From:	Fajardo, Juan
To:	Keating, Robert
Cc:	Yeh, Alice
Subject:	FW: The Hartz Mountain Corporation; Lower Passaic River Study Area-Diamond Alkalai Superfund Site; Request for Di Micromis/Di Minimis Consideration
Date:	Tuesday, December 20, 2016 3:50:41 PM
Attachments:	Trillium Expert Report-Hartz-011116.pdf

Robert,

I received the email below and the attached letter re: the Diamond Alkali Superfund Site. Please include the documents in the admin record for the Site.

Thanks,

Juan

From: Attorney - Michael, Curt [mailto:curt.michael@hrplaw.com]
Sent: Monday, December 19, 2016 12:47 PM
To: Fajardo, Juan <Fajardo.Juan@epa.gov>
Subject: The Hartz Mountain Corporation; Lower Passaic River Study Area-Diamond Alkalai Superfund Site; Request for Di Micromis/Di Minimis Consideration

Dear Mr. Fajardo:

I write to follow up on our telephone conversation of this morning. We represent The Hartz Consumer Group, Inc., which is successor to certain liabilities of The Hartz Mountain Corporation, (hereinafter "Hartz"). Hartz is a member of the Lower Passaic River Cooperating Parties Group (CPG). This e-mail and attached report requests – to the extent that Hartz is not already included in the potential diminimis/dimicromis group currently being finalized by EPA -- that USEPA add Hartz to such group.

In support of this request, I attach the Forensic Report prepared by James S. Smith, PhD, CPC, of Trillium, Inc. Dr. Smith reviewed EPA's July 13, 2006 nexus document (Volumes 7 and 8), as well as the voluminous discovery produced by Hartz and other parties in the State v. Occidental Petroleum litigation. From 1970 to 1993, Hartz operated a facility located at 700 Frank E. Rodgers Boulevard (South 4th Street), in Harrison. This facility is located at least ¼ mile from the Passaic River on all sides. Consistent with the findings of the nexus document, Dr. Smith notes that Hartz' operations were limited to manufacturing of aquariums, storage and packaging of pet supplies, and repair of Carpet Magic brand carpet cleaners, along with a research and development laboratory. The only pathway by which materials from the Hartz site could have entered the Passiac River was through the combined sewer system. In turn, the only chemicals that could have done so (and then only during sewer overflow events bypassing the Passaic Valley Sewerage Commission treatment works), were R&D laboratory chemicals used by Hartz in gram amounts or less. These materials would have been diluted by Hartz' typical water use of 50,0000 gallons per day. Dr. Smith concludes that the "intermittent convoluted pathway cannot produce a measurable amount of any substance used by

Hartz in the Passaic River sediments." (See page 7).

Without prejudice to Hartz' contention that it is not a liable party at all, we believe that the Trillium Report, and indeed the nexus document relied upon by EPA to issue its General Notice Letter to Hartz, support a conclusion that (at worst), Hartz is entitled to be included in the dimicromis/diminimis settlement currently being formulated by EPA. We appreciate your consideration in this regard, and remain available to further discuss this matter.

Very truly yours,

Curtis L. Michael
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