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VIA ELECTRONIC AND REGULAR MAIL



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Eve Vaudo, Esq.
U.S. Environmental Protection Agency, Region 1
Office of Environmental Stewardship
1 Congress Street, Suite 1100
Mail Code SES
Boston, MA 02114-2023

Re: Centredale Manor Restoration Project Superfund Site,
North Providence, Rhode Island

Dear Eve:

In February 2008, Loureiro Engineering Associates, Inc. ("LEA") installed three groundwater monitoring wells west of monitoring well MW-05S at the above-referenced site, pursuant to a workplan approved by Ms. Anna Krasko. The installation, development, and sampling of these wells generated six drums of investigation-derived waste ("IDW") consisting of two 55-gallon drums of soil drill cuttings; one 30-gallon drum of monitoring well sampling purge water; one 55-gallon drum of groundwater generated during the development of the monitoring wells; and two 55-gallon drums of decontamination water. LEA collected a composite sample of the IDW (soil drill cuttings), which was submitted to the laboratory for analysis for dioxins/furans to characterize the wastes for proper off-site disposal. The soil IDW was analyzed to characterize all IDW waste streams as the presence of dioxins/furans in the soil IDW is indicative of the presence of dioxins/furans on soil particles contained in the other waste streams. The laboratory reported a dioxin TEQ concentration of 39.9 nanograms per gram (ng/g) (parts per billion (ppb)) for the composite soil sample. We have identified several potential facilities that are permitted and willing to receive the IDW wastes based on this result. To dispose of the IDW at these facilities, however, we will need EPA's concurrence that the IDW (1) need not be characterized as an F020 or other RCRA hazardous waste, and (2) can be disposed or incinerated at a facility within the United States.

Contaminated environmental media are not hazardous waste and are not subject to regulation under RCRA unless they "contain" hazardous waste. U.S. EPA, *Management of Remediation Waste Under RCRA* (Oct. 1998), at 9. EPA guidance provides that contaminated media contain hazardous waste: "(1) when they exhibit a characteristic of hazardous waste; or, (2) when they are contaminated with concentrations of hazardous constituents from listed hazardous waste that are above health-based levels." *Id.* EPA policy is that "[s]ite managers are not required to presume that a CERCLA hazardous substance is a RCRA hazardous waste unless there is affirmative evidence to support such a finding." U.S. EPA, *Determining When Land*

Disposal Restrictions (LDRs) Are Applicable to CERCLA Response Actions, Directive 9347.3-05FS (Jul. 1989).

F020 wastes are defined as

Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri- or tetrachlorophenol, or of intermediates used to produce their pesticide derivatives. (This listing does not include wastes from the production of Hexachlorophene from highly purified 2,4,5-trichlorophenol.).

40 C.F.R. § 261.31(a). The IDW in question need not, and should not, be characterized as an F-listed waste, because the presence of contamination in the environmental media cannot be traced back to a release of waste from an original process meeting any listing description. *See* U.S. EPA, *Management of Remediation Waste Under RCRA* (Oct. 1998), at 5 (“Where a facility owner/operator makes a good faith effort to determine if a material is a listed hazardous waste but cannot make such a determination because documentation regarding a source of contamination, contaminant, or waste is unavailable or inconclusive, EPA has stated that one may assume the source, contaminant or waste is not listed hazardous waste”).¹

According to Thomas Cleary, Metro-Atlantic, Inc. operated a hexachlorophene (“HCP”) manufacturing operation at the Site for approximately one year in or about 1965. *See* Dep. of T. Cleary, *Emhart Indus., Inc. v. Home Ins. Co.*, Civil Action No. 02-053 S (D.R.I.) (Feb. 10, 2003), at 36-38, 53. The manufacturing process included the purification of a crude 2,4,5-trichlorophenol solution followed by hexachlorophene synthesis and purification. *Id.* at 40-43. Metro-Atlantic’s HCP process would not have created dioxin, but the trichlorophenol solution it received from Diamond Alkali may have contained dioxin. *See, e.g.*, J. Ronald Hass, *Evaluation and Opinions on the Conceptual Site Model Contained in U.S. EPA’s Interim-Final Remedial*

¹ *See also Proposed Rule: Requirements for Management of Hazardous Contaminated Media*, 61 Fed. Reg. 18,779, 18,805 (Apr. 29, 1996) (“[I]f information is not available or inconclusive, facility owner/operators may generally assume that the material contaminating the media were not hazardous wastes.”); Letter from Sylvia K. Lowrance, Director, Office of Solid Waste, to Jackie Noles, Operations Manager, Laidlaw Environmental Services (TS), Inc. (Dec. 24, 1992) (“If the waste in question cannot be traced back to an original process that would generate a waste meeting any listing description, then it is exempt from regulation providing that it does not fail a hazardous waste characteristic test.”); *Final Rule: National Oil and Hazardous Substances Pollution Contingency Plan*, 55 Fed. Reg. 8,666, 8,758 (Mar. 8, 1990) (noting “that it is often necessary to know the origin of the waste to determine whether it is a listed waste and that, if such documentation is lacking, the lead agency may assume it is not a listed waste.”); *Proposed Rule: National Oil and Hazardous Substances Pollution Contingency Plan*, 53 Fed. Reg. 51,394, 51,444 (Dec. 21, 1988) (“When this documentation is not available, the lead agency may assume that the wastes are not listed hazardous wastes”); Memorandum from John H. Skinner, Director, to David Wagoner, Director, Air and Waste Management Division Region VII (Jan. 6, 1984) (“If the exact origin of the toxicants is not known, the soils cannot be considered RCRA hazardous wastes unless they exhibit one or more of the characteristics of hazardous waste.”).

