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VIA ELECTRONIC & CERTIFIED MAIL

George Czerniak
Chief Air Enforcement & Compliance Assurance
United States Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590

Re: Withdrawal of Application for Significant Modification to Title V Permit No. V-IL-1716300103-08-01

Dear Mr. Czerniak:

This firm represents Veolia ES Technical Solutions, LLC ("Veolia"). Veolia is in receipt of your e-mail correspondence, dated November 29, 2012, and attached hereto as Ex. A, regarding the United States Environmental Protection Agency's ("USEPA's") notice of intent to deny Veolia's application for significant modification regarding the above-referenced permit. For the reasons stated below, Veolia is formally withdrawing its application for significant modification.

Veolia does not come to this decision lightly. Rather, it has carefully considered the path forward for it, and the Agency, and has determined that it is not in the best interests of either party to continue to waste time, energy, and resources carrying on the significant modification process when Veolia's Title V renewal process is set to begin in a few short months.

Veolia first applied for its Title V permit on September 7, 1995. USEPA officially took over the permitting process from the Illinois Environmental Protection Agency on September 29, 2006. Veolia then submitted a revised Title V application to USEPA on May 2, 2007. The permit was finally issued on September 12, 2008—but, as you know—the Operating Parameter Limits ("OPLs") for LVMs, SVMs, and mercury that are at the core of the significant modification process were left blank.

However, so much time has now elapsed since September of 2008 that Veolia's application for renewal of that very same permit is due in less than four months—on April 12, 2013—and the permit expires in less than 10 months—on October 12, 2013. To this end, Veolia is already working on its renewal application.

In an effort to articulate why Veolia believes it must withdraw its application for significant modification,—we need to understand how we got to this point.

The current stage of this process began with Veolia's submission of an application for significant modification on October 10, 2008. Veolia's application, as required by USEPA, included the OPLs for LVMs, SVMs, and mercury that were left out of the Title V permit. *See* USEPA, Region 5, Request to Provide Information Pursuant to the Clean Air Act, Appx. B ¶12, Sept. 12, 2008. The OPLs included in the October 2008 application were based on the performance testing that Veolia undertook in August and September of 2008, again pursuant to the Agency's request. *See id.* at Appx. B ¶2 (the requirement was originally included in an information request from February of 2008). Further, the October 2008 application included a request to use extrapolation in calculating Veolia's feedrates; specifically, Veolia included an extrapolation methodology that was provided to them by USEPA Region 5 personnel in 2008.

Subsequently, Veolia submitted a revised application for significant modification to USEPA on or about January 6, 2009. This revision further restricted the OPLs for LVMs, SVMs, and mercury based on a revised calculation for the moisture content of the waste that was fed to the incinerator during the August and September 2008 performance tests. Veolia again used the extrapolation methodology provided to them by USEPA in 2008.

On November 3, 2009, during a conference call with Veolia, USEPA requested that Veolia resubmit their application with more restrictive OPLs for LVMs, SVMs, and mercury. In the discussions, USEPA and Veolia agreed that Veolia could use the same extrapolation methodology as it had previously used (and that was previously provided by USEPA), but this time Veolia would limit the extrapolation to a maximum of a low multiple of the performance test feedrates or 75% of the MACT Emission Standard, whichever was less. On February 25, 2010, Veolia submitted the third revised application for significant modification. This February 2010 significant modification application included OPLs based on the revised extrapolation methodology that was discussed during the November 3, 2009, conference call. However, Veolia further limited the OPLs to a maximum of three times the amount of LVMs, SVMs, and mercury actually fed into the incinerator during the performance testing.

In light of Veolia's February 2010 revised application, USEPA later requested that Veolia withdraw the October 10, 2008, and January 6, 2009, applications for significant modification. Veolia obliged USEPA via correspondence dated May 12, 2010.

