Message

From: Shah, Harry [Shah.Harry@epa.gov]
Sent: 4/2/2012 2:22:08 PM
To: Fruitwala, Kishor [Fruitwala.Kishor@epa.gov]
Subject: Fw: U.S. Ecology/TD*X Associates

----- Forwarded by Harry Shah/R6/USEPA/US on 04/02/2012 09:21 AM -----

From: Evan Pearson/R6/USEPA/US
To: mreagan@mcginnislaw.com, JDHead@fbhh.com, Mark Hansen/R6/USEPA/US@EPA
Date: 04/02/2012 09:21 AM
Subject: Fw: U.S. Ecology/TD*X Associates

One point I forgot to mention. We have 30 days to reach an agreement.

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----- Forwarded by Evan Pearson/R6/USEPA/US on 04/02/2012 09:19 AM -----

From: Evan Pearson/R6/USEPA/US
To: mreagan@mcginnislaw.com, JDHead@fbhh.com
Cc: Mark Hansen/R6/USEPA/US@EPA
Date: 04/02/2012 09:12 AM
Subject: U.S. Ecology/TD*X Associates

We are willing to meet with you the week of April 9th. Please check your availability for the mornings of Tuesday, April 10th or Wednesday, April 11th. I will do the same for our team. Mark Hansen is planning to attend, but Cheryl and Suzanne will not. We are willing to go over our legal theory again, but I believe that we have fully explained our position. I think its more of a matter that you don't agree with our position. We are also working diligently to put together a draft consent agreement and final order, along with a proposed penalty demand. If we are unable to present these at the meeting, you should receive them shortly thereafter. If you have any questions, please feel free to call.

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From: "Reagan, Mary" <mreagan@mcginnislaw.com>
To: Evan Pearson/R6/USEPA/US@EPA
Cc: Mark Hansen/R6/USEPA/US@EPA, "Jim Baumgardner" <JBAUMGARDNER@usecology.com>, "Simon Bell" <SBELL@usecology.com>, "Andrew Marshall" <amarshall@usecology.com>, <JDHead@fbhh.com>
Date: 03/29/2012 11:26 AM
Subject: U.S. Ecology/TD*X Associates

Dear Evan,

I understand US Ecology's CEO and TD*X's owner recently contacted John Blevins and Mark Hansen to discuss concerns associated with the EPA's proposed issuance of a formal complaint that would include an allegation that an incinerator permit is required to operate components of the thermal desorption unit. Both US Ecology and TD*X communicated their belief to Mr. Blevins and Mr. Hansen that any unilateral issuance of an unresolved complaint would result in customers' suspending shipments to the facility, effectively shutting down the thermal recycling business . Based on these conclusions, I further understand that Mr. Blevins agreed to withhold filing of the complaint over the next 30-45 days to allow the parties an opportunity to work out a settlement. Due to these recent communications, I am taking the liberty of copying Mr. Hansen on this e-mail as immediate assurance to him and Mr. Blevins of our commitment to this process.

Accordingly, although we maintain strong disagreement with EPA's conclusion as to the permitting status of this unit, at the same time we are actively exploring potential options that would be acceptable to the EPA so that any complaint can be accompanied with a clear resolution to EPA's concerns. The following provides our immediate plans and needs to discuss alternatives that may address EPA's concerns:

- Schedule a meeting with TCEQ in an effort to discuss potential permitting strategies and other considerations, including existing permit provisions that limit operating hours. We have already reached out to the TCEQ and are hoping to set up a meeting in Austin next week.
  - TCEQ is the authorized permitting authority and must be in accord with the solution and regulatory basis.

- Work with EPA in an effort to better understand the technical and legal basis of EPA's conclusions including **specific** citations and associated regulatory basis.
  - We have provided EPA with multiple EPA guidance documents, citations and rule references supporting our position that the thermal desorption unit is not an incinerator but to date the responsive information provided by EPA does not adequately explain EPA's technical analysis in our opinion.
  - If we are to successfully develop a solution and an alternate permitting or other mutually satisfactory approach, it is important that we get more detail on the EPA's position, including the understanding of the relevance of the Rineco case which EPA has referenced in support of its position. It will be very difficult for us to address EPA's concerns and resolve this matter without a complete understanding of the technical and regulatory basis for EPA's conclusions. (As one example, it appears that EPA has concluded that the process used at U. S. Ecology's

facility is comparable with Rineco's and based on this comparison, that the destruction of non-condensable gases in the combustion zone of the thermal desorption unit constitutes incineration. It appears, however, that Rineco uses a separate thermal oxidizer and EPA's consent decree with Rineco requires a Subpart X permit for a miscellaneous unit, not an incinerator permit.)

- Schedule a meeting with you, Mark Hansen, Suzanne Murray, Cheryl Seager, and other subject matter EPA experts to discuss the results of meetings with the TCEQ, to discuss the technical and regulatory basis of EPA's position, and to present potential compliance strategies. Assuming we are able to schedule meeting with TCEQ next week, we would then schedule meeting with EPA for the week of April 9-13th.

I will plan on calling you shortly to discuss the matter further. Please do not hesitate to contact me in the meantime with any questions. I greatly appreciate your continued assistance and involvement.

Regards,
Mary

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