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TRJ -
Note requested
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Claire

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March 17, 2003

Elaine G. Stanley
MC: 2841T
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

BY FEDERAL EXPRESS

Re: Applicability of EPCRA Section 313 to Imported Articles Containing Toxic Chemicals

Dear Ms. Stanley:

I am requesting EPA's guidance on the applicability of section 313 of the Emergency Planning and Community Right to Know Act ("EPCRA") to the importation of articles containing toxic chemicals in the following three situations. Each situation involves a "facility" that is potentially subject to section 313 because it has 10 or more full-time employees and is in Standard Industrial Classification Codes 20-39.

(1) Facility A does not manufacture, process or otherwise use any section 313 toxic chemicals, and, therefore, does not currently need to file a Form A or Form R report. However, last year it imported manufactured articles that contain section 313 toxic chemicals, such as brass valves containing lead and copper, each chemical in amounts totaling greater than 25,000 lbs., which it sells "as is" to its customers (*i.e.* without conducting any further manufacturing, processing or other work on the articles or causing any releases of toxic chemicals).

(2) Facility B processes section 313 toxic chemicals (such as lead and copper) in amounts below the reporting thresholds and hence does not need to report under section 313, although there are releases associated with the processing. Last year, it imported manufactured articles containing the same section 313 toxic chemicals, such as brass valves containing lead and copper, each chemical in amounts totaling greater than 25,000 lbs., which it sells "as is" to its customers (*i.e.* without conducting any further manufacturing, processing or other work on the articles or causing any releases of toxic chemicals).

(3) Facility C already is subject to section 313 reporting because it processes section 313 toxic chemicals above the threshold limits into its products. But last year the facility also

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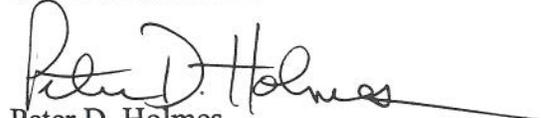
imported manufactured articles that contain section 313 toxic chemicals, such as brass valves containing copper and lead, each chemical in amounts totaling greater than 25,000 lbs., which it sells "as is" to its customers (*i.e.* without conducting any further manufacturing, processing or other work on the articles or causing any releases).

EPA's section 313 rules define "manufacture," in part, as "to . . . import . . . a toxic chemical." 40 CFR §372.3. The "article exemption" does not apply to the manufacture of an article. *See* 40 CFR §372.3 and §372.38(b). For each of the three situations listed above, does this mean that if the facility imports any manufactured articles, such as brass valves, that contain section 313 toxic chemicals, even if it does not itself perform any operations on those articles or cause any releases of the toxic chemicals in the imported articles, the facility must include the amount of the toxic chemicals in the imported articles toward the 25,000 pound manufacturing threshold (or the lower thresholds for persistent bioaccumulative toxic chemicals) under section 313?

I would appreciate receiving EPA's response by April 15, 2003, so as to allow sufficient time for the facilities to make the appropriate calculations for the section 313 reports due July 1, 2003. If you have any questions about this request or need further information, please let me know.

Very truly yours,

CLARK HILL PLC


Peter D. Holmes

PDH:tam