From: Lawrence, Kathryn
To: Helmlinger, Andrew
Cc: Huitric, Michele; Harris-Bishop, Rusty; Nixon, Donald
Subject: Re: Media query - KQED - Request for Valero"s response
Date: Wednesday, September 27, 2017 1:33:27 PM

I support your approach

Sent from my iPhone

On Sep 27, 2017, at 9:02 AM, Helmlinger, Andrew <Helmlinger.Andrew@epa.gov> wrote:

> Michele,
> Last night I spoke with Valero's counsel, who requested an additional 30 days to substantiate the CBI claims. Per our regulations, the decision to approve the extension for substantiation claims rests with ORC, but unless there are "extraordinary" circumstances, we must get the consent of the FOIA requester. It is my understanding that the reporter that you are speaking with has not actually made a FOIA request – is that correct? Assuming so, given the volume of the material, we'd probably be inclined to approve the extension, but I want to check with you first and solicit input from you and others on this post (Kay, Don, Rusty).
>
> J. Andrew Helmlinger
> Attorney-Advisor
> Office of Regional Counsel
> U.S. EPA Region IX
> d: (415) 972-3904
> f: (415) 947-3570
>
> ---
>
> **From:** Huitric, Michele
> **Sent:** Monday, September 18, 2017 3:05 PM
> **To:** Helmlinger, Andrew <Helmlinger.Andrew@epa.gov>; Lawrence, Kathryn <Lawrence.Kathryn@epa.gov>
> **Cc:** Harris-Bishop, Rusty <Harris-Bishop.Rusty@epa.gov>; Huitric, Michele <Huitric.Michele@epa.gov>
> **Subject:** RE: Media query - KQED - Request for Valero's response
>
> Thanks, Andrew. How does this look as a response to the reporter:
>
>> On September 15, EPA sent Valero a written request (see attached) for substantiation of the company's claim of confidentiality for the records they submitted. Once Valero's receipt of the letter is confirmed, the company has 15 days in which to respond. The length of EPA's subsequent review process will vary depending on the scope and complexity of Valero's response.
>
> Thanks,

Michele

From: Helmlinger, Andrew
Sent: Monday, September 18, 2017 11:53 AM
To: Huitric, Michele <Huitric.Michele@epa.gov>; Lawrence, Kathryn <Lawrence.Kathryn@epa.gov>
Cc: Harris-Bishop, Rusty <Harris-Bishop.Rusty@epa.gov>
Subject: RE: Media query - KQED - Request for Valero's response

Michelle,
The written request for substantiation went out last week. We're now in the process of waiting for a response, if any, from Valero. Although we sent the letter be e-mail, the 15 day clock to respond doesn't start until Valero takes receipt by certified mail, which may create a lag of a few more days. The scope and timing of our review will depend on the scope and complexity of Valero's response. Our substantial request is a public document, and is attached.

Please let me know if you have questions, or would like my assistance in speaking with the reporter. Several weeks was always a best case scenario.

J. Andrew Helmlinger
Attorney-Advisor
Office of Regional Counsel
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d: (415) 972-3904
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From: Huitric, Michele
Sent: Monday, September 18, 2017 11:25 AM
To: Helmlinger, Andrew <Helmlinger.Andrew@epa.gov>; Lawrence, Kathryn <Lawrence.Kathryn@epa.gov>
Cc: Harris-Bishop, Rusty <Harris-Bishop.Rusty@epa.gov>; Huitric, Michele <Huitric.Michele@epa.gov>
Subject: Media query - KQED - Request for Valero's response

Good morning,

The KQED reporter is checking in to see if there is an update on whether EPA can release the information that Valero submitted. Anything to share? As a reminder, on Aug 31 we told him that the review process could take at least several weeks, and I reiterated that to him on Sept. 7.

Thanks,
Michele

- **Sept. 7 response to reporter:** As mentioned, there is no set time frame for the review process but it can be expected to take at least several weeks. You are welcome to check in with me as often as needed.

- **Aug. 31 response to reporter:** Valero submitted a response to EPA's request for information on August 29. Valero has claimed that all of the information submitted thus far is confidential business information, which means that EPA cannot release any of the information to the public pending an EPA review to substantiate that claim. EPA will begin the process to review Valero's claim of confidentiality, and will be able to release portions of Valero's submission that are not finally determined to be confidential business information or otherwise subject to withholding. The length of time needed for this process varies, but it can be expected to take at least several weeks.

