

Kenny, Ann

From: Marchioro, Joan (ATG)
Sent: Saturday, September 08, 2001 7:51 PM
To: Hellwig, Raymond; Kenny, Ann
Subject: FW: New Proposal for E.1(b)

Importance: High



September 8
Condition E(1)(b) ...

CONFIDENTIAL ATTORNEY-CLIENT PRIVILEGED COMMUNICATION
Note: This communication is intended only for the addressee shown above. It may contain information that is privileged, confidential, or otherwise protected from disclosure. Any review, dissemination, or use of this communication or its contents by persons other than the addressee is strictly prohibited. If you have received this communication in error, please notify me immediately.

Here is the suggested language. I will be getting an entire agreement by the end of the day tomorrow and will try to get to work first thing Monday to forward it on. Joan

-----Original Message-----

From: Newlon, Tom [mailto:newlon.t@portseattle.org]
Sent: Saturday, September 08, 2001 9:34 AM
To: Marchioro, Joan (ATG); Tom Walsh (E-mail)
Cc: 'Jay Manning'; Newlon, Tom; Linn Gould (E-mail)
Subject: New Proposal for E.1(b)

Joan: Because of the substantial changes, I just redrafted our proposal for the added language on this one. You'll recognize some of it from mine, and some from yours. The wedge idea needed to go in, too (only it's called the "drainage layer cover, consistent with how the Services documents talk about it). Overall, the thing's enough different that I didn't bother with redlining. Sorry if that's a problem. I still need to get you the revised work plan. You'll notice I provided for 10 business days of review of SPLP results before material use. We have the exact same problem with written approval that we had before. We anticipate using SPLP a lot (we have already) due to the high degree of natural variability in metals levels in this region (due to volcanism, I'm told). The contractors are using SPLP for approval routinely, apparently, and are always passing. The metals in natural, unpolluted materials just don't leach out all-of-a-sudden when moved from one part of the region to another, which is apparently not surprising at all. Anyway, due to fairly routine SPLP use, and the simple nature of determining whether the material passes or not (just compare the leachate test number to the standard), the written notice requirement

24 277

for
SPLP is both problematic for us, and not apparently necessary (from our
point of view) for Ecology. I haven't cleared the 10 day notice thing
with
my client, but I'll bet that will be OK as potentially waiting around
for a
straightforward approval isn't something that scares off contractors.
As a
fallback if they're worried about SPLP approving bad-looking stuff, we
could
agree on never-to-exceed figures as we did with the Services (it's MTCA
A
for them for the wedge and a three-phase-partitioning number (again from
MTCA) for the rest of the material, I think. I'll bet we could live
with a
never-to-exceed Method A approach for SPLP-tested materials -- ironic if
the
state "unrestricted use" standards would be ok as a threshold for
federal
agencies but not for the state agency that promulgated them!). I'll get
the
work plan to you by the end of the weekend. Thanks for working so hard
on
all this and trying to get to a resolution in this insane time frame!!!
Tom

<<September 8 Condition E(1)(b) draft.doc>>

Condition E(1)(b). This condition concerns the fill criteria for imported fill material. The following paragraph shall be added to the end of this section:

"As an alternative to applying the limitations listed above for material within the top six feet of the existing ground surface and or within the first six feet of the embankment (as noted in footnotes two through six above), the Port may construct a "drainage layer cover" (that layer immediately above the drainage layer of the embankment) that will measure at least 40 ft thick at the face of the embankment and will reduce in height to the east at a rate of 2 percent. The fill criteria listed above for the first six feet of the embankment will apply to the drainage layer cover. If proposed fill (for either the drainage layer cover or the rest of the embankment) does not meet the fill criteria in Condition E.1.(b), the Port can demonstrate the suitability of that fill by employing a Synthetic Precipitation Leaching Procedure (SPLP), SW-846 Method 1312. SPLP testing shall be conducted in accordance with the SPLP work plan attached as Exhibit _____. Where the Port utilizes the SPLP method to demonstrate the suitability of fill, SPLP test results shall be provided to Ecology at least ten (10) business days prior to fill placement.