



AR 226 - 1177

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West Virginia Department of Environmental Protection

Bob Wise
Governor

Michael O. Callaghan
Secretary

April 15, 2002

Robert A. Bilott
Taft, Stettinius & Hollister LLP
1800 Firststar Tower
425 Walnut Street
Cincinnati, Ohio 45202-3957

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Dear Mr. Bilott:

I have the opportunity to discuss your letters of March 26, 2002 and March 29, 2002 with DEP staff members. Please allow this letter to serve as the DEP's answer.

Initially, you asked whether the state of West Virginia intends to establish a second laboratory to verify the CS water testing. The answer to that question is no. Exygen, as you are probably aware, is the only laboratory in the United States that can analyze the results of the C8 testing to approved standards. Furthermore, the state of West Virginia has independently certified the Exygen lab after a rigorous QAQC inspection by the DEP's Office of Water Resources. As a final check, sampling is always done in the presence of DEP employees for consistency purposes. Based on these factors, the DEP sees no reason at this time to establish its own laboratory.

As a second matter, you have requested representation at the upcoming CAT toxicologists meeting for an expert of your choosing. As you know, this would require a modification to the Consent Order. I do not see any benefit in modifying the agreement at this time for this request. However, the CAT is interested in reviewing any information that you may have in your possession that will aid them in their determination. In that light, please contact me if you desire to have your expert speak to the panel. I have been authorized to allow your expert a small window of time to share any information he or she may have on this issue.

Finally, regarding the Freedom of Information Act requests. The DEP will comply with all aspects of West Virginia's FOIA law. However, the law is clear that FOIA requests are only for "inspection or copying." W.Va. Code § 29B-1-3. The DEP will furnish a room to inspect the documents. If you do not have a copier with you, the DEP will make copies for a small fee. The documents will not leave the building. This system works with optimum efficiency if the request for documents is specific and a specific time to review the documents is requested. That way the

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documents can be set out for inspection and returned to their normal location after the time for inspection has been completed.

Please contact me if you have any questions.

Yours sincerely,



CHRISTOPHER D. NEGLEY
ASSOCIATE COUNSEL

cc: Dr. Dee *Ann* Staats
Dave Watkins

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