UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

EPA Region 5 Records Ctr.
330431

REPLY TO THE ATTENTION OF:
SR-6J

JUN 02 2009
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Former DAP Facility - 220 Janney Road, Dayton, OH
DAP
Mr. Matt Stewart
Manager, Regulatory and Environmental Affairs
2400 Boston Street. Suite 200
Baltimore, MD 21224

Re: Request for Information Pursuant to Section 104(e) of CERCLA for Behr Dayton Thermal Systems VOC Plume in Dayton, Ohio

Dear Mr. Stewart:

The U. S. Environmental Protection Agency (U. S. EPA) is investigating the Behr Dayton Thermal Systems VOC Plume Site ("the Site") in Dayton, Montgomery County, Ohio. This Site encompasses the areal extent of the undefined groundwater contamination plume originating from the Behr Dayton Thermal Products facility (the Behr Dayton facility) located at 1600 Webster Street, Dayton, Montgomery County, Ohio; from the Gem City Chemicals facility at 1200 Webster Street, Dayton, Montgomery County, Ohio; and from the Aramark Uniform Services facility at 1287 Air City Avenue, Dayton, Montgomery County, Ohio. U.S. EPA believes that you may have information that is relevant to the investigation of contamination at the Site. Enclosure 1 is a summary of the history of this Site and U.S. EPA's investigation.

U.S. EPA asks that you provide information and documents relating to the contamination of the Site. Please respond completely and truthfully to this Information Request and its questions in Enclosure 2 within 30 days of your receipt of this letter. Instructions for completion of this response are in Enclosure 3; definitions of terms used in this Information Request and its questions are in Enclosure 4.

You may consider some information that we request as confidential. If you wish to assert a privilege of business confidentiality, you must respond to the question and advise U. S. EPA that you request that the Agency treat the response as confidential business information. Instructions to assert a claim of business confidentiality are in Enclosure 5.

The Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601-9679 (2007), commonly referred to as CERCLA or Superfund, gives U.S. EPA the authority to: 1) assess contaminated sites, 2) determine the threats to human health and the environment posed by sites, and 3) clean up those sites.

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Under Section 104(e)(2) of CERCLA, 42 U.S.C. § 9604(e)(2), U.S. EPA has authority to gather information and to require persons to furnish information or documents relating to:

A. The identification, nature, and quantity of materials which have been or are generated, treated, stored or disposed of at a vessel or facility or transported to a vessel or facility;

B. The nature or extent of a release or threatened release of a hazardous substance or pollutant or contaminant at/or from a vessel or facility;

C. The ability to pay the costs of the clean up.

Enclosure 6 is a summary of this legal authority. Compliance with this Information Request is mandatory. Failure to respond fully and truthfully to each question within this Information Request and within the prescribed time frame can result in an enforcement action by U.S. EPA pursuant to Section 104(e)(5) of CERCLA, as amended . Failure to respond and/or failure to justify the non-response can result in similar penalties under this Section. Further, Section 104(e)(5) as adjusted by the Federal Civil Penalities Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note authorizes the United States to seek penalties from a Federal Court of up to thirty-seven thousand five hundred dollars ($37,500) for each day of continued noncompliance. U.S. EPA considers noncompliance to be not only failure to respond to the Information Request, but also failure to respond completely and truthfully to each question in the Information Request.

Among other things, U.S. EP A is trying to ascertain whether releases of hazardous substances, pollutants or contaminants from your facility located at 220 Janney Road, Dayton, Montgomery County, Ohio, could be contributing to the contamination at the Site. Accordingly, for the purposes of this information request, the definition of Site includes your facility and releases of hazardous substances, pollutants or contaminants from your facility.

The provision of false, fictitious or fraudulent statements or misrepresentations may subject you or your firm to criminal penalties of up to twenty five thousand dollars ($25,000) or up to five (5) years imprisonment, or both, under 18 U.S.C. § 1001.

U.S. EPA has the authority to use the information requested in an administrative, civil, or criminal action.

This information request is not subject to the approval requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. §§ 3501-3549 (2008).

Return your response to U.S. EPA within 30 days of your receipt of this Information Request. Mail your response to:

Denise Ratliff, Enforcement Specialist
U.S. Environmental Protection Agency
Remedial Enforcement Support Section
77 W. Jackson SR-6J
Chicago, IL 60604

If you have questions about a legal matter, please contact Maria Gonzalez, Associate Regional Counsel, at (312) 886-6630. Address technical questions to Stacey Coburn, Remedial Project Manager, at (312) 886-2263. Address all other questions to Denise Ratliff at (312) 886-9481.

