JOHN DEERE HARVESTER WORKS

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4 April 1989

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IEPA-DLPC

Re: **1618100015-Rock Island County**
John Deere Harvester Works
ILD025423054 Compliance File;
Deere's Response

Dear Ms. Tin:

In response to the Illinois Environmental Protection Agency's ("IEPA") Compliance Inquiry Letter ("CIL"), dated March 20, 1989, the John Deere Harvester Works ("Deere") provides this response. The CIL identifies three alleged violations pursuant to Illinois' incorporation of the federal Resource Conservation and Recovery Act "RCRA":

1) Section 722.111, applicable to waste characterization (for Wisconsin manifests numbers 88576 (dated 10-08-86) and 88530 (dated 12-11-87).

2) Section 722.134(a), applicable to management and training standards for waste generators.

3) Section 855.104, applicable to waste identification.

Deere shall respond to items 1 and 3 jointly as the same facts, but different time periods, comprise the alleged violation.

EPA Region 5 Records Ctr.
305354

Deere's Response

Items 1 and 3, Waste Characterization and Identification

Generally

Congress' enactment of the Hazardous and Solid Waste Amendments of 1984 ("HSWA") extensively amends numerous RCRA provisions, and adds new provisions. HSWA amended §3004 to add thirteen new subsections ((b)-(n)), which prohibit or restrict certain land disposal requirements. Effective November 8, 1986, §3004(e), certain solvents and dioxins were banned from land disposal,namely, F001, 002, 003, 004, 005, 020, 021, 022, 023. Such ban was subject to several exemptions or postponements.

The November 8, 1986 ban changed certain waste characterization activities. Chief among these was to assess the ban's applicability to wastes containing a mixture of chemicals. Immediately before the ban a mixture was not a RCRA listed waste, unless the mixture contained at 10% of a solvent. After the ban, the "10% rule" became inapplicable to mixtures subject to the land ban. Now solvent mixtures are land banned material unless the banned solvent tested below applicable concentrations (Sec. 40 CFR §268.40; 35 Ill. Adm. Code Subpart C, Part 721) (specifically, 1,1,1, Trichloroethane concentration 0.41 mg/l).

Alleged Violations

The CIL notes the relevant waste manifests as Wisconsin 88576 (dated 10-08-86) and 88580 (dated 12-11-87). Each manifest presents different issues.

First, Wisconsin 88576, was sent for shipment on October 08, 1986, prior to the land bans effective date of November 08, 1986. The land bans characterization/identification requirements simply did not apply to Wisconsin 88576. Accordingly, Deere requests IEPA to withdraw this alleged violation.

Second, Wisconsin 88580, sent for shipment on December 11, 1987 reflects Deere's attempt to comply with the applicable land ban provisions. Deere's internal procedures, and the manifest itself, shows Deere's subjective compliance: (1) Deere-generated wastes are routinely analyzed based on a review of material safety data sheets (MSDS) and (2) Wisconsin 88580 expressly lists "waste mineral spirits and 1,1,1 Trichloroethane" under the US DOT description, as item "C", and refers to the same as "D001." Thus, Deere's alleged violations for Wisconsin 88580 deserve separate treatment.

Regarding waste characterization, Deere conducted appropriate analyses. Consistent with 35 Ill. Adm. Code Section 722.111, Deere reviewed its waste management practices, conducted a product analysis based on MSDS, and accurately presented the material as "waste mineral spirits and 1,1,1 Trichloroethane." Indeed, Deere's accurate description is the basis for the current CIL.

Regarding waste identification, Deere erred by referring to the material as "D001." Under 35 Ill. Adm. Code 855.104, Deere's identification was incorrect given the land ban's applicability to solvent mixtures. Again, Deere's error resulted from an incorrect understanding of the changed land ban regulatory requirements and a misplaced reliance on the pre-November 8, 1986 rules.

Importantly, the CIL has caused Deere to readdress IEPA's rules application to its on-going manufacturing operations. Deere's bona fide mistake appears on the face of its Wisconsin manifest and such reflects Deere's lack of intent in violating applicable IEPA rules. Consistent with the currently applicable rules, Deere has amended its internal waste characterization process to ensure the matching of waste characterization with identification.

Waste Management and Training, Item 2

Generally

Deere has extensive in-plant training plans to ensure the safety and regulatory conformance of its employee population with applicable waste management rules. Deere implemented such a program in 1983, and new employees are regularly trained in the procedures of 35 Ill. Adm. Code 725 Subpart C (Preparedness and Prevention), Subpart D (Contingency Plan and Emergency Procedures), and with 35 Ill. Adm. Code 725.116 (Personal Training). Deere views these regulations as essential to providing for the safety of its employees engaged in hazardous waste management activities.

Under 35 Ill. Adm. Code 725.116(d)(1), the relevant employees are those who work in job titles, "related to hazardous waste management." The Illinois regulations do not expressly define what activities are "related to hazardous waste management." Given that the Occupational Safety and Health Act ("OSH Act") regulates work place safety for hazardous substances used during production, there is a regulatory separation between production activities subject to the OSH Act and hazardous waste management subject to Section 725.116. Such differentiation is key to industry in assessing which statue -- OSH Act or the Illinois RCRA -- applies to production employees.

Alleged Violations

The CIL notes that Section 722.134(a) and 725.116(d) were allegedly violated. Both citations relate to the regulatory overlap issue noted above. Thus, a single Deere production employee who (1) uses commercial chemical products, and (2) moves such product to a waste storage area is, allegedly, subject to Section 725.116(d). For both practical and legal reasons, Deere respectfully disagrees. Practically, Deere maintains a standard operating procedures manual ("SOPM") classifying each factory operation according to tasks performed, handling of regulated wastes, and job descriptions. Such SOPM documents that employees follow IEPA procedures in their waste material handling assignments--and Deere strongly enforces such procedures.

Legally, Section 725.116 does not apply to the employee at issue. Under Section 725.116(a)(2)(applicability) states that affected employees are those who jobs are "relevant to the positions in which they are employed," namely employees involved in "hazardous waste management." The employee here is involved in the use, not management, of a product albeit a hazardous substance; other Deere-trained employees manage the hazardous substances after becoming hazardous wastes.

Importantly, Deere does not suggest that some employees have the dual responsibility of using and managing hazardous substances and wastes, respectively. Further Deere acknowledges that such dual roles are subject to both the OSH Act and the Illinois RCRA. Instead, Deere maintains that the employee in question has a singular role to use hazardous substances and that he is not managing hazardous wastes as contemplated by the CIL.

* * *

Deere acknowledges that compliance with environmental regulation requires vigilance. Such laws constantly change and many "gray" areas develop when applied to real-world plant conditions. Deere hopes that its response satisfies IEPA's questions and Deere is willing to engage in a dialogue with IEPA regarding any matter discussed herein.

Sincerely,

RGK/ls

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