

802.2(c)

Verne, B. Michael

From: [REDACTED]
Sent: Tuesday, June 23, 2009 5:03 PM
To: Verne, B. Michael
Cc: [REDACTED]
Subject: Question re application of 802.20(c)

Mike,

I hope you are doing well. Co-counsel on a matter, [REDACTED], has suggested that 802.2(c) might apply to the following situation and I wanted your views. My client, Company A is acquiring a steam methane reformer facility (the "Facility") from Company B pursuant to purchase and sale agreement (the "PSA"). The purchase price is in excess of the HSR size of transaction threshold. The Facility is in the process of being constructed, and will continue to be in the process of being constructed, at the time of closing. The construction of the Facility should be in the range of 25% (twenty-five percent) complete at the time of closing and thus is not a "turnkey" manufacturing facility which is excluded from coverage under the exemption. See Informal Staff Opinion Letter 0601027-8.

The Facility will be used by Company A to provide products to Company B, some of them for resale to A's customers. There are three contracts involved in the transaction. First, under a lease agreement, the land on which the Facility is being constructed will be leased by Company B to Company A for a term of twenty years. Second, a supply agreement will be entered into by the parties (A providing products to B) for a parallel period of twenty years. Third, under the previously mentioned PSA, Company A will acquire such assets as (i) real and personal property in the form of the Facility and all fixtures, improvements, equipment and parts comprising the steam methane reformer and related compression facilities and appurtenances thereto that are currently being constructed and installed, or which have previously been delivered or are being held for delivery, (ii) the construction contract for the Facility (title to the Facility passes in stages as completion progress is made), (iii) lube oil coalescing filters, lube oil blowdown drum and meters and related contracts and warranties, (iv) engineering and processing technology, and (v) permits, books and records and other assets.

Would the 802.2(c) exemption apply here? Thanks.

YES -
 BM
 6/23/09

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