We appreciate your effort to respond fully and promptly to this information request.

Sincerely,

Thomas C. Marks, Chief
Remedial Enforcement Services Section

Enclosure:

1. Site History Elements
2. Questions
3. Instructions
4. Definitions
5. Confidential Business Information
6. Description of Legal Authority
7. Small Business Resources Fact Sheet

Enclosure 1

SITE HISTORY ELEMENTS

This Site is located in the vicinity of 1600 Webster Street in Dayton, Montgomery County, Ohio and nearby areas where hazardous substances, pollutants or contaminants will have, or may have come to be located from current or former operations at 1600 Webster Street, Dayton, Montgomery County, Ohio; 1200 Webster Street, Dayton, Montgomery County, Ohio; and 1287 Air City Avenue, Dayton, Montgomery County, Ohio. The area near the Site is commercially and residentially developed and includes homes, schools, and commercial buildings. There are schools nearby, including Van Cleve Elementary School and Kiser Elementary School.

On September 28, 2006, groundwater sampling results at the Site showed trichloroethene (TCE) concentrations as high as 3,900 parts per billion (ppb). The Maximum Contaminant Level (MCL) for TCE is 5 ppb. On October 16, 2006, Ohio EPA installed a total of seven soil gas probes at the Site to evaluate potential risk posed by vapor intrusion from a VOC groundwater plume. These samples yielded concentrations as high as 16,000 ppb. Based on Agency for Toxic Substances and Disease Registry (ATSDR) and Ohio Department of Health (ODH) recommendations, U. S. EPA conducted indoor air sampling at eight locations in November 2006 and obtained indoor air concentrations of TCE as high as 260 ppb. The A TSDR residential TCE indoor air screening level for TCE is 0.4 parts per billion by volume (ppbv).

A removal action began in December 2006. This action included additional sampling to identify homes with potential vapor intrusion of TCE, sampling indoor air in the homes to measure TCE concentrations, and installation of vapor abatement systems in homes where monitoring indicated such action was appropriate. This removal action is ongoing.

This Site has been listed on the National Priorities List (NPL). Special Notice Letters were sent to four Potentially Responsible Parties (PRPs) in November 2007. Negotiations toward an agreement for PRPs to conduct a Remedial Investigation / Feasibility Study were concluded without settlement.

This information request is being sent to collect information about the Site to prepare to conduct a Remedial Investigation / Feasibility Study.

Enclosure 2

QUESTIONS

1. Identify all persons consulted in the preparation of the answers to these Information Requests.

2. Identify all documents consulted, examined, or referred to in the preparation of the answers to these Requests, and provide copies of all such documents.

3. If you have reason to believe that there may be persons able to provide a more detailed or complete response to any Information Request or who may be able to provide additional responsive documents, identify such persons.

4. Provide the EPA Identification Numbers of the Respondent.

5. Identify the acts or omissions of any persons, other than your employees, contractors, or agents, which may have caused the release or threat of release of hazardous substances, pollutants, or contaminants, and damages resulting there from.

6. Identify all persons having knowledge or information about the generation, transportation, treatment, storage, disposal, or other handling of hazardous substances by you, your contractors, or by prior owners and/or operators.

7. Did you ever use, purchase, store, treat, dispose, transport or otherwise handle any hazardous substances or materials? If the answer to the preceding question is anything but an unqualified "no", identify:

a) The chemical composition, characteristics, physical state (e.g., solid, liquid) of each hazardous substance;

b) Who supplied you with such hazardous substances;

c) How such hazardous substances were used, purchased, generated, stored, treated, transported, disposed, or otherwise handled by you;

d) When such hazardous substances were used, purchased, generated, stored, treated, transported, disposed, or otherwise handled by you;

e) Where such hazardous substances were used, purchased, generated, stored, treated, transported, disposed, or otherwise handled by you; and

f) The quantity of such hazardous substances used, purchased, generated, stored, treated, transported, disposed or otherwise handled by you.

8. Identify all liability insurance policies held by Respondent from commencement of operations to the present that might address operation or ownership of the Site. In identifying such policies, state the name and address of each insurer and of the insured, the amount of coverage under each policy, the commencement and expiration dates for each policy, whether or not the policy

contains a "pollution exclusion" clause, and whether the policy covers or excludes sudden, non-sudden, or both types of accidents. In lieu of providing this information, you may submit complete copies of all relevant insurance policies.

