



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUN 20 2012

REPLY TO THE ATTENTION OF:

VIA E-MAIL, AND CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Robert A. Manglitz
President/CEO
Lake Michigan Trans-Lake Shortcut, Inc.
A/K/A Lake Michigan Carferry Service
701 Maritime Drive
Ludington, Michigan 49431

Subject: National Pollutant Discharge Elimination System Individual Permit Application
for the S.S. Badger

Dear Mr. Manglitz:

On May 23, 2012, the U.S. Environmental Protection Agency received a National Pollutant Discharge Elimination System permit application for coal ash discharges from the S.S. Badger (Badger). Lake Michigan Car Ferry, Inc. (LMC) notified EPA that LMC considered this submittal to be a complete application. We have begun the review required by 40 C.F.R. § 124.3 to determine whether the permit application is complete. Our preliminary review has identified issues with the permit application. We believe it is prudent to make you aware of these issues prior to our final determination as to the completeness of the permit application. The most critical issue is the failure to submit five (5) independent samples of the coal ash slurry in the application. Inadequate data would be a reason for EPA to determine that your application is incomplete.

On February 24, 2012, EPA provided you with a detailed description of additional information required to complete the NPDES permit application under 40 C.F.R. §122.21. In that letter, EPA found that five (5) independent samples of coal ash slurry discharged by the Badger were necessary to characterize the effluent entering Lake Michigan. EPA also designated the specific pollutants and sampling and analytical methods to be utilized in developing this data.

The permit application included only one sample of coal ash slurry from one sampling event conducted in 2011. For the following reasons, EPA has determined that the one sample provided by the LMC with its application was not analyzed consistent with EPA's specified procedure and is not acceptable for consideration as one of the five required samples to be used to determine the nature of the Badger's discharge.

Document CC-99 of the application provides the sampling and analysis procedures used by Merit Laboratories for that sample. EPA found the following deficiencies with the coal ash slurry preparation procedure in document CC-99. The CC-99 procedure does not indicate that

the ash was ground as required and it also specified that the samples were allowed to equilibrate for at least 24 hours after agitation before a sample was withdrawn for analysis. The CC-99 procedure also indicates that undisturbed samples were poured out of the slurry bottles. The sampling and analytical methods used are not consistent with our February 24, 2012 letter.

The CC-99 procedure also indicates that the total pollutant loading from the coal ash slurry was not adequately characterized as any coal ash that settled to the bottom of the container over the minimum 24 hour period was not sampled (an undisturbed sample was poured out of the bottle). As such, the procedure utilized is not consistent with the sampling protocol specified by EPA and the analyzed simulated effluent does not represent the true nature of the pollutant loadings in the Badger's coal ash slurry discharge.

EPA was informed on June 4, 2012 that additional coal ash sampling would be conducted on June 5, 2012. On June 4, 2012, EPA sent an electronic mail message to Charles Leonard, Vice President-Navigation, and Kathleen Hall, LMC's contractor in charge of the sample collection, detailing our concerns with the sampling and analytical methodologies employed previously (CC-99). This was done to help assure that LMC's efforts to provide effluent data to meet the criteria outlined in our February 24, 2012 letter would be successful.

In summary, EPA finds that LMC failed to submit the required number of samples with its permit application. Inadequate data would be a reason for EPA to determine that your application is incomplete. 40 C.F.R. §122.44(d) requires EPA to consider effluent variability when determining the need for limits and this is the basis for our request for 5 samples. EPA's Technical Support Document for Water Quality-based Toxics Control (EPA/505/2-90-001, March 1991)(TSD) discusses and assesses the confidence level or certainty that an effluent is adequately characterized by a certain number of samples. EPA has determined that five samples of the discharge are necessary to characterize the impact of coal ash discharge on the Lake for the purpose of developing effluent limitations.¹

If you have any questions concerning this matter, please contact Sean Ramach of my staff at (312) 886-5284, or your counsel may contact Nicole Cantello, in the Office of Regional Counsel, at (312) 886-2870.

Sincerely,



Kevin M. Pierard, Chief
NPDES Programs Branch

cc: Barry Selden, MDEQ w/enclosure
Susan Sylvester, WDNR w/enclosure
Barry Hartman, K&L Gates w/enclosure

¹ EPA's TSD recommends that 10 samples be collected to calculate a coefficient of variation to improve the confidence in the characterized pollutant loadings. Here, EPA has reduced the number of effluent samples requested from 10 samples to 5. While this will not allow EPA to calculate a site specific coefficient of variation, EPA believes that these 5 samples will allow a sufficient characterization of the pollutant loadings while balancing the resource from LMC necessary to collect these samples.