

July 16, 2020

Delivery Via Electronic Mail

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Re: Blackfoot Post Yard, CECRA Facility, Lincoln, Montana

Dear Ms. Johnson:

On May 20, 2020, the Montana Department of Environmental Quality (DEQ) sent notice letters to the Montana Department of Transportation, John D. Mulcare, Norman Grosfield, Blackfoot Storage, Inc., Gerald Biresch, Atlantic Richfield Company, and International Paper Company, indicating that each party had been identified as a potentially liable party (PLP) under the Montana Comprehensive Environmental Cleanup and Responsibility Act (CECRA) “for hazardous or deleterious substance contamination” at the Blackfoot Post Yard CERCRA Facility (Site). DEQ stated that the noticed PLPs had 30 days to “designate a lead PLP who will conduct the required remedial actions at the Facility,” and 60 days to “petition DEQ in writing to participate in an allocation process and provide DEQ with the identity of other PLPs who were not noticed by DEQ.” DEQ had to re-send at least some of the notice letters on June 1, 2020, because the initial transmittals omitted every other page. By letter dated June 11, 2020, DEQ extended the deadline for designating a lead PLP to July 20, 2020.

Since receiving the notice letters, the PLPs have been communicating about the Site and DEQ’s CECRA directives. In addition, some of the noticed PLPs have sought to obtain copies of DEQ’s files regarding the Site. As of last week, some but not all of the requested documents had been received from DEQ. Without the complete set of records, and without yet having had the opportunity to fully review and analyze the information in DEQ’s files regarding the Site’s history and various entities’ ownership, operations, and other activities at the Site, the noticed PLPs are not in a position to designate a lead PLP, make a decision on proceeding with the CERCA allocation process, or identify other PLPs not yet noticed. The ongoing COVID-19 pandemic has only complicated and delayed the information gathering and review process.

The noticed PLPs discussed DEQ’s deadlines during a conference call on July 10, 2020. Given a number of complicating factors, including the extensive document record, some PLPs’ general lack of understanding of Site conditions and the environmental investigations performed at the Site to date, the complex ownership histories and land uses of the multiple parcels included within the Site, the apparent involvement of “orphans” in past Site operations, and the breadth of the remedial investigation scope of work requested by DEQ, the parties agreed that considerable

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additional time is needed to develop their respective responses. Accordingly, the noticed PLPs, request: an additional 120 days from the current deadline to designate a lead PLP—until November 17, 2020; and an additional 30 days from the November 17, 2020 deadline to petition for the CECRA allocation process and/or identify additional PLPs—until December 17, 2020.

The noticed PLPs understand that DEQ may desire more expedited attention to the 55-gallon drums observed at the Site. Mr. Grosfield and Mr. Feedback walked the Site this past weekend and observed two closed-lid drums on the Mulcare property containing unidentified liquids and a third open-topped drum that appeared to be empty. During the requested extensions, if granted, the noticed PLPs propose to characterize the contents of the two closed-lid drums and properly dispose of them if the characterization indicates the drums contain hazardous waste. If acceptable to DEQ, the PLPs will attempt to reach an interim agreement on how to accomplish the characterization and off-site disposal of the drums (should disposal be determined necessary) in a timely fashion, without admitting liability or setting any sort of precedent for future allocation.

The noticed PLPs appreciate DEQ's timely consideration of this extension request.

Carol Grell Morris & Chris Nygren
Montana Department of Transportation

Peter Scott
Counsel for John D. Mulcare and
Blackfoot Storage Inc.

Norman Grosfield

KD Feedback
Counsel for Gerald Biresch

Jean Martin
Atlantic Richfield Company

Brian Heim
International Paper Company

cc: Jenny Chambers, DEQ
Denise Martin, DEQ
Dan Norris, DEQ