Message

**From**: Crossland, Ronnie [Crossland.Ronnie@epa.gov]
**Sent**: 4/15/2019 2:29:11 AM
**To**: Quinones, Edwin [quinones.edwin@epa.gov]; Smalley, Bryant [smalley.bryant@epa.gov]; Smith, Monica [smith.monica@epa.gov]
**Subject**: Fwd: ITC Discharge Limitations and Monitoring Requirements
**Attachments**: image002.png; ATT00001.htm; image003.png; ATT00002.htm; image004.png; ATT00003.htm; image005.png; ATT00004.htm; image006.png; ATT00005.htm; Stanford memo 041419.pdf; ATT00006.htm; 40 CFR 300.400(g).docx; ATT00007.htm

Ed

Let's discuss in the morning

Ronnie

Sent from my iPhone

Begin forwarded message:

> **From:** Kelly Cook <kelly.cook@tceq.texas.gov>
> **Date:** April 14, 2019 at 6:06:44 PM CDT
> **To:** Ronnie Crossland <Crossland.Ronnie@epa.gov>
> **Subject: Fwd: ITC Discharge Limitations and Monitoring Requirements**
>
> FYI
>
> Sent from my iPhone
>
> Begin forwarded message:
>
> > **From:** Margaret Ligarde <margaret.ligarde@tceq.texas.gov>
> > **Date:** April 14, 2019 at 5:29:19 PM CDT
> > **To:** L'Oreal Stepney <loreal.stepney@tceq.texas.gov>, David Galindo <david.galindo@tceq.texas.gov>
> > **Cc:** Stephanie Bergeron Perdue <Stephanie.Bergeron_Perdue@tceq.texas.gov>, Kelly Cook <kelly.cook@tceq.texas.gov>
> > **Subject: Fwd: ITC Discharge Limitations and Monitoring Requirements**
> >
> > I'm forwarding the below as an FYI for now. My proposed response to ITC on this would be that the company needs to begin its discussion with R6 because its request of 4/13 is pending with R6 or even possibly already issued. That said, it might be reasonable for us to take a look at this in the event that R6 inclined to modify draft or issued directive based on ITC's comments.
> >
> > Thoughts?
> >
> > Margi
> >
> > CONFIDENTIAL
> > ATTORNEY CLIENT COMMUNICATION

Begin forwarded message:

**From:** <aileen.hooks@bakerbotts.com>
**Date:** April 14, 2019 at 5:12:43 PM CDT
**To:** <Margaret.Ligarde@tceq.texas.gov>
**Cc:** <Stephanie.Bergeron_Perdue@tceq.texas.gov>, <MGaudet@iterm.com>, <molly.cagle@bakerbotts.com>
**Subject: ITC Discharge Limitations and Monitoring Requirements**

Margi,

ITC carefully reviewed the effluent limitations and monitoring requirements proposed by TCEQ and gave consideration to whether the requirements proposed were feasible, constituted state ARARs and, even if they might not be ARARS, they were otherwise reasonable and appropriate under the circumstances. The attached memorandum from ITC's consultant, Chris Stanford of DiSorbo Environmental Consulting Firm (the Stanford memo) sets forth ITC's proposed approach to revising requirements proposed by TCEQ.

The requirements proposed included discharge limits and/monitoring requirements for approximately 225 compounds, the majority of were not found at the site, and went well beyond the regulatory bases for identifying ARARs (see discussion below). ITC respectfully requests TCEQ's consideration of the recommendations made in the Stanford memo, which would include the discharge limits and monitoring requirements contained in the permit as well as additional requirements as set forth in Table 2 to the Stanford memo. The approach proposed in the Stanford memo for setting effluent limits and monitoring requirements for the discharge is guided by TCEQ Implementation Procedures, the TSWQS and current TCEQ policies for industrial TPDES permits, all of which are carefully designed to be fully protective of human health, aquatic life, food web and the environment generally. This approach and the resulting recommendations included in the memo results in some requirements that would not necessarily meet the criteria for ARARs, but it is one that is more appropriate than TCEQ's initial proposal and would be acceptable.

We thought it might be helpful to the process to revisit the NCP provisions and guidance regarding ARARs. The NCP provides that federal and state applicable or relevant and appropriate requirements (ARARs) are required to be attained in CERCLA section 106 removal actions "to the extent practicable considering the exigencies of the situation." 40 CFR 300.415(j). The identification of an applicable requirement is to be based on "an objective determination of whether the requirement specifically addresses a hazardous substance, pollutant, contaminant, remedial action, location, or other circumstance found at a CERCLA site." 30 CFR 300.400(g)(1). If a requirement is not applicable, it may still be relevant and appropriate to the release being addressed. The NCP provides that "[i]n evaluating relevance and appropriateness, the factors in paragraphs (g)(2)(i) through (viii) of this section [300.400] shall be examined, where pertinent, to determine

whether a requirement addresses problems or situations sufficiently similar to the circumstances of the release or remedial action contemplated, and whether the requirement is well-suited to the site, and therefore is both relevant and appropriate." 30 CFR 300.400(g)(2). The NCP further provides that "[o]nly those state standards **that are promulgated**, are identified by the state in a timely manner, and are more stringent than federal requirements may be applicable or relevant and appropriate. For purposes of identification and notification of promulgated state standards, the term promulgated means that the standards are of general applicability and are legally enforceable." 30 CFR 300.400(g)(4)(emphasis added). We have included for reference an attachment the text of 30 CFR 300.400(g) for reference.

In addition, EPA guidance on ARARs makes it clear that requirement that proposed as an ARAR is not an ARAR when it is not applied consistently to hazardous waste sites throughout the State. See p. 25 of the guidance available at https://nepis.epa.gov/Exe/ZyNET.exe/10001YMN.TXT?ZyActionD=ZyDocument&Client=EPA&Index=1991+Thru+1994&Docs=&Query=&Time=&EndTime=&SearchMethod=1&TocRestrict=n&Toc=&TocEntry=&QField=&QFieldYear=&QFieldMonth=&QFieldDay=&IntQFieldOp=0&ExtQFieldOp=0&XmlQuery=&File=D%3A%5Czyfiles%5CIndex%20Data%5C91thru94%5CTxt%5C00000000%5C10001YMN.txt&User=ANONYMOUS&Password=anonymous&SortMethod=h%7C-&MaximumDocuments=1&FuzzyDegree=0&ImageQuality=r75g8/r75g8/x150y150g16/i425&Display=hpfr&DefSeekPage=x&SearchBack=ZyActionL&Back=ZyActionS&BackDesc=Results%20page&MaximumPages=1&ZyEntry=1&SeekPage=x&ZyPURL.

It remains ITC's intent to work cooperatively with TCEQ and EPA to accomplish a safe and environmentally protective response at the Deer Park facility consistent with regulatory requirements. Further, as you aware, receiving TCEQ and EPA concurrence on a plan for management of the very large volumes of wastewater that have accumulated continue to accumulate at the site is of critical importance to the site and to the continued response activity.

Molly and I and the ITC technical team are available to discuss.

Sincerely,

Aileen

**Aileen Hooks**
Partner

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