



FD 35116

Robert B. Jacobs to: danielle.gosselin

Cc: "Sue Hannegan"

08/22/2011 04:19 PM

History:

This message has been forwarded.

Dear Ms. Gosselin,

Attached is a notice from the PA Department of Environmental Protection dated August 15, 2001 revoking the permit for the Keystone Clearwater Solutions proposed wastewater treatment facility located on the Resource Recovery LLC (RR LLC) property in Rush Township, Centre County PA. This action verifies my comments dated April 25, 2011 (attached and highlighted) to the Surface Transportation stating that the proposed rail line reactivation is not warranted. There is no permit for the proposed waste-to-ethanol facility, the quarry will most likely not be producing enough material from a 44 acre approved site to ship off-site via rail since the materials are to be used for internal access roads and well pads for the natural gas drilling on the RR LLC property, and now the wastewater treatment will not be built due to the revoked permit.

In addition, the article below shows that an ethanol facility a few miles from the RR LLC property will be sold through bankruptcy even though they won an arbitration hearing. This provides additional proof that a proposed waste-to-ethanol facility is not a viable development activity, nor is such a facility permitted or being developed on the RR LLC property. If an existing ethanol plant using conventional production methods and feed stock materials (corn) cannot survive on the open market, how can the RR LLC proposal survive let alone state in an EIS document that the produced amount of ethanol will be shipped via rail?

Area Bionol plant to receive \$230 million arbitration award

Thursday, August 18, 2011

CLEARFIELD - A Boston lawfirm has announced a hefty award for the Bionol Clearfield plant. According to a press release posted on the website of McDermott Will & Emery LLP, the firm has secured a \$230 million arbitration award for Bionol Clearfield LLC from Getty Petroleum Marketing Inc. The award includes \$47 million in damages incurred to date, and over \$180 million in future damages.

In 2007, Bionol and Getty, a wholly owned subsidiary of Lukoil Americas at the time, entered into a five-year "Off-take Agreement" requiring Getty to purchase essentially all of the output from the Clearfield-based ethanol plant under a commodity based pricing formula. When the plant came online in early 2010, and after a precipitous drop in the commodities market, Getty challenged the pricing mechanisms of the contract. Getty then began the subject of arbitration, seeking damages of \$10 million for breach of contract, fraudulent inducement, mistake and related claims.

The McDermott team responded with counterclaims on behalf of Bionol. A panel of AAA Arbitrators then heard evidence over four weeks, including expert testimony on the ethanol, corn, and related commodities markets. Ultimately, the panel adopted all of McDermott's legal theories on liability and damages under the Uniform Commercial Code.

Adding another dimension of difficulty to this case, after the first six days of testimony from fact

and expert witnesses, Lukoil announced the sale of Getty to an unrelated party. This forced Bionol to file a motion for interim relief, which the panel allowed, ordering an attachment on all of the assets of Getty in the amount of \$47 million.

"This was an important benchmark for our trial team, providing us with momentum to keep this complex case moving forward toward the final award providing for all damages sought."

According to previously published Courier-Express articles, Bionol Clearfield was expected to produce 110 million gallons of ethanol per year.

The employees were hired in November 2009 and trained from November through January 2010. The first truck-load of corn arrived at the plant Dec. 11, 2010, and the first train-load of corn arrived Dec. 15. The plant began producing its first batch of ethanol Dec. 26.

The plant is spread across 35 acres with grain silos; a grain receiving building; truck and rail dump pits; fermentation facilities; heat exchangers; a processing area "cook alley" where the corn solids are dried; evaporation areas; distillation areas where the "beer" is separated from the water and the solids; the energy center, which powers the plant using centrifuges and drum kiln dryers; a steam generation area; flat storage with a conveyor system; load out areas for truck and rail cars; cooling towers using a closed loop system; water treatment buildings and storage for the ethanol once it is produced.

Prior to initiating operations, Bionol entered into an off-take agreement with Getty Petroleum Marketing in which Getty was to buy all the ethanol produced by Bionol. Getty defaulted on that agreement last year and Bionol has been selling its ethanol on the open market since then.

As a result of the fluctuations in the corn and ethanol markets, Bionol put the plant into a hot idle status in June following a week-long shutdown for summer maintenance. Since then, Bionol and its lenders decided that the best course, given Bionol's limited liquidity, would be a sale of the plant through bankruptcy.

Reported by Kimberly Finnigan, staff writer, E-mail: kfinnigan@thecourierexpress.com

Please revise the EIS document accordingly to reflect this updated land use information. Should you have any questions or require additional information please let me know. Thanks.

Regards,
Bob

Robert B. Jacobs, AICP
Centre County Planning and Community Development Office
420 Holmes Street
Bellefonte, PA 16823
814.355.6791
814.355.8661 (fax)



PA DEP - Keystone Clearwater Solutions - Revoked Permit letter 8-15-11.pdf



Centre County - FD 35116 comments 4-25-11.pdf