
From: Nicole Cantello [Cantello.Nicole@epamail.epa.gov]
Sent: Monday, March 26, 2012 5:15 PM
To: Hartman, Barry M.
Cc: 'Bob Manglitz'; Dawn Messier; Juhi Saxena; 'Don Clingan'; 'McCarthy, Patrick'; Sean Ramach; Chuck Leonard
Subject: Fw: EPA Questions
Attachments: Followup questions_2012_03_09.docx

Hello Barry:

Sean has drafted answers to Mr. Leonard's questions, below. Please let us know if you have any further inquiries.

Best,

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(See attached file: Followup questions_2012_03_09.docx)

Dear Mr. Leonard:

Here are responses to your questions, which you asked via email on March 9th.

1. As you know the company made six prior submissions to EPA: a response to a Clean Water Act information request from Region 5, in 2008; a response to a Clean Air Act information Request from Region 5; 3 submissions to EPA Washington in the form of comments to the first VGP (which included the information request responses), and the Petition seeking permission to file a permit application filed with Region 5 last November which also referenced them. Two of these are referred to in your letter of February 24. We believe that a large amount of the information that is sought in the February 24 letter and as part of the permit application is contained in those submissions. These were very expensive to prepare, especially the two information request responses, We have already referred to them in our Petition, and hope that at some point over the last several years EPA has reviewed them. We would like to refer to these materials in our application by incorporating them by reference and then point to the specific pages that address specific issues raised in the February 24 letter. Incorporating by reference is well accepted, and we believe that will be a very clear record and process. It would also save time and money as we would have to unnecessarily tear apart, reorganize and recompile the information. These materials would also be in the same form as they were when EPA and Region 5 originally reviewed them, making additional review a little easier. We are therefore asking that we be permitted to reference these materials in the application, and incorporate them by reference with specific page citations to sections that are responsive to the questions you have raised. Even though each is in the agency's hands we will resubmit them if needed.

Answer:

As expressed on the conference call, EPA wants to ensure that the permit application provides a clear and straight forward record for EPA and the public to review. We believe that this is best achieved by creating a submission that provides only the information necessary to complete the application forms and our additional information request. The documents you refer to above were prepared over a range of years and in some cases, provided information that would be extraneous to the permit application information requirements. Additionally, as discussed, there were some instances where EPA believes the information provided was presented in different ways in those documents that may lead to an inconsistent understanding. This process will enable you to ensure that all submissions are representative of current operations onboard the vessel and consistent in presentation and informational content before inclusion into the permit application.

If you would like to incorporate prior submissions into the permit application supporting documentation, it is acceptable to copy the specific information/pages from the previous document that you would like to submit and insert them into LCFS's response. EPA does not believe this will result in LCMS having to "tear apart, reorganize and recompile the information..." at a significant cost or time requirement.

2. In considering various alternatives such as storage of the coal ash, should we consider the impacts if EPA alters status of the coal ash to being a hazardous waste?

Answer:

In considering alternatives to the discharge of coal ash, LMCS should assume that the applicable regulatory requirements are those in effect at the time of submission of the application. Regulatory requirements that may be imposed in the future are not appropriate to consider until they are finalized and an effective date has been published in the Federal Register.

3. Given the current situation and the time frame that the Badger is faced with, may we submit the application with current information, and supplement it as additional information becomes available? Will EPA accept the application with the proviso that it may require additional information, or will EPA reject the application and start the clock over if it determines that additional or different information is needed? You indicated during the call that EPA is already considering information and will consider it as it is submitted. Thus, for example, we believe that the current test results from simulated slurry substantially meet the requirements for sampling and testing and provides a scientifically defensible representation of the nature of both the coal ash and the receiving waters. If after review EPA has a reasonable basis for seeking additional testing, will it reject our application, or continue processing it subject to receipt of that additional information?

Answer:

Under the applicable federal regulations, EPA must determine that a permit application is complete prior to making a determination on whether to prepare a draft permit. EPA has indicated that the requested permit application documents and information may be submitted on a rolling basis, but must be submitted no later than June 29, 2012. LMCS should indicate with each submission if additional information submittals are expected that would be necessary to complete the permit application. EPA believes that submission of Application Forms 1 and 2C and all of the accompanying information EPA has requested will complete the application, but has indicated that additional information may be necessary in our letter of February 24, 2012.

EPA will notify LMCS as to the completeness of the permit application after LMCS has indicated they believe the application to be complete. If EPA determines that the permit application is incomplete, the letter notifying LMCS of that decision will specify the information necessary to complete the permit application with a date for submittal.

4. Although we did not ask this question, during the call you indicated you are already looking at some information relevant to our permit application. If what you are looking at is something other than what we have submitted, is there a way we could see it so we are operating on the same information plane as the agency? We are not meaning to ask the agency for internal materials, but if you are referring to outside studies and similar information, it might help if we could be aware of that.

Answer:

Please let us know what portion of our conversation you are referring to- Were there specific documents or topics referenced? If there is a document we are looking at and it is appropriate to release that document to you prior to public notice, we will do so. All documents that are utilized in the development of any draft permit will be included in the administrative record and will be made available when a draft permit is public noticed.