

Danielle R. Taber

From: Laura L. Malone
Sent: Monday, November 24, 2014 9:09 PM
To: 'joe.drazek@quarles.com'; Karen Gaylord; Bruce C. Travers, RG; Klein, Mitchell
Cc: Tina LePage; Scott R. Green; Danielle R. Taber
Subject: West Van Buren Area WQARF site - FS Report Deliverables

Ms. Gaylord, Mr. Klein, Mr. Drazek,

Thank you for meeting with ADEQ last week. It is always helpful to sit down to discuss issues. I'd like to clarify expectations for submitting deliverables resulting from the "Administrative Completeness Review" checklists. I know we discussed this in the meeting, but we agreed to send you the expectations. Please submit the following regarding changes to the West Van Buren Working Group's Draft FS Report.

- 2 hard copies of complete text with redlines
- 2 hard copies of any tables, figures, and/or appendices that have been modified. The modifications need to be clearly marked.
- 1 complete .pdf version of the draft FS with redlined text and tables, figures, and/or appendices with modifications clearly marked.

ADEQ will modify the public file and desk copies with what is outlined above.

Also, due to time constraints, the CAB meeting presentation slide deck requirement to be delivered by COB on Wednesday 11/26 has been revised. By COB on 11/26, please provide a .pdf of summary slides or a presentation outline so ADEQ can send to CAB members in advance of the meeting. Copies of the complete slide deck are requested to be provided at the CAB meeting with enough copies for the CAB (6), ADEQ (6), and attendees (up to 30).

Please let me know if you have any questions.

Thanks

Laura

Laura L. Malone, Director
Waste Programs Division
Az. Department of Environmental Quality
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Danielle R. Taber

From: Laura L. Malone
Sent: Wednesday, December 10, 2014 7:09 PM
To: Danielle R. Taber
Subject: FW: West Van Buren WQARF site - FS Report deliverables

Here you go.

Laura

From: Laura L. Malone
Sent: Monday, November 24, 2014 8:57 PM
To: 'dneese@rooseveltirrigation.org'
Cc: 'dennis.shirley@syn-env.com'; 'Kimball III, David P.'; Tina LePage; Scott R. Green; Danielle R. Taber
Subject: West Van Buren WQARF site - FS Report deliverables

Mr. Neese,

Thank you for meeting with ADEQ last week. It is always helpful to sit down to discuss issues. I'd like to clarify expectations for submitting deliverables resulting from the "Administrative Completeness Review" checklists. I know we discussed this in the meeting, but wasn't sure we actually agreed upon what was required. Therefore, please submit the following regarding changes to RID's Draft FS Report.

- 2 hard copies of complete text with redlines
- 2 hard copies of any tables, figures, and/or appendices that have been modified. The modifications need to be clearly marked.
- 1 complete .pdf version of the draft FS with redlined text and tables, figures, and/or appendices with modifications clearly marked.

ADEQ will modify the public file and desk copies with what is outlined above.

Also, due to time constraints, the CAB meeting presentation slide deck requirement to be delivered by COB on Wednesday 11/26 has been revised. By COB on 11/26, please provide a .pdf of summary slides or a presentation outline so ADEQ can send to CAB members in advance of the meeting. Copies of the complete slide deck are requested to be provided at the CAB meeting with enough copies for the CAB (6), ADEQ (6), and attendees (up to 30).

Please let me know if you have any questions.

Thanks

Laura

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Danielle R. Taber

From: Laura L. Malone
Sent: Wednesday, December 03, 2014 9:18 AM
To: Danielle R. Taber
Subject: FW: West Van Buren Area WQARF site - Feasibility Study Report meeting [QBLLP-ACTIVE.FID35131590]
Attachments: Letter to Tina LePage.DOCX.pdf

For the website

Laura L. Malone, Director
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From: Drazek, Joe A. (PHX x3335) [<mailto:Joe.Drazek@quarles.com>]
Sent: Tuesday, November 18, 2014 4:29 PM
To: Laura L. Malone; Young, Tony (Anthony.Young@azag.gov)
Cc: Tina LePage; Scott R. Green; Danielle R. Taber; 'gailclement@earthlink.net'; Bruce C. Travers, RG; Klein, Mitchell; Karen Gaylord
Subject: RE: West Van Buren Area WQARF site - Feasibility Study Report meeting [QBLLP-ACTIVE.FID35131590]

Laura -

I am writing regarding your request for a list of items to be discussed at tomorrow's meeting. Attached is the WVB Working Group's draft Response to the ADEQ deficiency letter. The Response best describes the issues to be discussed based on our current understanding of the described deficiencies. The draft Response is being provided now merely to facilitate and assist tomorrow's discussion. Of course, the Group will make any further revisions to the Response it deems appropriate in the final submittal.

Joe

Joe A. Drazek
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F: (602) 420-5135
Joe.Drazek@quarles.com

From: Laura L. Malone [<mailto:Malone.Laura@azdeq.gov>]
Sent: Friday, November 14, 2014 12:49 PM
To: Drazek, Joe A. (PHX x3335); Young, Tony (Anthony.Young@azag.gov)
Cc: Tina LePage; Scott R. Green; Danielle R. Taber; 'gailclement@earthlink.net'; Bruce C. Travers, RG; Klein, Mitchell;

Karen Gaylord

Subject: RE: West Van Buren Area WQARF site - Feasibility Study Report meeting [QBLLP-ACTIVE.FID35131590]

Great.

We will be meeting in room 4100B. Please check in at the front desk and we will have someone escort you to the room. We'll see you all next week.

Thanks

Laura

From: Drazek, Joe A. (PHX x3335) [<mailto:Joe.Drazek@quarles.com>]

Sent: Friday, November 14, 2014 12:21 PM

To: Laura L. Malone; Young, Tony (Anthony.Young@azag.gov)

Cc: Tina LePage; Scott R. Green; Danielle R. Taber; 'gailclement@earthlink.net'; Bruce C. Travers, RG; Klein, Mitchell; Karen Gaylord

Subject: RE: West Van Buren Area WQARF site - Feasibility Study Report meeting [QBLLP-ACTIVE.FID35131590]

Laura -

November 19 from 3:00 - 4:30pm will work for us.

Thank you - Joe

Joe A. Drazek

Attorney

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Joe.Drazek@quarles.com

From: Laura L. Malone [<mailto:Malone.Laura@azdeq.gov>]

Sent: Friday, November 14, 2014 11:55 AM

To: Drazek, Joe A. (PHX x3335); Young, Tony (Anthony.Young@azag.gov)

Cc: Tina LePage; Scott R. Green; Danielle R. Taber; 'gailclement@earthlink.net'; Bruce C. Travers, RG; Klein, Mitchell; Karen Gaylord

Subject: RE: West Van Buren Area WQARF site - Feasibility Study Report meeting [QBLLP-ACTIVE.FID35131590]

I am proposing rescheduling the WVBWG meeting to Wednesday, November 19th from 3:00 – 4:30. If this time is not good, we'll need to look at Friday the 21st at 1:00 – 2:30. Please let me know as soon as possible and we will re-send out the notice.

Thanks

Laura

Laura L. Malone, Director

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From: Drazek, Joe A. (PHX x3335) [<mailto:Joe.Drazek@quarles.com>]
Sent: Friday, November 14, 2014 11:01 AM
To: Laura L. Malone; Young, Tony (Anthony.Young@azag.gov)
Cc: Tina LePage; Scott R. Green; Danielle R. Taber; 'gailclement@earthlink.net'; Bruce C. Travers, RG; Klein, Mitchell; Karen Gaylord
Subject: RE: West Van Buren Area WQARF site - Feasibility Study Report meeting [QBLLP-ACTIVE.FID35131590]

Laura -

Thank you for the prompt reply and for your willingness to reschedule next week's meeting. I understand from Karen Gaylord that she is generally available either Tuesday, Wednesday or Friday next week. Please let us know if one of those days will work for ADEQ.

Regarding your statement that the request for items to be discussed at the meeting was originally sent in a November 12 email from you at 2:33pm and that I was copied on that email, I have thoroughly checked my email and the only other email I received from you was earlier in the day at 10:59 am (attached) informing us of the 4 Group members that were the subject of one of the deficiency items. I have now also checked with several other FS Group members and have yet to identify anyone who received any such email from you at 2:33pm. Can you let us know who you sent it to or forward a copy of what you sent?

In any event, the Group will submit the requested information as soon as we are able to do so.

Thanks - Joe

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Joe.Drazek@quarles.com

From: Laura L. Malone [<mailto:Malone.Laura@azdeq.gov>]
Sent: Thursday, November 13, 2014 4:55 PM
To: Drazek, Joe A. (PHX x3335); Young, Tony (Anthony.Young@azag.gov)
Cc: Tina LePage; Scott R. Green; Danielle R. Taber; 'gailclement@earthlink.net'; Bruce C. Travers, RG; Klein, Mitchell; Karen Gaylord
Subject: RE: West Van Buren Area WQARF site - Feasibility Study Report meeting [QBLLP-ACTIVE.FID35131590]

Joe,

Thank you for your email. We will look for another time next week to hold the meeting with the WVBWG. It would be helpful if you can provide dates/times that Ms. Gaylord is available as that will help expedite the rescheduling. As a matter of clarification, the request for items to be discussed was originally sent in an email from me yesterday at 2:33pm. You were copied on that email. Ms. Taber's email was simply a follow-up to ensure everyone had the meeting

information. As mentioned in my email, ADEQ would like to better understand your questions to ensure we have a productive meeting. I did mention that you could provide bullet points, but detailed comments would be better. I will leave it up to you to decide how best to communicate your questions/concerns. Feel free to submit the information at your earliest convenience. Upon receipt, ADEQ will do our best to review the information with the time afforded to us.

