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To: Rich Leukroth/DC/USEPA/US@EPA
cc:
Subject: Incineration ECA/ language inserts and deletions

Rich:

Here are the items that I promised to get to you during today's call:

1. Section X (Study plans):

We want these two sentences added to the section, in place of the sentence that begins on line 11 of my version of the current draft, beginning with the language "A study plan may cross reference . . .":

"This ECA and/or its appendices satisfy the requirements of 40 CFR 790.62(b)(2), (8), (9), and (10). The study plan may cross reference the applicable provisions of the ECA and/or its appendices to satisfy these requirements."

These sentences will eliminate needless redundancy between the ECA documents and the study plan. For example, there is no reason to address in the study plan the subject of the identity of the chemical substances being tested (790.62(b)(2)(8)), a subject that is addressed comprehensively in the ECA documents. Similarly, there is no reason to address the schedule for the test program in the study plan (790.62(b)(10), since this subject will also be addressed comprehensively in the ECA documents (i.e., Table 1).

2. Section XII (Failure to Comply with the ECA):

Here, we want all of the text except the first sentence deleted. The regulations governing the content of ECA's are quite specific about what must be included in an ECA on this subject (see 790.60(a)(13)); the first sentence of this section covers all that the regulation requires to be covered quite adequately. The rest of the section is unnecessary.

3. Section XV (Publication and Disclosure of Test Results):

We want the following two sentence paragraph added to this section, to present our position on the legal rationale for disclosure:

"The Companies contend that the documents generated for the incineration testing program under this ECA are protected from public disclosure under 5 U.S.C. section 552(b)(4) and 15 U.S.C. section 2613(a) and do not constitute studies subject to disclosure under 15 U.S.C. section 2613(b). Accordingly, the public information disclosure provisions of this ECA are, in the view of the Companies, a waiver of legal rights."

Again, we are not asking EPA to agree with our position, but only to acknowledge that this is our position. We are also, of course, not objecting to the disclosure of any non CBI data.

Call me if you have any questions about any of this.

David

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