

From: McBarnette, Andrea (USADC) [<mailto:Andrea.McBarnette@usdoj.gov>]
Sent: Wednesday, February 22, 2012 5:05 PM
To: Kit Douglass
Subject: RE: Peer v. EPA (RBW) 11-cv-01864

Hi Kit,

PEER has asked that EPA clarify its position regarding whether "there are no responsive documents on decision-pending sites?"

EPA's answer is:

yes, there are responsive documents on a decision-pending site. There is only one decision-pending site. The EPA produced scores on all New Jersey sites reviewed but not listed during the applicable 5-year period (July 2006 to July 2011). Among the score sheets mailed in the February 10 supplemental response is a score sheet for the Selecto Flash (a/k/a West Orange) site, for which a decision is still pending regarding its listing on the NPL. There are no other sites for which a listing is still pending.

Andrea

From: Kit Douglass [<mailto:kdouglas@peer.org>]
Sent: Friday, February 17, 2012 2:53 PM
To: McBarnette, Andrea (USADC)
Subject: Peer v. EPA (RBW) 11-cv-01864

Dear Andrea,

PEER received the agency's most recent production responsive to Item 2 of our request. Thank you for following up further on that.

However, the wording of the cover letter in that response still suggests that the agency is only producing documents responsive to one part of Item 2—HRS scores that exist and where the agency made a final determination not to list on the NPL. The agency has said production is complete. But, we believe that there are still unproduced responsive documents to the element of our request pertaining to sites not listed because a listing decision is still pending. See my email below to you on this subject.

Please clarify, is the agency maintaining that there are no responsive documents on decision-pending sites? If so, will they simply so state?

Sincerely,
Kit

From: Kit Douglass
Sent: Monday, January 16, 2012 12:11 PM
To: 'McBarnette, Andrea (USADC)'
Subject: RE: Peer v. EPA (RBW) 11-cv-01864

Dear Andrea,

I apologize if I was not as specific enough with my follow up question as need be. I meant to ask for, and was referring only to, the number of HRS scores generated in New Jersey for the past 5 years.

Item 2 of our FOIA request asks for HRS score sheets for sites reviewed but not listed on the NPL. The EPA's response produced documents where HRS scores exist and the agency decided not to list them (ie, had made a determination one way or another). Logically, there are other possible sites where EPA conducted an HRS and has not yet decided whether to 1) pursue Superfund listing or 2) to take final action NOT to pursue Superfund listing. That is, HRS scores that exist for sites still pending decision. Hence, answering the question of how many HRS scores were produced in NJ in the last 5 years would help us determine whether the Agency has fully responded.

Regards,
Kit

From: McBarnette, Andrea (USADC) [<mailto:Andrea.McBarnette@usdoj.gov>]
Sent: Friday, January 13, 2012 6:49 PM
To: Kit Douglass
Subject: RE: Peer v. EPA (RBW) 11-cv-01864

Kit,

Certainly the agency would like to work out any issues that stand in the way to an amicable resolution. You stated that the Plaintiff is not necessary sold on the completeness of the agency's response. If in good faith the Plaintiff believes that there is something missing, we request that you explain why and point to what. Then the agency can respond. As for the follow up question, the agency further notes that the number of sites with HRS scores nation-wide in the last 5 years does not relate to the Plaintiff's FOIA request which dealt with New Jersey only. We request that the Plaintiff reconsider its stance or, at the very least, let the agency know what concerns the Plaintiff has with the agency's production.

From: Kit Douglass [<mailto:kdouglas@peer.org>]
Sent: Friday, January 13, 2012 12:45 PM
To: McBarnette, Andrea (USADC)
Subject: RE: Peer v. EPA (RBW) 11-cv-01864

Dear Andrea,

Ok, based on this response, it looks as though an answer will be required and that we then move on to briefing. We are not necessarily sold on the completeness of the agency's response and it looks like we will have to brief the matter since the agency is unwilling to answer the question. As for the status report, it could simply say that the stay is over, there remain issues unresolved, that an answer will be forthcoming, and that the parties intend to set a briefing schedule with dispositive motions to resolve their outstanding issues.