Please let me know via email if you have any questions.

Thanks,

Laura

Laura L. Malone, Director
Waste Programs Division
Az. Department of Environmental Quality
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602-771-4567
llm@azdeq.gov
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From: Drazek, Joe A. (PHX x3335) [<mailto:Joe.Drazek@quarles.com>]
Sent: Thursday, November 13, 2014 3:55 PM
To: Young, Tony (Anthony.Young@azag.gov)
Cc: Laura L. Malone; Tina LePage; Scott R. Green; Danielle R. Taber; 'gailclement@earthlink.net'; Bruce C. Travers, RG; Klein, Mitchell
Subject: RE: West Van Buren Area WQARF site - Feasibility Study Report meeting [QBLLP-ACTIVE.FID35131590]

Tony -

I am writing to follow-up on the voice message Dave Armstrong and I left you a short time ago regarding the email below from Ms. Taber. As we mentioned, we were calling on behalf of the West Van Buren Working Group to respectfully request that: a) the meeting proposed for November 20 be rescheduled to any other day that week; and b) the Group be given more than two hours to provide the agency with detail regarding the subjects to be discussed at the meeting. We request the former in order to allow the attendance of Karen Gaylord, who is the Group's lead on WQARF issues. As you know, Karen was one of the primary architects of WQARF, and she is unavailable that day. We request the latter because it is patently unreasonable to demand that the Group detail its questions and concerns regarding complex issues and provide it on two hours' notice. With all due respect, we believe that failure by the agency to accommodate either request would be arbitrary and capricious.

Joe

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Joe.Drazek@quarles.com

From: Danielle R. Taber [<mailto:Taber.Danielle@azdeq.gov>]
Sent: Thursday, November 13, 2014 3:01 PM
To: Drazek, Joe A. (PHX x3335); 'gailclement@earthlink.net'; Bruce C. Travers, RG; Klein, Mitchell
Cc: Laura L. Malone; Tina LePage; Scott R. Green
Subject: West Van Buren Area WQARF site - Feasibility Study Report meeting
Importance: High

Dear West Van Buren Working Group,

Based on requests for clarification on ADEQ's comments regarding the "Administrative Completeness Review" conducted on the WVBWG and RID FS reports, ADEQ has set-up face-to-face meetings with each group. The purpose of this e-mail is to provide you with the date, time, and location as well as provide some information on ADEQ's expectations.

Technical Meeting

Thursday November 20, 2014 from 1500 to 1630 (3:30pm to 4:30pm)
Conference Room 5100B – fits up to 20 people (ADEQ/AGO will take 6 seats)
Please sign-in with the Receptionist on the 1st floor lobby. An ADEQ employee will bring you up to the conference room.

Expectations

Provide ADEQ with details regarding the questions/concerns to be covered during the meeting. These are due by the **close of business today**.

Please limit your questions to the review letter and FS checklist only.

Provide ADEQ with a list of attendees **two days prior** to the date of your meeting.

Please limit the overall number of attendees – this will ensure that there is ample seating.

Responses to ADEQ's comment letter are due by **close of business on Wednesday November 26th**.

The CAB meeting as been set for **December 1st**. Details regarding this will be forthcoming.

If you have questions or need additional information (technical or legal), please follow the contact procedure outlined by Ms. Malone via e-mail dated July 15, 2014.

Sincerely,

Danielle Taber

Project Manager

Voluntary Remediation Program and Remedial Projects Unit

Arizona Department of Environmental Quality

1110 West Washington Street Phoenix, AZ 85007

D: 602.771.4414; F: 602.771.4138; E: dt3@azdeq.gov

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DRAFT
11/18/2014

November __, 2014

VIA E-MAIL AND U.S. MAIL

Ms. Tina LePage
Manager
Remedial Projects Section
Arizona Department of Environmental Quality
1110 West Washington Street
Phoenix AZ 85007

**RE: West Van Buren Working Group/Response to "Administrative
Completeness" Review of draft Feasibility Study Report**

Dear Ms. LePage:

I am writing on behalf of the West Van Buren (WVB Working Group) in response to your October 24, 2014 letter regarding the Arizona Department of Environmental Quality's (ADEQ's) "Administrative Completeness" review of the WVB Working Group's draft Feasibility Study Report (FS Report). ADEQ has determined that certain specific information is required for ADEQ to determine that the FS Report is administratively complete. Each category of information identified by ADEQ and the WVB Working Group's response is set forth below.

Required Information

1. *In accordance with Arizona Administrative Code (A.A.C.) R18-16-407(H), a FS Report shall include an evaluation of several topics regarding each alternative remedy. ADEQ was unable to locate the evaluation of:*
 - a. *A.A.C. R18-16-407(H)(3)(b)(ii): Current and future land and resource use;*
 - i. *There are at least three members of the working group that have not determined if they are, or were, a source of contamination to the groundwater within the WVB WQARF site. Without this information, ADEQ believes that an evaluation of risk addressing current and future land and resource use cannot be completed.*

Ms. Tina LePage
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Page 2

RESPONSE

The WVBA Working Group does not understand the basis for this belief and respectfully notes that the FS Report provides ample information to allow for an evaluation of risk addressing current and future land resource use.

The FS Report thoroughly discusses the comparative analysis of the reference remedy and the more and less aggressive alternative remedies performed in order to select the preferred remedial alternative according to the prescribed comparison criteria in Arizona Administrative Code (A.A.C) R18-16-407(H). That comparative analysis includes an evaluation of risk under reasonably foreseeable use scenarios, specifically including current and future land and resource use. The comparative evaluation of risk associated with current and future land and resource use was based on the information obtained by ADEQ and described in the 2012 Land and Water Use Report that was the basis for the West Van Buren Study Area (WVBA) Remedial Objectives (RO's) established by ADEQ in 2012 and also on data developed during the field investigation described in ADEQ's August 2012 Remedial Investigation (RI) Report. In that regard, A.A.C. R18-16-406(E) specifically provides for a site-specific risk evaluation to be conducted to characterize the current risks to public health and the environment from contaminants of concern "using the data developed during the field investigation and information concerning use of land and waters of the state." That evaluation is what the WVBA Working Group completed as described in detail in the FS Report.

With ADEQ approval, the FS Report assumes that facility-specific source work, to the extent any is necessary, will be completed under ADEQ guidance separate from the FS and ADEQ has confirmed its intention to continue to work to address any facility sources in the WVBA. In addition to the sources or potential sources identified in the RI Report, the WVBA Working Group submitted to ADEQ on August 15, 2014, an extensive database of information for evaluation and investigation by ADEQ regarding other potential sources in the WVBA and surrounding areas.

To the extent ADEQ believes additional information on Holsum Bakery, Inc., ITT Corporation, Laundry and Cleaners Supply, Inc., or Milum Textile Service Co. is necessary to complete the comparative evaluation of risk, the WVBA Working Group disagrees. The absence of facility-specific source information in the FS Report for these four entities does not affect the evaluation of risk associated with current and future land and resource use for the purpose of conducting a comparative evaluation of the reference remedy and the alternative remedies as required by A.A.C. R18-16-407(H). If there is some fact that ADEQ is focused upon that we have not accounted for in this response, please share it with us and we will respond accordingly. Otherwise, the WVBA Working Group requests that the ADEQ, in light of the explanation above, accept as complete the evaluation of risk associated with current and future land and resource use as presented in the FS Report.

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- b. *A.A.C. R18-16-407(H)(3)(b)(v): Residual risk in the aquifer at the end of remediation; and*

RESPONSE

While it is not required under the Water Quality Assurance Revolving Fund (WQARF), a Human Health Risk Assessment, provided as Appendix D to the FS Report, was conducted for the WVBA on behalf of the WVB Working Group following United States Environmental Protection Agency and ADEQ risk assessment guidance. Under agency guidance documents, the assumptions used in the Human Health Risk Assessment are required to be conservative; in other words, they result in an overestimation of potential health risks.

Because the Human Health Risk Assessment concluded that there are no current health risks to receptors, the reference remedy and alternative remedies were determined to be comparable with respect to addressing current risk. Future risk is a function of either future groundwater use in the WVBA or cessation of aquifer hydraulic control currently created by Roosevelt Irrigation District's (RID's) irrigation pumping within the WVBA. Accordingly, each of the remedial alternatives assumes that RID ceases pumping by 2026. Each remedial alternative includes remedial measures and contingencies to mitigate or eliminate risks associated with future potable water end use.

Declines in the contaminants of concern observed within the regional WVBA plume will continue under current regional pumping conditions based on past trends. Assuming that ongoing source mitigation under ADEQ direction continues, it would expedite these declining contaminant concentration trends.

For these reasons, the WVB Working Group's comparative evaluation of risk associated with the reference remedy and the alternative remedies properly considered any residual risk in the aquifer at the end of remediation. With these explanations, we request that ADEQ determine that no further risk evaluation is required for the FS Report to be deemed administratively complete. If there is something in ADEQ's analysis that the WVB Working Group has not grasped, please let us know and it will be considered.

