.com>; J.W. Ring (JWRing@ringbenderlaw.com) <JWRing@ringbenderlaw.com>; Christine L. Hein (CHein@ringbenderlaw.com) <CHein@ringbenderlaw.com>; Pirzadeh, Michelle <Pirzadeh.Michelle@epa.gov>
Subject: RE: Portland Harbor - Sample Locations Issue

FOR SETTLEMENT PURPOSES ONLY – SUBJECT TO Rule 408, FRE

Dan,

Thank you for clarifying EPA's position – that is very helpful. This clarification has been communicated to the Pre-RD Group. We have set up a call for the group with our technical consultants for Friday

afternoon to obtain their input and to discuss this among the group, including any implications for our data objectives. We hope to be in a position to be back to EPA on this promptly.

In the interim, we look forward to receiving EPA's comments on the work plan on Friday and to working through those as well as the limited remaining issues on the AOC as discussed on this morning's call in order to achieve our mutual goal of finalizing these documents and launching the sampling work in the river.

Please advise a time that is convenient for the EPA team to work through the comments on the work plan on Wednesday. In light of your comment, I would suggest that the teams set aside 3 hours to do this on Wednesday to ensure adequate time. If we are able to get through the comments in less time, I am sure no one will complain in getting part of their day back.

Peter

From: Opalski, Dan [mailto:Opalski.Dan@epa.gov]

Sent: Thursday, October 05, 2017 1:50 PM

To: Peter Saba <psaba@schl.com>

Cc: Kelly, Albert <kelly.albert@epa.gov>; Woolford, James <Woolford.James@epa.gov>; Mackey, Cyndy <Mackey.Cyndy@epa.gov>; Gustavson, Karl <Gustavson.Karl@epa.gov>; Shel Drake, Sean <shel Drake.sean@epa.gov>; Cora, Lori <Cora.Lori@epa.gov>; Ebright, Stephanie <EBRIGHT.STEPHANIE@EPA.GOV>; Bilbrey, Sheryl <Bilbrey.Sheryl@epa.gov>; Zhen, Davis <Zhen.Davis@epa.gov>; Ingemansen, Dean <Ingemansen.Dean@epa.gov>; Loren R. Dunn (LDunn@bdlaw.com) <LDunn@bdlaw.com>; greg.christianson (greg.christianson@morganlewis.com) <greg.christianson@morganlewis.com>; richard.george (richard.george@pgn.com) <richard.george@pgn.com>; Karen TRAEGER (karen.traeger@external.total.com) <karen.traeger@external.total.com>; J.W. Ring (JWRing@ringbenderlaw.com) <JWRing@ringbenderlaw.com>; Christine L. Hein (CHein@ringbenderlaw.com) <CHein@ringbenderlaw.com>; Pirzadeh, Michelle <Pirzadeh.Michelle@epa.gov>

Subject: RE: Portland Harbor - Sample Locations Issue

Peter,

Thank you for discussing the issue of sample locations with me on the phone earlier today. As I conveyed to you, our key concern about your proposal is not really about using transects versus grids, per se, but about the moving of sample locations after they are randomly generated. To forego further debate, EPA would accept your proposal for grid-based sampling as long as the random generated samples are not "relocated" or moved (to the 2004 sample locations or otherwise) per the "and then shifted" language of Step 4 in Appendix B of the draft work plan. EPA believes the additional step of purposefully moving the random-generated locations introduces bias in the dataset. In order for EPA to achieve our objectives, as outlined in the Record of Decision, we believe that the 424 unbiased samples must be collected.

I also appreciated your brief but positive update regarding today's AOC discussion among the legal teams. I have also now have heard from our team that it was a constructive discussion and that there was agreement to exchange draft language on remaining, unresolved issues within the next week.

Lastly, EPA will be providing our comments on the work plan tomorrow, including comments on the unbiased sampling location methodology, and we will be available to discuss on Wednesday as you propose. I think we will be wise not to underestimate the effort that may be needed to work through the work plan comments in order to get to an approvable work plan.