From: Huitric, Michele
Sent: Thursday, September 07, 2017 2:47 PM
To: Helmlinger, Andrew <Helmlinger.Andrew@epa.gov>; Lawrence, Kathryn <Lawrence.Kathryn@epa.gov>
Cc: Harris-Bishop, Rusty <Harris-Bishop.Rusty@epa.gov>; Huitric, Michele <Huitric.Michele@epa.gov>
Subject: RE: Media query - KQED - Request for Valero's response

Ok, thanks for the quick update. For now, I will reiterate to the reporter that there is no set time frame for the process but it can be expected to take at least several weeks, and that he is welcome to check in with me as often as needed.

From: Helmlinger, Andrew
Sent: Thursday, September 07, 2017 2:35 PM
To: Lawrence, Kathryn <Lawrence.Kathryn@epa.gov>; Huitric, Michele <Huitric.Michele@epa.gov>
Cc: Harris-Bishop, Rusty <Harris-Bishop.Rusty@epa.gov>
Subject: RE: Media query - KQED - Request for Valero's response

I will be out of the office tomorrow, but can speak more on Monday. There are general forms available on our intranet site, which the program could use to start the process. (See the Forms linst here, bottom right:
http://intranet.epa.gov/9online/sites/foia/index.html#
).

Before or commensurate with the letter going out, we could call Valero and let them know that the letter is coming, but if there is any information that Valero would release from its CBI claim early, that would be appreciated. If the program has reviewed the response and has some ideas of things to suggest as not CBI, perhaps we can help get those cleared early.

As for the requestor, I'd hate to suggest to him that he provide a FOIA, but he'll have more rights if he does. He probably knows this, though.

J. Andrew Helmlinger
Attorney-Advisor
Office of Regional Counsel
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d: (415) 972-3904
f: (415) 947-3570

From: Lawrence, Kathryn
Sent: Thursday, September 7, 2017 2:23 PM
To: Huitric, Michele <Huitric.Michele@epa.gov>; Helmlinger, Andrew <Helmlinger.Andrew@epa.gov>
Cc: Harris-Bishop, Rusty <Harris-Bishop.Rusty@epa.gov>
Subject: RE: Media query - KQED - Request for Valero's response

HI Michele

Andrew, the case lead and I have not yet had a chance to meet and get the substantiation process started. I will aim to connect with both tomorrow to establish a clearer timeline.

From: Huitric, Michele
Sent: Thursday, September 7, 2017 2:15 PM
To: Lawrence, Kathryn <Lawrence.Kathryn@epa.gov>; Helmlinger, Andrew <Helmlinger.Andrew@epa.gov>
Cc: Harris-Bishop, Rusty <Harris-Bishop.Rusty@epa.gov>; Huitric, Michele <Huitric.Michele@epa.gov>
Subject: Media query - KQED - Request for Valero's response

Hi – just heard back from the reporter, he is asking when he should check back on the status of Valero's response. I wanted to see if at this point you have a better sense of timing, or if we should stick with the "can be expected to take at least several weeks" timeframe for now.

Thanks,
Michele

From: Lawrence, Kathryn
Sent: Wednesday, August 30, 2017 10:10 AM
To: Helmlinger, Andrew <Helmlinger.Andrew@epa.gov>
Cc: Huitric, Michele <Huitric.Michele@epa.gov>; Harris-Bishop, Rusty <Harris-Bishop.Rusty@epa.gov>

Subject: Re: Media query - KQED - Request for Valero's response

Looks fine to me

Sent from my iPad

On Aug 30, 2017, at 9:53 AM, Helmlinger, Andrew <Helmlinger.Andrew@epa.gov> wrote:

> Michele,
>
> With all apologies to the potential legal-ese, I've suggested a modification to your response.
>
> J. Andrew Helmlinger
> Attorney-Advisor
> Office of Regional Counsel
> U.S. EPA Region IX
> d: (415) 972-3904
> f: (415) 947-3570
>
> ---
>
> **From:** Huitric, Michele
> **Sent:** Wednesday, August 30, 2017 9:45 AM
> **To:** Helmlinger, Andrew <Helmlinger.Andrew@epa.gov>; Lawrence, Kathryn <Lawrence.Kathryn@epa.gov>
> **Cc:** Huitric, Michele <Huitric.Michele@epa.gov>; Harris-Bishop, Rusty <Harris-Bishop.Rusty@epa.gov>
> **Subject:** RE: Media query - KQED - Request for Valero's response
>
> Hi Kay and Andrew,
>
> Thank you for the helpful call this morning. Please let me know if you have any edits to this proposed response.
>
>> Valero submitted a response to EPA's request for information on August 29. Valero has claimed that all of the the information submitted thus far is confidential business information, which means that EPA cannot release any of the information to the public pending an EPA review to substantiate that claim. EPA will begin the process to review Valero's claim of confidentiality, and will be able to release portions of Valero's submission that are not finally determined to be confidential business information or otherwise subject to withholding. The length of time needed for this process varies, but it can be expected to take at least several weeks.

Thanks,
Michele

From: Lawrence, Kathryn
Sent: Tuesday, August 29, 2017 9:21 AM
To: Helmlinger, Andrew <Helmlinger.Andrew@epa.gov>; Huitric, Michele <Huitric.Michele@epa.gov>
Cc: Harris-Bishop, Rusty <Harris-Bishop.Rusty@epa.gov>
Subject: RE: Media query - KQED - Request for Valero's response

Hi Andre and Michele

As the response may trigger an enforcement action on our part it may be premature to offer it only on the basis of a CBI review and PII review. We may need to further consider it as Enforcement Confidential.

Can we have a brief discussion (ideally on phone/in-person) to pick the best path forward? I am available between now and 1030 and then again in the afternoon.

Thanks

k

From: Helmlinger, Andrew
Sent: Tuesday, August 29, 2017 9:02 AM
To: Huitric, Michele <Huitric.Michele@epa.gov>; Lawrence, Kathryn <Lawrence.Kathryn@epa.gov>
Cc: Harris-Bishop, Rusty <Harris-Bishop.Rusty@epa.gov>
Subject: RE: Media query - KQED - Request for Valero's response

This looks fine to me, Michele. And I know that you have in your back pocket some prepared language for any follow up requests for comment on pending or potential enforcement actions.

J. Andrew Helmlinger
Attorney-Advisor
Office of Regional Counsel
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d: (415) 972-3904
f: (415) 947-3570

From: Huitric, Michele

Sent: Tuesday, August 29, 2017 8:54 AM
To: Helmlinger, Andrew <Helmlinger.Andrew@epa.gov>; Lawrence, Kathryn <Lawrence.Kathryn@epa.gov>
Cc: Huitric, Michele <Huitric.Michele@epa.gov>; Harris-Bishop, Rusty <Harris-Bishop.Rusty@epa.gov>
Subject: Media query - KQED - Request for Valero's response

Hi Kay,

As you can see below, KQED has asked if they can receive a copy of whatever information Valero submits in response to our request. I am proposing the following response. Would you please take a look and let us know if it sounds ok? Andrew is also reviewing.

> Yes, we will share the response with you once it is available. Please note, there may be a delay pending EPA's review of the response for non-public information, such as confidential business information or information subject to personal privacy concerns. Non-public information will be withheld as needed. I will keep you posted as to possible timing.

I would like to get back to the reporter today.

Thanks,
Michele

From: Harris-Bishop, Rusty
Sent: Tuesday, August 29, 2017 8:49 AM
To: Huitric, Michele <Huitric.Michele@epa.gov>
Cc: Helmlinger, Andrew <Helmlinger.Andrew@epa.gov>
Subject: Re: KQED Question

We should loop in Kay as well. She thought consideration if we are pursuing a case might require us to withhold some information too.

Rusty

Sent from my iPhone

On Aug 29, 2017, at 11:21 AM, Huitric, Michele <Huitric.Michele@epa.gov> wrote:

> Good morning,
>
> KQED has asked if they can receive a copy of whatever information that Valero submits in response to our request. I

am planning to send the following response, based on the language Andrew had previously provided. Please take a look and let me know if it sounds ok.

> Yes, we will share the response with you once it is available. Please note, there may be a delay pending EPA's review of the response for non-public information, such as confidential business information or information subject to personal privacy concerns. Non-public information will be withheld as needed. I will keep you posted as to possible timing.

Thanks,
Michele