Ms. Tina LePage
November __, 2014
Page 4

- c. *A.A.C. 418-16-407(H)(3)(c): "...Transactional costs necessary to implement the remedial alternative, including the transactional costs of establishing long-term financial mechanisms, such as trust funds, for funding an alternative remedy..."*

RESPONSE

The WVB Working Group will revise the cost section of the FS Report to include the following assumptions and transactional costs:

- A Trust will be utilized to manage financial expenditures for remedy construction and operation.
 - The Trust agreement used will be derived from existing model Trust agreements used elsewhere for similar purpose.
 - Adjustments required to model Trust agreement will be limited.
 - \$100,000 will be carried as a one-time "capital" cost in year one for legal expenses for model Trust agreement drafting, modifications, execution, and filing.
 - Money deposited into the Trust account(s) will be invested with a government-insured institution.
 - Compensation to the entity performing investment on behalf of the Trust will be accounted for in the investment return rate in the net present value (NPV) calculations, meaning the 9% investment return (assumed) will be after payment of investment management fees. When investment returns are "corrected" for inflation (3% inflation rate assumed), a net discount rate of 6% annually will be utilized in the NPV calculations.
2. *ADEQ was unable to clearly determine which statutory mechanism the WVBWG's FS Report was submitted under. If the FS Report was submitted for approval pursuant to A.A.C. R18-16-413, the elements of A.A.C. R18-16-413(A) need to be clearly presented in one document. If the FS Report was submitted with a different intent, provide a written explanation as to what are WVBWG's expectations.*

RESPONSE

The WVB Working Group is requesting approval of its FS Report under A.A.C. 418-16-413. The information required to be provided by R18-16-413(A) is as follows:

1. *The name and address of the person submitting the request and nature of the relationship of the person to the site, if any.*

Ms. Tina LePage
November __, 2014
Page 5

RESPONSE: The names and addresses of the persons who comprise the WVB Working Group are attached as Exhibit A. All such persons either had or have operating facilities located within the WVBA or are key regional stakeholders.

2. The location and boundaries of the site or portion of the site addressed by the remedial action

RESPONSE: The WVBA is located in the western portion of the City of Phoenix, approximately bounded by West McDowell Road to the North, 7th Avenue to the East, West Buckeye Road to the South, and 75th Avenue to the West.

3. The nature, degree, and extent of the hazardous substance contamination, if known.

RESPONSE: The nature, degree and extent of the hazardous substance contamination in the WVBA is described in the RI Report and in the Site Conceptual Model prepared using data and information from the RI Report and provided in Appendix A to the FS Report.

4. A description of any remedial action performed before the request is submitted

RESPONSE: A description of the remedial actions performed prior to this request is contained in the RI Report. Additionally, the WVB Working Group is informed that the RID allegedly has conducted or allegedly is conducting what RID believes is an "early response action" within the WVBA. Further, ADEQ is continuing to work with specific facilities in the WVBA with regard to remedial actions to address site-specific source control.

5. A work plan for any remedial action to be performed after the request is submitted.

RESPONSE: The requested approval is for the FS Report. There is no work plan for any remedial action to be performed and none is required pending the issuance of the Proposed Remedial Action Plan Report by ADEQ.

6. A demonstration of how the remedial action complied, or will comply, with this Article.

RESPONSE: The FS Report describes in detail how it complied with the requirements of A.A.C. R18 16, Article 4.

7. A proposal for public notice and an opportunity for public comment on the application for approval under this Section. The proposal shall include a list of the names and addresses of persons whom the applicant believes to be responsible parties under A.R.S. § 49-283 and a summary of the basis for that belief.

RESPONSE: The WVB Working Group is informed that ADEQ is developing a draft template for the public notice to be issued at the commencement of the public comment period. The names and addresses of currently known persons who may be responsible parties are

Ms. Tina LePage
November __, 2014
Page 6

described in the RI Report and are further discussed in Section 2 of the FS Report. Additionally, the WVB Working Group submitted an extensive database to ADEQ on August 15, 2014 with information on potential sources in or near the WVBA. The WVB Working Group reserves the right to identify additional persons who may be responsible parties in the future.

8. *An agreement in which the person requesting the approval agrees:*
 - a. *To grant access to the Department as necessary to evaluate the request for approval.*
 - b. *To reimburse the Department for the Department's costs under subsection (G).*

RESPONSE: The WVB Working Group and ADEQ entered into a Working Agreement effective January 15, 2013.

9. *An original seal imprint and signature of a registered professional if required by the Arizona Board of Technical Registrations under A.R.S. Title 32, Chapter 1 and the rules under that Chapter.*

RESPONSE: The FS Report is signed and sealed by an Arizona Registered Geologist.

Recommendations

The suggestion below is not required by State law and there are no legal consequences should the WVBWG choose to disregard it; however, ADEQ asks the WVBWG to consider the following:

1. *Although the United States Environmental Protection Agency has employed an informal policy of capping Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) remedial action costs at 30 or 50 years, ADEQ strongly recommends that the WVBWG perform a cost evaluation that is based on the amount of time needed to reach numeric water quality standards as opposed to the subjective 30 or 50 years timeframe.*

RESPONSE

To the extent that ADEQ is suggesting that WQARF requires all remedies to achieve restoration of all points within the aquifer itself to drinking water standards, that suggestion is incorrect. Aquifer restoration was a presumption contained in the original CERCLA National Contingency Plan that has proven to be infeasible or cost-ineffective in practice. WQARF was reformed in part to ensure that WQARF remedies did not repeat the errors of CERCLA. Arizona Revised Statute § 49-282.06(D), for instance, specifically provides that all WQARF remedies need not require restoration of all aquifers to drinking water standards, without regard to actual and foreseeable uses of the impacted aquifer. Accordingly, the WVB Working Group is not addressing this recommendation.

DRAFT
11/18/2014

Ms. Tina LePage
November __, 2014
Page 7

Sincerely,

QUARLES & BRADY LLP

Joseph A. Drązek

cc: Ms. Danielle Taber (via email and U.S. Mail, w/attachments)
Mr. Henry R. Darwin (via email, w/attachments)
Mr. Laura Malone (via email, w/attachments)
Mr. Anthony Young (via email, w/attachments)
WVB Working Group (via email, w/attachments)

Danielle R. Taber

From: Klein, Mitchell <mjklein@swlaw.com>
Sent: Friday, November 14, 2014 11:29 AM
To: Laura L. Malone; Drazek, Joe A. (PHX x3335); Young, Tony (Anthony.Young@azag.gov)
Cc: Tina LePage; Scott R. Green; Danielle R. Taber; 'gailclement@earthlink.net'; Bruce C. Travers, RG; Karen Gaylord
Subject: RE: West Van Buren Area WQARF site - Feasibility Study Report meeting [QBLLP-ACTIVE.FID35131590]

Thanks Laura. I don't know what to tell you, but I never got this e-mail. I have checked through all of my files, including deleted, and this never appears as having been received.

Mitchell J. Klein
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One Arizona Center
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From: Laura L. Malone [mailto:Malone.Laura@azdeq.gov]
Sent: Friday, November 14, 2014 11:13 AM
To: Drazek, Joe A. (PHX x3335); Young, Tony (Anthony.Young@azag.gov)
Cc: Tina LePage; Scott R. Green; Danielle R. Taber; 'gailclement@earthlink.net'; Bruce C. Travers, RG; Klein, Mitchell; Karen Gaylord
Subject: RE: West Van Buren Area WQARF site - Feasibility Study Report meeting [QBLLP-ACTIVE.FID35131590]

As requested, please see attached email.

Thanks

Laura

Laura L. Malone, Director
Waste Programs Division
Az. Department of Environmental Quality
1110 W. Washington St.
Phoenix, AZ 85007
602-771-4567
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From: Drazek, Joe A. (PHX x3335) [<mailto:Joe.Drazek@quarles.com>]
Sent: Friday, November 14, 2014 11:01 AM
To: Laura L. Malone; Young, Tony (Anthony.Young@azag.gov)
Cc: Tina LePage; Scott R. Green; Danielle R. Taber; 'gailclement@earthlink.net'; Bruce C. Travers, RG; Klein, Mitchell; Karen Gaylord
Subject: RE: West Van Buren Area WQARF site - Feasibility Study Report meeting [QBLLP-ACTIVE.FID35131590]

Laura -

Thank you for the prompt reply and for your willingness to reschedule next week's meeting. I understand from Karen Gaylord that she is generally available either Tuesday, Wednesday or Friday next week. Please let us know if one of those days will work for ADEQ.

Regarding your statement that the request for items to be discussed at the meeting was originally sent in a November 12 email from you at 2:33pm and that I was copied on that email, I have thoroughly checked my email and the only other email I received from you was earlier in the day at 10:59 am (attached) informing us of the 4 Group members that were the subject of one of the deficiency items. I have now also checked with several other FS Group members and have yet to identify anyone who received any such email from you at 2:33pm.

Can you let us know who you sent it to or forward a copy of what you sent?

In any event, the Group will submit the requested information as soon as we are able to do so.

