Message

From: Mills, Clarissa [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EA5BA9E94F9C45E3BDCAE44F8E5EDB65-HOWLEY-MILL]
Sent: 4/19/2019 1:42:19 PM
To: Teter, Royan [Teter.Royan@epa.gov]
Subject: FW: Ethanol Facility - ENFORCEMENT CONFIDENTIAL
Attachments: 2057_001.pdf; AltEn Soil Conditioner Summary for EPA INTERNAL ONLY.docx; 2056_001.pdf

Clarissa Howley Mills

From: Weekley, Erin
Sent: Tuesday, April 09, 2019 9:05 AM
To: Mills, Clarissa <mills.clarissa@epa.gov>
Subject: FW: Ethanol Facility - ENFORCEMENT CONFIDENTIAL

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From: Green, Jamie
Sent: Tuesday, April 09, 2019 8:13 AM
To: Weekley, Erin <weekley.erin@epa.gov>
Cc: Daniels, Michael <daniels.michael@epa.gov>
Subject: FW: Ethanol Facility - ENFORCEMENT CONFIDENTIAL

Ex. 5 DP / Ex. 7(A)

From: Creger, Tim <tim.creger@nebraska.gov>
Sent: Tuesday, April 09, 2019 7:26 AM
To: Green, Jamie <Green.Jamie@epa.gov>; Daniels, Michael <daniels.michael@epa.gov>
Subject: RE: Ethanol Facility

Jamie and Mike,

Thanks for the message, and just to be clear, I wasn't trying to push Mike aside, I am trying to avoid repeating a lot of the same discussions we've already had with NDEQ, and there have been many. I am attaching a quick summary I put together for management last week on the issue. It will hopefully bring you up to speed on where NDA is at right now, but doesn't cover all the internal discussions NDEQ has had on the issue, and I

know they are working on it hard due to one or two state senators that become involved (and various attorneys representing landowners near the wetcake application fields). It is also important that the attached document be considered internal, enforcement sensitive, and not for release outside of your regional office. The remarks in the document are mine alone and designed to initiate internal discussion in NDA for the issue. The reason we are taking so long to get our work done is a simple matter of getting the right people in the room at the same time, which has not been easy this year due to our Director's travel schedule and absence of some administrative people on leave or separated from state service. I also need to tell you that some folks I have been working with at NDEQ told me that the assistant director in their agency was the one working with Jim Gulliford's office and preparing a written assessment of the situation. Thus, they have been asking me for a lot of position statements on FIFRA and the state soil conditioner law.

Ex. 7(A)

Ex. 7(A) (Our current governor cut the ribbon on the plant the day it opened, heralding a wonderful new employer and environmental solution to ag waste issues.) That plant uses only treated seed as their carbohydrate source (by their estimate approximately 10,000 to 15,000 bushels of treated seed *daily*), and while they are trying to expand the plant to other sources, they are a long way off on securing a reliable alternate source that isn't going to cost them a lot of money to buy the product. They make a profit now because they are not buying any of the carbohydrate sources, which would otherwise cost the seed companies a lot of money for disposal. The AltEn process takes an otherwise waste product out of landfills, extracts a usable ethanol product (profit), and then generates a potentially usable soil conditioner (no-cost disposal); win-win solution. Except that the wetcake "soil conditioner" is contaminated with a half-dozen or more pesticides, and that's the problem.

What you won't see in my summary is what we've done in NDA to research the Federal Seed Act. I personally called USDA's program that oversees the Federal Seed Act and asked them about administration and enforcement of seed bag labels. The person I spoke with was adamant that USDA only enforces that law in a way that ensures seed companies include all required language on the seed tag, but they do not enforce any provision on the label that directs the user on how to use the seed or dispose of unused seed. In fact, he pointedly said it is EPA's job to enforce the provisions on the seed tag (see attached file) that inform the user the treated seed can go to ethanol production ONLY if 1) the DDG is not fed to livestock, and 2) there is NO pesticide contamination of the wetcake or other byproducts used for agronomic benefit. That was a surprise to me and others here, since it looks to us from the way the seed label is written it is clearly under the Federal Seed Act, plus, I've been told for years EPA can't enforce a label that isn't classified as a registered pesticide.

NDEQ has a meeting with us and possibly the senators on May 3rd, and we are trying to get our "official" sample analyzed and reported by April 20th in order to inform that discussion. I am not on the A list for this meeting, but it seems it would be very helpful to the discussion to have the appropriate people from R7 at the table.

With all that presented, if you want a call, I would be available on Thursday or Friday of this week, but today and tomorrow I am caught up in a first-ever all agency staff meeting across the street, and will not be able to take calls or get away easily.

Till later,

Tim Creger
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From: Green, Jamie <Green.Jamie@epa.gov>
Sent: Monday, April 8, 2019 6:59 PM
To: Creger, Tim <tim.creger@nebraska.gov>
Cc: Daniels, Michael <daniels.michael@epa.gov>
Subject: Ethanol Facility

Hi Tim – Mike touched base with me re your questions about our interest in a conference call to talk about the ethanol facility you're working with DEQ on. I'll try to tick off some thoughts I hope will help with some of the questions.

- I will check with some folks regarding whether DEQ is working with the RA. I have not heard that but will check with some additional folks that I haven't already asked to see if we can run that down.
- When we talked on the phone I think you were asking what programs here, might have an interest and be able to look at the piles/site and collect samples for informing the discussion going forward.
- I've talked about your issues with supervisors and attorneys that work with the relevant media (water, RCRA). I think there may be interest and authorities to take a look but we would want to coordinate with DEQ.
- We thought for that coordination it would be helpful to have a quick call with all three agencies to walk through again what everyone is seeing and get insights from DEQ on what they have done or considered directly as some of our authorities in the other media are comparable to theirs.
- If that makes sense to you – I thought it would be helpful to know who you were already working with that might be a part of the call. It may be they are the same program people we would loop in, but if, not wanted to be sure we weren't sowing confusion by leaving anyone out, etc.

Hope that makes sense. If not, I'll try to give you a call and talk through it. Not sure I'll get to it this week either. Maybe Friday.

Let us know what you think and thanks for your patience!

Jamie

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