Jacques Gusmano

05/25/2004 10:31 AM

To: Clifford Villa/R10/USEPA/US@EPA, Andrea Lindsay/R10/USEPA/US@EPA, Howard Orlean/R10/USEPA/US@EPA, Lynne Kershner/R10/USEPA/US@EPA
cc:
Subject: Anchorage Terminal Reserve

----- Forwarded by Jacques Gusmano/R10/USEPA/US on 05/25/2004 09:29 AM -----

Envires Corporation <envirescorp@verizon.net>

05/25/2004 08:50 AM

To: Jacques Gusmano/R10/USEPA/US@EPA
cc:
Subject: Anchorage Terminal Reserve

Good afternoon -

I downloaded a copy of the AOC for Alaska Railroad Corporation [Anchorage Terminal Reserve] that you have on your website, and I notice that the EPA ID # listed on the AOC is different from the EPA ID # listed in the CERCLIS database for this site.

Why the discrepancy, and which one is correct?

Many thanks,

Kathryn Hart
Document Control
ENVIRES Corporation
-for EPA Shadow Law
1-888-368-4737

FLINT HILLS RESOURCES

North Pole Refinery
Flint Hills Resources Alaska, LLC.
1100 H & H Lane
North Pole, Alaska 99705
907.488.2741

June 18, 2004

Jacques Gusmano - Via Fax (907) 271-3424
U.S. Environmental Protection Agency
222 West Seventh Avenue, Suite 19
Anchorage, AK 99513-7588

Re: Comments on draft EPA/AK Railroad AOC

Dear Mr. Gusmano:

Thank you for granting an extension of time to provide Flint Hills Resources Alaska, LLC ("FHR") an opportunity to comment on the draft Administrative Order on Consent ("AOC") entered into between the U.S. Environmental Protection Agency ("EPA") and the Alaska Railroad Corporation ("ARC"). As you may be aware, FHR is the owner and operator of the North Pole refinery and the Anchorage Port assets formerly owned and operated by Williams Cos. We are very interested in any investigation activities planned for ARC properties where Flint Hills has a leasehold interest. FHR intends to be cooperative and involved as the process moves forward.

Our comments on the draft AOC and planned investigation activities are general in nature and reflect our preliminary understanding of the AOC and the process that lies ahead.

1. **Existing Data.** Williams Cos. generated a significant amount of investigation and remediation data concerning its former properties at the Port. FHR is in receipt of that data and believes it needs to be carefully reviewed and considered by EPA and ARC as part of the investigation process. We wish to avoid a duplication of efforts and cost.

2. **Access and Coordination.** We understand that ARC and/or EPA will need access to FHR properties to allow for investigation and remediation work. FHR is agreeable to providing reasonable access, provided that all individuals agree to adhere to the security, safety and other restrictions applicable to FHR employees and contractors and agree to use best efforts to avoid disruption to FHR's leasehold activities.

3. **Copies of Communications/Involvement in Meetings.** Upon request by any leaseholder, EPA and ARC should place that party on the copy list for all written and electronic communications concerning specified portions of the Site. This would include routine correspondence, progress reports, interim action planning, workplans, etc. Third parties should also be given notice of and allowed an opportunity to observe conference calls and meetings pertaining to specified leaseholds. Please consider this a request from FHR to be copied on any communications concerning FHR leaseholds.

4. **Operable Units.** The Site is exceedingly large, spanning from Reeve Boulevard to the Port of Anchorage. There is little or no relationship between many of the parcels other than the fact that ARC is a common owner of the overall Site. We encourage EPA to develop a process – using operable units or some similar approach– to ensure that decisions can be made and resources can be expended and tracked with respect to precise geographic areas.

5. **Interim Actions.** FHR would like to receive advance notice and opportunity to participate in the decision-making process regarding interim actions in any FHR leasehold areas.

6. **Work Performed Under State Oversight.** To our knowledge, ADEC has historically overseen investigation and remediation activities in the leasehold areas held by FHR. Most or all of the contamination existing on properties held by FHR involves releases of petroleum products. We believe the State contaminated sites program – which specifically addresses petroleum – is well-suited for addressing these types of issues and areas. We would like to see EPA give appropriate consideration, under the CERCLA/RCRA process, for areas that may be successfully investigated and remediated under active oversight from the ADEC contaminated sites program. If an area receives a "No Further Action" or similar

determination from ADEC, that area should not be subject to continuing active studies by EPA.

If you have any questions, please contact our environmental manager, Brian Roos, at (907) 488-0033. Legal questions should be directed to Eric Fjelstad at Perkins Coie at (907) 263-6973.