Dan Opalski

From: Peter Saba [mailto:psaba@schn.com]

Sent: Wednesday, October 4, 2017 3:16 PM

To: Pirzadeh, Michelle <Pirzadeh.Michelle@epa.gov>

Cc: Kelly, Albert <kelly.albert@epa.gov>; Woolford, James <Woolford.James@epa.gov>; Mackey, Cyndy <Mackey.Cyndy@epa.gov>; Gustavson, Karl <Gustavson.Karl@epa.gov>; Sheldrake, Sean <sheldrake.sean@epa.gov>; Cora, Lori <Cora.Lori@epa.gov>; Ebright, Stephanie <EBRIGHT.STEPHANIE@EPA.GOV>; Bilbrey, Sheryl <Bilbrey.Sheryl@epa.gov>; Zhen, Davis <Zhen.Davis@epa.gov>; Ingemansen, Dean <Ingemansen.Dean@epa.gov>; Opalski, Dan <Opalski.Dan@epa.gov>; Loren R. Dunn (LDunn@bdlaw.com) <LDunn@bdlaw.com>; greg.christianson (greg.christianson@morganlewis.com) <greg.christianson@morganlewis.com>; richard.george (richard.george@pgn.com) <richard.george@pgn.com>; Karen TRAEGER (karen.traeger@external.total.com) <karen.traeger@external.total.com>; J.W. Ring (JWRing@ringbenderlaw.com) <JWRing@ringbenderlaw.com>; Christine L. Hein (CHein@ringbenderlaw.com) <CHein@ringbenderlaw.com>

Subject: Portland Harbor - Sample Locations Issue

FOR SETTLEMENT PURPOSES ONLY – SUBJECT TO Rule 408, FRE

Michelle,

This is to follow up on the conversation between the EPA and Pre-RD Group on Monday. The Pre-RD Group is very disappointed to learn that we still have a “threshold” issue with respect to surface sediment sampling – this time relating to specific sampling locations. As summarized in the attached bullet points prepared by Geosyntec, we believe that the grid-cell approach will provide better spatial coverage in this dynamic river system and that use of the grid-cell approach had been substantially agreed to by EPA in August.

The chart with the proposed comprehensive package that had been in play since September 5 and the chart of the agreement-in-principle provided on September 20 and on which EPA commented on September 22 consistently identified this issue as “Surface Sediment Sample Numbers” and the Pre-RD Group’s position as “Willing to accept EPA’s position on number of unbiased sample locations” (emphasis added). Accordingly, we were very surprised to learn on Monday that EPA had interpreted this to mean that Pre-RD Group had somehow agreed to the specific EPA sampling locations in EPA’s June 2017 plan and that EPA was no longer in agreement with the grid-cell approach to placement of randomized samples.

Even when the sampling location issue first surfaced at the end of last week, we thought that this was just a misunderstanding relating to updating the Figures attached to the Work Plan and as to timing for finalization of the specific locations, not a change in EPA’s position on the acceptability of the grid-cell approach. Accordingly, we were very surprised on Monday to learn that EPA’s position was that you had somehow understood that the Pre-RD Group had agreed to the specific sample locations in EPA’s June 2017 plan and that EPA did not agree with the grid-approach. If that was EPA’s position on this threshold issue, it had not been previously discussed or conveyed (and was not reflected in EPA’s 9/22 mark-up of the agreement-in-principle).

This issue has raised significant concerns among the Pre-RD Group regarding back-tracking and our ability to reach agreement on final documents within the limited time remaining to get in the water to start work this year and stay on the two-year schedule. Moreover, we believe that the transect approach proposed by EPA will limit the ability to use the dataset for critical objectives such as SWAC calculations, comparisons to prior (e.g., 2004) data for analysis of recovery potential, and optimization for future monitoring designs. EPA’s response that we could just add additional samples if we want to

achieve these important objectives is not acceptable as we have already added hundreds of additional samples compared to the group's initial proposal, and adding more samples would have significant cost and timing implications. Adding even more samples is not the answer - particularly, where our technical team and consultants advise that use of a grid-cell pattern is a better approach in this dynamic river system and is being used or considered at other large, complex Region 10 Superfund sediment sites.

Rather than losing valuable time running the randomization process and preparing new maps based on an approach that we are unsure whether EPA is in agreement with and then negotiating specific sample placements, we believe that the best way forward on this issue is to determine whether there is agreement on use of the grid-cell approach as compared to transects and on the specifics of the sample placement and design process as detailed in Appendix B of the draft Work Plan. In parallel, we are prepared to press ahead to resolve any other remaining issues and finalize the documentation.

We understand that EPA will provide comments on the Work Plan on Friday, October 6, 2017. Based on that schedule, the Pre-RD Group plans to review these comments internally and meet on Tuesday and proposes to have a call with EPA on Wednesday to discuss those comments. We will adjust our schedule for whatever time on Wednesday is convenient for the EPA team.

We would hope to have a response from EPA on the grid-cell approach and further discussion on the issue of surface sample placement this week.

Peter

Peter B. Saba

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