From: Green, Jamie (R7)
To: Jepson, Scott
Cc: Beringer, Mike; Weekley, Erin; Barton, Kasey
Subject: FW: ESE Alcohol Crop Sampling Plan
Date: Friday, June 24, 2022 2:44:00 PM

Hello Scott

Attached is some additional information we received from the facility. It appears that at this point they are still intended to move forward with sampling in the field Ex. 5 AWP / Ex. 7(A)
Ex. 5 AWP / Ex. 7(A)

I think we would be interested (to the extent practical) on FDA's perspective given this and the other information provided – Ex. 5 AWP / Ex. 7(A)
if collectively we may need to have additional discussions Monday to work through possible concerns and options.

From: Beringer, Mike <Beringer.Michael@epa.gov>
Sent: Friday, June 24, 2022 2:32 PM
To: Green, Jamie (R7) <Green.Jamie@epa.gov>
Subject: FW: ESE Alcohol Crop Sampling Plan

From: Marty, Kirk F. (SHB) <KMARTY@shb.com>
Sent: Friday, June 24, 2022 1:36 PM
To: Barton, Kasey <Barton.Kasey@epa.gov>
Cc: Jim Dowell <jdowell@dowelllaw.net>; deberning esealcohol.com <deberning@esealcohol.com>; Terry Bobo <tbobo@emiok.com>; Buckner, Edwin <Buckner.Edwin@epa.gov>; Lewis, Hannah <Lewis.Hannah@epa.gov>; Beringer, Mike <Beringer.Michael@epa.gov>; Madden, Venessa <Madden.Venessa@epa.gov>
Subject: RE: ESE Alcohol Crop Sampling Plan

Kasey: Please see my responses (in bold) to your questions below:

- The intended use of the wheat;
  It is anticipated the wheat will be sold to a grain elevator.

- Estimate of the total acreage of fields to be sampled and locations;
  4 fields totaling approximately 505 acres.

- Confirmation that representative sampling will occur at all wheat fields where any wet distillers grain, process wastewater, or wastewater sludges have been placed since January 1, 2020;

Sampling will occur on fields where mash and irrigation water have been applied as agronomic products for their nutrient value since January 1, 2020. The plan is to do representative sampling on fields with similar application characteristics. For example if multiple fields have similar application rates for the same year (e.g. 5 tons/acre in 2020), we only plan to sample one such representative field at this time.

- Procedures for shipping the samples to the lab;
  Samples will be shipped in sealed containers via second day air.

- Clarification of the sentence "a representative sample shall be collected in each type of wheat field relative to the amount and timing of the conditioned mash application," as this statement appears to be at odd with the proposed sampling approach;
  See comment above regarding sampling representative fields.

- Analytical methods to be used and associated reporting and detection limits for each analyte;
  The analytical method is listed in the plan. Detection limits are 10 ppb.

- Whether the crops will be segregated until sampling results are received, and if so, how they will be segregated and stored;
  The plan is to have the sampling results prior to harvesting.

- Whether all impacted fields are planted with wheat crop;
  Some fields on which land application of irrigation water and/or mash has occurred since 2020 are planted with corn or milo. However, harvest of these crops is not imminent, so sampling is not planned to occur at this time.

- Estimated timing of sampling results.
  July 13 or 14

Kirk F. Marty
Partner
Shook, Hardy & Bacon L.L.P.

816.559.2495 | kmarty@shb.com

From: Barton, Kasey <Barton.Kasey@epa.gov>
Sent: Thursday, June 23, 2022 4:16 PM
To: Marty, Kirk F. (SHB) <KMARTY@shb.com>
Cc: Jim Dowell <jdowell@dowelllaw.net>; deberning esealcohol.com <deberning@esealcohol.com>; Terry Bobo <tbobo@emiok.com>; Buckner, Edwin <Buckner.Edwin@epa.gov>; Lewis, Hannah <Lewis.Hannah@epa.gov>; Beringer, Mike <Beringer.Michael@epa.gov>; Madden, Venessa <Madden.Venessa@epa.gov>
Subject: RE: ESE Alcohol Crop Sampling Plan

EXTERNAL

Hi Kirk:

Thanks for your email. We appreciate ESE moving forward with crop sampling. We would like to better understand the plans for sampling and use of the crops, and request the following information:

- The intended use of the wheat;
- Estimate of the total acreage of fields to be sampled and locations;
- Confirmation that representative sampling will occur at all wheat fields where any wet distillers grain, process wastewater, or wastewater sludges have been placed since January 1, 2020;
- Procedures for shipping the samples to the lab;
- Clarification of the sentence "a representative sample shall be collected in each type of wheat field relative to the amount and timing of the conditioned mash application," as this statement appears to be at odd with the proposed sampling approach;
- Analytical methods to be used and associated reporting and detection limits for each analyte;
- Whether the crops will be segregated until sampling results are received, and if so, how they will be segregated and stored;
- Whether all impacted fields are planted with wheat crop; and
- Estimated timing of sampling results.

Thanks,
Kasey

From: Marty, Kirk F. (SHB) <KMARTY@shb.com>
Sent: Wednesday, June 22, 2022 8:03 PM
To: Barton, Kasey <Barton.Kasey@epa.gov>
Cc: Jim Dowell <jdowell@dowelllaw.net>; deberning esealcohol.com <deberning@esealcohol.com>; Terry Bobo <tbobo@emiok.com>
Subject: RE: ESE Alcohol AOC Follow-up

Kasey – I wanted to respond to your comment about potential sampling of the crop that is currently in the ground. While ESE Alcohol is not currently under an order requiring it to sample this crop, it plans to perform residue sampling prior to harvest. In checking with Duane, it appears we are in harvest season for the wheat crop and, based on the condition of the crop, harvest of these fields needs to begin very soon, ideally within the next week. Any sampling of the crops needs to occur prior to harvest. Terry Bobo will perform the sampling according to the attached plan, which outlines the sampling and analytical methods. Our plan is for Terry to obtain the samples on Friday (6/24) and send them off for analysis on a rush basis. Please let me know if you have any questions or would like to discuss.

I have some additional comments on the other points raised in your email, but didn't want to delay in getting this out. I'll be in touch with the additional comments by separate email.

Best,
Kirk

From: Barton, Kasey <Barton.Kasey@epa.gov>
Sent: Tuesday, June 21, 2022 3:41 PM
To: Nathanson, Kirsten L. <KNathanson@crowell.com>; Marty, Kirk F. (SHB) <KMARTY@shb.com>
Cc: Buckner, Edwin <Buckner.Edwin@epa.gov>; Lewis, Hannah <Lewis.Hannah@epa.gov>; Jim Dowell <jdowell@dowelllaw.net>
Subject: RE: ESE Alcohol AOC Follow-up

EXTERNAL

Kirsten and Kirk:

Ex. 5 AWP / Ex. 7(A)

We appreciate your continued cooperation.

Sincerely,
Kasey

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