Thanks - Joe

Joe A. Drazek

Attorney

Quarles & Brady LLP

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Joe.Drazek@quarles.com

From: Laura L. Malone [<mailto:Malone.Laura@azdeq.gov>]
Sent: Thursday, November 13, 2014 4:55 PM
To: Drazek, Joe A. (PHX x3335); Young, Tony (Anthony.Young@azag.gov)
Cc: Tina LePage; Scott R. Green; Danielle R. Taber; 'gailclement@earthlink.net'; Bruce C. Travers, RG; Klein, Mitchell; Karen Gaylord
Subject: RE: West Van Buren Area WQARF site - Feasibility Study Report meeting [QBLLP-ACTIVE.FID35131590]

Joe,

Thank you for your email. We will look for another time next week to hold the meeting with the WVBWG. It would be helpful if you can provide dates/times that Ms. Gaylord is available as that will help expedite the rescheduling. As a matter of clarification, the request for items to be discussed was originally sent in an email from me yesterday at 2:33pm. You were copied on that email. Ms. Taber's email was simply a follow-up to ensure everyone had the meeting information. As mentioned in my email, ADEQ would like to better

understand your questions to ensure we have a productive meeting. I did mention that you could provide bullet points, but detailed comments would be better. I will leave it up to you to decide how best to communicate your questions/concerns. Feel free to submit the information at your earliest convenience. Upon receipt, ADEQ will do our best to review the information with the time afforded to us.

Please let me know via email if you have any questions.

Thanks,

Laura

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From: Drazek, Joe A. (PHX x3335) [<mailto:Joe.Drazek@quarles.com>]
Sent: Thursday, November 13, 2014 3:55 PM
To: Young, Tony (Anthony.Young@azag.gov)
Cc: Laura L. Malone; Tina LePage; Scott R. Green; Danielle R. Taber; 'gailclement@earthlink.net'; Bruce C. Travers, RG; Klein, Mitchell
Subject: RE: West Van Buren Area WQARF site - Feasibility Study Report meeting [QBLLP-ACTIVE.FID35131590]

Tony -

I am writing to follow-up on the voice message Dave Armstrong and I left you a short time ago regarding the email below from Ms. Taber. As we mentioned, we were calling on behalf of the West Van Buren Working Group to respectfully request that: a) the meeting proposed for November 20 be rescheduled to any other day that week; and b) the Group be given more than two hours to provide the agency with detail regarding the subjects to be discussed at the meeting. We request the former in order to allow the attendance of Karen Gaylord, who is the Group's lead on WQARF issues. As you know, Karen was one of the primary architects of WQARF, and she is unavailable that day. We request the latter because it is patently unreasonable to demand that the Group detail its questions and concerns regarding complex issues and provide it on two hours' notice. With all due respect, we believe that failure by the agency to accommodate either request would be arbitrary and capricious.

Joe

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From: Danielle R. Taber [<mailto:Taber.Danielle@azdeq.gov>]
Sent: Thursday, November 13, 2014 3:01 PM
To: Drazek, Joe A. (PHX x3335); 'gailclement@earthlink.net'; Bruce C. Travers, RG; Klein, Mitchell
Cc: Laura L. Malone; Tina LePage; Scott R. Green
Subject: West Van Buren Area WQARF site - Feasibility Study Report meeting
Importance: High

Dear West Van Buren Working Group,

Based on requests for clarification on ADEQ's comments regarding the "Administrative Completeness Review" conducted on the WVBWG and RID FS reports, ADEQ has set-up face-to-face meetings with each group. The purpose of this e-mail is to provide you with the date, time, and location as well as provide some information on ADEQ's expectations.

Technical Meeting

Thursday November 20, 2014 from 1500 to 1630 (3:30pm to 4:30pm)
Conference Room 5100B – fits up to 20 people (ADEQ/AGO will take 6 seats)
Please sign-in with the Receptionist on the 1st floor lobby. An ADEQ employee will bring you up to the conference room.

Expectations

Provide ADEQ with details regarding the questions/concerns to be covered during the meeting. These are due by the **close of business today**.

Please limit your questions to the review letter and FS checklist only.

Provide ADEQ with a list of attendees **two days prior** to the date of your meeting.

Please limit the overall number of attendees – this will ensure that there is ample seating.

Responses to ADEQ's comment letter are due by **close of business on Wednesday November 26th**.

The CAB meeting as been set for **December 1st**. Details regarding this will be forthcoming.

If you have questions or need additional information (technical or legal), please follow the contact procedure outlined by Ms. Malone via e-mail dated July 15, 2014.

Sincerely,

Danielle Taber

Project Manager

Voluntary Remediation Program and Remedial Projects Unit

Arizona Department of Environmental Quality

1110 West Washington Street Phoenix, AZ 85007

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Danielle R. Taber

From: Laura L. Malone
Sent: Wednesday, November 12, 2014 2:59 PM
To: Danielle R. Taber
Subject: FW: WVBA Deficiency letter

For the file. Thanks

Laura

From: Laura L. Malone
Sent: Wednesday, November 12, 2014 2:59 PM
To: 'Klein, Mitchell'
Subject: RE: WVBA Deficiency letter

Mitch,

I apologize if my email caused you concern and I appreciate your clarification on this issue. Our review team could not locate information on those listed showing if they are, or were, a source of contamination to the groundwater. We acknowledged as a review team that some probably have done the work, such as ITT, but if the information (or reference to the information) couldn't be easily located in the report, then the comment applied. Information on the others in the WVBWG were located within the report and as such, are not one of the 'at least three'. Our review was cursory in nature in order to determine if required information was included in the report prior to starting the substantive technical review. I hope that helps to explain our position. I did not send this to the entire group as you indicated to direct any questions directly to you.

Please let me know if we need to discuss this further.

Thanks

Laura

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From: Klein, Mitchell [<mailto:mjklein@swlaw.com>]
Sent: Wednesday, November 12, 2014 11:10 AM
To: Laura L. Malone; Karen Gaylord; 'Young, Anthony'; Tina LePage; Danielle R. Taber
Cc: 'Judith.Heywood@aps.com'; 'Jenn.Mccall@freescale.com'; 'CConsoli@lrrlaw.com'; 'btravers@allwynenvironmental.com'; 'joe.drazek@quarles.com'; 'ArmstrongD@ballardspahr.com'; 'Karilee.Ramaley@srpnet.com'; 'Greg.Kornrump@srpnet.com'; 'karol.wolf@srpnet.com'; 'gailclement@earthlink.net';

'tsuriano@clearcreekassociates.com'; 'Troy.J.Meyer@honeywell.com'; 'Robert.Frank@CH2M.com'; Ronnie Hawks; 'chris.thomas@squirepb.com'; 'stephen.wetherell@phoenix.gov'; 'Gary.gin@phoenix.gov'; 'plagas@haleyaldrich.com'; 'molly.cagle@bakerbotts.com'; 'JOliver@whpacific.com'; 'JWorsham@rhlfirm.com'; 'vww@slwplc.com'; 'Thomas.Loquvam@pinnaclewest.com'; 'Ken.Miller@pinnaclewest.com'; 'tsuriano@clearcreekassociates.com'; 'jbarkett@shb.com'; 'Roger Strassburg'

Subject: RE: WVBA Deficiency letter

Laura – I do not understand how this relates to the FS, and why it was listed as a “deficiency”, but on behalf of ITT, please be advised of the following:

ADEQ has all the information it could possibly need regarding the former ITT facility. Pursuant to an ADEQ Consent Order, ITT conducted substantial investigation and characterization work that demonstrated that that the site is not, and never was, a source of contamination to groundwater. No remedial work and no further characterization work was needed, and ADEQ issued a No Further Action Letter.

If you have any questions regarding this particular former facility, please direct them to me.

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From: Laura L. Malone [<mailto:Malone.Laura@azdeq.gov>]

Sent: Wednesday, November 12, 2014 10:54 AM

To: Karen Gaylord; 'Young, Anthony'; Tina LePage; Danielle R. Taber

Cc: 'Judith.Heywood@aps.com'; 'Jenn.Mccall@freescale.com'; 'CConsoli@lrrlaw.com'; 'btravers@allwynenvironmental.com'; 'joe.drazek@quarles.com'; 'ArmstrongD@ballardspahr.com'; 'Karilee.Ramaley@srpnet.com'; 'Greg.Kornrumph@srpnet.com'; 'karol.wolf@srpnet.com'; 'gailclement@earthlink.net'; 'tsuriano@clearcreekassociates.com'; 'Troy.J.Meyer@honeywell.com'; 'Robert.Frank@CH2M.com'; Ronnie Hawks; 'chris.thomas@squirepb.com'; 'stephen.wetherell@phoenix.gov'; 'Gary.gin@phoenix.gov'; 'plagas@haleyaldrich.com'; Klein, Mitchell; 'molly.cagle@bakerbotts.com'; 'JOliver@whpacific.com'; 'JWorsham@rhlfirm.com'; 'vww@slwplc.com'; 'Thomas.Loquvam@pinnaclewest.com'; 'Ken.Miller@pinnaclewest.com'; 'tsuriano@clearcreekassociates.com'; 'jbarkett@shb.com'; 'Roger Strassburg'

Subject: RE: WVBA Deficiency letter

Karen,

Based on our cursory review during the FS “Administrative Completeness Review”, we were unable to locate information on the companies below showing if they are, or were, a source of contamination to the groundwater. These companies are listed as members in the WVSWG’s working agreement from January 2013. They are as follows:

Holsum Bakery, Inc.
ITT Corporation
Laundry & Cleaners Supply, Inc.
Milum Textile Services Co.

