UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

82091

OCT 16 2002

URGENT LEGAL MATTER PROMPT REPLY NECESSARY

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Martin J. Usdan
President
Heller Usdan, Inc.
7 Caesar Place
Moonachie, New Jersey 07074-1702

Re: Request for Information Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq., re: the Berry's Creek Study Area, Bergen County, New Jersey.

Dear Mr. Usdan:

The United States Environmental Protection Agency ("EPA") is charged with responding to the release or threat of release of hazardous substances, pollutants, and contaminants into the environment and with enforcement responsibilities under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. Sections 9601-9675.

EPA has documented the release and threat of release of hazardous substances into the environment at the Berry's Creek Study Area, Bergen County, New Jersey (the "Study Area"). In response to the release and threat of release of hazardous substances at the Study Area, EPA has spent public funds and anticipates spending additional public funds pursuant to CERCLA.

Under CERCLA and other laws, responsible parties may be held liable for monies expended by the federal government in taking response actions at and around sites where hazardous substances have been released, including investigative, planning, removal, remedial and enforcement actions. Responsible parties also may be subject to orders requiring them to take response actions themselves. Responsible parties under CERCLA include, among others, the current and past owners or operators of a facility from which there has been a release or threatened release of hazardous substances, persons that arranged for the treatment or disposal of hazardous substances which were sent to such a facility, and persons that transported hazardous substances to such a facility.

The Study Area is the water body known as Berry's Creek, including the Berry's Creek Canal

and the natural course of Berry's Creek; and all water bodies tributary to Berry's Creek, from its headwaters to the Hackensack River; and wetlands that are hydrologically connected to Berry's Creek and/or its tributaries. Additionally, the Study Area includes upland properties in the Berry's Creek watershed. Numerous facilities located near the Study Area have or may have contributed contamination to the Study Area. These include three National Priorities List (NPL) sites, as well as other CERCLA and non-CERCLA hazardous waste sites, industrial sites and properties. These sites lie within portions of the Boroughs of Carlstadt, Wood-Ridge, Rutherford, East Rutherford, Moonachie, Hasbrouck Heights, Little Ferry, Lyndhurst, and Teterboro. Available information indicates that contaminants released from these sites are intermixed in the surface water, groundwater, sediments and wetland soils of the Study Area.

EPA and the New Jersey Department of Environmental Protection (NJDEP) are addressing the myriad contamination problems associated with the many potential upland contamination sources to Berry's Creek; many of these upland sources have been addressed, though several still remain.

EPA has determined that an RI/FS under CERCLA must be conducted to complete the investigatory work at the Study Area and to evaluate remedial action alternatives. The RI/FS will include, but is not limited to, identifying Study Area characteristics; defining the nature and extent of sediment, soil, surface water and groundwater contamination, as well as the risks posed by contamination in the Study Area; determining the impacts of continuing contaminant sources to the Study Area; and evaluating different cleanup options for the Study Area. EPA is issuing this Request For Information to clarify the status of numerous parties in the Berry's Creek watershed as potentially responsible parties under CERCLA with regard to the Study Area.

Please be advised that EPA has been asked by one of the stakeholders with an interest in the Berry's Creek watershed to consider suggestions for additional approaches to protecting the environment and facilitating the use of environmental resources in that watershed beyond those traditionally used in connection with the Superfund program. The Superfund program is expected to be part of any approach to remediation and restoration of Berry's Creek; however, EPA is of course willing to consider any suggestions from private parties, state and/or local governments concerning additional alternatives. The information gathered pursuant to this information request will (except to the extent it may include confidential business information or Privacy Act information) be available to any interested party for review.

INFORMATION REQUEST

Under Section 104(e) of CERCLA, 42 U.S.C. §104(e), EPA has broad information gathering authority which allows EPA to require persons to provide information or documents relating to the materials generated, treated, stored or disposed of at or transported to a facility, the nature or extent of a release or threatened release of a hazardous substance, pollutant or contaminant at or from a facility, and the ability of a person to pay for or perform a cleanup.