Sincerely,

Flint Hills Resources Alaska, LLC

Allen Lasater, President

cc: Phyllis Johnson, ARC
Brian Roos, FHR
John Hellen, FHR
Eric Fjelstad, Perkins Coie

TO EPA

June 4, 2004

Comment on contamination at Ak Railroad site at Ship Creek.

Administrative Notice

Notice of deficiency, Request for findings and determination of template or model standard (reviewability). "Due process". DRA, OW, "equal protection" and equality against social profiling.

RECEIVED
JUN 07 2004
OFFICE OF THE EXECUTIVE

It is a fact that EPA lacks authority to rationalize, presume, or speculate what constitutes a "public process". Congress has not delegated this authority to EPA. AOO, ORC

It is a fact that EPA has not fully delegated authority to Alaska, under Clean Water Act. I remind EPA, that under a duel delegation, EPA lacks sole authority for reviewability. Reviewability isn't final. Where is the public process within the "state"? it has not occured.

I'm not contesting scientific reasoning. I am contesting (public process standard). (not as equivalent) (equal protection)

Where a state legislature adopts standards for public (state) process, and its deficient, and not complied with. The person delegated responsibility by the state legislature must be held accountable. The governor. (Enforceable policy). AS 46.03.040 state enviromental plan.

Responsibility for approval AS 46.03.040.
infers responsibility for
"public process." not done.
This violates Coastal Mgmt Act of 1972 as amended,

The State can not waive
cost bond requirement under
Alaska Oil & Gas Commission (part of shallow gas program).
for coal bed methane (public
notice in Anchorage Daily News
public notice section (classified adds)
on Wednesday (the past) for the federal
government (division within
Interior Dept.) and concurrently
argue in 4FA-03-1901, that my
appeal should be dismissed
because I didn't ask for
a stay from the court and pay
a cost bond. (The state is a party).

Under appellate rules (state), my
motion to require the state
pay a cost bond was denied. (at that
point).

Where is the enforcement of public process
standard?

The deficiencies allows defense claims to be raised against EPA. Will EPA correct the problem?

Corporations and commissions have been created by the AK legislature apparently for the purpose of violating "public process" mandated by Alaska legislature. Shall they be invalidated on this principle of law, or shall the deficiencies be fixed. I ask EPA to make a finding of its interpretation. AK railroad is a (state) corporation.

I seek publication of EPA standards for reviewability of (public process) standards applied over 19 years to me AK Survival vs DNR (1986). Public Trust standard, Public interest standard, public involvement standard. Shall EPA apply a different standard? and bind me to this standard used in federal case law.

I cite changes in court rules (federal evidence) and rule of civil procedure 45) require EPA to ~~publish~~ publish its standards. (not done) in federal register - (public process standards).

I was denied (by motion practice)
in (4FA-03-190)
the standard that AK RR fuel spill
was reviewed under. (no due process)

(Comparison) models is a standard
practice under law.
Or is EPA prepared to invalidate
the state template standards
under Clean Air Act?

The social & economic
impacts are not known
ahead of public process. (EPA public process)
The public has right of disclosure
to require EPA to provide notice
before public comment or
I allege EPA process violates
1st amendment free speech
& assembly of the people.
because it curtails
discussion of them and can
lead to social profiling.

(b) (6)

Sincerely, June 2004

(b) (6)

WASILLA, AK 99654

(b) (6)

June 4, 2004

1 ATTACHMENT
COPY OF Ninth Circuit response

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
P.O. Box 193939
95 Seventh Street
San Francisco, CA. 94119-3939

May 26, 2004

(b) (6)

HC-35 Box 5438
Wasilla, AK 99654

Dear Mr. (b) (6):

This will respond to your recent correspondence to this court. We are a court of limited jurisdiction which means that it can only act on cases which have been first filed, and finally decided in a U.S. District Court within this Circuit. *See* Title 28 of the United States Code Section 1291, 1292. This office does not furnish specific forms for filing appeals, writs or other pleadings in this court, or any other court. For examples of forms see the appendix of forms in back of our rules. This court and its employees are prohibited by statute from giving legal advice.

In order to request relief in this court, you must file a ***notice of appeal*** from an appealable judgment or order of the U.S. District Court. Depending upon your type of case, you are referred to Title 28 of the United States Code, Sections 2241 - 2255; Title 42 of the United States Code, Section 1983; and Title 28 of the United States Code Sections 1330 - 1335 and 1343. If you are filing a writ of habeas corpus, it must be filed with the appropriate U.S. District Court. *See* Fed. R. App. P. 22 (a).

In addition, it is important to note that all administrative and state court remedies must be exhausted before petitioning the federal court system, in the event the matter relates to your confinement in a state correctional institution.

Your materials are being returned.

Sincerely,

CATHY A. CATTERSON
Clerk of the Court

Jeff Crocker

Jeff Crocker
Deputy Clerk