



## GEORGIA DEPARTMENT OF LAW

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March 6, 2020

**Via E-mail – dhenderson@kslaw.com**

Mr. Douglas Henderson  
King & Spalding LLP

**Via E-mail – michelle.quinn@bd.com**

Ms. Michelle Quinn  
BD

RE: *Richard E. Dunn, Director, Environmental Protection Division, Georgia Department of Natural Resources v. Becton, Dickinson and Company*  
Superior Court of Newton County  
Civil Action No.: SUCV2019002219

Dear Doug & Michelle:

As we discussed earlier, Condition #2 of the October 28, 2019 judicial Consent Order between BD and the Georgia Environmental Protection Division (EPD) requires that BD notify EPD “immediately” by email of “[a]ll unpermitted releases of ethylene oxide” from the Covington and Madison facilities. Additionally, a follow-up report regarding a release is due within 48 hours of the initial notification. We understand that there has been some confusion about the term “unpermitted releases” and want to ensure that going forward BD is clear on EPD’s expectations about the requirements of Condition #2.

For purposes of the judicial Consent Order, an “unpermitted release” is any release of ethylene oxide caused by a malfunction or other failure of equipment at the facility that results in ethylene oxide not being routed through the facilities’ emissions controls. EPD expects any such release will be reported immediately to EPD. BD’s permit applications for the Covington and Madison facilities propose that BD install systems at each facility that will cause indoor air to be sent to the emissions controls. Until those systems are fully operational, all malfunctions that result in releases to indoor air should also be reported as “unpermitted releases.” Although the term “immediately” is not defined in the judicial Consent Order, the plain language meaning of the term implies that BD should notify EPD as soon as possible, followed by a report of the release within 48 hours. In addition, emissions from indoor incidents of this nature at the Covington

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facility must also be included in the monthly fugitive emissions report described in Condition 8 of the judicial Consent Order.

Based on this understanding of the judicial Consent Order requirements, the releases to indoor air that BD's Covington facility experienced on December 29, 2019, January 12, 2020, and March 3, 2020 should have been reported to EPD immediately under Condition #2 of the judicial Consent Order. Per that same Condition, EPD should have received follow up reports within 48 hours.

With respect to the December 28, 2019 incident, EPD recognizes that the release of 1.34 pounds to indoor air was included in the January 6, 2020 monthly fugitive emissions report for the Covington facility. EPD also acknowledges that the total fugitive emissions that month were below the 30-pound per month limit on a rolling 90-day average set in the judicial Consent Order. The 1.34 pound unpermitted release, however, was caused from a power failure of the back-vent fan on December 28<sup>th</sup> and should have been separately and immediately reported to EPD. Based on the restoration of power to the fan, at this time EPD does not require and is not seeking the 48-hour follow up report.

With respect to the January 12, 2020 incident, BD accounted for that release of 0.45 pounds to indoor air by adjusting the facility's production rates to ensure that BD would not exceed its fugitive emissions limit of 30-pounds per month on a rolling 90-day average. That event was the result of the regenerative thermal oxidizer going off-line due to weather conditions, which resulted in a shutdown of all valves to that oxidizer and the 0.45 pound release to indoor air at the facility. This is a malfunction and therefore an "unpermitted release". Based on the information provided in the initial report, at this time EPD does not require and is not seeking the 48-hour follow up report.

With respect to the March 2, 2020 incident, EPD received an email from BD on March 4, 2020 attributing a release of 0.18 pounds to indoor air to "process-related fugitives." BD's email stated that the event was caused by a failure of a limit switch to activate timely and turn on the back-vent fan. EPD's follow up compliance monitoring inspection on March 4<sup>th</sup> determined that the malfunction was related to a misalignment of a cam intended to initiate that back-vent fan. Accordingly, EPD considers that incident to be an "unpermitted release". While the follow up report described in Condition #2 is technically due today, EPD is allowing BD until close of business on Monday, March 9, 2020 to submit the report. As with the December 28, 2019 and January 12, 2020 events, EPD also expects that this release will be accounted for in BD's operations so that BD does not exceed its rolling 90-day average monthly fugitive emissions limit of 30 pounds.

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BD must review its records for the Covington and Madison facilities to confirm that no additional incidents beyond those described in this letter have resulted in “unpermitted releases” as defined above. If BD identifies any additional events, BD must submit a report describing them to EPD no later than close of business on Monday, March 9, 2020.

If you have any questions about this letter, please contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "Robin J. Leigh". The signature is written in a cursive style with a large, stylized initial "R".

Robin J. Leigh  
Senior Assistant Attorney General