While EPA seeks your cooperation, your compliance with the Request for Information is

required by law. When you have prepared your response to the enclosed Request for Information, please sign and have notarized the enclosed "Certification of Answers to Request for Information," and return that Certification to EPA along with your response **within 30 calendar days of your receipt of this letter.** Please note that false, fictitious or fraudulent statements or representations may subject you to civil or criminal penalties under federal law. In addition, Section 104 of CERCLA, 42 U.S.C. Section 9604, authorizes EPA to pursue penalties for failure to comply with requests for information.

Some of the information EPA is requesting may be considered by you to be confidential business information. Please be aware that you may not withhold the information on that basis. If you wish EPA to treat all or part of the information confidentially, you must advise EPA of that fact by following the procedures described in the Instructions included in the enclosed Request for Information, including the requirement of supporting your claim of confidentiality.

If you have information about other parties who may have information which may assist EPA in its investigation of the Study Area or may be responsible for the contamination at the Study Area, that information should be submitted to EPA within the time frame noted above.

Please note that if after submitting your response you obtain additional or different information concerning the matters addressed by our Request for Information, it is necessary that you promptly notify EPA.

This Request for Information is not subject to the approval requirements of the Paperwork Reduction Act of 1980, 44 U.S.C. Sections 3501-3520.

Your response to this Request for Information should be mailed to:

Seth Ausubel
Remedial Project Manager
United States Environmental Protection Agency
Region II
Emergency and Remedial Response Division
290 Broadway, 19th Floor
New York, NY 10007-1866

with a copy to:

Clay Monroe
Assistant Regional Counsel
Office of Regional Counsel
290 Broadway, 17th Floor
New York, NY 10007-1866

Due to the seriousness of these matters, EPA urges that immediate attention and prompt responses be given to this letter.

If you have any questions regarding the Request for Information, or would like to discuss this matter with EPA, please call Seth Ausubel at (212) 637-4976, or have your attorney call Clay Monroe, Assistant Regional Counsel, at (212) 637-3142.

Sincerely yours,

Janet Conetta

Janet Conetta, Strategic Integration Manager
Emergency and Remedial Response Division

Enclosure

cc: Gwen Zervas, NJDEP

ENCLOSURE

Request for Information

in the Matter of the Berry's Creek Study Area, Bergen County, New Jersey

Heller Usdan, Inc.

INSTRUCTIONS FOR RESPONDING TO REQUEST FOR INFORMATION

A. Directions

1. A complete and separate response should be given for each question.

2. Identify each answer with the number of the question to which it is addressed.

3. For each document produced in response to this Request for Information, indicate on the document, or in some other reasonable manner, the question to which it applies.

4. Provide responses to the best of the Respondent's ability, even if the information sought was never put in writing or if the written documents are no longer available.

5. In preparing your response to each question, consult with all present and former employees and agents of your company whom you have reason to believe may be familiar with the matter to which the question pertains.

6. In answering each question, identify each individual and any other source of information (including documents) that was consulted in the preparation of the response to the question.

7. If you are unable to give a detailed and complete answer, or to provide any of the information or documents requested, indicate the reason for your inability to do so.

8. If you have reason to believe that an individual other than one employed by your company may be able to provide additional details or documentation in response to any question, state that person's name, last known address, phone number and the reasons for your belief.

9. If a document is requested but not available, state the reason for its unavailability. To the best of your ability, identify the document by author, date, subject matter, number of pages, and all recipients of the document with their addresses.

10. If anything is omitted from a document produced in response to this Request for Information, state the reason for, and the subject matter of, the omission.

11. If you cannot provide a precise answer to a question, please approximate but, in any such instance, state the reason for your inability to be more specific.

12. Whenever this Request for Information requests the identification of a natural person, or other entity, the person or entity's full name and present or last known address also should be provided.

13. If additional information or documents responsive to this Request become known or available to you after you respond to this Request, EPA hereby requests pursuant to CERCLA Section 104(e) that you supplement your response to EPA.

