

Plunkett, Steven, Env. Health

From: Karl Morthole [karl@mortholelaw.com]
Sent: Friday, June 13, 2008 2:39 PM
To: 'Bud Duke'
Cc: Drogos, Donna, Env. Health; Plunkett, Steven, Env. Health; 'Mark Malinowski'; 'Sharon Fair'; tdowney@BurnhamBrown.com; 'Derek H. Lim'; 'Jan A. Greben'; 'Martin Deutsch'
Subject: RE: Crow Canyon Cleaners; DTSC Consultative Agreement
Attachments: Roessler_Burrows Crow Canyon Cleaners consult agmnt revised 20080602 from Duke of DTSCwithKRMComments20080613.pdf; Roessler_Burrows Crow Canyon Cleaners consult agmnt attachment with KRM comments 20080613.DOC

Categories: Red Category

June 13, 2008

Mr. Harold Duke, DTSC, Sacramento

Dear Bud:

Thanks for your e-mail forwarding the draft consultative services agreement.

Based on discussions with counsel for the other two parties – the Parks and the Perrys – and on behalf of my clients, Bruce Burrows and Jim Roessler, I am sending comments with suggested revisions to the draft agreement. There are two attachments: the PDF shows the pages with reference numbers to my comments and the Word document has my comments.

In summary, six Applicants will sign the agreement, but there will be one contact “Project Coordinator” with whom the DTSC can communicate, though with e-mail/fax/hardcopy notifications to all six of the Applicants through their legal counsel. All six of the Applicants will sign for responsibility for the entire amount, now estimated to be \$9,073. The six Applicants have a separate, confidential side agreement with each other regarding issues to do with their cost-sharing, but this will not affect the Department. Addresses, and other contact information for the Applicants, are through counsel, except for the Project Coordinator.

As shown on the Word document, the suggestions should be clear. By far most of them are to replace “[six names]” with “the Applicants” in various forms, depending on the context. Also, I would draw your attention to addition of the word “alleged” before the word “releases” at one point and insertion of “50%” for “x%” at another point.

I have not attempted to make any changes regarding the County’s role, both because I think that is between the state and the county and because the description of the county’s role is satisfactory, in my opinion, from the Applicants’ perspective.

Please contact me if there is any question or comment, and let me know if the language is agreeable so the agreement may be executed and the advance payment submitted, allowing the important work to go forward of public participation and toxicological review by the Department.

Sincerely,

Karl

Attachs. (PDF of Draft Agreement, MSWord of KRM Comments)

CC: Drogos, Plunkett, Malinowski, Fair, Downey, Lim, Greben, Deutsch, Office e-mail

Karl R. Morthole
Law Offices of Karl R. Morthole
57 Post Street
Suite 801
San Francisco, CA 94104
TEL: (415) 986-0227
FAX: (415) 986-1734
karl@mortholelaw.com <<mailto:karl@mortholelaw.com>>

From: Bud Duke [<mailto:BDuke@dtsc.ca.gov>]
Sent: Monday, June 02, 2008 2:48 PM
To: tdowney@BurnhamBrown.com; karl@mortholelaw.com
Cc: donna.drogos@acgov.org; Steven Env. Health Plunkett; Mark Malinowski; Sharon Fair
Subject: Crow Canyon Cleaners; DTSC Consultative Agreement

Mr. Morthole and Mr. Downey.

Please find attached with this e-mail a copy of the revised consultative agreement with comments/edits from DTSC's Office of Legal Council, Ms. Judith Tracy. Judy did provide me with the notes highlighted in *blue*, below. If possible, DTSC would prefer to have this agreement be between one unit/party.

Please forward to me your comments on the revised consultative agreement so that we can finalize.

Thank you, and please contact me if you have any questions.

Bud

Thanks for sending the examples of previous agreements and for clearing up some of the questions I had. Here is a revised version of the draft agreement based on the examples you sent and tailored to Crow Canyon. I added a reference to HSC 25201.9 (our authority for entering into these kinds of agreements) and deleted the language about DTSC stopping work if we exceeded the cost estimate (but added notification language so the applicants could agree to modify the cost estimate or terminate the agreement if they chose).

Still needed is some clarification on the County's role, which can be added to the draft as appropriate. Also, hopefully the six applicants will organize themselves into a working unit for purposes of payments, communications, etc.

Harold (Bud) Duke, P.G.
Senior Engineering Geologist
Brownfields and Environmental Restoration Department
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, CA 95826
Phn: (916) 255-3695
Cell: (916) 708-3728
Fax: (916) 255-3734
BDuke@dtsc.ca.gov