**From:** Mendoza, Mary S.
**To:** Nguyen, Long B.
**Subject:** [EXTERNAL] To forward to EPA via the system
**Date:** Friday, July 30, 2021 2:51:05 PM

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On Friday July 23, a contractor employee working at the Tokai facility on the emission control equipment tested positive for COVID. This employee was engaged in an work function that resulted in him being in contact with multiple other contractor employees on the project. Three of the contractors with employees having contact with the positive employee left the Borger on Friday and directed their employees to isolate pending testing. Testing was performed on Monday through Tuesday. This resulted in 7 more COVID positive tests, bringing the current total as of yesterday morning to 8.

Many of these contractors are critical path contractors. As a result, Tokai does not currently believe that it will be able to meet the August 9 deadline which is the deadline in the Consent Decree amendment that is awaiting signature. Tokai asserts that the COVID infection in the Borger contractors is a Force Majeure event under Section XVI, paragraphs 70-73 of the Consent Decree, and asks that EPA and the states extend the August 9 deadline to account for the delay. In light of the ongoing health issues in our workforce and the resulting delays, as we discussed yesterday, Tokai is withdrawing its signature on the pending amendment so that we can discuss a further extension.

The COVID situation at the Borger facility remains a fluid situation. We anticipate that contractors will be substantially back on site today less positive employees (and those in close contact) but as more test results come in, we may encounter further delays. Our best estimate of the delay is a minimum of an additional 14 days beyond the August 9 date. But the delay may be greater as the situation develops.

Tokai will provide you with regular updates on our situation as we work to resolve this health issue. As a supplement to our oral notice yesterday and this email communication, we will also provide a formal written Force Majeure notice pursuant to paragraph 71 of the Consent Decree with additional details on the contractors involved, their role in the project and our subsequent steps to minimize these delays.

We appreciate you consideration of this matter.

As we obtain additional information we will promptly convey that information to you.

Please let me know if you have any questions.

Regards,

Mary

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