USEPA next contacted Veolia on February 27, 2012, two years after the submission of the February 2010 application, to set up a conference call. That conference call was held on March 8, 2012. During that call, USEPA informed Veolia that the Agency was going to deny Veolia's application on the basis of the extrapolation methodology that Veolia used. Veolia and USEPA then discussed a schedule by which either Veolia would submit additional information, or the Agency would begin actions to deny the modification application.

Veolia responded to USEPA by email on March 27, 2012. In that correspondence, Veolia reiterated that it wanted to work with the Agency, but believed that the request by the USEPA to again revise the application—for the fourth time—was unreasonable, particularly in light of the fact that Veolia prepared the February 2010 submission in accordance with the agreement reached with USEPA during November of 2009.

Subsequently, at the Agency's request, Veolia submitted even more technical information to USEPA on June 7, 2012. Veolia received no other communication from the USEPA until Veolia received your email on November 29th.

This entire modification process has taken over four years, has been very costly to Veolia, and has not achieved its objective of placing the OPLs in Veolia's Title V permit.

The regulations are clear that four years is well beyond the required deadline for USEPA to make a final decision regarding Veolia's application:

> (2) Except as provided under the initial transition plan provided for under § 71.4(i) or under 40 CFR part 72 or title V of the Act for the permitting of affected sources under the acid rain program, ***the permitting authority shall take final action on each permit application (including request for permit modification or renewal) within 18 months after receiving a complete application.***

40 C.F.R. § 71.7(a)(2) (emphasis supplied). USEPA has exceeded this clear non-discretionary deadline. This is true even based on the third iteration of the application for significant modification submitted on February 25, 2010. Using the third iteration as the most conservative approximate starting point of the 18 month period, USEPA would have had to make a final decision by the end of August of 2011 in order to comply with the regulation. The Agency failed to act within the 18 month period and thereby violated the regulation.

These delays and constant uncertainties have frustrated Veolia and have ultimately thwarted the intent and mechanics of the regulatory process. However, while Veolia could escalate this matter to a point where a neutral third party could finally weigh in on USEPA's failure to follow its own regulations, Veolia, for now, has decided the best way forward is to simply withdraw its application for significant modification and focus its efforts, and the Agency's efforts, on the permit renewal process that begins in April of 2013.

Veolia understands that by withdrawing its application USEPA may still proceed with reopening the current permit under 40 C.F.R. 71.7(f). However, because the permit expires on October 12, 2013, less than a year from now, and less than seven months from the end of the proposed public comment period, it makes little sense to proceed down this path. Veolia will submit its application for renewal prior to April 12, 2013, per 40 C.F.R. § 71.5(a)(1)(iii). After the submission of the renewal materials, the clock begins ticking again for both Veolia and the USEPA to complete the full Title V process within the 18 month window afforded by the regulations. In addition, the chances of achieving a successful, amicable, and permanent result from a reopening—that is not appealed in near perpetuity—are made worse because the process will surely begin to overlap with the renewal process.

Thus, in sum, the current stage of this process has been an unequivocal failure, and, as a result, Veolia is withdrawing its application for significant modification. Veolia will not offer comments by the unreasonable deadline of December 14, 2012, as set forth in your email.

("Unreasonable" because it provides Veolia with 15 days to comment after USEPA has taken no action since March 8, 2012, and no substantive action on this matter since February of 2010.)

While the significant modification process did not produce the desired result for Veolia, we were encouraged by your predecessor's willingness to meet and negotiate over these very important issues to both parties. Veolia hopes again to work with you within the context of the permit renewal. In this spirit after Veolia submits its Title V application in April 2013, Veolia requests a meeting with you and other Agency members this Spring to work out any differences between the parties. Veolia remains willing and able to work with the Agency on any issues that may arise as part of the permit renewal and believes that—at this stage in the process—success is most likely to result from communications between technical personnel during the upcoming Title V renewal.

Please contact me should you have any questions or if I can be of assistance to you.

Very truly yours,

Thompson Coburn LLP

By Joseph M. Kellmeyer

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