14. Confidential Information. The information requested herein must be provided even though you may contend that it includes confidential business information or trade secrets. You may assert a confidentiality claim covering part or all of the information requested, pursuant to Sections 104(e)(7)(E) and (F) of CERCLA, 42 U.S.C. Sections 9604(e)(7)(E) and (F), and 40 C.F.R.

Section 2.203(b).

15. If you make a claim of confidentiality for any of the information you submit to EPA, you must prove that claim. For each document or response you claim to be confidential, you must separately address the following points:

a. the portions of the information which are alleged to be entitled to confidential treatment;

b. the period of time for which confidential treatment is desired (e.g., until a certain date, until the occurrence of a specific event, or permanently);

c. measures taken by you to guard against the undesired disclosure of the information to others;

d. the extent to which the information has been disclosed to others, and the precautions taken in connection therewith;

e. pertinent confidentiality determinations, if any, by EPA or other federal agencies, and a copy of any such determinations or reference to them, if available; and

f. whether you assert that disclosure of the information would likely result in substantial harmful effects on your business' competitive position, and if so, what those harmful effects would be, why they should be viewed as substantial, and an explanation of the causal relationship between disclosure and such harmful effects.

To make a confidentiality claim, please stamp, or type, "confidential" on all confidential responses and any related confidential documents. Confidential portions of otherwise non-confidential documents should be clearly identified. Please submit your response so that all non-confidential information, including any redacted versions of documents, are in one envelope and all materials for which you desire confidential treatment are in another envelope.

All confidentiality claims are subject to EPA verification. It is important that you satisfactorily show that you have taken reasonable measures to protect the confidentiality of the information and that you intend to continue to do so, and that it is not and has not been obtainable by legitimate means without your consent. Information covered by such claim will be disclosed by EPA only to the extent permitted by CERCLA Section 104(e) and 40 C.F.R. Part 2, Subpart B. If no such claim accompanies the information when it is received by EPA, then it may be made available to the public by EPA without further notice to you.

B. Definitions

1. As used herein, the term "Heller Usdan Site", or "Site", shall be the property or properties, located at 7 Caesar Place, Moonachie, Bergen County, New Jersey, and comprised, in whole or in part, of Block 6402, Lot 3, Borough of Moonachie.

2. As used herein, the term "Berry's Creek Study Area" shall be identified as the water body known as Berry's Creek, including the Berry's Creek Canal and the natural course of Berry's Creek; and all water bodies tributary to Berry's Creek, from its headwaters to the Hackensack River; and wetlands that are hydrologically connected to Berry's Creek and/or its tributaries. Additionally,

the Study Area includes upland properties in the Berry's Creek watershed. The Study Area is located in Bergen County, New Jersey, including portions of the Boroughs of Carlstadt, Wood-Ridge, Rutherford, East Rutherford, Moonachie, Hasbrouck Heights, Little Ferry, Lyndhurst, and Teterboro.

3. As used herein, the terms "the Company" and "your Company" refer not only to your Company as it is currently named and constituted, but also to all predecessors in interest of your Company and all subsidiaries, divisions, affiliates and branches of your Company or of its predecessors.

4. The term "waste" or "wastes" shall mean and include trash, garbage, refuse, by-products, solid waste, hazardous waste, hazardous substances, and pollutants or contaminants, whether solid, liquid, or sludge, including but and not limited to, containers for temporary or permanent holding of such wastes.

5. As used herein, the term "hazardous substance" shall have the meaning set forth in Section 101(14) of CERCLA, 42 U.S.C. Section 9601(14). The substances which have been designated as hazardous substances pursuant to Section 102(a) of CERCLA (which, in turn, comprise a portion of the substances that fall within the definition of "hazardous substance" under Section 101(14) of CERCLA) are set forth at 40 C.F.R. Part 302.

6. As used herein, the terms "hazardous waste," "disposal" and "storage" shall have the meanings set forth in Sections 1004(3), (5) and (33) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. Sections 6903(3), (5) and (33), respectively.

