UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

SEP 04 2008

VIA FACSIMILE AND REGULAR MAIL

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Re: Rose Guard
Data submissions pursuant to Unilateral Administrative Orders, Docket Nos:
RCRA-07-2007-0006
RCRA-07-2007-0007
RCRA-07-2007-0011

Dear Bill and Terry:

This letter discusses two outstanding issues with respect to the above Unilateral Administrative Orders (UAOs). First, as we have discussed, you have asked the Environmental Protection Agency, Region 7 (EPA) to clarify the regulatory status of numerous containers of unusable "Rose Guard" pesticide products that are being stored at the warehouse owned by your client, HPI Products, Inc. (HPI), at 417 S. 4th St., St. Joseph, Missouri. Second, this letter discusses the need for your client to provide clear documentation regarding HPI's performance of hazardous waste determinations and other information pursuant to the above-referenced orders.

Your question regarding the waste Rose Guard product has to do with the comment published within with the regulatory language at 40 C.F.R. § 261.33. The regulation provides that discarded commercial chemical products or manufacturing chemical intermediates having generic names listed in the P- and U- waste tables are hazardous wastes. However, the comment says:

> The phrase "commercial chemical product or manufacturing chemical intermediate having the generic name listed in . . . ." refers to a chemical substance which is manufactured or formulated for commercial or

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> manufacturing use which consists of the commercially pure grade of the chemical, any technical grades of the chemical that are produced or marketed, and all formulations in which the chemical is the sole active ingredient. . . .

In previous correspondence with EPA, you have asserted on behalf of your client that the waste or off-specification Rose Guard, which is being stored at the 417 S. 4th Street facility, is not a P- or U- listed waste pursuant to 40 C.F.R. § 261.33 because it contains more than one "active ingredient" as discussed in the above comment to the rule. You have also indicated that there are two different formulations of Rose Guard. One formulation contains a pesticide (Disulfoton) and a fertilizer, and the other formulation contains a pesticide (Disulfoton), an herbicide (Trifluralin), and a fertilizer.

The EPA has considered your position on this matter and we have determined that, regardless of whether the Rose Guard formulation contains just the pesticide ingredient or contains both the pesticide ingredient and the herbicide ingredient, neither formulation would be a P- or U- listed waste. This is because the fertilizer ingredient also performs the function of the product, i.e., performs as an active ingredient.

This determination is limited solely to your inquiry regarding the Rose Guard formulations, and not to any other product. And, more importantly, even if the Rose Guard product is not included within the P- and U- listings, the waste and/or off-specification Rose Guard product may still be classified as a hazardous waste under other criteria set forth in the regulations. This is an especially important point since, as discussed in previous correspondence, it appears based on EPA sampling of the material that at least some of the Rose Guard is off-specification. Therefore, prior to disposing of the Rose Guard, HPI must still perform a hazardous waste determination on the Rose Guard and provide it to EPA, along with the rest of the documentation required pursuant to Paragraph 35 of the UAO issued for the 417 S. 4th St. facility (Docket No. RCRA-2007-07-0006). Please also note that, regardless of EPA's interpretation of the rules, the Missouri Department of Natural Resources (MDNR) may have a different opinion as to whether HPI's Rose Guard product, when disposed or off-specification, is a P- or U-listed hazardous waste. You may therefore wish to contact MDNR and discuss the matter with them. You can reach MDNR at (573) 751-3176.

The second issue deals with the documentation submitted to EPA pursuant to Paragraph 40 of the UAO for the 222 Sylvanie facility and Paragraph 36 of the UAO for the 424 S. 8th St. facility. As EPA has previously discussed with HPI and HPI's contractor, Heritage Environmental Services, the documentation submitted pursuant to those requirements did not contain some of the required information. Specifically, the initial submissions did not clearly demonstrate, with respect to much of the material at those facilities, that HPI had performed hazardous waste determinations on the wastes to be disposed. In addition, the documentation did not clearly track sample information or indicate which wastes were shipped under which manifests. This information was required under all three UAOs.

Kevin Snowden, EPA's compliance officer assigned to this matter, has worked with Kevin Reinhard of Heritage Environmental Services (HPI's contractor) to clarify these items. Mr. Reinhard revised and expanded the format of the tables provided in the initial submissions and on July 30, 2008, Heritage sent EPA five pages of the revised tables for the 222 Sylvanie facility. The EPA appreciates Mr. Reinhard's response to our comments, and we find the revised format much clearer. Mr. Reinhard has indicated that he will continue to revise the documentation previously submitted, both for the 222 Sylvanie facility and for the 424 S. 8th St. facility, using the same format.

Mr. Reinhard also stated that, in reorganizing the documentation, he found some errors in the previously-submitted information that has prompted him to change some of the shipping information, sampling information, and other items submitted with the previous documents. The EPA is therefore requesting that, where errors occurred and are changed in the resubmission, HPI provide EPA with an explanation of the error and that HPI highlight the erroneous documents previously submitted. In addition, if any documents, such as the manifests or land disposal restriction notices, must be changed as a result of any errors, the EPA is requesting that these documents be provided as well when HPI submits the required documentation in the revised format.

Finally, EPA also requests that HPI provide the documentation submitted for the 417 S. 4th St. facility in the same format as the revised pages Mr. Reinhard sent to EPA on July 30, and we are requesting that you provide documentation in the new format for all three facilities within thirty days of your receipt of this letter.

Please contact me at (913) 551-7714 if you have any questions about this letter, or you may have Mr. Reinhard contact Mr. Snowden with any questions about the required documentation. Thank you for your immediate attention to this matter.

Sincerely,

Belinda L. Holmes
Senior Counsel

cc: Kevin Snowden, AWMD/RESP
Eric Albert, Esq., U.S. Department of Justice