Exemption 5: Deliberative; Attorney-Client

To: Peter, David[peter.david@epa.gov]; Avey, Lance[Avey.Lance@epa.gov]; Hawkins, Andy[hawkins.andy@epa.gov]
From: Algoe-Eakin, Amy
Sent: Wed 6/15/2016 6:56:09 PM
Subject: FW: Ameren Missouri-Site Specific Demonstration Under Section 3.2 of 40 CFR Part 51 and the 2010 1 Hour SO2 NAAQS

-----Original Message-----
From: Algoe-Eakin, Amy
Sent: Wednesday, June 15, 2016 1:55 PM
To: Meyer, Jonathan <Meyer.Jonathan@epa.gov>; Weber, Rebecca <Weber.Rebecca@epa.gov>; Jay, Michael <Jay.Michael@epa.gov>
Cc: Skelley, Dana <Skelley.Dana@epa.gov>
Subject: RE: Ameren Missouri-Site Specific Demonstration Under Section 3.2 of 40 CFR Part 51 and the 2010 1 Hour SO2 NAAQS

[redacted]

To the extent this is a purely legal matter, I think its reasonable to encourage ORC to engage Mike Thrift on developing a response.

-----Original Message-----
From: Meyer, Jonathan
Sent: Wednesday, June 15, 2016 1:49 PM
To: Weber, Rebecca <Weber.Rebecca@epa.gov>; Jay, Michael <Jay.Michael@epa.gov>; Algoe-Eakin, Amy <Algoe-Eakin.Amy@epa.gov>
Cc: Skelley, Dana <Skelley.Dana@epa.gov>
Subject: FW: Ameren Missouri-Site Specific Demonstration Under Section 3.2 of 40 CFR Part 51 and the 2010 1 Hour SO2 NAAQS

[redacted]

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-----Original Message-----
From: Chen, Alexander
Sent: Wednesday, June 15, 2016 1:12 PM
To: Meyer, Jonathan <Meyer.Jonathan@epa.gov>; Skelley, Dana <Skelley.Dana@epa.gov>
Subject: FW: Ameren Missouri-Site Specific Demonstration Under Section 3.2 of 40 CFR Part 51 and the 2010 1 Hour SO2 NAAQS

FYI.

-----Original Message-----
From: Cipriano, Renee [mailto:RCipriano@schiffhardin.com]
Sent: Wednesday, June 15, 2016 12:51 PM
To: Chen, Alexander <Chen.Alex@epa.gov>
Subject: Ameren Missouri-Site Specific Demonstration Under Section 3.2 of 40 CFR Part 51 and the 2010 1 Hour SO2 NAAQS

Dear Alex: I know it has been some time since we have corresponded and I hope this e-mail finds you well and trying to stay cool during this unusual hot spell in the Midwest. I am experiencing my first St. Louis summer and I have to say it has been quite an introduction so far!

Alex, I write to you today to see if I can get your help with a matter involving my client, Ameren Missouri, that presents meaningful legal consequences for both the company and EPA. As you may know, EPA is working to make its final designation decisions for the 2010 1-Hour SO2 NAAQS. Ameren's Labadie Energy Center ("Labadie") is impacted by EPA's designation decision and we have put forth great effort to ensure that EPA renders a correct, legally valid designation decision. In addition to providing to both MDNR and EPA modeling performed by a national expert, AECOM, to support a correct attainment designation for the area around Labadie, Ameren Missouri has placed into operation a monitoring network approved and supported by the MDNR to obtain actual data so that EPA, again, could make an informed and correct designation decision. Both the modeling and "actual data" collected to date (a full year now) support a designation of "attainment," but MDNR was of the opinion that more data was needed. As a result, MDNR recommended the area be classified as unclassifiable so that more actual data could be obtained. Even knowing we would have actual data in hand, AECOM recommended that we pursue a site specific demonstration under Section 3.2 of 40 CFR Part 51 to seek correction of certain defaults or beta options (LOWIND3 and ADJ U*) unique to AERMOD to render more accurate and defensible modeling results. Indeed, we have found that modeling using the corrected beta options is significantly more inline with actual observed conditions. Thus, we all thought EPA would certainly want to have the most accurate modeling runs when making such an important designation decision, and the site specific request was completely aligned with EPA's own experts' proposal to amend 40 CFR Part 51, Appendix W. MDNR agreed and on December 9, 2015, MDNR submitted the initial site-specific request to EPA to consider the use of LOWWIND3 and ADJ U* for modeling the area around Labadie.

