Johnson, Janice C.

802.3(c); 802.4

From: [redacted]
Sent: Tuesday, November 28, 2006 10:11 AM
To: Johnson, Janice C.
Cc: [redacted]
Subject: HSR Exemption

Ms. Johnson - This e-mail sets forth the information that we discussed yesterday about the applicabiitly of exemptons under 16 C.F.R. sections 802.3 (carbon-based mineral reserves) and 802.4 (acquisitions of entities holding exempt assets) to the proposed transaction described below. As we discussed, we believe that the majority of the assets of the acquired company are exempt under section 802.3 and that the remaining non-exempt assets are valued at $30 million, which is well below the $56.7 million reporting threshold under section 802.4. As we discussed, the proposed transaction is as follows:

Company A, an LLC, would acquire 100% of the membership interests in Company B, also an LLC. The acquisiton price would be approximately $110 million. Company B has liabilities of approximately $5.5 million (including about $3 million in current liablitities), which indirectly will become liabilities of the buyer as a result of the transaction.

Company B is engaged in the business of producing landfill gas ("LFG"), by obataining contract rights to the LFG, producing the gas and ultimately selling the gas produced from landfill gas reserves. Landfill gas is methane gas that is created as a result of the decomposition of landfill material. Company B obtains rights to extract LFG by contracts with owners of landfills. Wells are drilled on the landfill sites at which Company B has such contract rights to the gas reserves, in order to extract the gas from the landfill material. The extracted gas is collected from the wells at each site at a central collection point (where the "blower," or "compressor," which provides the force to extract the gas from the wells, is located). From that collection point, the gas is moved to a processing plant at the site, where impurities are removed, after which the gas is transported for ultimate delivery to the purchaser of the gas. Company B has eight "active" LFG sites, at which LFG is being produced, and about 13 "passive" sites, at landfills where Company B has contractual rights to the LFG reserves but where no LFG currently is being produced. In addition to the contract rights to LFG reserves at the active and passive sites, Company B's other principal categories of assets include the above-described production and processing equipment, accounts receivable, and goodwill, know-how, and other intangibles associated with its LFG operations.

This transaction is exempt. The writer stated that the related assets are the closely related only to the exempt assets. J. Johnson

M. Verne concurs

As we discussed, based upon the regulations (sections 802.3 and 802.4) and published Interpretations 211 and 212 in the ABA Premerger Notification Practice Manual (3d ed. 2003), we believe that Company B's contract rights to LFG reserves at the active and passive landfill sites are exempt rights to reserves under section 802.3(a), and that the physical assets used to produce and collect the gas at each active site (up to and including the blower/compressor collection points), the accounts receivable, and the goodwill are closely related to the exempt business operations and thus are exempt as associated exploration or production assets, under section 802.3 (c), and as described in Interpretation 212. The only category of assets that appears to include non-exempt assets under section 802.3(c) would be the processing facilities and transport pipelines after the collection points at each site. If those physical assets were to be recreated, the aggregate replacement cost (for all of the active sites) would be

approximately $60 million, based upon the construction costs that currently are being incurred at one of Company B's sites. However, many of those assets have been in place for many (as much as 20 or more) years. We are not aware of any active resale market for assets of this kind. If a purchaser of a group of these assets currently located at one of Company B's active sites were interested in buying them for use at another LFG site, the purchaser would need to spend substantial sums (as much as several million dollars) to remove, transport and reinstall the used equipment at another LFG site. Many of these assets most likely only could be sold for scrap value, which would be far less than the replacement cost for comparable new equipment. The reasonable aggregate fair market value of these non-exempt assets is at 50% of the current replacement cost of the assets, or not more than $30 million. This amount is well below $56.7 million, the reporting threshold as provided in section 802.4(a).

Thus, as noted during our telephone conversation, we believe that this analysis confirms that the transaction is not reportable because the exemptions in sections 802.3 and 802.4 apply. I understand that you will advise us whether you concur in this analysis and conclusion. Of course, please also feel free to contact me [redacted] and [redacted] if you have any questions in this regard. Thank you again very much for your time and guidance.

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