7. As used herein, the term "industrial waste" shall mean any solid, liquid or sludge or any mixture thereof which possesses <u>any</u> of the following characteristics:

   a. it contains one or more "hazardous substances" (at any concentration) as defined in 42 U.S.C. Section 9601(14);

   b. it is a "hazardous waste" as defined in 42 U.S.C. Section 6903(5);

   c. it has a pH less than 2.0 or greater than 12.5;

   d. it reacts violently when mixed with water;

   e. it generates toxic gases when mixed with water;

   f. it easily ignites or explodes;

   g. it is an industrial waste product;

   h. it is an industrial treatment plant sludge or supernatant;

   i. it is an industrial byproduct having some market value;

   j. it is coolant water or blowdown waste from a coolant system;

   k. it is a spent product which could be reused after rehabilitation; or

l. it is any material which you have reason to believe would be toxic if either ingested, inhaled or placed in contact with your skin.

8. The term "pollutant or contaminant" shall have the same definition as that contained in Section 101(33) of CERCLA, 42 U.S.C. Section 9601 (33), and includes any mixtures of such pollutants or contaminants with any other substances. Petroleum products mixed with pollutants and contaminants are also included in this definition.

9. The term "release" has the same definition as that contained in Section 101(22) of CERCLA, 42 U.S.C. Section 9601 (22), and includes any spilling, leaking, pumping, pouring, emitting, emptying, disposing into the environment, including the abandonment or discarding of barrels, containers and other closed receptacles containing any hazardous substance or pollutant or contaminant.

10. The terms "document" and "documents" shall mean any object that records, stores, or presents information, and includes writings of any kind, formal or informal, whether or not wholly or partially in handwriting, including, but not limited to, any invoice, manifest, bill of lading, receipt, endorsement, check, bank draft, canceled check, deposit slip, withdrawal slip, order, correspondence, record book, minutes, memorandum of telephone and other conversations, including meetings, agreements and the like, diary, calendar, desk pad, scrapbook, notebook, bulletin, circular, form, pamphlet, statement, journal, postcard, letter, telegram, telex, report, notice, message, analysis, comparison, graph, chart, interoffice or intra office communications, photostat or other copy of any documents, microfilm or other film record, any photograph, sound recording or any type of device, any punch card, disk or tape or other type of memory generally associated with computers and data processing (together with the programming instructions necessary to use such computer memory); and (a) every copy of each document which is not an exact duplicate of a document which is produced, (b) every copy which has any writing, figure or notation, annotation or the like on it, (c) drafts, (d) attachments to or enclosure with any document, and (e) every document referred to in any other document.

11. Words in the masculine shall be construed in the feminine, and vice versa, and words in the singular shall be construed in the plural, and vice versa, where appropriate in the context of a particular question.

12. The term "identify" means, with respect to a natural person, to set forth: (a) the person's full name; (b) present or last known business and home address and telephone numbers; and (c) present or last known employer (include full name, address and telephone number) with title, position, occupation or business.

13. The term "identify" means, with respect to a corporation, partnership, business 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.), and a brief description of its business.

14. All terms not defined herein shall have their ordinary meaning, unless such terms are defined in CERCLA or RCRA, in which case the statutory definitions shall apply.

REQUEST FOR INFORMATION

1. a. State the correct legal name and mailing address of your Company.

   b. Identify the legal status of your Company (corporation, partnership, sole proprietorship, specify if other) and the state in which your Company was organized or formed.

   c. State the name(s) and address(es) of the President, Chairman of the Board, and the Chief Executive Officer of your Company.

   d. If your Company is a subsidiary or affiliate of another corporation, or has subsidiaries, identify each such entity and its relationship to your Company, and state the name(s) and address(es) of each such entity's President, Chairman of the Board, and Chief Executive Officer.

   e. Identify the state and date of incorporation and the agent for service of process in the state of incorporation and in the State of New Jersey for your Company and for each entity identified in your response to question 1.d., above.

   f. If your Company is a successor to, or has been succeeded by another entity, identify such other entity and provide the same information requested in question 1.e., above.

2. Provide a description of the Site, i.e. the property or properties in Moonachie, Bergen County, New Jersey, which your Company owned or owns, or upon which it operated or leased, or currently operates or leases. Include Block and Lot numbers, names of streets or physical features bounding the property(ies), and acreage.