On February 16, 2016, however, EPA issued its proposed 2010 1-Hour SO2 NAAQS nonattainment designation for the area around Labadie. In its proposal, EPA refused to consider AERMOD's low wind beta options despite that their use demonstrated attainment of the 2010 SO2 NAAQS for the area around Labadie, despite that their use rendered modeling results more consistent with "actual data" collected, and despite MDNR's pending site specific request to use LOWWIND3 and ADJ U*. After reviewing EPA's explanation for its proposed decision to designate the area around Labadie as non-attainment, Ameren requested an in - person meeting with the Region to discuss the Labadie - specific approval for the use of beta options in accordance with Section 3.2.2(b) of Appendix W. In turn, on March 7, 2016, the Region requested additional information from MDNR in order to consider approving the use of low wind beta options for Labadie. And on March 24, 2016, following a conference call with the Region, Ameren provided additional information as requested by the Region under the auspices of EPA's consideration of the site specific request.

Alex, it is now June 15, 2016, and there has been no decision made by EPA on the site-specific request. Our request has now been outstanding for over seven months. On April 27, 2016, I wrote to Ms. Weber in follow-up to both Ameren's and the Missouri Department of Natural Resources' (MDNR) prior request to EPA to authorize the use of AERMOD low wind beta options. I informed Ms. Weber that in accordance with Section 3.2 of 40 CFR Part 51, Appendix W, both Ameren and MDNR had provided all the necessary information to substantiate EPA's site-specific approval of the beta options and I respectfully requested an update on the status of the request and the status of EPA's Model Clearinghouse's concurrence. I never received a response.

As we await EPA's decision on our request originally made in December 2015, Ameren continues to collect monitoring data from the ambient air quality monitors sited around Labadie. Consistent with Ameren's prior data submissions, the additional monitoring data continues to confirm that AERMOD modeling using the low wind beta options correlates more closely to actual air quality monitoring results than AERMOD using non-site specific and generic default assumption. This additional monitoring data has been provided to the Region. Also, with my April 2016 letter, I provided two additional publications from AECOM supporting the use of low wind beta options. The first is a scientifically peer-reviewed paper published in the Air & Waste Management Association journal (submitted on October 27, 2015). The second is a white paper submitted on March 31, 2016, to the docket of the U.S. Court of Appeals for the Ninth Circuit in Sierra Club v. McCarthy, No. 15-15894. Both publications provide additional support for use of AERMOD's low wind beta options, and address any perceived deficiencies in Ameren's site-specific request under Appendix W that have been raised either by the Region or Sierra Club.

As we have repeatedly clarified to the Agency in both of Ameren's public comments on EPA's nonattainment recommendation, use of the low wind beta options are not necessary to support a designation of unclassifiable for the Labadie area. Indeed, the existence of now a year of monitoring data indicating attainment and varying modeling results from all interested parties make self-evident that a nonattainment designation is simply not supported by the great weight of evidence. Yet, Ameren believes that any designation made by EPA should be based on the most reliable and accurate data possible. Thus, Ameren continues to believe that approval and use of the low wind modeling options for Labadie is necessary and appropriate in order for EPA to issue a supportable designation.
As you know, EPA's designation decisions on the 1-hour SO2 NAAQS are imminent. It is arbitrary and capricious for EPA to ignore our site-specific request and fail to render a decision. We can only assume the Agency has chosen to tip the scale in favor of remaining with its proposed designation for the Labadie area as non-attainment in order to satisfy the Sierra Club through not responding to Ameren's request. But EPA's final designation decision for Labadie does not and cannot act as a sufficient response to Ameren's site-specific request. We ask again, Alex, that EPA render a decision, and the right decision, on the pending request and to do so before the EPA makes its final attainment designation. I would like to set up a time to discuss this with you with the hope that we can collaborate on how we can get beyond this arbitrary impasse. Thank you Alex.

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