Please reply back via email if you have any additional questions.

Thanks

Laura

Laura L. Malone, Director

Waste Programs Division

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From: Karen Gaylord [<mailto:KSG@jhc-law.com>]

Sent: Monday, November 10, 2014 2:46 PM

To: 'Young, Anthony'; Laura L. Malone

Cc: 'Judith.Heywood@aps.com'; 'Jenn.Mccall@freescale.com'; 'CConsoli@lrrlaw.com'; 'btravers@allwynenvironmental.com'; 'joe.drazek@quarles.com'; 'ArmstrongD@ballardspahr.com'; 'Karilee.Ramaley@srpnet.com'; 'Greg.Kornrump@srpnet.com'; 'karol.wolf@srpnet.com'; 'gailclement@earthlink.net'; 'tsuriano@clearcreekassociates.com'; 'Troy.J.Meyer@honeywell.com'; 'Robert.Frank@CH2M.com'; Ronnie Hawks; 'chris.thomas@squirepb.com'; 'stephen.wetherell@phoenix.gov'; 'Gary.gin@phoenix.gov'; 'plagas@haleyaldrich.com'; 'mjklein@swlaw.com'; 'molly.cagle@bakerbotts.com'; 'JOliver@whpacific.com'; 'JWorsham@rhlfirm.com'; 'vww@slwplc.com'; 'Thomas.Loquvam@pinnaclewest.com'; 'Ken.Miller@pinnaclewest.com'; 'tsuriano@clearcreekassociates.com'; 'jbarkett@shb.com'; 'Roger Strassburg'

Subject: WVBA Deficiency letter

Thanks, Tony, for your clarification that discussion of legal issues related to WVBA should be addressed to Laura Malone rather than to the AG's office. The Working Group received ADEQ's letter regarding the agency's administrative completeness determination, and is preparing a response. We will direct any questions, including legal questions, to Laura in writing. We will copy you. In the meantime, Laura, can the agency please clarify for us the reference to "at least three members" of the working group that have not determined if they are, or were, a source of contamination to the groundwater?

Karen S. Gaylord

Jennings, Haug & Cunningham L.L.P.

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Danielle R. Taber

From: Laura L. Malone
Sent: Wednesday, November 12, 2014 2:44 PM
To: Danielle R. Taber
Subject: FW: Legal/Technical RID FS Meeting with ADEQ
Attachments: RID Ltr to Malone 08 12 14.pdf; Email to L Malone of 10 31 14.pdf

For the file.

Thanks

Laura L. Malone, Director
Waste Programs Division
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Phoenix, AZ 85007
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From: Hartley, Joanne K. [<mailto:joanne.hartley@gknet.com>]
Sent: Wednesday, November 12, 2014 11:10 AM
To: Anthony.Young@azag.gov
Cc: Laura L. Malone; Henry Darwin
Subject: Legal/Technical RID FS Meeting with ADEQ

Tony,

Per our discussion regarding the scheduled technical/legal meeting with ADEQ on November 19 at 9:00 a.m., attached is the August 12, 2014 correspondence from Mr. Neese of RID to ADEQ Division Director Malone that apparently you have not seen. Also attached is my October 31, 2014 email to Division Director Malone. Both attached documents highlight serious legal concerns with the Working Group's Feasibility Study (FS) Report, ADEQ's recent Administrative Completeness Review (ACR) of both FS Reports, and ADEQ's ACR checklist. These attached documents identify the significant legal and procedural issues that RID would like to discuss at the November 19 meeting with ADEQ. Additionally, Synergy will be attending to understand the specific nature of the "missing required elements" identified in ADEQ's Administrative Completeness Review of RID's FS Report.

We also discussed the need to extend the existing November 13, 2014 deadline to submit RID's Response to ADEQ's comments and a revised FS Report until at least after the scheduled November 19, 2014 meeting. Please contact me if you have any questions.

Dave

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SUPERINTENDENT
DONOVAN L. NEESE

BY ELECTRONIC AND U.S. MAIL

Date: August 12, 2014
From: Donovan L. Neese
To: Ms. Laura Malone
Director, Waste Programs Division
Arizona Department of Environmental Quality
1110 West Washington Street
Phoenix, Arizona 85007

Re: Working Group's Feasibility Study Report for West Van Buren Area WQARF Site

Dear Ms. Malone:

I wanted to follow up on the July 16, 2014 email that was submitted to the Arizona Department of Environmental Quality (ADEQ) before RID was able to review the Working Group's Feasibility Study (WGFS) Report for the West Van Buren Area (WVBA) Water Quality Assurance Revolving Fund (WQARF) Site. RID is aware that ADEQ's review process for the feasibility study reports submitted to ADEQ for the WVBA WQARF Site requests that "comments" be withheld until after the reports are deemed "administratively complete." However, the WGFS Report fails to meet the minimum requirements for an "administrative completeness" determination for ADEQ's further review and approval of the WGFS Report.

Working Group Fails to Submit Required "Written Request" for ADEQ Review and Approval

Pursuant to Arizona Administrative Code (AAC) R18-16-407.J, "[a]ny person, other than a person proposing to perform work under an agreement under A.R.S. § 49-287.03(C), may submit a request in compliance with R18-16-413 for the Department to approve a work plan or a report for all or any portion of a feasibility study." The Working Group does not fall within the exception in AAC R18-16-407.J since the Agreement to Conduct Work between ADEQ and the Working Group, dated January 15, 2013, was made and entered into as an "agreement pursuant to A.R.S. § 49-282.05," and not pursuant to A.R.S. § 49-287.03(C).¹ Therefore, the Working Group is required to comply with the requirements of AAC R18-16-413 in order to obtain ADEQ's review and approval of its Feasibility Study Report.

¹ It is unlikely that the Working Group would argue, contrary to the specific terms of that agreement, that its working agreement with ADEQ is pursuant to A.R.S. 49-287.03 (C). An agreement pursuant to A.R.S. 49-287.03(C) is made between ADFQ and a "person who, according to information available to the department, may be liable under" WQARF. As noted by Fennemore Craig and RiD regarding the Working Group's Feasibility Study Work Plan, the Working Group has failed to clearly identify themselves as the potentially responsible parties for the hazardous substances that have contaminated the groundwater entering into and within the WVBA WQARF Site as required by state law. See AAC R18-16-413.A.7.

Pursuant to AAC R18-16-413.A, "any person who seeks approval of a remedial action at a site or a portion of a site on the registry under A.R.S. § 49-285(B) shall submit a written request to the Department that contains" specific requirements (emphasis added). In its July 16, 2014 email, RID again flagged some of the AAC R18-16-413 specific requirement deficiencies, previously raised by Fennemore Craig and RID regarding the Working Group's Feasibility Study Work Plan, that RID also believed would be deficient in the Working Group's R18-16-413.A request for its Feasibility Study Report. However, this time the Working Group has even failed to include the "written request" that is required for ADEQ's review and approval of the WGFS Report. According to the WQARF regulations, the WGFS Report is not eligible for further review and approval by ADEQ.

ADEQ's stated final process that will be used "to review the Feasibility Study reports for the [WVBA] WQARF Site" establishes there will be a period to determine first whether the reports are "administratively complete" and, only after being deemed administratively complete, would the reports be subject to further substantive review and potential approval. The only administrative completeness criteria for a feasibility study report are in R18-16-413.A. Therefore, it would be inappropriate for ADEQ to conduct an "administrative completeness" review on the WGFS Report since the Working Group has not submitted the required R18-16-413.A "written request" for ADEQ review and approval pursuant to applicable state law. In fact, the Working Group's conscious failure to include the mandatory "written request" for ADEQ's approval² prior to ADEQ's July 15, 2014 deadline³ should prohibit any further review, including an "administrative completeness" review, by ADEQ.

Working Group Fails to Provide Required Information and Demonstration for ADEQ Review and Approval

Among the more critical requirements in the mandatory "written request" under AAC R18-16-413 (which the Working Group has failed to provide) is the obligation in subsection A.7 that the applicant "shall include a list of the names and addresses of the persons whom the applicant believes to be responsible parties under A.R.S. § 49-283 and a summary of the basis for that belief." This requirement is unequivocal in its scope and clarity. It is required in order to ensure that ADEQ and the general public are aware of the parties whom the "applicant believes" are legally responsible for the contamination, the basis for that belief, and the bias that may be present in any remedial action (or feasibility study report) proposed by the applicant, if the applicant were in fact the responsible party. The Working Group members have been identified in a federal lawsuit as potentially responsible parties, based on public records from ADEQ, the United States Environmental Protection Agency (EPA) and the Working Group members, for the groundwater contamination that ADEQ has determined "has impacted multiple RID water supply wells which may present an imminent and substantial endangerment to the public health, welfare or the environment within the [WVBA] WQARF Site."⁴ In fact, two Working Group members have identified to a federal court a list of potentially responsible parties,⁵

² The Working Group failed to include any "written request" for its Feasibility Study Work Plan, dated February 8, 2013. Only after ADEQ raised the issue in a March 7, 2013 letter did the Working Group provide a partially complete, but still inadequate, "written request" on March 19, 2013 for ADEQ's "approval of the FS Work Plan."

³ The Working Group has failed to meet ADEQ's final review process that "to receive full consideration, FS reports must be submitted to ADEQ no later than July 15, 2014."

