Message

From: Presler, Amos [presler.amos@epa.gov]
Sent: 2/20/2019 6:46:53 PM
To: Saenz, Diana [Saenz.Diana@epa.gov]; Miles, James [miles.james@epa.gov]; Holmes, Carol [Holmes.Carol@epa.gov]; Baney, Tony [Baney.Tony@epa.gov]
CC: Gardner, Geraldine [Gardner.Geraldine@epa.gov]
Subject: RE: NEW LITIGATION -- TSCA [Hazelton Creek Properties v EPA (3rd Circ. No. 18-3665)]
Attachments: Updated Briefing Paper - Pennsylvania Beneficial Use Permit and Clean Fill Policy 2-4-19.docx; Briefings on R3 PCB Fill_12-19-18.pdf

Importance: High

Here is a rough draft update to Diana's 12/20 email to Susan.

Tony/Carol – can you review for accuracy, and reply all with edits? Feel free to change as much as you want.
James/Diana – once we've gotten edits from Tony/Carol, please send onward to Susan with copy to us, Rosemarie, and John Fogarty.

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Susan,

We are updating you on the status of the enforcement matter concerning Hazelton Creek Properties, Moosic, in Pennsylvania.

Procedural Status

Attorney Client / Ex. 5

Substantive Background: use versus disposal of PCBs:

Attorney Client / Ex. 5

Next Steps

Attorney Client / Ex. 5

Amos Presler
(202) 564-1076

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From: Saenz, Diana
Sent: Thursday, December 20, 2018 6:28 PM
To: Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Sullivan, Greg <Sullivan.Greg@epa.gov>
Cc: Miles, James <miles.james@epa.gov>; Werner, Jacqueline <Werner.Jacqueline@epa.gov>; Presler, Amos <presler.amos@epa.gov>
Subject: RE: NEW LITIGATION -- TSCA [Hazelton Creek Properties v EPA (3rd Circ. No. 18-3665)]

Susan – Here is a procedural update on the Hazelton Creek filing [TSCA/ PCBs]:

Hazelton Creek Properties, Moosic, Pennsylvania, filed a petition dated 12/5/18 for review with the U.S. Court of Appeals for the Third Circuit. The filing requests review of what the petitioner labels a "final agency action" in the form of a Notice of Noncompliance and Information Request.

The scheduling order required a government response by Thursday, December 20th, but DOJ filed an unopposed motion for extension of time to respond by January 8th. The motion has not yet been granted, but the clerk advised DOJ to proceed as if it will be granted.

Attorney Client / Ex. 5

Prior to the filing, the region met with attorneys for Hazelton. The Region also received a letter in response to the NON, detailing the petitioner's potential arguments/defenses. Bethany Fisher is the OGC attorney and Cheryl Jamieson is the regional attorney. OGC has also secured a DOJ attorney.

We will provide you with more information in early January and will be available if you would like to discuss this during the first week of January.

Thank you,
Diana

Diana J. Saenz

Acting Director
Waste and Chemical Enforcement Division
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Saenz.Diana@epa.gov

From: Sullivan, Greg
Sent: Monday, December 10, 2018 11:45 AM
To: Saenz, Diana <Saenz.Diana@epa.gov>; Miles, James <miles.james@epa.gov>; Werner, Jacqueline <Werner.Jacqueline@epa.gov>
Cc: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>
Subject: FW: NEW LITIGATION -- TSCA [Hazelton Creek Properties v EPA (3rd Circ. No. 18-3665)]

Please reach out to region 3.

From: Bodine, Susan
Sent: Monday, December 10, 2018 10:12 AM
To: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Sullivan, Greg <Sullivan.Greg@epa.gov>
Cc: Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Branning, Hannah <Branning.Hannah@epa.gov>
Subject: FW: NEW LITIGATION -- TSCA [Hazelton Creek Properties v EPA (3rd Circ. No. 18-3665)]

Attorney Client / Ex. 5

Susan

From: Beck, Nancy
Sent: Monday, December 10, 2018 8:00 AM
To: Bodine, Susan <bodine.susan@epa.gov>; Wright, Peter <wright.peter@epa.gov>
Subject: FW: NEW LITIGATION -- TSCA [Hazelton Creek Properties v EPA (3rd Circ. No. 18-3665)]

FYI

Nancy B. Beck, Ph.D., DABT
Deputy Assistant Administrator, OCSPP
P: 202-564-1273
beck.nancy@epa.gov

From: Grant, Brian
Sent: Monday, December 10, 2018 7:18 AM
To: OGC Immediate Office MGMT <OGC_Immediate_Office_MGMT@epa.gov>; OGC Immediate Office Support <OGCFrontOfficeSupportStaff@epa.gov>; Beck, Nancy <Beck.Nancy@epa.gov>; Baptist, Erik <baptist.erik@epa.gov>; Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>; Morris, Jeff <Morris.Jeff@epa.gov>; Mottley, Tanya <Mottley.Tanya@epa.gov>
Cc: Cole, Joseph E. <cole.josephe@epa.gov>; Fisher, Bethany <fisher.bethany@epa.gov>
Subject: NEW LITIGATION -- TSCA [Hazelton Creek Properties v EPA (3rd Circ. No. 18-3665)]

On December 5, Hazelton Creek Properties, located in Moosic, PA, filed a petition for review under TSCA section 19(a) in the US Court of Appeals for the Third Circuit challenging a Notice of Noncompliance (NON) issued by EPA Region 3. The NON asserts that placement of PCB materials on the site property at levels over 2 ppm, in compliance with a Pennsylvania State permit and Pennsylvania policy, constitutes a violation of the EPA TSCA PCB regulations, and cautions that further receipt by the company of such materials may result in EPA enforcement. The Notice states that "No corrective action is necessary by your company at this time".

We will contact DOJ to have an attorney assigned and work with Region 3 ORC on this. Please let us know if you have any questions.

Brian Grant
EPA Office of General Counsel
Pesticides and Toxic Substance Law Office
202-564-5503