3. Provide a narrative description of the nature of the Company's business. If the nature of the Company's business changed over time, please explain how it changed, (including any name changes) and approximately when the changes occurred.

4. Please specify the time period during which the Company leased, owned, and/or operated the Site. If the Company leased, owned or operated at portions of the Site, specify the time periods of such involvement, and appropriate block and lot numbers. If your Company ever leased the Site, provide copies of leases, names, current addresses and telephone numbers of each owner of the Site during the period the Company leased the Site.

5. Describe the Site at the time the Company took possession of it. If there was any business at the Site, explain the nature of that business.

6. Describe in detail the nature of the activities conducted by the Company at the Site from the time the Company began operations at the Site until the present time, including:

   a. the services performed at the Site;

   b. all products which the Company manufactured, supplied, or sold which resulted from activities at the Site;

   c. research and development activities; and

d. the time period during which those activities occurred.

7. Did your Company cease operations at the Site? If so, when? Describe the circumstances that precipitated your Company's decision to cease operations at the Site.

8. Did your company generate hazardous wastes at the Site, or does your company currently do so? Please describe your company's treatment, storage and/or disposal practices for any hazardous wastes generated at the Site.

9. Provide a list of all local, state and federal environmental permits ever granted for the Site or any part thereof (e.g., RCRA permits, NPDES permits, etc.)

10. List all hazardous substances (as defined in the "Instructions"), which were, or are, used, stored, or handled at the Site.

11. State when and where each substance identified in your response to Question 10 was, or is, used, stored, or handled at the Site and the volume of each substance.

12. Describe in detail how and where the hazardous wastes, industrial wastes, and hazardous substances generated, handled, treated, and stored at the Site were, or are, disposed of. If any hazardous wastes, hazardous substances, or industrial wastes were, or are, taken off-site for disposal or treatment, state the names and addresses of the transporters and the disposal facility used.

13. Who determined, or determines, where to treat, store, and/or dispose of the hazardous substances and/or hazardous wastes handled at the Site? Provide the names and current or last known addresses of any entities or individuals which made such determination.

14. Describe in detail the remedial activities conducted at the Site under CERCLA, the Resource Conservation and Recovery Act (RCRA), and/or laws of the State of New Jersey. Describe your Company's involvement in the remedial activities.

15. Identify all leaks, spills, or releases into the environment of any hazardous substances, pollutants, or contaminants that have occurred, or are occurring, at or from the Site. Specifically identify and address any leaks, spills, or releases to the Berry's Creek Study Area. Identify:

    a. when such releases occurred;

    b. how the releases occurred;

    c. the amount of each hazardous substances, pollutants, or contaminants so released (for substances contained in any sewage effluent from the Site, provide discharge monitoring reports or other data indicating discharge concentrations and loads, as available);

    d. where such releases occurred;

    e. where such releases entered the Berry's Creek Study Area, if applicable; and

    f. the pathway by which such releases entered the Berry's Creek Study Area, including any

storm sewers, pipes, or other conveyances discharging to a water body or wetland: or via surface runoff, groundwater discharge, or any spills, leaks, or disposal activities.

16. Please complete the form on page 5, below. Indicate on the form whether each of the chemicals listed has ever been released from the Site to the Berry's Creek Study Area, including creeks, ditches, or other water bodies, or wetlands. Follow all additional instructions on the form. In addition, please answer Question 15, above, specifically addressing any chemicals for which you answered "yes".

17. Identify all companies, firms, facilities, and individuals (hereafter referred to as "customers") from whom your Company obtained, or obtains, materials containing Industrial Waste as defined in Number 6 of the Definitions and whose Industrial Waste was, or is, treated, stored, handled or disposed of at the Site. For each such customer:

    a. Describe the relationship (the nature of services rendered and products purchased or sold) between your Company and the customer;

    b. Provide Copies of any agreements or/and contracts between your Company and the customer;

    c. Provide the name and address of each customer who sent such materials, including contact person(s) within said customer;

    d. Provide shipping and transaction records pertaining to such Industrial Wastes sent by each customer, including but not limited to invoices, delivery receipts, receipts acknowledging payment, ledgers reflecting receipt of payment, bills of lading, weight tickets, and purchase orders; and

    e. Provide the name and address of all companies and individuals who transported, or transport, Industrial Wastes to the Site.

