



John.

Here is the latest version of the working document.

It has benefited from the recent Matt – Van meeting as well as some of our detailed schedule planning.

It shows a 15 Nov execution date. Obviously that is not possible and will be revised but it indicates our willingness to engage and get a move on.

I am in CA now. See you on Thursday morning at 9:30.

Best,

-jim

GUIDANCE DOCUMENT – TAILINGS MANAGEMENT CERTIFICATION PROCESS
D R A F T

I. PURPOSE

As stated herein, it is the purpose of this Guidance Document, and the Tailings Management Certification Process outlined herein, to articulate a path forward with the intention that it lead, ultimately, to Full Certification for the management of Omya's tailings in accordance with Vermont law. This document is intended as a "road map" outlining the steps that will be taken and the responsibilities of the parties going forward; that is, the process by which the management of Omya's tailings will be considered and determined. It is not the purpose of this document to prescribe a certain outcome, although all parties agree that a degree of certainty and clarity regarding the process and procedures will facilitate an outcome beneficial to all.

II. DEFINITIONS

1. Tailings: the residual byproduct resulting from the beneficiation of rock to separate out mineral impurities and concentrate calcium carbonate, and prepare the calcium carbonate for further processing.
2. Tailings Management Area (TMA): means the active Kane & Drake and Dolomite Quarry deposition areas and the currently inactive Loveland Quarry deposition area.
3. Tailings Management Certification Process (Process): means the process described herein and the schedule(s) and documents developed hereunder.
4. Tailings Management Facility (TMF): means a site to be used for the future management of tailings in conjunction with the closure of the TMAs.

III. GOALS AND OBJECTIVES

The purpose of the Process is for the Agency and Omya to work together to facilitate the Agency making a final determination on Full Certification on or before 30 June, 2009.

IV. ROLES & RESPONSIBILITIES

1. Throughout this Process and its implementation, the Agency and Omya will work together in good faith.
2. Time shall be of the essence of the Process.
3. The Agency and Omya will involve external stakeholders to review and comment on the Process.

V. REGULATORY SETTING AND PROCEDURES

1. This Process and its implementation will be governed by the Vermont Waste Management Act (Act), and the Agency's Solid Waste Management Rules (Rules).

Deleted: ~9660240

GUIDANCE DOCUMENT – TAILINGS MANAGEMENT CERTIFICATION PROCESS
DRAFT

2. This Process and its implementation will supplement and inform the current Interim Certification application on file with the Agency.
3. As a predicate to Full Certification, the Agency will continue to process Omya's pending application for Interim Certification in accordance with the Act and the Rules and leading to the closure of the existing TMAs.
4. In the period prior to a final determination of Omya's application for interim certification the facility shall operate consistent with the requirements contained in paragraph VI of this guidance document.
5. In the event the Agency and/or Omya learns new information not available to it as of the date of this Guidance Document, the Agency will not be precluded from taking such steps or such action as may be lawful and consistent with the protection of the public health, safety and welfare and the environment. Omya will not be precluded from taking such steps or such action as may be commercially reasonable, lawful, and consistent with the protection of the public health, safety and welfare and the environment.

VI. OMYA OPERATION DURING THE PROCESS

1. Insert appropriate provisions here

VII. CLOSURE OF EXISTING TAILINGS MANAGEMENT AREAS

1. Once a Full Certification has been issued and the TMF(s) is operational, Omya shall cease to deposit any additional tailings into the existing TMAs except to the extent that is required to achieve final grades for closure of the TMAs.
2. The existing TMAs will be closed, in accordance with an approved TMA Closure Plan and monitoring program shall continue under an approved Post-closure Plan. Omya shall provide the Agency with a cost estimate for the closure and post closure activities. Omya shall also provide the Agency with an approved financial instrument for the amount of an approved closure and post-closure cost estimate.

MANAGEMENT OF TAILINGS OUTSIDE OF THE EXISTING TMAS

1. Physical Description
 - a. Omya will investigate the feasibility of the following three options for placement of newly-created tailings outside and in concert with closure of the existing TMAs:
 - i. On-site within the confines of Omya's Florence facility; and/or,
 - ii. At an existing quarry or similar feature or on land owned by Omya not part of Omya's Florence facility; and/or,
 - iii. At a new location(s) yet to be determined.

Deleted: Provided that Omya proceeds with this Process in good faith and continues to operate the TMAs consistent with Commissioner Wennberg's letter of 20 June, 2005, the Agency will not issue to Omya a notice of violation or commence enforcement action related to the TMAs

Deleted: and/or

Deleted: In that regard as well, the Agency and Omya agree to provide each to the other all information pertinent to the tailings, their production, their management, and their presence in the environment except to the extent protected by a statutory or common law privilege.

Deleted: <#>Omya will operate the TMAs consistent with Commissioner Wennberg's letter of 20 June, 2005 ¶ In the event that additional on-site capacity is required to allow for continued operation of the Verpol facility, and a new TMF(s) has not yet become operational, Omya and the Agency will work together to consider additional on-site tailings management consistent with current guidelines and protocols.

