Message

From: Johnson, Barnes [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C39E9338CBF04DC3B4B29F78E5213303-JOHNSON, BARNES]
Sent: 4/5/2019 11:42:28 AM
To: Michaud, John [Michaud.John@epa.gov]; Lewis, Jen [Lewis.Jen@epa.gov]; DeRobertis, Cecilia [DeRobertis.Cecilia@epa.gov]
CC: ORCR IO [ORCR_IO@epa.gov]; Sasseville, Sonya [Sasseville.Sonya@epa.gov]; Mimi Guernica (Guernica.Mimi@epa.gov) [Guernica.Mimi@epa.gov]; Kohler, Amanda [Kohler.Amanda@epa.gov]; Monell, Carol [Monell.Carol@epa.gov]; Hansen, Susan [Hansen.Susan@epa.gov]
Subject: FW: WASCO LLC and Asheville Dyeing and Finishing
Attachments: Index - WASCO Docs in Resp to N.C. Order (2019).pdf

FYI – Bern called me yesterday after receiving an informal email from the front office indicating that we had no intention of intervening and that a letter would be forthcoming. I explained the general content of the letter and our intent to send it shortly. I received the attached last evening.

Ex. 5 Deliberative Process (DP)

Thanks,

Barnes Johnson
USEPA | Resource Conservation and Recovery | Tel 703-308-8895 | johnson.barnes@epa.gov | @EPAland

From: rappoldb@gtlaw.com <rappoldb@gtlaw.com>
Sent: Thursday, April 04, 2019 10:29 PM
To: Johnson, Barnes <Johnson.Barnes@epa.gov>
Subject: WASCO LLC and Asheville Dyeing and Finishing

Dear Barnes –

Thanks for your call earlier today regarding the WASCO LLC permitting matter in North Carolina. I sincerely appreciate your taking time from your schedule to share the EPA's thinking on this matter.

We are, of course, disheartened to learn that the Agency has decided not to intercede with NCDEQ to forestall the state's unjust action here. We understand that the letter the Agency intends to send in reply to WASCO will, among other things, cite to the state court proceedings, presumably as evidence of the process the state has afforded WASCO.

To clarify, **none** of the state court proceedings **has ever allowed WASCO** the **opportunity to contest evidence and cross-examine witnesses**. In fact, the Wake County Superior Court granted **summary judgment** to the state, **despite the existence of genuine issues of material fact**. This was not just a **procedural foul, but also a substantive one**, resulting, if left unchecked, in WASCO – a holding company with no employees – having to hire workers and maintain a daily presence in a state where it has never conducted business; never treated, stored, or disposed of hazardous waste; at a site it does not and has never owned.

When we sent the EPA copies of the documents WASCO submitted to the state in response to the Buncombe County Superior Court's order, we did not include an index, which may have hampered your review of the documents. In the hope that you and your colleagues might take one last look before sending the letter you described earlier today, we are sending you an **electronic index** to facilitate any last-minute review. Even a cursory review of the index may give you a better feeling for the wrongs here.

In sum, **WASCO does not meet, and has never met, the applicability criteria for any RCRA permit.** EPA guidance makes clear that an authorized state cannot issue a permit under the facts here. We are simply asking that the EPA help ensure its own regulations and guidance are properly applied.

Thanks again for your consideration here. It is much appreciated, Barnes.

Please do not hesitate to give me a ring if you require any additional information or would like to speak further.

Kindest regards,

Bern

Bernadette M. Rappold
Shareholder

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