18. For each customers' Industrial Wastes handled, treated, stored, or disposed of at the Site, describe:

    i. the volume;
    ii. the nature;
    iii. chemical composition;
    iv. color;
    v. smell;
    vi. physical state (e.g., solid, liquid);
    vii. any other distinctive characteristics; and
    viii. the years during which each customer's materials were handled, treated, stored, or disposed of at the Site.

19. Please supply any additional information or documents that may be relevant or useful to identify other companies or sources that sent industrial wastes to the Site.

20. Please state the name, title and address of each individual who assisted or was consulted in the preparation of your response to this Request for Information and correlate each individual to the

question on which he or she was consulted.

21. For each question herein, identify all documents consulted, examined, or referred to in the preparation of the answer or that contain information responsive to the question and provide true and accurate copies of all such documents.

Request for Information Regarding Chemical Releases to the Berry's Creek Study Area

* * *

Instructions: As instructed in Question 16, please complete this form by marking the appropriate spaces. Indicate whether each of the chemicals listed has ever been released from the Site to the Berry's Creek Study Area, including creeks, ditches, or other water bodies, or wetlands. Follow additional instructions below. Return the completed form along with your other responses to the Request for Information in the Matter of the Berry's Creek Study Area, Bergen County, New Jersey. N/A signifies no information available.

	Yes	No	N/A
acenaphthene			
acenapthylene			
anthracene			
aluminum			
antimony			
arsenic			
benz(a)anthracene			
benzene			
benzo(a)pyrene			
benzo(b)fluoranthene			
benzo(g,h,i)perylene			
benzo(k)fluoranthene			
bis(2-ethylhexyl)phthalate			
butyl benzyl phthalate			
cadmium			
chlorinated dibenzo-p-dioxins (if "yes", please list specific dioxin compounds on a separate sheet)			
chlorinated dibenzofurans (if "yes", please list specific compounds on a separate sheet)			
chlorobenzene			
chloroform			
chromium			
chrysene			
copper			
cyanide			
dibenz(a,h)anthracene			
dichlorobenzene			
1,2-dichloroethene			
di-n-butyl phthalate			
1,2-dichlorobenzene			
1,2-dichloroethane			
dieldrin			
di-n-octyl phthalate			
ethylbenzene			
fluoranthene			

	Yes	No	N/A
fluorene			
hexachlorobenzene			
indeno(1,2,3-cd)pyrene			
lead			
manganese			
mercury			
methylene chloride			
methyl ethyl ketone			
methyl mercury			
2-methylnaphthalene			
naphthalene			
nickel			
pentachlorophenol			
petroleum hydrocarbons			
phenanthrene			
phenol			
polychlorinated biphenyls (if "yes" please list specific congeners and aroclors on a separate sheet)			
polycyclic aromatic hydrocarbons (if "yes", please list specific compounds on a separate sheet, if not listed on this page)			
pyrene			
selenium			
silver			
1,1,2,2-tetrachloroethane			
tetrachloroethylene			
thallium			
toluene			
1,2-trans dichloroethylene			
1,1,1-trichloroethane			
trichloroethylene			
vinyl chloride			
xylene			
zinc			

Name of person completing form _____ Company _____ Site (as defined in the "Instructions") _____

CERTIFICATION OF ANSWERS TO REQUEST FOR INFORMATION

State of _____

County of _____:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document (response to EPA Request for Information) and all documents submitted herewith, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete, and that all documents submitted herewith are complete and authentic unless otherwise indicated. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment. I am also aware that my company is under a continuing obligation to supplement its response to EPA's Request for Information if any additional information relevant to the matters addressed in EPA's Request for Information or the company's response thereto should become known or available to the company.

_____
NAME (print or type)

_____
TITLE (print or type)

_____
SIGNATURE

Sworn to before me this

day of , .

_____
Notary Public