Formatted: Bullets and Numbering

Formatted: Highlight

Deleted: the

Deleted: , with closure including a cap or similar protective barrier

Deleted: .

Deleted: <#>An environmental monitoring program accompanied by appropriate financial assurance documentation will be developed and implemented to regularly test for the presence of tailings-related compounds in the environment associated with the existing TMAs. It is anticipated that the Monitoring Plan currently in effect will be utilized for this purpose. ¶

----- Page Break -----

Formatted: Bullets and Numbering

Deleted: ~9660240

GUIDANCE DOCUMENT – TAILINGS MANAGEMENT CERTIFICATION PROCESS
D R A F T

2. Siting

- a. Both the Agency and Omya recognize that the permitting requirements of siting a TMF(s) may prove arduous and that both the Agency and Omya will work together to facilitate a timely permit process.
- b. The Agency will provide guidance and assistance regarding the suitability and inclusion of various sites under applicable state, regional, and/or local solid waste implementation plans.

3. Environmental Controls

- a. Consistent with the Act and the Rules, the TMF(s) is expected to consist of a lined facility;
- b. An environmental monitoring program will be developed and implemented to regularly test for the presence of tailings-related compounds in the environment associated with operation of the TMF(s).

Deleted: reasonably designed to limit to the extent technically possible and necessary, tailings or related compounds coming into contact with bedrock and/or groundwater

4. Closure of the TMF(s)

- a. The TMF(s) will be closed, in accordance with the TMF(s) Closure Plan with closure including a cap or similar protective barrier;
- b. A post-closure environmental monitoring program will be developed and implemented to regularly test for the presence of tailings-related compounds in the environment associated with the TMF(s).

Deleted: <#>It will be assumed that the environmental monitoring program will be similar in nature and content to the Monitoring Plan currently in effect for the TMA.s.†

Formatted: Bullets and Numbering

Deleted: Upon reaching its design capacity, †

Deleted: <#>The cap or protective barrier will have the general design criteria as outlined in the TMF(s) Preliminary Design and the TMF(s) Certification Application.†

IX. TAILINGS RE-USE / RECYCLING

1. Newly Generated Tailings Transferred to a 3rd Party

- a. Newly generated tailings that have not nor are planned to be delivered to a treatment, storage, or disposal facility; abandoned; stored or placed in a manner that constitutes the discharge, injection, spilling or leaking of any material or constituent thereof into or on any land or water or air; or conveyed to a commercial hauler for delivery to a treatment, storage, disposal, or recycling facility shall not be considered solid waste. Omya will take reasonable efforts to inform the Agency of the uses that the newly generated tailings will be put to.

Formatted: Bullets and Numbering

Deleted: It will be assumed that the environmental monitoring program will be similar in nature and content to the Monitoring Plan currently in effect for the TMA.s.

Deleted: With respect to tailings that have not come into contact with the external natural environment during their processing, these tailings are not a Solid Waste under Agency rules and Omya shall be allowed to transport these tailings to third parties for the purposes of beneficial re-use (i.e. value added (i.e. manufactured) products).

2. Newly Generated Tailings Placed in the TMF(s)

- a. With respect to tailings placed within the TMF(s), these tailings shall be deemed a Solid Waste. Protocols to allow Omya to remove such tailings for transfer to and re-use by a 3rd party for value added (e.g. manufactured) products will be included as part of the certification process.

Deleted: ~9660240

GUIDANCE DOCUMENT – TAILINGS MANAGEMENT CERTIFICATION PROCESS
DRAFT

- b. With respect to tailings placed within the TMF(s), these tailings shall be deemed a Solid Waste. Protocol to allow Omya to remove such tailings for processing within its Verpol Facility to reclaim the calcium carbonate content remaining therein will be included as part of the certification process.
3. With respect to tailings that currently exist within the TMAs, should there exist potential beneficial use, re-use or recycling opportunities, protocols to allow Omya to remove such tailings for such opportunities will be included in any pending and subsequent certifications.

X. MONITORING AND REPORTING

1. During this Process, the Agency and Omya will have regular progress meetings to facilitate communication and efficient project execution.

XI. ESCROW ACCOUNT

1. Should the Agency require external technical and scientific resources to develop information, beyond the information contained within the Section 5 study, to facilitate its activities under this Process, an escrow account shall be created and funded by Omya that the Agency, at its sole discretion, may use to pay for additional technical and scientific studies as reasonably may be required to carry out its tasks and duties hereunder. The unit costs and rates for the tasks to be performed by the persons or entities providing such services shall be within professional standards.
2. This escrow account will be established on or before 31 December, 2007 with an initial balance of \$50,000. Subsequent deposits, if any, to the escrow account by Omya will be negotiated with the Agency on an as-needed basis.
3. At the conclusion of the Process, any balance in the escrow account shall be returned to Omya.

Deleted: <#>During this Process, the Agency and Omya will submit monthly progress reports to each other by the fifth business day of each month.¶

Formatted: Bullets and Numbering

XII. DATA

1. Wherever feasible, existing data shall be utilized, including those data generated as a result of the Section 5 process.
2. The Agency may choose an entity or entities to undertake external scientific and/or technical review and/or studies (per Section XI) subject to the concurrence of Omya, whose concurrence will not be unreasonably withheld.
3. All data generated during this Process shall be freely exchanged between the parties subject to the protection of any trade secret or proprietary information provisions.

