

Robert N. Steinwurtzel
Direct Phone: 202.373.6030
Direct Fax: 202.373.6001
robert.steinwurtzel@bingham.com

July 7, 2010

VIA ELECTRONIC MAIL

Gina McCarthy
Assistant Administrator
Office of Air and Radiation
United States Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N. W.
Mail Code: 6101A
Washington, DC 20460
mccarthy.gina@epa.gov

Information Quality Guidelines Processing Staff
Mail Code 2811R
United States Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, DC 20460
quality@epa.gov

Re: Request for Correction Number 09001

Dear Ms. McCarthy:

On March 26, 2010, the U.S. Court of Appeals for the District of Columbia Circuit recognized the right to challenge an agency's failure to respond to a request for correction ("RFC") submitted pursuant to the Information Quality Act and the guidelines issued pursuant to that Act. *Prime Time Int'l Co. v. Vilsack*, 599 F.3d 678 (D.C. Cir. 2010). To date, EPA has failed to provide a response to the RFC submitted on behalf of the Association of Battery Recyclers ("ABR" or "Petitioner") on October 14, 2008.¹ Thus, we request that EPA provide such response promptly.

¹ ABR supplemented the RFC on November 17, 2008.

Boston
Hartford
Hong Kong
London
Los Angeles
New York
Orange County
San Francisco
Santa Monica
Silicon Valley
Tokyo
Washington

Bingham McCutchen LLP
2020 K Street NW
Washington, DC
20006-1806

T 202.373.6000
F 202.373.6001
bingham.com

A/73412553.1

ABR's RFC requested that EPA provide data, an explanation of methodology, and calculations related to information being disseminated by EPA in association with, among other things, EPA's rulemaking revising the lead National Ambient Air Quality Standard ("NAAQS") -- Lanphear, B.P., *et al.*, Low-level environmental lead exposure and children's intellectual function: an international pooled analysis, *Environ. Health Perspect.* 113: 894-899 (2005) (hereinafter referred to as "Lanphear (2005)"). EPA has not denied that the information addressed in ABR's RFC is subject to the Information Quality Act. Rather, EPA indicated on March 6, 2009, more than 90 days from the initial RFC, that it was "deferring consideration" of ABR's RFC due to pending litigation related to the revised lead NAAQS -- *Coalition of Battery Recyclers Association v. EPA*, No. 09-1011 (D.C. Cir. filed Jan. 12, 2009). ABR, which was not a party to the case, disputed that the litigation was appropriate grounds for EPA's failure to respond to the RFC. Specifically, in a March 18, 2009 letter to EPA, ABR noted that, because EPA continued to disseminate the information, it had an ongoing obligation to comply with its Information Quality Act guidelines, and it was also required to provide the requested information under the Freedom of Information Act. Nonetheless, EPA, on May 1, 2009, confirmed that it would not respond to the RFC in light of the pending litigation.²

The D.C. Circuit issued its decision in *Coalition of Battery Recyclers Association v. EPA* on May 14, 2010, and EPA has still failed to provide a response to ABR's RFC. As ABR was not a party to that case and the D.C. Circuit did not address EPA's obligations under the Information Quality Act or the Freedom of Information Act, the outcome of the case has no bearing on EPA's response to the RFC.³ Thus, EPA's continued delay in considering and responding to ABR's RFC is without any justification, particularly in light of the court's decision in *Prime Time*, which recognized that agencies had an obligation to follow the procedures of the Information Quality Act guidelines.

² ABR's RFC and related correspondence are available at <http://www.epa.gov/quality/informationguidelines/iqg-list.html>.

³ Since the May 1, 2009 letter, ABR submitted a separate Freedom of Information Act request for the underlying data related to the Lanphear (2005) study, which EPA has similarly delayed in responding to despite its agreement that it is obligated to obtain such data.

Gina McCarthy, Assistant Administrator
Information Quality Guidelines Staff
July 7, 2010
Page 3

EPA's guidelines provide for a response within 90 days of the request. It has been well over one year since ABR submitted its initial RFC and the supplement. Because EPA indicated that it was "deferring" consideration due to the pending litigation, ABR requests that EPA provide a response to its RFC by August 12, 2010, which is 90 days from the date of the court's decision.

We appreciate your attention to this matter.

Sincerely yours,

/s/ Robert N. Steinwurtzel

Robert N. Steinwurtzel