Investigation Report and Human Health and Ecological Risk Assessment Reports (Oct. 19, 2006) ("Oct. 2006 Hass Report"), at 7-8; Exponent/Limno-Tech, *Review of Dr. J. Ronald Hass's evaluation of EPA's Conceptual Site Model for the Centredale Manor Restoration Project Superfund site* (Apr. 4, 2007) ("Apr. 2007 Exponent Memo"), at 3.

There is no evidence, however, that any waste from the HCP process was disposed of or released on the Site. Mr. Cleary stated that all the trichlorophenol and all of the hexachlorophene were recovered. Dep. of T. Cleary at 43. Moreover, during the time period that Metro-Atlantic was producing hexachlorophene, it was disposing of solid waste into containers that were removed by a commercial service. See, e.g., Admin. Dep. of J. Turcone, *In the Matter of Centredale Manor Superfund Site, North Providence, Rhode Island* (U.S. EPA Region 1) (Nov. 30, 1999), at 13-15; Admin. Dep. of Anon., *In the Matter of Centredale Manor Superfund Site, North Providence, Rhode Island* (U.S. EPA Region 1) (Aug. 31, 2000), at 16-17; Dep. of J. Turcone, *Emhart Indus., Inc. v. Home Ins. Co.*, No. 02-053 S (D.R.I.) (Dec. 16, 2002), at 11-12, 14-15, 43-45; Dep. of J. Nadeau, *Emhart Indus., Inc. v. Home Ins. Co.*, No. 02-053 S (D.R.I.) (Dec. 17, 2002), at 43-44, 52-55.

A consultant retained by Site PRPs, customers of New England Container Company, has speculated that an aqueous waste stream was disposed on the Site during the trichlorophenol purification process. See, e.g., Apr. 2007 Exponent Memo at 4-5. Even if this speculation were true, which Emhart Industries, Inc. denies, the F020 regulatory definition, nonetheless, specifically excludes wastewater from characterization as an F020 waste. See Memorandum from Michael B. Cook, Dioxin Management Coordinator, to Regional Dioxin Policy Coordinators Re: Implementation of Dioxin Listing Regulation (Mar. 29, 1985) ("None of the wastewater resulting from the manufacturing processes in [EPA Hazardous Waste Listings F020, F021, F022, F023, or F026] is subject to this regulation.").

Moreover, to the extent that the IDW did result from the manufacture of hexachlorophene, which is not possible to determine 43 years after the manufacturing process in question was operated, the waste may have resulted from "the production of Hexachlorophene from highly purified 2,4,5-trichlorophenol," which is excluded from the F020 listing. 40 C.F.R. § 261.31(a). EPA has determined that

highly purified 2,4,5-TCP means any 2,4,5-TCP that contains less than 1 ppb of 2,3,7,8-TCDD. This level is much lower than that typically found in 2,4,5-TCP where the 2,4,5-TCP had not been highly purified. ... In addition, based on discussions we had with manufacturers who used to produce hexachlorophene meeting FDA standards with respect to TCDD-contamination and their supplies of 2,4,5-TCP, the 1 ppb level of 2,3,7,8-TCDD was indicated as necessary in order to meet the FDA specification for Hexachlorophene.

Letter from Matthew A. Straus, Chief, Waste Characterization Branch, to Alfred A. Levin, Director, Toxic Substances Control Regulatory Affairs, Velsicol Chemical Corporation (Oct. 21, 1986). The hexachlorophene allegedly manufactured by Metro-Atlantic was used in the production of pharmaceutical products. See Dep. of T. Cleary (Feb. 10, 2003), at 32-36, 43, 53;

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Dep. of Joseph Buonanno, Jr., *Crown-Metro, Inc. v. Emhart Industries, Inc.*, C.A. No.: 6:00-2720-24 (D.S.C.), Apr. 23, 2001, at 21 (stating that Metro Atlantic manufactured hexachlorophene for use in PhisoHex). Therefore, hexachlorophene allegedly manufactured by Metro-Atlantic may have been produced using highly-purified 2,4,5-trichlorophenol, in order that it would be suitable for use in pharmaceutical products. Accordingly, any resulting waste would be excluded from the F020 listing.

Please also note that application of an F020 waste code to the IDW would significantly negatively impact future Site remediation activities by restricting the range of potential cleanup alternatives, limiting management and disposal options for the waste, and increasing the final remedy costs substantially. Please call at your earliest convenience so that we may discuss this request.

Sincerely,



Jerome C. Muys, Jr.

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cc: Laura Ford Brust, Esq.