⁴ Agreement to Conduct Work between ADEQ and RID, dated October 8, 2009.

⁵ On October 12, 2012, the City of Phoenix and Milum Textiles Services Co., two members of the Working Group, filed a Motion for Leave to Join as Third-Party Defendants and Serve Third Party Complaint against five (5) other Working Group members (Air Liquide America Specialty Gasses, Arizona Public Service, Dolphin Incorporated, Honeywell International Inc. and Univar USA Incorporated) and informed the federal court that they "must exhaust the available administrative remedies before filing claims against [Salt River Agricultural Improvement and Power District]" and that they were "in the process of evaluating possible third-party claims against Freescale Semiconductor, Inc., the successor in interest to Motorola at the 52nd Street Superfund Site." *Roosevelt Irrigation District v. Salt River Agricultural Improvement and Power District*, Case No. CV2010-00290-DAE, Doc. 539. On September 26, 2013, the federal court ordered that all prior third-party actions are deemed superseded because RID's new legal counsel had filed a new Second Amended Complaint, naming the parties in the third-party complaint, but that "cross-claims for contribution under CERCLA by and between all defendants shall be deemed filed and denied" (emphasis added). Such contribution claims, deemed filed and denied, allege that each defendant is potentially liable for the groundwater contamination being addressed by RID under the Agreement to Conduct Work between ADEQ and RID, dated October 8, 2009.

including other members of the Working Group, and a summary of the basis for that belief, so there was no impediment for the Working Group to submit this required and necessary information.

An equally important requirement in the mandatory “written request” under AAC R18-16-413.A.6 is “a demonstration of how the remedial action complied, or will comply, with [WQARF remedy selection regulations].” Clearly, the Working Group failed to provide such a demonstration in a “written request” to ADEQ, since no “written request” was submitted to ADEQ by the Working Group. Furthermore, even a cursory review of the WGFS Report itself clearly reveals obvious and significant non-compliance with the WQARF Feasibility Study requirements in R18-16-407, which describe the feasibility study as “a process to identify a reference remedy and alternative remedies that appear to be capable of achieving remedial objectives and to evaluate them based on the comparison criteria to select a remedy that complies with A.R.S. § 49-282.06” (emphasis added). See R18-16-407.A.

- The WGFS Report fails to “assure the protection of public health and welfare and the environment” as required by A.R.S. § 49-282.06.A.1.
 - All three alternative remedies fail to address the on-going uncontrolled releases of hazardous substances into the environment, in direct contradiction of ADEQ’s requirement in its approval of RID’s Modified Early Response Action, dated February 1, 2013, that measures need to be implemented to limit exposure from the “significant volatilization and transfer of contaminants, from the water into the air.”
 - ADEQ and EPA have policies that prohibit the “relocation of contaminants from one media (groundwater) to another (air).”⁶ Compliance with such policies is required at virtually all other Arizona groundwater cleanup sites. RID believes that the same protective measures implemented to protect public health and welfare at other sites in Phoenix, Scottsdale and Paradise Valley from exposure to groundwater contaminants should be implemented to protect the residents in West Phoenix.⁷
 - The local population has been discouraged from using the RID laterals as swimming pools and drinking the contaminated water. RID does not agree that these risks are acceptable, yet these risks are not addressed by any of the Working Group’s alternatives.
 - All three alternative remedies fail to address groundwater contamination impacting RID’s wells and the environment. After 2025, the contaminant plume is not addressed and, instead, is unfortunately allowed to migrate and contaminate more groundwater as long as the non-RID threatened wells can be relocated outside the plume’s continued downgradient path of migration or screened within the Lower Alluvial Unit (LAU) of the aquifer.
- The WGFS Report fails “to the extent practicable, [to] provide for the control, management or cleanup of the hazardous substances in order to allow the maximum beneficial use of the waters of the state” as required by A.R.S. § 49-282.06.A.2.
 - All three alternative remedies do not provide a “permanent solution” for the “control,” “management” or “cleanup” of the hazardous substances. This is contrary to ADEQ’s core functions of pollution control and cleanups.⁸ Likewise, these three alternative remedies place the WVBA WQARF Site at risk for an EPA overfile to implement additional measures. According to EPA, there is “a preference for remedies that employ treatment that permanently and significantly reduce the mobility, toxicity, or volume of hazardous substances as a principal element. Emphasis is placed on destruction or detoxification of hazardous materials rather than on protection strictly through prevention of exposure”⁹ (emphasis added). According to the

⁶ Letter from Amanda Stone to Keith Takata (November 14, 2007)

⁷ For example, ADEQ required air emission controls on the planned 30-gallon per minute groundwater treatment system in the West Osborn Complex WQARF Site in order to provide a high degree of public protection against potential exposure to VOCs in air.

⁸ See <http://www.azdeq.gov/function/about/index.html>.

⁹ EPA, Guidance on Remedial Actions for Contaminated Ground Water at Superfund Sites, 2-2 (December 1988).

WGFS Report and contrary to ADEQ and EPA requirements, the contaminant plume will not be significantly controlled or cleaned up after 2025. The proposed contingent measures simply relocate non-RID threatened wells outside the plume's uncontrolled downgradient path of migration, or such wells are screened within the LAU of the aquifer.

- All three alternative remedies fail to include, "to the extent practicable," the remedial strategy of "plume remediation" to cleanup the hazardous substances "to allow the maximum beneficial use of the waters of the state."
 - The contaminated groundwater should be cleaned up to meet the water quality standards established by ADEQ "for all waters in all aquifers to preserve and protect the quality of those waters for all present and reasonably foreseeable future uses."¹⁰ ADEQ has established that the reasonable foreseeable future use of the aquifer underlying the WVBA WQARF Site is for a drinking water supply, which is consistent with state law that "all aquifers in this state ... shall be classified for drinking water protected use."¹¹ Accordingly, the groundwater underlying the WVBA WQARF Site should be cleaned up to at least meet the applicable primary drinking water numeric maximum contaminant levels under the federal Safe Drinking Water Act¹² and the applicable narrative aquifer water quality standards that prohibit (1) pollutants "in an aquifer classified for a drinking water protected use [which includes the groundwater underlying the WVBA WQARF Site] in a concentration which endangers human health" and (2) the presence of pollutants "in an aquifer which impairs existing or reasonably foreseeable uses of water in an aquifer."¹³
 - ADEQ already has determined that it is "practicable" to cleanup a larger portion of the aquifer than the one 500 gpm well or two wells (with a 1,000-2000gpm capacity)¹⁴ considered in the WGFS Report with its approval of RID's Modified Early Response Action, dated February 1, 2013, that utilizes eight existing wells (with a 16,200 gpm capacity) to extract the contaminated groundwater and thereby significantly enhance plume remediation and protect against further migration and expansion of the contaminant plume.¹⁵
- All three alternative remedies fail to allow, as required by state law and to the extent practicable, the "maximum beneficial use" of the UAU¹⁶ within the WVBA WQARF Site. Although the three alternatives identify and incorporate RID's existing water supply wells as the

¹⁰ A.R.S. § 49-221.A.

¹¹ A.R.S. § 49-224.B.

¹² See A.R.S. § 49-223.A.

¹³ AAC R18-11-405.A and C.

¹⁴ The WGFS includes these one or two new wells as its "localized" plume remediation, but clearly acknowledges that the real benefit of each alternative remedy is the extraction of water by the RID wells. The WGFS notes that these new wells would cease operating in 2025 because "the efficacy of the new extraction well depends on operating alongside the current RID pumping regime." (WGFS 49, 54) However, the WGFS clearly states that the efficacy of these new wells is not worth their cost because a "disadvantage" of the Reference Remedy and More Aggressive remedy is "the relative cost of any potential additional benefit" (WGFS 53, 57) because "the WVBA plume is already hydraulically contained under current pumping conditions, additional hydraulic control wells are not necessary and would only act to further remove groundwater from storage from within the WVBA." (WGFS 62)

¹⁵ The Working Group acknowledges that "groundwater extraction and treatment via one or more pumping wells is considered a feasible technology within the WVBA [and that] [e]xtraction wells placed within the core of the plume would remove dissolved-phase mass in higher VOC concentration areas and help expedite declining VOC concentration trends" (emphasis added). (WGFS 25)

¹⁶ None of RID's impacted wells, which is unfit for its "reasonably foreseeable water end use" due to contamination in the UAU, are addressed by any of the three alternative remedies despite being utilized as the critical component of each remedy. However, the Working Group's Reference Remedy and the More Aggressive Remedy treats 500 or 2000 gpm, respectively, within the UAU.

critical component¹⁷ of each remedy, no alternative provides for the treatment of that extracted water¹⁸ from the UAU for its “maximum beneficial use” as established by Arizona law and ADEQ’s Remedial Objectives for the WVBA WQARF Site. Such treatment is practicable given that ADEQ already has approved as “reasonable, necessary and cost-effective” and consistent with A.R.S. § 49-282.06.A. the wellhead treatment of eight highly contaminated RID wells within the WVBA WQARF Site, which will “control,” “manage” and “cleanup” the hazardous substances to allow the “maximum beneficial use” of UAU and address the uncontrolled releases of hazardous substances into the environment. Likewise, such treatment has been utilized at other cleanup sites in Arizona, regardless of end use, consistent with ADEQ’s core functions and EPA’s guidance noted above.