9. Provide copies of all income tax returns sent to the Federal Internal Revenue Service in the last five years.

10. If Respondent is a Corporation, respond to the following requests:

a) Provide a copy of the Articles of Incorporation and By-Laws of the Respondent.

b) Provide Respondent's audited financial statements for the past five fiscal years, including, but not limited to those filed with the Internal Revenue Service. If audited financial statements are not available, please state the reasons that they are not available, and provide the financial statements that management would review at the conclusion of each fiscal year.

c) Identify all of Respondent's current assets and liabilities and the persons who currently own or are responsible for such assets and liabilities.

d) Provide a list of any investments that the Corporation may own. For example, any ownership in stock should list Corporate name, number of shares owned, and price at a current specific date. Ownership of real estate should itemize property location, type of property (land, office building, factory, etc.), size of property, purchase price, and current market valuation. These schedules should agree with financial statement presentations.

11. Identify all persons, including yourself, who may have arranged for disposal or treatment or arranged for transportation for disposal or treatment of waste materials, including hazardous substances, at the Site or to the Site. In addition, identify the following:

a) The persons with whom you or such other persons made such arrangements;

b) Every date on which such arrangements took place;

c) For each transaction, the nature of the waste material or hazardous substance, including the chemical content, characteristics, physical state (e.g., solid, liquid) and the process for which the substance was used or the process which generated the substance;

d) The quantity of the waste materials or hazardous substances involved (weight or volume) in each transaction and the total quantity for all transactions;

e) Where the person identified in a) above intended to have such hazardous substances or waste materials transported and all evidence of this intent;

f) What was actually done to the waste materials or hazardous substances once they were brought to the Site;

g) The final disposition of each of the waste materials or hazardous substances involved in such transactions;

h) The measures taken by you to determine the actual methods, means, and site of treatment or disposal of the waste material and hazardous substances involved in each transaction;

i) All documents containing information responsive to a)-h) above, or in lieu of identification of all relevant documents, provide copies of all such documents;

j) All persons with knowledge, information, or documents responsive to a)-h) above.

12. Describe the nature of your activities or business at the Site, with respect to purchasing, receiving, processing, storing, treating, disposing, or otherwise handling hazardous substances or materials at the Site.

13. State the dates during which Respondent owned, operated, or leased the Site, and provide copies of all documents evidencing or relating to such ownership, operation, or lease arrangement (e.g., deeds, leases, etc.).

14. Provide information about the Site, including but not limited to the following:

a) Property boundaries, including a written legal description;

b) Location of underground utilities (telephone, electrical, sewer, water main, etc.);

c) Surface structures (e.g., buildings, tanks, etc.);

d) Ground water wells, including drilling logs;

e) Storm water drainage system, and sanitary sewer system, past and present, including septic tank(s), subsurface disposal field(s), and other underground structures; and where, when and how such systems are emptied;

f) Any and all additions, demolitions, or changes of any kind on, under, or about the Site, to its physical structures, or to the property itself (e.g., excavation work); and any planned additions, demolitions, or other changes to the Site; and

g) All maps and drawings of the Site in your possession.

15. Identify all past and present solid waste units (e.g., waste piles, landfills, surface impoundments, waste lagoons, waste ponds or pits, tanks, container storage areas, etc.) on the property. For each such solid waste unit identified, provide the following information:

a) A map showing the unit's boundaries and the location of all known solid waste units whether currently in operation or not. This map should be drawn to scale, if possible, and clearly indicate the location and size of all past and present units;

b) The type of unit (e.g., storage area, landfill, waste pile, etc.), and the dimensions of the unit;

c) The dates that the unit was in use;

d) The purpose and past usage (e.g., storage, spill containment, etc.);

e) The quantity and types of materials (hazardous substances and any other chemicals) located in each unit; and

f) The construction (materials, composition), volume, size, dates of cleaning, and condition of each unit.

g) If a unit is no longer in use, how was such unit closed and what actions were taken to prevent or address potential or actual releases of waste constituents from the unit.

16. Identify the prior owners of the Site. For each prior owner, further identify:

a) The dates of ownership;

b) All evidence showing that they controlled access to the Site; and

c) All evidence that a hazardous substance, pollutant, or contaminant, was released or threatened to be released at the Site during the period that they owned the Site.

