From: Powell-Dickson, Antoinette

Sent: Thursday, September 26, 2019 09:51 PM

To: Jessica Christy; Peter Zalzal; Benjamin Levitan

CC: Mia, Marcia; Scinta, Robert; Newman, Maya; Battle, Jernell; Cox, John

Subject: Response to clarification comments for EPA-HQ-2019-001669

Ms. Christy,

Below are OECA's responsive to your comments in blue. We believe that a lack of understanding of OECA's information collection process for the FOIA may be causing some confusion.

We stated on the call that Performance tests and 0000a reports are not submitted to OECA. The Performance test reports are publicly available and directed you to Webfire to obtain them. The 0000a reports are sent to the regions and we would task the regions with the production of such paper records, if any. We also indicated that as a start, over 800 reports were now publicly available and could be obtained through Webfire.

On the call you stated that that you wanted copies of paper reports that were not online. We explained that while the publicly available reports had been vetted for potential CBI, the paper records have not. The paper records for the 0000a reports may need to go through a CBI process before the regions could release them. OECA has no control over how or when regions will start releasing reports under Item 1. OECA can only task regions (through FOIAonline) with the production of the such paper reports and advise them of the six month extension.

OECA only committed to the production of item 2 records. We agreed to provide communication records on a rolling basis, with the first release within 2 months of our starting the search. OECA can begin the search for responsive records once agreement is reached with EDF on the clarification of the scope of this request.

Our comments are in red and highlighted in yellow.

If you have any question, please feel free to contract me.

Thank you,

Antoinette

Thank you all so much for taking the time to chat with me today. I forgot to ask EPA which states are authorized implementers for this program, which states generally provide EPA with curtesy copies of compliance reports, and whether those states are consistent in what they provide EPA. We do not have this information in a centralized location. Some regions have websites with delegations and some do not. 40 CFR part 60 includes delegations at 60.4, but I am not sure how often that is updated. Regarding reports, none of our regions have a central repository of whether they had waived receipt of reports a particular state. To do so, the region would have to review each delegation (and superseding delegations) on a case by case basis to determine this.

Performance Tests

EPA stated that all performance tests are submitted only through CEDRI and no CBI submissions are allowed for reports under this section. Thus, there are no paper copies to produce. To clarify, all Performance Tests must be submitted to CEDRI. If a source has CBI, they must submit a non-CBI version to CEDRI and submit the CBI version to the CBI officer in OAR. I believe either Ms. Mia or Ms. Newman specifically clarified on the call that the performance test submission cannot contain CBI. Please clarify. You are correct, Performance Tests are publicly available through Webfire. You can start reviewing them at any time.

Semi-annual, Annual, and Annual for Sweeteners Reports

Hard copy reports submitted to HQ or regional offices will need to undergo a CBI review process which, for those who do not waive CBI claims, EPA anticipates may take up to six months. For those who do waive CBI claims, I understand EPA expects to begin producing those reports within two months and will continue producing reports, as they become available, on an interim basis. Additionally, if any CBI submissions were made separately from the CEDRI submission, I understand those will be either produced or, if not produced, will be noted as not produced in the records from OAQPS. HQ does not receive any compliance reports, that function is performed by the regional offices. EPA did not discuss when we would start producing reports. EPA will task the regions to produce the following reports: All hard copy reports filed with the region after November 21, 2017 until September 11, 2019 and has not been uploaded to CEDRI:

- semiannual reports required by 40 C.F.R. § 60.5422(a)

- annual reports, required by 40 C.F.R. § 60.5420a(b)

- annual reports of excess emissions for sweetening Units, as required by 40 C.F.R. § 60.5423a(b)

That production will entail the CBI steps which we discussed, and we will begin producing records when those steps are complete.

EPA absolutely stated they anticipated releasing reports where CBI claims were waived within two months as the process of requesting these records from the regional offices was discussed. That process was anticipated to take approximately six weeks and we added a two-week buffer into the timeline.