Please let me know what you think about these next steps or an alternate proposal.

Regards,
Kit

From: McBarnette, Andrea (USADC) [<mailto:Andrea.McBarnette@usdoj.gov>]
Sent: Friday, January 13, 2012 12:10 PM
To: Kit Douglass
Subject: RE: Peer v. EPA (RBW) 11-cv-01864

Kit,

The agency does not view this question as a FOIA request. Although the agency understands the reasoning for your question and likewise does not wish to prolong matters, the agency does not believe that it is good policy to start answering questions as opposed to providing documents.

From: Kit Douglass [<mailto:kdouglas@peer.org>]
Sent: Thursday, January 12, 2012 5:26 PM
To: McBarnette, Andrea (USADC)
Subject: RE: Peer v. EPA (RBW) 11-cv-01864

Andrea,

Thanks for following up. So the reason I asked that follow up question was to determine whether we needed to challenge the completeness of the agency's response to our FOIA requests. It was not another FOIA request. As such, we respectfully ask that the agency answer the question so as not to prolong matters. I believe that I am in the same position as the agency—meaning that I would like to get this wrapped up soon and without needing the court's intervention.

I am happy to discuss this via telephone, if that would be easier.

Regards,
Kit

From: McBarnette, Andrea (USADC) [<mailto:Andrea.McBarnette@usdoj.gov>]
Sent: Thursday, January 12, 2012 5:19 PM
To: Kit Douglass
Subject: RE: Peer v. EPA (RBW) 11-cv-01864

Kit,

The EPA has provided all information responsive to the two requests by PEER (dated July 27, 2011) to EPA's Region 2 offices as well as Headquarters. No material has been redacted or withheld.

You asked "Is it possible to find out how many HRS scores the EPA generated in the last 5 years?" Because the FOIA requires an agency to provide responsive documents but does not require an agency to answer questions, the EPA declines to answer your above follow up question. To do so would be to expand its obligation under the FOIA.

The parties are to file a joint status report on January 15 - which is a Sunday, so the report is due the next business day, Tuesday, January 17.

Please let me know your thoughts on the content of the status report.

Thanks,

Andrea

From: Kit Douglass [<mailto:kdouglas@peer.org>]
Sent: Monday, January 09, 2012 1:08 PM
To: McBarnette, Andrea (USADC)
Subject: RE: Peer v. EPA (RBW) 11-cv-01864

Dear Andrea,

As you are likely aware, the EPA has been producing documents responsive to our FOIA requests. The latest of which came last Friday, January 6. By way of our determining how we feel about the completeness of production, I have a question that I am hoping you could ask the agency. Is it possible to find out how many HRS scores the EPA generated in the last 5 years? That is, we would simply like to know the universe of numbers out there in the last 5 years. Please let me know if you have any questions or if you would like to discuss.

Sincerely,
Kit

From: McBarnette, Andrea (USADC) [<mailto:Andrea.McBarnette@usdoj.gov>]
Sent: Tuesday, November 15, 2011 4:25 PM
To: Kit Douglass
Subject: Peer v. EPA (RBW) 11-cv-01864

Kathyrn Douglass,

I am the AUSA assigned to PEER v. EPA, 11-1864. The Defendant would like to try to resolve this litigation without Court action. The EPA intends to produce, by next week, documents responsive to PEER's July 27 FOIA request. The EPA intends to produce responsive information for roughly 70 sites (including the Dupont RCRA site in Pompton Lakes, N.J.) The immediate production will have no redactions.

There are roughly 23 sites responsive to PEER's request that the EPA is still processing. For the remaining documents, the Defendant needs time to evaluate the documents for release. In light of Thanks Giving and Christmas and the vacation schedules for these holidays, the Defendant is interested in filing a motion to stay litigation until January 15, 2012. During such time, the Defendant expects to determine what remaining documents can be released and make production upon the Plaintiff. Once production is completed, the parties can discuss if there is a desire for further litigation. Please let me know the Plaintiff's position on this request for consent on a motion to stay litigation.

Andrea