17. Identify the prior operators, including lessors, of the Site. For each such operator, further identify:

a) The dates of operation;

b) The nature of prior operations at the Site;

c) All evidence that they controlled access to the Site; and

d) All evidence that a hazardous substance, pollutant, or contaminant was released or threatened to be released at or from the Site and/or its solid waste units during the period that they were operating at the Site.

18. Provide copies of all local, state, and federal environmental permits ever granted for the Facility or any part thereof (e.g., RCRA permits, NPDES permits, etc.).

19. Did the Facility ever have "interim status" under RCRA? If so, and the Facility does not currently have interim status, describe the circumstances under which the Facility lost interim status.

20. Did the Facility ever file a notification of hazardous waste activity under RCRA? If so, provide a copy of such notification.

21. Provide all reports, information, or data related to soil, water (ground and surface), or air quality and geology/hydrogeology at and about the Site. Provide copies of all documents containing such data and information, including both past and current aerial photographs as well as documents containing analysis or interpretation of such data, including but not limited to the following:

a) Any analytical data packages for groundwater samples collected from groundwater wells, not included in the items above, and all well logs and field notes for these wells.

b) Any soil sampling results obtained at the Site or nearby areas, including analytical data packages and field logs and notes taken during sampling.

c) Complete data sets for indoor air, sub-slab, and ambient sampling done as part of the removal action, or any other investigation or remediation, including dates and locations of sampling and analytical data packages.

d) Results of any ground water or soil samples taken to assess either the condition of the property being remediated or the operation of these remedial systems, including analytical data packages and field notes.

22. Are you or your consultants planning to perform any investigations or remediation of the soil, water (ground or surface), geology, hydrology, or air quality on or about the Site, or have such activities already begun? If so, identify:

a) The nature and scope of these investigations or remediations;

b) The contractors or other persons that did / will undertake these investigations or remediations;

c) The purpose of the investigations or remediations;

d) Dates when such investigations or remediations did / will take place and were / will be completed; and

e) Where on or about the Site such investigations or remediations did / will take place.

23. Identify all leaks, spills, or releases into the environment of any hazardous substances, pollutants, or contaminants that have occurred at or from the Site. In addition, identify:

a) When such releases occurred;

b) How the releases occurred;

c) The amount of each hazardous substance, pollutant, or contaminant so released;

d) Where such releases occurred;

e) Any and all activities undertaken in response to each such release or threatened release, including the notification of any agencies or governmental units about the release.

f) Any and all investigations of the circumstances, nature, extent or location of each release or threatened release including the results of any soil, water (ground and surface), or air testing undertaken; and

g) All persons with information relating to these releases.

24. Was there ever a spill, leak, release or discharge of hazardous materials into any subsurface disposal system or floor drain inside or under a building at the Site? If the answer to the preceding question is anything but an unqualified "no," identify:

a) Where the disposal system or floor drains were located;

b) When the disposal system or floor drains were installed;

c) Whether the disposal system or floor drains were connected to pipes;

d) Where such pipes were located and emptied;

e) When such pipes were installed;

t) How and when such pipes were replaced, or repaired; and

g) Whether such pipes ever leaked or in any way released hazardous materials into the environment.

25. Did any leaks, spills, or releases of hazardous materials occur on the Site when such materials were being:

a) Delivered by a vendor;

b) Stored (e.g., in any tanks, drums, or barrels);

c) Transported or transferred (e.g., to or from any tanks, drums, barrels, or recovery units); or

d) Treated.

26. Has soil ever been excavated or removed from the Site? Unless the answer to the preceding question is anything besides an unequivocal "no," identify:

a) Amount of soil excavated;

b) Location of excavation:

c) Manner and place of disposal and/or storage of excavated soil;

d) Dates of soil excavation;

e) Identity of persons who excavated or removed the soil;

t) Reason for soil excavation;

g) Whether the excavation or removed soil contained hazardous materials and why the soil contained such materials;

h) All analyses or tests and results of analyses of the soil that was removed from the Site;

i) All persons, including contractors, with information about (a) through (h) ofthis request.

27. Have you conducted any treatment or removal of contaminated water (ground or surface) from the Site? If the answer to the preceding question is anything but an unqualified "no," identify:

a) The amount of water treated or removed;

b) The type of water treated or removed;

c) The location of the treatment or removal and the destination;

d) The manner of treatment or removal;

e) The dates of treatment or removal;

f) Identify the persons who treated or removed the water;

g) The reason for treatment or removal;

h) All analyses or tests and results of analyses of contaminated water that was treated or removed from the Site;

i) All persons, including contractors, with information about a) through h) of this request.