Deleted: All

Deleted: entities

Deleted: undertaking

Deleted: will be mutually agreeable to both the Agency and Omya

Deleted: In that regard as well, the Agency and Omya agree to provide each to the other all information pertinent to the tailings, their production, their management, and their presence in the environment except to the extent protected by a statutory or common law privilege.

Deleted: ~9660240

XIII. SCHEDULE

1. Completion of this Guidance Document
 - a. Due 15 November, 2007

GUIDANCE DOCUMENT – TAILINGS MANAGEMENT CERTIFICATION PROCESS
D R A F T

2. Submittals

a. The following schedule is based upon reasonable assumptions regarding staffing availability, deployment of existing technologies, the information known as of the date of this Guidance Document, and exigencies beyond the control of the Agency and/or Omya. The following submittal schedule is dependent upon timely completion of this Guidance Document and compliance with the steps outlined herein. Should unforeseen circumstances occur, different procedures be employed, or new information become known, the schedule may need to be modified.

b. Existing TMA Life Cycle Report

- Forecast of operational life of existing TMAs.
 - i. Draft submitted by Omya on 30 November, 2007
 - ii. Comments received from the Agency on 14 December, 2007
 - iii. Preliminary report submitted by Omya 28 December, 2007
 - iv. Review and determination received from the Agency on 11 January, 2008

Deleted: Final
Deleted: Final approval
Deleted: ???

c. TMA Closure Plan

- Capping and Environmental Monitoring Program for closure of existing TMAs
 - i. Draft submitted by Omya 14 December, 2007
 - ii. Comments received from the Agency 28 December, 2007
 - iii. Preliminary report submitted by Omya 11 January, 2008
 - iv. Review and determination received from the Agency 25 January, 2008

Deleted: Final
Deleted: Final
Deleted: ???
Deleted: approval

d. TMF(s) – Environmental Management Report

- Technical document focusing on design requirements and environmental monitoring protocols for TMF(s) operation
 - i. Draft submitted by Omya 25 January, 2008
 - ii. Comments received from the Agency 08 February, 2008
 - iii. Preliminary report submitted by Omya 07 March, 2008
 - iv. Review and determination received from the Agency 21 March, 2008

Deleted: Final
Deleted: Final
Deleted: ???
Deleted: approval

e. TMF(s) – Site Feasibility Report

- Feasibility study (technical, regulatory, political and economic analysis) of the three options for management of new tailings

Deleted: ~9660240

GUIDANCE DOCUMENT – TAILINGS MANAGEMENT CERTIFICATION PROCESS
D R A F T

(Florence facility, a non-site specific quarry, a new site yet to be determined).

- Provides recommendations for new TMF(s) location, lists data gathering requirements and presents a TMF(s) conceptual design.
- Prior to draft submittal, potential site walk-throughs to be conducted with Agency and Omya staff.
- i. Draft submitted by Omya 15 April, 2008
- ii. Comments received from the Agency 13 May, 2008
- iii. Preliminary report submitted by Omya 10 June, 2008
- iv. Review and determination received from the Agency 8 July, 2008

Deleted: Final

Deleted: Final approval

Deleted: ???

f. TMF(s) – Preliminary Design

- Preliminary technical design submittal
- i. Draft submitted by Omya 11 April, 2008
- ii. Comments received from the Agency 09 May, 2008
- iii. Preliminary report submitted by Omya 06 June, 2008
- iv. Review and determination received from the Agency 04 July, 2008

Deleted: Final

Deleted: Final approval

Deleted: ???

g. TMF(s) – Certification Application

Submittal to include the following documents required by the Vermont Solid Waste Management Regulations:

- Fee Schedule Calculation Document
- Application Certificate of Service
- Plan for Public Notice
- Evidence that the application complies with the planning requirements of 10 V.S.A. § 6605(c)
- Waste Characterization Report
- Hydrogeological Report
- Water Quality Monitoring Program
- Report Documenting Compliance with the Vermont Water Quality Standards
- Design Report and Drawings
- Facility Management Plan

Deleted: ~9660240

GUIDANCE DOCUMENT – TAILINGS MANAGEMENT CERTIFICATION PROCESS
D R A F T

- Facility Closure Plan
 - Facility Post Closure Plan
 - Financial Assurance Documents
 - Background Disclosure Information
- i. Draft submitted by Omya 3 February, 2008
 - ii. Comments received from the Agency 7 April, 2009
 - iii. Final report submitted by Omya 5 May, 2009
 - iv. Final determination received from the Agency 30 June, 2009

Deleted: action

Deleted: f
Approved for the Agency of Natural
Resources*
By: _____
Title: _____
Date: _____ [1]

Deleted: -9660240

Approved for the Agency of Natural Resources

By: _____

Title: _____

Date: _____

Approved for Omya Inc.

By: _____

Title: _____

Date: _____