From: Powell-Dickson, Antoinette

Sent: Monday, September 23, 2019 11:46 AM

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

Subject: RE: Revisions to your confirmation email

I will be in the office tomorrow and we can discuss next steps in the morning. I will send out an invite.

I need the information from OAR so we can get this started.

From: Jessica Christy <jchristy@edf.org>

Sent: Friday, September 20, 2019 1:51 PM

To: Powell-Dickson, Antoinette <Powell-Dickson.Antoinette@epa.gov>

Cc: Mia, Marcia <Mia.Marcia@epa.gov>; Newman, Maya <Newman.Maya@epa.gov>; Battle, Jernell <Battle.Jernell@epa.gov>; Scinta, Robert <scinta.robert@epa.gov>; Benjamin Levitan <blevitan@edf.org>; Cox, John <cox.john@epa.gov>; Peter Zalzal <pzalzal@edf.org>; Rosalie Winn <rwinn@edf.org>

Subject: RE: Revisions to your confirmation email

Good Morning Ms. Powell-Dickson,

Please see my comments in blue below. A number of EPA's "corrections" are in direct contradiction to what was discussed on the phone. EDF has already consented to a significant delay in receiving records under this request (initially submitted on 11/27/2019, with the fee waiver granted in March of 2019).

After spending several months attempting to contact the employee responsible for processing this request (including being told by you that this request did not belong to you in June of 2019), EDF is glad to be in contact with EPA and is looking forward to receiving records related to this request. However, EDF expects that EPA will inform us if the deadlines discussed on the phone are not able to be met and will work in good faith towards a reasonable timetable for record production.

Thank you,

Jessica

From: Powell-Dickson, Antoinette <Powell-Dickson.Antoinette@epa.gov>

Sent: Wednesday, September 11, 2019 12:55 PM

To: Jessica Christy <jchristy@edf.org>

Cc: Mia, Marcia <Mia.Marcia@epa.gov>; Newman, Maya <Newman.Maya@epa.gov>; Battle, Jernell <Battle.Jernell@epa.gov>; Scinta, Robert <scinta.robert@epa.gov>; Benjamin Levitan <blevitan@edf.org>; Cox, John <cox.john@epa.gov>; Peter Zalzal <pzalzal@edf.org>; Rosalie Winn <rwinn@edf.org>

Subject: Revisions to your confirmation email

Hi Jessica,

Please see below our corrections to some of the statements made in your email. Please advise if the corrections are acceptable.

From: Jessica Christy <jchristy@edf.org>

Sent: Tuesday, September 10, 2019 8:53 PM

To: Powell-Dickson, Antoinette <Powell-Dickson.Antoinette@epa.gov>

Cc: Mia, Marcia <Mia.Marcia@epa.gov>; Newman, Maya <Newman.Maya@epa.gov>; Battle, Jernell <Battle.Jernell@epa.gov>; Cox, John <cox.john@epa.gov>; Peter Zalzal <pzalzal@edf.org>; Rosalie Winn <rwinn@edf.org>; Benjamin Levitan <blevitan@edf.org>

Subject: RE: CONFERENCE CALL REQUESR re: FOIA Request EPA-HQ-2019-001669

Greetings,

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.

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. 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.

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.

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.

Please let me know if I have missed anything or if EPA has a different understanding. Thank you again for taking the time to talk today. I will look forward to receiving the first interim production within two months. Please do not hesitate to reach out to me if it will assist with production.

Cheers,

Jessica Christy

Antoinette Powell Dickson, Esq.

FOIA Coordinator/Records Manager

U.S. Environmental Protection Agency | Office of Site Remediation Enforcement | 1200 Pennsylvania Ave, N.W. | WJC South Mailcode: 2272A | Washington, D.C. 20460 | phone: (202) 564-5136 | email: powell-dickson.antoinette@epa.gov

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