28. Please provide a copy of any Phase I environmental assessment(s) for the facility.

Enclosure 3

INSTRUCTIONS

1. Answer each of the questions in this Information Request separately.

2. Precede each answer with the number of the question to which it corresponds.

3. In answering each question, identify all persons and contributing sources of information.

4. Although the U.S. EPA seeks your cooperation in this investigation, CERCLA requires that you respond fully and truthfully to this Information Request. False, fictitious, or fraudulent statements or misrepresentations may subject you to civil or criminal penalties under federal law. Section 104 of CERCLA, 42 U.S.C. § 9604, authorizes the U.S. EPA to pursue penalties for failure to comply with that Section, or for failure to respond adequately to requests for submissions of required information.

5. In answering each question, identify all persons and contributing sources of information.

6. You must supplement your response to U.S. EPA if, after submission of your response, additional information should later become known or available. Should you find at any time after the submission of your response that any portion of the submitted information is false or misrepresents the truth, you must notify U.S. EP A as soon as possible.

7. For any document submitted in response to a question, indicate the number of the question to which it responds.

8. You must respond to each question based upon all information and documents in your possession or control, or in the possession or control of your current or former employees, agents, contractors, or attorneys. Information must be furnished regardless of whether or not it is based on your personal knowledge, and regardless of source.

9. Your response must be accompanied by the following statement, or one that is substantially equivalent:

   I certify under a penalty of law that this document and all Enclosures were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted.

   Based upon my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are

significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

The individual who prepared the response or the responsible corporate official acting on behalf of the corporation must sign and date the statement, affidavit, or certification. Include the corporate official's full title.

10. If any of the requested documents have been transferred to others or have otherwise been disposed of, identify each document, the person to whom it was transferred, describe the circumstances surrounding the transfer or disposition, and state the date of the transfer or disposition.

11. All requested information must be provided notwithstanding its possible characterization as confidential information or trade secrets. If desired, you may assert a business confidentiality claim by means of the procedures described in Enclosure 5.

Enclosure 4

DEFINITIONS

1. As used in this letter, words in the singular also include the plural and words in the masculine gender also include the feminine and vice versa.

2. The term *person* as used herein includes, in the plural as well as the singular, any natural person, firm, contractor, unincorporated association, partnership, corporation, trust or governmental entity, unless the context indicates otherwise.

3. *The Site* referenced in these documents shall mean the Behr Dayton Thermal Systems VOC Plume Site located in Dayton, Ohio, your facility, and releases of hazardous substances, pollutants or contaminants from your facility.

4. The term *Respondent* as used herein includes DAP or any of its predecessors in interest, subsidiaries, divisions, or associated entities.

5. The term *you* or *DAP* shall mean the addressee of this Information Request, the addressee's officers, managers, employees, contractors, trustees, successors, assigns, and agents, and any predecessor or successor corporations or companies.

6. The term *hazardous substance* shall have the same definition as that contained in Section 101(14) of CERCLA, including any mixtures of such hazardous substances with any other substances, including petroleum products.

7. The term, *pollutant* or *contaminant*, shall have the same definition as that contained in Section 101(33) of CERCLA, and includes any mixtures of such pollutants and contaminants with any other substances.

8. The term *release* shall have the same definition as that contained in Section 101(22) of CERCLA, and means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance, pollutant, or contaminant.

9. The term *identify* means, with respect to a natural person, to set forth the person's full name, present or last known business address and business telephone number, present or last known home address and home telephone number, and present or last known job title, position or business.

10. The term *identify* means, with respect to a corporation, partnership, businesses trust or other association or business entity (including a sole proprietorship), to set forth its full

name, address, legal form (e.g., corporation, partnership, etc.), organization, if any, and a brief description of its business.

11. The term *identify* means, with respect to a document, to provide its customary business description, its date, its number, if any (invoice or purchase order number), the identity of the author, addressor, addressee and/or recipient, and the substance or the subject matter.

12. All terms not defined herein will have their ordinary meaning, unless such terms are defined in CERCLA, RCRA, 40 C.F.R. Part 300, or 40 C.F.R. Parts 260-280, in which case, the statutory or regulatory definitions will apply.

Enclosure 5

CONFIDENTIAL BUSINESS INFORMATION

You may consider some of the information confidential that the U.S. Environmental Protection Agency (U .S. EPA or Agency) is requesting. You cannot withhold information or records upon that basis. The Regulations at 40 C.F.R. Part 2, subpart B require that the U.S. EP A affords you the opportunity to substantiate your claim of confidentiality before the Agency makes a final determination on the confidentiality of the information.