- The WGFS Report fails to “meet the requirements” of A.R.S. § 49-282.06.B.4.b as required by A.R.S. § 49-282.06.B.4 that “for remediation of waters of the state, *the selected remedial action shall address, at a minimum, any well that at the time of selection of the remedial action either supplies water for municipal, domestic, industrial, irrigation or agricultural uses or is part of a public water system if the well would now or in the reasonably foreseeable future produce water that would not be fit for its current or reasonably foreseeable end uses without treatment due to the release of hazardous substances.* The specific measures to address any such well shall not reduce the supply of water available to the owner of the well.” (Emphasis added).
 - All three alternative remedies fail to address, *at a minimum*, the RID water supply wells impacted by groundwater contamination above the applicable numeric and narrative Arizona Aquifer Water Quality Standards that ADEQ has determined “may present an imminent and substantial endangerment to the public health, welfare or the environment within the [WVBA] WQARF Site.”¹⁹
 - This failure to address RID’s wells is contrary to the findings in the WGFS Report that each RID well within the WVBA WQARF Site, at the time of the selection of the remedy, “supplies water for irrigation”²⁰ and that the RID wells within the WVBA WQARF Site “would now or in the reasonably foreseeable future produce

¹⁷ For example, “the current regional irrigation pumping conditions represent the primary hydraulic influence (base conditions) on groundwater within the WVBA, and accordingly, *must be factored into the FS alternatives development*” (emphasis added). (WGFS 38) Therefore, according to the WGFS Report, “the capture zones of the RID irrigation wells encompass the current plume footprint ... [and] the groundwater monitoring data indicate that actual plume containment under current conditions is sufficient to control plume migration at concentrations above AWQS.” (WGFS 39) Likewise, any new extraction well “would cease operating at the end of 2025 ... based on the assumption that the efficacy of the new extraction well primarily depends on operating alongside the current RID pumping regime.” (WGFS 49, 54) Finally, “hydraulic control would no longer be maintained if RID discontinued pumping, and, based on model results, ... the center of the plume’s mass may continue to move downgradient until a hydraulic sink ... is reached.” (WGFS 48) “Should RID irrigation pumping within the WVBA cease, the overall groundwater flow direction would likely shift to the northwest, towards the regional pumping depression known as the Luke Sink, near the Luke Air Force Base.” (WGFS 7)

¹⁸ The WGFS Report provides that “for each end use scenario, extracted groundwater would need to be treated to meet AWQS for WVBA COCs prior to injection or discharge to an end user.” (WGFS 25) The WGFS Report also notes that “ongoing remediation projects in the Phoenix region require pumping of groundwater and treatment *of that water* to AWQS” (emphasis added). (WGFS 36) Nevertheless, without providing any justification or explanation, the WGFS Report fails to address, consistent with RID’s water management policy and WQARF remedial action regulations, RID’s wells within the WVBA WQARF Site that are unfit for their reasonably foreseeable end use, nor explains why the extracted groundwater from RID’s wells, which is a critical component of each alternative, is not treated like the extracted water from the proposed one or two new wells or the other ongoing remediation projects in the Phoenix region.

¹⁹ Agreement to Conduct Work between ADEQ and RID, dated October 8, 2009.

²⁰ “RID has approximately 32 irrigation wells located within or adjacent to the WVBA. Although those wells are presently used exclusively for irrigation, RID’s water provider plan states that RID may seek to pump those wells to supply drinking water.” (WGFS 38)

water that would not be fit for its ... reasonably foreseeable end uses without treatment due to the release of hazardous substances.”²¹

- All three alternative remedies provide contingencies to address all threatened, but not yet impacted, City of Tolleson, City of Phoenix, Salt River Project and private wells, but do not address the RID wells²² that are currently impacted.

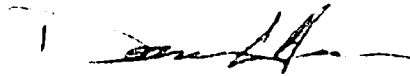
In short, the Working Group failed to submit the “written request” and provide the information and demonstration required by AAC R18-16-413 for ADEQ review and approval of its Feasibility Study Report. Additionally, none of the three alternative remedies provide a permanent remedy addressing the existing groundwater contamination in the WVBA that “complies with A.R.S. § 49-282.06,” as required by R18-16-407.A, to:

- “assure the protection of public health and welfare and the environment”
- “provide for the control, management or cleanup of the hazardous substances in order to allow the maximum beneficial use of the waters of the state” to the extent practicable, and
- “address, at a minimum, any well that at the time of selection of the remedial action either supplies water for municipal, domestic, industrial, irrigation or agricultural uses or is part of a public water system if the well would now or in the reasonably foreseeable future produce water that would not be fit for its current or reasonably foreseeable end uses without treatment due to the release of hazardous substances.”

Instead and contrary to Arizona (and EPA) requirements, the three alternative remedies in the WGFS Report seek protection solely through incomplete and inadequate future contingencies to prevent future drinking water end use exposure only. However, the alternative remedies fail to address the current ongoing air and water exposures to the local predominantly minority population, which are addressed at other cleanup sites in Arizona.

For all these reasons and pursuant to the above-referenced WQARF requirements and the ADEQ review process, RID respectfully submits that the WGFS Report is not legally entitled to any further review or approval by ADEQ. Please let me know if you have any questions.

Regards,
Roosevelt Irrigation District



Donovan L. Neese
Superintendent

CC, Email only:
Henry Darwin, ADEQ
Ana Vargas, ADEQ
Tina LePage, ADEQ
Dennis Shirley, Synergy Environmental
David Kimball, Gallagher & Kennedy

²¹ The WGFS acknowledges that the WVBA COCs are currently above the AWQS and would require treatment before the water could be pumped for its reasonable foreseeable water end use as drinking water supply: “If the COP is required to pump the UAU aquifer in the WVBA in the future prior to the time COCs have been reduced to AWQS, then a contingent measure such as well-head treatment ... may be appropriate.” (WGFS 41)

²² The alternative remedies attempt to avoid the statutory obligation to address RID’s wells by simply addressing the extracted water before its end use. Unfortunately, as discussed above, the failure to address RID’s impacted wells prohibits the WGFS alternative remedies to meet the other statutory requirements. It should be noted that one potential contingency addresses only RID-114, which will be addressed by moving the well outside the plume boundary.

Hartley, Joanne K.

From: Kimball III, David P.
Sent: Friday, October 31, 2014 3:44 PM
To: Malone.Laura@azdeq.gov
Cc: Henry R. Darwin (darwin.henry@azdeq.gov)
Subject: ADEQ Administrative Completeness Review

Laura:

Could you please provide us with the name of the appropriate ADEQ contact (and contact information) who could provide some clarification regarding certain ADEQ interpretations and/or determinations in ADEQ's recent "'Administrative Completeness' Review of [RID's] draft Feasibility Study Report" letter, dated October 24, 2014? The following are areas of particular concern:

- It is confusing how ADEQ has determined that the requirement of Ariz. Admin. Code (AAC) R18-16-413.A.7. is "not applicable" to any Feasibility Study (FS) Report. AAC R18-16-407.J states that "[a]ny person ... may submit a request in compliance with R18-16-413 for the Department to approve a work plan or a report for all or any portion of a feasibility study." However, once a party submits a request for Department approval of a "work plan or a report for all or a portion of a feasibility study," AAC R18-16-413.A specifically states:

[a]ny person who seeks approval of a remedial action at a site or a portion of a site on the registry under A.R.S. § 49-285(B) shall submit a written request to the Department that contains all of the following: ... 7. A proposal for public notice and an opportunity for public comment on the application for approval under this Section. The proposal shall include a list of the names and addresses of persons whom the applicant believes to be responsible parties under A.R.S. § 49-283 and a summary of the basis for that belief.

It also is relevant that AAC R18-16-407.J contains the following qualified statement: "The Department shall approve a feasibility study report if the feasibility study complies with this Section and community involvement activities have been conducted under this Article." Subsection B of AAC R18-16-407 specifically states:

The Department or any person may perform all or a portion of a feasibility study ... A work plan shall be developed and implemented for all or any portion of a feasibility study for a site or portion of a site, as follows ... 3 ... A person seeking approval of a work plan by the Department shall proceed under R18-16-413.

In short, no FS Work Plan or FS Report can be submitted for Department approval and no Department approval can be granted without the submitting party having complied with the AAC R18-16-413 requirements. All of the requirements of AAC R18-16-413 are "applicable" to both WVBA FS reports. See further analysis below. We would appreciate clarification on the "applicability" of AAC R18-16-413.

- The reference to “any person” in AAC R18-16-413 also includes the Working Group. It is confusing and inconsistent that ADEQ did not check the “No” box for Requirement 24 in the Working Group’s checklist since the Working Group did not submit the required “written request” and failed to comply with all the requirements of AAC R18-16-413. Even more confusing is ADEQ’s statements in its October 24, 2014 letter to the Working Group stating that “ADEQ was unable to clearly determine the statutory mechanism the WVBWG’s FS Report was submitted under [and] ... [i]f the FS Report was submitted with a different intent [other than for approval pursuant to AAC R18-16-413], provide a written explanation as to what are WVBWG’s expectations.” However, the Working Group’s intent has been established for some time. Pursuant to the Working Group’s Agreement to Conduct Work with ADEQ, dated January 15, 2013, it clearly states that the “WVB working group desires to obtain ADEQ’s approval of the Work Plan and, once approved, the subsequent approval of the FS Report following completion of the FS, which approvals are, pursuant to A.R.S. § 49-285, deemed to be in substantial compliance with the rules and procedures adopted pursuant to A.R.S. § 49-282.06.” Consistent with ARS § 49-285.B, only a “remedial action approved by the Department under this Section [R18-16-413] shall be deemed to be in substantial compliance with this Article.” *See* AAC R18-16-413.I. It is unclear why ADEQ is not requiring the Working Group to act in accordance with its legal obligations under state law as prescribed in ARS § 49-285.B and AAC R18-16-413 and under its written Agreement to Conduct Work with ADEQ to submit its FS Report for approval under AAC R18-16-413.

