→ ① Kyle ② ~~Mark~~ ③ ~~Cynde~~

Pls. review A.S.A.P. and return. Thanks!

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June 1, 1992

Tom Nash, Esq. (CS-3T)
United States Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590

SENT VIA TELECOPY

Re: Draft RCRA Corrective Action Order
Hacco, Inc., Randolph, Wisconsin Plant

Dear Mr. Nash:

The purpose of this letter is to provide to the United States Environmental Protection Agency, Region V and its staff, both a statement of position and a status report regarding the draft RCRA corrective action order (draft order) sent to Hopkins Agricultural Chemical Company (hereinafter "Hacco") by Allen Wojtas on or about March 1, 1992.

The additional narrow purpose of this letter is to formally request a 30 day extension of time to complete negotiations regarding the above referenced draft order. The text of this letter will provide information which will serve as the basis for: (1) the statement of position; (2) a status report of negotiations regarding the draft order; and (3) the

request for the 30 day extension to complete negotiations regarding the draft order.

Summary of Activities Undertaken to Date

There are four sets of professionals involved in the negotiations regarding the draft order. They are: (1) EPA staff; (2) Wisconsin Department of Natural Resources (DNR) staff; (3) Hacco's environmental consulting firm; and (4) Hacco's attorneys. These parties have met on three occasions. The first meeting occurred in the EPA headquarters building in Chicago on April 6, 1992. The purpose of that meeting was to establish both the protocol and the ground rules for negotiations regarding the draft order. Timetables were established for completion of various tasks by various parties.

The second meeting occurred in Milwaukee, Wisconsin on May 14, 1992 at the DNR offices and was a full day negotiation on various areas of concern raised by Hacco and/or others regarding the draft order.

The third face-to-face negotiations on the draft order occurred on May 21, 1992 in Milwaukee, Wisconsin at the DNR offices. There were in fact two meetings on that date. The first meeting was a technical subcommittee meeting reviewing the scope of work contained in the appendixes to the draft order. The subsequent meeting was a meeting of all parties to discuss the body of the administrative order.

In addition to the face-to-face negotiations, both prior and subsequent to such meetings, there were substantial exchanges of ideas and comments regarding the various aspects of the draft corrective order. Two significant submittals were sent by Hacco prior to the first face-to-face negotiations consistent with the Chicago meeting which established the protocol for the exchange of ideas. On May 13, 1992, Hacco's attorneys provided all of its proposed revisions to the draft order. The proposal utilized EPA's original document and showed proposed deletions with a line through the text to be deleted and block shaded proposed additions. Hacco also provided a written analysis outlining the basis for the major changes in the document submitted. At the same time, the environmental consultant for Hacco did an identical effort in relation to the appendixes to the draft order.

Subsequent to the May 14th meeting, both the EPA attorney and the Hacco attorneys sent to each other proposed language changes to facilitate discussion at the May 21, 1992 meeting in Milwaukee.

At the conclusion of the May 21, 1992 meeting, the following tasks were assigned to various parties for completion and mailing to all concerned by on or about May 29, 1992. First, environmental consultant RMT was to finalize agreed upon matters that had been concluded at the technical subcommittee meeting. Second, the EPA counsel was to review two matters which had been preliminarily agreed to at the meeting of May 21 and to develop alternative language on one other issue for further consideration by Hacco. Third, Hacco attorneys were to draft specific language on one area for further consideration by EPA and to continue to work on one area where there was some uncertainty. Fourth, Project Manager Allen Wojtas was to provide a master document showing all agreed upon revisions to the administrative order on or about May 29, 1992. It is now anticipated that such a document will be available on June 1, 1992. Finally, the EPA staff attorney was to provide a memorandum outlining EPA jurisdiction over the Hacco facility.

Unresolved Issues

There are less than a half dozen unresolved issues. Many of those that are unresolved, remain so only because there has not been an opportunity for all parties to review the specific language that was to be drafted after conceptual agreement. A brief discussion of unresolved issues is found below.

Hacco's attorneys are submitting to EPA on May 29 additional language regarding dispute resolution. That language will in large measure be built around the Land Reclamation 3008(h) Order which was signed in December, 1991. Second, based upon EPA's insistence, there will be a proof of financial responsibility provision in the consent order. The language is yet to be approved on that item nor has Hacco yet identified how it could obtain the necessary proof of responsibility. Third, EPA staff counsel is providing alternative language regarding stipulated penalties and will be confirming conceptual and preliminary agreements on other language provided on May 21, 1992 regarding site access and reservation of rights. Finally, complete conceptual agreement has been reached on the contents of the scope of work and the appendixes relating

thereto. RMT is submitting those materials to EPA for final review on May 29, 1992.

Statement of Position

Hacco believes significant progress has been made in negotiations. It knows of no issues which would preclude settlement of this matter within 30 days. Hacco's principle original concern with the draft 3008(h) order was and remains the issue of whether in fact EPA involvement in this site remediation will slow down ongoing investigation and remediation efforts. Hacco believes that EPA and DNR have worked hard to ameliorate this concern. Hacco has no philosophical or practical reason to dispute EPA jurisdiction to issue the proposed RCRA corrective action order under all of the circumstances described above, and anticipates entering into such an order within the next thirty days.

Conclusion

We request that a copy of this letter be entered into the Agency administrative record in this proceeding. We also request that the Agency grant a thirty day extension for final negotiations on the draft order.

Sincerely,

Peter A. Peshek

PAP:cgw

cc Mr. Allen Wojtas
Ms. Cindy English