You may assert a business confidentiality claim covering part or all of the information requested, in the manner described by 40 C.F.R. § 2.203(b). Information covered by such a claim will be disclosed by the U.S. EP A only to the extent and only by means of the procedures set forth in 40 C.F.R. Part 2, Subpart B. (See 41 Fed. Reg. 36.902 (September 1, 1976); 50 Fed. Reg. 51.654 (December 18, 1985).) If no such claim accompanies the information when the U.S. EPA receives it, the information may be made available to the public by the Agency without further notice to you. Please read carefully these cited regulations, together with the standards set forth in Section 104(e)(7) of Comprehensive Environmental Response Compensation Liability Act (CERCLA), because, as stated in Section 104(e)(7) (ii), certain categories of information are not properly the subject of a claim of confidential business information.

If you wish the U.S. EPA to treat the information or record as "confidential", you must advise the U.S. EPA of that fact by following the procedures described below, including the requirement for supporting your claim of confidentiality. To assert a claim of confidentiality, you must specify which portions of the information or documents you consider confidential. Please identify the information or document that you consider confidential by page, paragraph, and sentence. You must make a separate assertion of confidentiality for each response and each document that you consider confidential. Submit the portion of the response that you consider confidential in a separate, sealed envelope. Mark the envelope "confidential," and identify the number of the question to which it is the response.

For each assertion of confidentiality, identify:

1. The period of time for which you request that the Agency consider the information confidential, e.g., until a specific date or until the occurrence of a specific event;

2. The measures that you have taken to guard against disclosure of the information to others;

3. The extent to which the information has already been disclosed to others and the precautions that you have taken to ensure that no further disclosure occurs;

4. Whether the U.S. EP A or other federal agency has made a pertinent determination on the confidentiality of the information or document. If an agency has made such a determination, enclose a copy of that determination;

5. Whether disclosure of the information or document would be likely to result in substantial harmful effects to your competitive position. If you believe such harm would result from any disclosure, explain the nature of the harmful effects, why the harm should be viewed as substantial, and the causal relationship between disclosure and the harmful effect. Include a description of how a competitor would use the information;

6. Whether you assert that the information is voluntarily submitted as defined by 40 C.F.R. § 2.201(i). If you make this assertion, explain how the disclosure would tend to lessen the ability of the U. S. EPA to obtain similar information in the future;

7. Any other information that you deem relevant to a determination of confidentiality.

Please note that pursuant to 40 C.F .R. § 2.208(e), the burden of substantiating confidentiality rests with you. The U.S. EPA will give little or no weight to conclusory allegations. If you believe that facts and documents necessary to substantiate confidentiality are themselves confidential, please identify them as such so that the U.S. EP A may maintain their confidentiality pursuant to 40 C.F.R. § 2.205(c). If you do not identify this information and documents as "confidential," your comments will be available to the public without further notice to you.

Enclosure 6

DESCRIPTION OF LEGAL AUTHORITY

The Federal Superfund law (the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, *et seq.* (commonly referred to as CERCLA or Superfund)) gives U.S. EPA the authority to, among other things: 1) assess contaminated sites, 2) determine the threats to human health and the environment posed by each site, and 3) clean up those sites.

Under Section 104(e)(2) of CERCLA, 42 U.S.C. § 9604 (e)(2), U.S. EPA has broad information gathering authority which allows U.S. EP A to require persons to furnish information or documents relating to:

A. The identification, nature, and quantity of materials which have been or are generated, treated, stored, or disposed of at a vessel or facility, or transported to a vessel or facility;

B. The nature or extent of a release or threatened release of a hazardous substance or pollutant or contaminant at/or from a vessel or facility;

C. The ability to pay the costs of the clean-up.

Compliance with this Information Request is mandatory. Failure to respond fully and truthfully to each question within this Information Request and within the prescribed time frame can result in an enforcement action by U.S. EPA pursuant to Section 104(e)(5) of CERCLA. This Section also authorizes an enforcement action with similar penalties if the recipient of the Request does not respond and does not justify the failure to respond. Other statutory provisions (18 U.S.C. § 1001) authorize separate penalties if the responses contain false, fictitious or fraudulent statements. The U.S. EP A has the authority to use the information requested in this Information Request in an administrative, civil, or criminal action.

Enclosure 7