It has been suggested that the Working Group is attempting to avoid compliance with the requirements in AAC R18-16-413.A by attempting to interpret AAC R18-16-413 as applying only to “any person” seeking “cost recovery.” Such an interpretation is contrary to the plain language of ARS § 49-285.B, AAC R18-16-413, AAC R18-16-407 and ADEQ’s prior actions and determinations. ARS § 49-285.B specifically states:

Any person ... may request that the director approve the remedial action as prescribed by rules adopted pursuant to section 49-282.06 at any time before, during or after the remedial action.

The rules referenced in ARS § 49-285.B that prescribe the process for any person requesting director approval of a remedial action (including a feasibility study report) are codified at AAC R18-16-413, which is titled “Approval of Remedial Actions Under ARS 49-285(B)” without any restriction to applying only to parties seeking cost recovery. Additionally, AAC R18-16-413 expressly requires “any person” requesting Department approval of a remedial action “shall submit a written request to the Department that contains all of the ... information” in AAC R18-16-413.A.

The non-enforceable preamble language to AAC R18-16-413 does contain a statement that “this section describes the process for a person who performs work at a site or portion of a site to obtain the Department’s approval of the work for purposes of cost recovery.” This is a true statement, but it cannot be interpreted (as has been suggested) to restrict application of the AAC R18-16-413 rule and its requirements to only Department approvals for cost recovery. Why? Because no such restriction is present in the applicable and enforceable statutory and regulatory provisions. In fact, the very same preamble unconditionally clarifies “a person seeking approval for a remedial action must submit a written request to the Department” that complies with all the informational requirements in AAC R18-16-413. *See* AAR at 1506 (2002). Furthermore, the enforceable statute and applicable rules, and even the very same preamble, clearly state that the Director’s or Department’s approval under AAC R18-16-

413 is not required to preserve any right to cost recovery. If ADEQ's approval of any remedial action is not required for parties seeking cost recovery, the approval process prescribed in AAC R18-16-413 cannot be interpreted to be limited only to parties seeking cost recovery, particularly when no such restriction is found in the plain language of ARS § 49-285.B., AAC R18-16-407, or AAC R18-16-413. Appropriately, in its letter to the Working Group dated March 7, 2013, ADEQ previously required the Working Group to include a "written request" for approval of the FS Work Plan consistent with AAC R18-16-413.A even though the Working Group was not seeking cost recovery. Similarly, ADEQ instructed the Working Group in its October 24, 2014 letter that "[i]f the FS Report was submitted for approval pursuant to A.A.C. R18-16-413, the elements of A.A.C. R18-16-413(A) need to be clearly presented in one document." As noted above, both an FS Work Plan and FS Report are obligated to comply with AAC R18-16-413 under AAC R18-16-407.J. We would appreciate the opportunity to discuss this further with ADEQ.

- Although AAC R18-16-413.A.7 is applicable to RID, RID did not include a specific public notice proposal in its FS Report because, as indicated to ADEQ in its July 11, 2014 written request to ADEQ, RID intended to follow the process used for the Feasibility Study Work Plan which included coordination with Wendy Flood of ADEQ to develop a specific public notice that met the AAC R18-16-413.A.7 requirement. Given that AAC R18-16-413.A specifically states that "[a]ny person who seeks approval of a remedial action at a site or a portion of a site on the registry under A.R.S. § 49-285(B) shall submit a written request to the Department that contains all of the following," RID would like to discuss whether it should include in its response to ADEQ's October 24, 2014 letter a specific public notice proposal in order to meet the AAC R18-16-413 mandatory requirement that all elements be included in the written request. There are no exceptions as to who qualifies as "any person" under AAC R18-16-413.
- Also, it is confusing why ADEQ checked the "Yes" box on Requirement 11 of the checklist for both the RID FS Report and the Working Group's Feasibility Study (WGFS) Report indicating both FS Reports "satisfy the requirements of A.R.S. § 49-282.06(B)(4)(b)." This is surprising given ADEQ's footnote and the contents of the WGFS Report. ADEQ's footnote summarizes statutory language in Ariz. Rev. Stat. § 49-282.06.B.4.b that specifically states:

For remediation of waters of the state, the selected remedial action shall address, at a minimum, any well that at the time of selection of the remedial action either supplies water for municipal, domestic, industrial, irrigation or agricultural uses ... if the well would now or in the reasonably foreseeable future produce water that would not be fit for its current or reasonably foreseeable end uses without treatment due to the release of hazardous substances.

Although the WGFS Report states that the contaminated RID wells are factored "into [each of] the [WG]FS remedial alternatives [as] necessary and critical"(WGFS, 19), the hazardous VOCs in the contaminated groundwater impacting these "necessary and critical" RID wells are not treated to address either (i) the risks posed to "public health and welfare and the environment" by the VOCs released at the Working Group's facilities, as identified in ADEQ, EPA and Working Group documents, or (ii) the restrictions on the "reasonably foreseeable end uses" of the water supply produced from these RID wells due to the groundwater contamination as required by ARS § 49-282.06.B.4.b. In fact, these "necessary and critical" RID wells to each of the WGFS remedial alternatives are not included in the cost estimate of the WGFS proposed remedial alternatives. All three WGFS proposed alternative remedies only include future measures to address threatened, but not yet impacted, City of Tolleson, City of Phoenix,

Salt River Project and private wells. All three WGFS proposed remedial alternative remedies fail to address, as required by the referenced mandatory requirement in ARS § 49-282.06.B.4.b, the existing RID water supply wells that are currently impacted above the applicable Arizona numeric and narrative aquifer water quality standards, the Remedial Objectives established for the WVBA WQARF Site, and the reasonably foreseeable end uses established by ADEQ's Land and Water Survey for the WVBA WQARF Site. We would appreciate understanding how Requirement 11 was interpreted and applied by ADEQ.

- Finally, we want to confirm that just because ADEQ may not have included a qualifying “note” on certain questions in the checklist, it did not indicate or suggest that ADEQ has made a determination regarding the sufficiency of the substantive requirements of an FS Report. For example, ADEQ included qualifying language in a note on Questions 8, 12 and 17 that states: “Requirements within A.R.S. § 49-282.06 are considered technical in nature and are not reviewed to determine ‘administrative completeness.’” Similar qualifying language should be included in other substantive/technical areas addressed in the checklist, such as Questions 5, 11 and 14.

We would appreciate the opportunity to discuss these and other relevant issues with the ADEQ contact.

Thanks.

Dave

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Danielle R. Taber

From: Laura L. Malone
Sent: Wednesday, November 12, 2014 2:33 PM
To: Klein, Mitchell; Karen Gaylord; 'Young, Anthony'; Kimball III, David P.; Kimball, Stuart S.
Cc: 'Judith.Heywood@aps.com'; 'Jenn.Mccall@freescale.com'; 'CConsoli@Irrlaw.com';
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Joel Peterson (joel.peterson@syn-env.com); DNeese@rooseveltirrigation.org;
phendricks@cox.net; Tina LePage; Danielle R. Taber; Henry Darwin
Subject: WVB Feasibility Study Reports

Good afternoon,

In emails dated October 24, 2014, ADEQ provided comments to the WVBWG and RID regarding the "Administrative Completeness Review" conducted for both FS reports. In those communications, ADEQ requested information be submitted by November 13th. Since that time, it was suggested (and both parties agreed), that a face-to-face legal/technical meeting would help facilitate the discussions on the checklists. Separate meetings have been scheduled for next week and both technical staff and attorneys are welcome to attend. Due to this change, ADEQ is extending the deadline for submitting information requested in the checklists to **COB Wednesday, November 26th**. This will give both parties sufficient time to submit information after their respective meeting. However, in order to be as productive as possible, I am requesting advanced notice of your particular questions/concerns regarding the checklists. So, if you have not already submitted comments, bullet points or other information, please do so by COB Thursday, November 13th. Providing detailed information by the deadline will allow ADEQ time to review and come prepared to discuss the issues.

Please let me know via email if you have any questions.

Thanks

Laura

Laura L. Malone, Director
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Danielle R. Taber

From: Dennis H. Shirley <dennis.shirley@syn-env.com>
Sent: Wednesday, November 05, 2014 3:34 PM
To: Tina LePage
Cc: Danielle R. Taber; Joel Peterson
Subject: RID-FS Report

Hi Tina,

I thought I'd follow up on voice message I left with you yesterday to coordinate a time that Joel and I can talk to clarify our understanding of ADEQ comments re: administrative completeness review of the draft RID FS Report. Please let us know a convenient time to speak with you Thursday or Friday if possible.

THANKS,
Dennis

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Dennis H. Shirley, PG
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