

**OFFICE OF THE COMMISSIONER OF THE**

**ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

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| FLINT HILLS RESOURCES ALASKA, LLC, | ) |
|                                    | ) |
| Requestor,                         | ) |
|                                    | ) |
| v.                                 | ) |
|                                    | ) |
| ALASKA DEPARTMENT OF               | ) |
| ENVIRONMENTAL CONSERVATION,        | ) |
| DIVISION OF SPILL PREVENTION AND   | ) |
| RESPONSE                           | ) |
| _____                              | ) |

**ORDER REGARDING DECEMBER 20, 2013 REQUEST FOR STAY**

On December 20, 2013, Flint Hills Resources Alaska (Flint Hills) filed a Request for Stay (Stay Request) related to a Request for Adjudicatory Hearing filed the same day. Flint Hills requested that these activities be stayed:

1. Completion of a revised Human Health Risk Assessment (HHRA) as directed by DEC in its November 27, 2013 letter to Flint Hills.
2. Preparation or revisions of onsite or offsite feasibility studies, site characterization reports or cleanup plans, as directed by DEC in its July 25, 2013 letter to Flint Hills.
3. Remedial actions, except: (a) ongoing implementation of the *Alternative Water Solutions Program – Management Plan* with the most recent revisions submitted to DEC in December 2013; (b) operation of the current onsite groundwater remediation system and existing light non-aqueous phase liquid (LNAPL) recovery efforts; (c) expansion of the groundwater extraction system as set forth in the *Revised IRAP Addendum* submitted to DEC in July 2013; and (d) groundwater monitoring. Stay Request at Pages 2-3.

As explained below, this order grants a temporary and partial interim stay regarding a portion of Activities (1) and (2), and denies, without prejudice to future requests, the request for stay regarding Activity (3).

A. Stay Request for Activities (1) and (2)

I intend to issue a final decision on the Stay Request and Spill Prevention and Response (SPAR) Division's response, as it applies to Activities (1) and (2), once there is a decision on the Request for Adjudicatory Hearing (Decision on Hearing). I make no determination on the final

merits under 18 AAC 15.210 at this time. In the interim a temporary and partial stay is appropriate.

Flint Hills argues that it will incur potentially unnecessary expenses if it is required to continue work on the Human Health Risk Assessment (HHRA) reports, feasibility studies, site characterization reports, cleanup plans, and Conceptual Site Model while the Alternative Cleanup Level (ACL) is disputed.<sup>1</sup> *Id.* at 4-5. There is logic to this argument as an ACL is used by the SPAR Division in developing remedial action objectives leading towards the feasibility studies and the ultimate cleanup plan. But the SPAR Division asserts that important work on the reports listed in Activities (1) and (2) can be accomplished without knowing the final ACL. SPAR Division Response at 11-20. For example, there are other contaminants besides sulfolane that are being addressed at the site. There has been no showing by Flint Hills that work relating to these contaminants is dependent on knowing the ACL for sulfolane.

Although it is not clear from the briefing how much of the remaining work is dependent on knowing the ACL for sulfolane and the potential financial risks to the parties if this work goes forward before the ACL is determined, I believe Flint Hills commitment to provide the “Alternative Water Solutions,” groundwater monitoring and treatment system improvements already approved by SPAR Division (and described in the Stay Request at page 9) greatly reduces the risk of harm to the public in granting a limited stay. I also recognize the significant delays that have already occurred regarding preparation of these reports.<sup>2</sup> This implies that an additional relatively short delay will not have a significant impact on the public.

The Request for Stay is temporarily DENIED in regards to work on contaminants other than sulfolane. I ORDER a temporary and partial interim stay for the other Activities (1) and (2) until fourteen calendar days after issuance of a Decision on Hearing.

A status conference will be scheduled and held within fourteen calendar days of issuance of a Decision on Hearing. At the time of the status conference, the continuation, modification, or termination of the interim stay regarding Activities (1) and (2) will be discussed, and there will be a determination, if necessary, of when a final decision on the merits of the stay request for Activities (1) and (2) will be issued, if still required.

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<sup>1</sup> While not mentioned in its list on pages 2-3 of the Stay Request, Flint Hills requests a stay of any revisions to the Conceptual Site Model on page 5 of the Stay Request. For purposes of this order, any required continued work on the Conceptual Site Model is considered to fall under (2) of the Activities listed on Page 3 of the Stay Request.

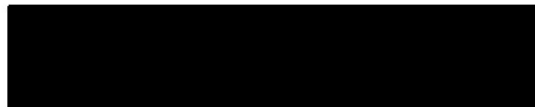
<sup>2</sup> There have already been multiple delays in preparation of these reports. SPAR Response to Stay Request Exhibits 8, 9, and 10 (letters from DEC to Flint Hills dated April 24, 2013, July 25, 2013, and August 21, 2013 regarding submission of deliverables).

B. Stay Request for Activity (3)

Flint Hills has also requested a stay of “[r]emedial actions” which it describes as including implementation of “remedial actions beyond the interim actions currently in place while the cleanup standards are in dispute.” Stay Request at 5. Flint Hills does not request a stay of any specific or concrete remedial actions, or even of any proposed remedial actions. To the contrary, the only concrete remedial actions discussed are those that Flint Hills is committed to continue and does not request to be stayed. Stay Request at 5-9.

Without any information regarding what, if any, activities would be stayed, I cannot assess what harm would occur if a stay were granted or denied, and what resources would be committed during proceedings if a stay were granted or denied. Thus, I am unable at this point to properly conduct an analysis as required by 18 AAC 15.210(a)(1) and (2). Therefore, the request for stay regarding Activity (3) is denied, without prejudice to further requests.

As there is still no final decision on a stay for Activities (1) and (2), nor is there yet a Decision on Hearing, this order does not trigger any deadlines under the February 19, 2014 Order Staying Processing of Request for Adjudicatory Hearing Dated January 24, 2014, issued in the related matter regarding the additional January 24, 2014 Request for Adjudicatory Hearing.



Larry Hartig, Commissioner  
Alaska Department of Environmental Conservation

DATED: March 18, 2014

Cc: Eric Fjelstad and James Leik, Perkins Coie  
Lauri Adams, AAG, Alaska Department of Law