Message

From: Miles, James [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6C27D6E7B72E48508EF8AE5768CCAAD3-JMILES]
Sent: 12/10/2018 5:19:49 PM
To: Presler, Amos [presler.amos@epa.gov]
Subject: FW: Litigation on Region 3 NON - request for OECA assistance

Attorney Client / Ex. 5

From: Fisher, Bethany
Sent: Monday, December 10, 2018 11:18 AM
To: Baney, Tony <Baney.Tony@epa.gov>
Cc: Presler, Amos <presler.amos@epa.gov>; Miles, James <miles.james@epa.gov>
Subject: RE: Litigation on Region 3 NON - request for OECA assistance

Attorney Client / Ex. 5

Attorney Client / Ex. 5

Bethany Fisher
EPA Office of General Counsel
Pesticides and Toxic Substances Law Office
202-564-2672

From: Baney, Tony
Sent: Monday, December 10, 2018 11:03 AM
To: Fisher, Bethany <fisher.bethany@epa.gov>
Cc: Presler, Amos <presler.amos@epa.gov>; Miles, James <miles.james@epa.gov>
Subject: RE: Litigation on Region 3 NON - request for OECA assistance

Bethany:

Attorney Client / Ex. 5

From: Miles, James
Sent: Monday, December 10, 2018 9:54 AM
To: Fisher, Bethany <fisher.bethany@epa.gov>
Cc: Baney, Tony <Baney.Tony@epa.gov>; Presler, Amos <presler.amos@epa.gov>
Subject: FW: Litigation on Region 3 NON - request for OECA assistance

Bethany – sounds like an interesting issue. Please invite Tony Baney, Amos Presler and me to the call.

From: Fisher, Bethany
Sent: Monday, December 10, 2018 9:11 AM
To: Miles, James <miles.james@epa.gov>
Subject: Litigation on Region 3 NON - request for OECA assistance

Good morning James,

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 (which is not included with the petition but is attached separately here) 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. The NON says that EPA is "requesting" certain information related to the PCB use violations but also that within 30 days, Hazleton Creek "must respond to the questions presented in this Notice and you must certify by written statement that your facilities will no longer accept PCB-containing materials that contain PCBs at concentrations of 2 ppm or greater." Note that an EPA Region 3 letter sent in reply to a Hazelton Creek response to the NON (attached to the petition) says that "no corrective action is necessary...at this time," but cautions that further receipt by the company of such materials may result in EPA enforcement.

I would like to set up a call with Region 3, OPPT, and OECA to discuss the interplay between the NON and TSCA sections 16(a) and 19(a). In particular, I would like to discuss whether the NON constitutes the "notice" in TSCA section 16(a)(2)(A).

Could you please let me know whom in OECA to work with on this matter? I'm happy to have a call to discuss the background on this issue, if that would be helpful. Thank you!

Bethany Fisher
EPA Office of General Counsel
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202-564-2672