There appears to be some confusion between item 1 and item 2 in your request. On the call for item 1 reports, we explained that Performance tests and 0000a reports are not submitted to OECA. Performance tests are publicly available through WebFire and compliance reports are submitted online or to the region. As a start to releasing 0000a reports, we informed you that over 800 reports were publicly available through Webfire.

While we requested a six month extension, OECA in no way indicated when the regions would be releasing their reports. OECA has no control over how or when regions will start releasing reports under Item 1. OECA can only task regions (through FOIAonline) with the production of the such paper reports and advise them of the six month extension. We also informed you that the regions may potentially have to go through a CBI review process before the paper reports could be released.

What OECA absolutely did agreed to was the production of item 2 communication records. We agreed to provide communication records on an interim basis and that the first

production of communication records would be within 2 months of our start of the search.

For reports that claim CBI, EPA anticipated the CBI process we discussed would take approximately six months. We agreed to another phone discussion if these deadlines could not be met. Further, it was discussed that some handwritten reports or reports containing CBI are received by HQ. In any case, EDF expects EPA to produce all OOOOa reports in its possession (excluding any information available on CEDRI), whether they are in regional offices or in HQ, and to indicate to EDF any reports, or portions thereof, that are not produced and not available in CEDRI. Again, no reports are submitted to OECA. Reports are submitted to CEDRI and made available publicly through WebFire. OECA will task the regions (through FOIAonline) to produce paper reports submitted to the regions, if any.

Further, I understand that states and tribes who are authorized implementers of this program only sometimes submit a curtesy copy of compliance reports to EPA or notify EPA that it has received the compliance reports. EPA does not have a clear understanding of the scope of the regulated community or the proportion of reports for which EPA does not receive a curtesy copy.

EPA does not have a complete understanding of the scope. EPA has estimates that were used for rulemaking purposes, but that information is not of sufficient granularity to know who should be submitting reports.

Correspondence

I understand that EPA will begin the search for responsive HQ correspondence immediately. This includes correspondence with industry and other outside correspondence, as well as correspondence internal to EPA. I understand that EPA will start its search with records that reference "OOOOa" and one of the search terms contained in EDF's request letter. EDF agrees, on a tentative basis to limit the specific word "compliance" to those instances where it is used within 10 words of "OOOOa," in order to limit the number of emails that appear in the search results due to signatures from OECA employees. EDF is reserving the right to remove this consent if it appears relevant correspondence is not captured by the search limitation.

For responsive records in the regional offices, I understand that search will begin after regional offices begin the CBI process for compliance reports located in those offices. It is the production of reports under Item 1 of your request that will start after the CBI process is completed. The production of records under Item 2 of your request, will begin once we have determined the search terms which are used for the production of records for OECA are usable.

This does not comport with the phone discussion we had. In no circumstance did EPA communicate to EDF that the agency anticipated communication productions releases to extend past six months, particularly given the number of uncertainties regarding the CBI process and the multiple opportunities EPA extends to operators to claim CBI. EDF expects that, once it is ascertained which companies are claiming CBI, EPA will begin the communications search in the regional offices. You are confusing the process for producing reports (which may contain CBI) under item 1 with communication records under item 2. The communications search does not involve the CBI process.

Currently, EDF does not anticipate EPA will search for any of the terms in EDF's request letter linked with any regulatory provision EPA provided in suggestion to EDF. However, EDF reserves the right to request EPA perform this search if it appears that the current search is not producing responsive records.

Productions

Finally, I understand that EPA anticipates being able to produce an interim set of records within two months. EPA will continue to provide records on an interim basis, with all the productions expected to be finished within six months. OECA only can commit to the production of communications records under Item 2. We do not have any of the reports under Item 1 because they are not submitted to OECA. We will task regions (through FOIAonline) with the production of the such paper reports and advise them of the six month extension.