

December 10, 2003

VIA FACSIMILE AND U.S. MAIL

J. Kemper Will, Esq.
Burns Figa & Will, P.C.
6400 Fiddler's Green
Suite 1030
Englewood, CO 80111

Re: RI/FS and Tolling Agreement For CSMRI Site, Golden, Colorado

Dear Kemp:

This letter responds to your December 5, 2003 letter sent on behalf of the entities listed on Attachment 1 of your letter who are working together as a group and have a tolling agreement with Colorado School of Mines (School) for litigation related to the CSMRI Site (the Group). Your letter provided a series of comments with respect to the ongoing Remedial Investigation/Feasibility Study (RI/FS) for the CSMRI Site in Golden, Colorado. This letter responds to them in the order presented in your letter.

In addition to this letter, I believe that a meeting to answer your questions and discuss the RIFS will be helpful. Last we talked, you were going to arrange a meeting for this Friday at 9:30 a.m. in Denver between School representatives and Group representatives. A representative from New Horizons Environmental Consultants will attend to respond to technical issues. Please let me know where the location of the meeting will be.

As to the amount of information available, the Group has available all of the underlying data that the School has for this Site. Much of it was available at the Open House and is available in the School's information repository and in CDPHE and EPA records. The same data is serving as the basis of the School's RI/FS efforts. If you cannot locate any specific document, I would be glad to assist you in obtaining it. While some of the internal drafting and other calculations being performed by contractors for the School with respect to the RI/FS is not available, all of the underlying data and prior reports that are the bases of the RI/FS work is available. In addition, we have fully disclosed the alternatives being considered for the RI/FS. The School therefore believes that the Group has sufficient information

available at this time to comment fully on the preparation of the RI/FS. To be sure, if the Group believes that the alternatives being considered by the School are “very deficient,” as you state in your letter, then there must be enough information for the Group to draw this conclusion.

Comments on the Remedial Investigation (RI)

The RI work plan consists of a combination of documents: the URS Characterization Survey Work Plan (CSWP) as supplemented by work plans prepared by NHEC. Each is available upon request.

1. URS performed only a portion of the investigation work described in the CSWP. After receiving a substantial cost estimate to remove the asphalt and concrete, the School bid out the remainder of the investigation work. Cotter was one of the three finalists for this work, so it would have the information you seek to answer your questions. The School awarded NHEC the remaining investigation work.
2. Although the School is using prior data as much as possible, there was not enough data to determine the nature and extent of remaining site issues. Other than that, I am not sure I understand your question. If you are asking why a CERCLA “remedial action” is being performed, as opposed to another CERCLA “removal action,” it is essentially because the School is now looking to develop a final long term remedy for the Site, among other reasons. If I have not answered your question, please let me know.
3. URS did not dig any testpits. Testpits increase the understanding of the subsurface issues in a way that boreholes cannot.
4. The information regarding this area of soil contamination is available. The contamination likely arose on-site although the exact source of it is uncertain. It will be addressed as part of the RIFS because it is part of the on-site contamination.

Comments on Risk Evaluation

1. We are developing additional alternatives to represent a reasonable range of alternatives based on comments received, including yours. The alternatives are still open to change. Please let us know what specific alternatives you want considered. The latest iteration is as follows:

- 1 No Further Action
- 2A. Institutional Controls with engineered cap (no excavation)

- 2B Same as 2A plus slurry wall
- 3A Same as 2A with excavation and off-site disposal of soils above 15pCi/g of Ra-226
- 3B Same as 2A with excavation and off-site disposal of soils above 5pCi/g of Ra-226
- 4A On-Site consolidation and solidification with engineered cap (no off-site disposal)
- 4B On-Site consolidation with entombment (no off-site disposal)
- 5A Excavation to unrestricted use and disposal at solid waste facility
- 5B Excavation to unrestricted use and disposal at solid waste and special waste facilities

2. The RI will so identify. While a reasonable range of alternatives will be evaluated, we cannot evaluate every possible alternative, or multiple variations of alternatives. If the Group has a specific one in mind, please let us know ASAP so we can include it.
3. The criteria will be provided. Let us know what commercial scenario you want evaluated and for which alternative. As noted above, we can evaluate some alternatives but not many alternatives.
4. The RESRAD parameters will be provided.
5. We don't understand this question. In addition to established qualitative and quantitative ARARs, risk drives the selection of DCGLs.
6. The model interprets the data to mean that all of the contamination is at the surface. A basement cannot collect radon when the contamination is only at the surface. When you add cover to the surface, the model sees a basement that can collect radon. The contamination here is at the subsurface and the surface.
7. We don't understand this question. Metals and radionuclides drive the risk here.
8. We don't understand this comment. Let's discuss at the meeting.

Comments on Alternative Evaluation

1. See comments above.
2. BFI and CSI have informed us that they may accept the solid waste found at the Site. They will likely need governmental authorization for taking the solid waste. We have looked at Envirocare and will likely screen this alternative out as being cost prohibitive. We may look at other sites too. Let us know if you have other sites you want us to consider.

3. See comments above. We will consider post RI/FS bidding if off-site disposal is required. We will also look at the ownership and indemnity issues, and we welcome your participation in trying to procure them, if necessary. Even if we cannot procure them, there may be sensible reasons to send the materials off-site.
4. We will consider restricted land uses. The Group has contribution rights against others, and the Group is of course not restricted from using its rights. As to the *City of Detroit* case referenced in your letter, we note that it does not address the issue that we discussed at our meeting on November 21, at which you stated that any cleanup provides a windfall to a land owner. The *City of Detroit* case addresses remediation beyond industrial use standards. Assuming that the case is correct in its view of the law and the circumstances are similar between the site there and the Site here, there may not be a significant enough cost difference between the two standards to warrant consideration here. But, we can explore that as we proceed.
5. See comments above.
6. We will evaluate the use of radon mitigation systems.
7. Institutional controls will be evaluated.
8. The School believes that the current list of alternatives is reasonable. But, we are open to specific suggestions you may have on what specific alternatives you want the School to consider.
9. Your comments are noted.

We appreciate your efforts to comment and your willingness to assist the School. The School welcomes your participation in this process. We agree with your suggestion that a meeting may be helpful. We look forward to meeting with you on Friday December 12, 2003 to answer your questions and discuss the RIFS. We would appreciate it, given the schedule, that you come with specific ideas as to which specific alternatives you would like the School to consider in the FS.

By the way, the School has not yet received a draft of a tolling agreement for one year, through December 31, 2004. I look forward to reviewing the draft tolling agreement from the

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Group.

Sincerely,
THE HANNON LAW FIRM, LLC

Asimakis (Maki) P. Iatridis

cc: Linn Havelick
Anne Walker, Esq.