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OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

FEB 14 1990

Richard L. Feulner
Director, Regulatory Affairs
CIBA-GEIGY Corporation
P.O. Box 18300
Greensboro, NC 27419

Dear Mr. Feulner:

This letter is in response to your November 17, 1989 request for a one-time exemption from RCRA requirements for end-users of chlordimeform. In your letter, you outlined the voluntary termination of FIFRA registration for chlordimeform, and Ciba-Geigy's commitment to accept for disposal chlordimeform stocks turned in by end-users. According to EPA's final decision regarding chlordimeform, its use is prohibited after October 1, 1989 [54 FR 6246, February 8, 1989].

Your letter describes an assumption that Galecron 4E (a Ciba-Geigy formulation of chlordimeform) is a hazardous waste, and describes difficulties involved in obtaining EPA Identification Numbers for the various chlordimeform users. You then requested that EPA's Office of Solid Waste develop a program "that would, on a one-time basis, exempt end users from manifesting requirements." You also stated your belief that a certain interpretation of the pesticide's waste classification may be necessary to exempt end-users from manifesting requirements.

After reviewing the information you have submitted, I have concluded that in most (if not all) instances the Galecron 4E is a solid waste in the hands of end-users. Specifically, you stated in a February 19, 1988 letter to EPA that Ciba-Geigy would "offer and actively encourage the return of all inventory remaining after the 1988 use season regardless of the ownership or location of the material. This material will be destroyed, at Ciba-Geigy expense, in accordance with all appropriate state and federal regulations." In your November 17, 1989 letter you also stated that "the exemption from classification of Galecron 4E as a waste would only last until the

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material had been gathered for disposal. Once it has been collected, it will be stored and disposed of as hazardous waste" and "We plan to have the chlordimeform incinerated at a permitted RCRA facility once it has been collected from the end users."

40 CFR Section 261.2(b)(3) provides:

Materials are solid waste if they are abandoned by being:

Accumulated, stored, or treated (but not recycled) before of in lieu of being abandoned by being disposed of, burned, or incinerated.

Thus it is clear that end-users who are accumulating Galecron 4E before it is disposed are managing wastes.

My June 23, 1989 memorandum on regulation of cancelled pesticides, which you mentioned as stating that case-by-case determinations must be made for determining the waste status of cancelled pesticides, refers to the April 8, 1987 Federal Register (52 FR 11332). That Federal Register notice states that "cancelled pesticides are considered to be solid wastes subject to RCRA if they have been "discarded" or are intended for discard. In this context, "discarded" means either abandoned or used as fuel..." Because of the Section 261.2(b)(3) regulation defining the term "abandoned", it is clear that in the circumstances you have described, the end-users are managing wastes.

Another factor affecting this determination is the fact that chlordimeform use is banned in the United States as well as many foreign countries. Thus it is unlikely that Ciba-Geigy would accept unused stocks for resale. In the event Ciba-Geigy does find a legal market and is able to accept the unused stocks for resale, the unused chlordimeform may not be a solid waste under 40 CFR Section 261.2. Another situation in which the material may not be a waste is if it is a commercial chemical product that is being reclaimed (Section 261.2(c)(3)). However, in both these situations, the burden of proof would be on the parties claiming that the unused chlordimeform is not a solid waste (Section 261.2(f)).

Assuming the unused chlordimeform is a waste (and the available

information indicates that it is), the end-users must determine whether it is a hazardous waste. Although neither chlordimeform nor chlordimeform hydrochloride appear on the lists of hazardous waste in Section 261.33, you indicated that you believe that Galecron 4E is an ignitable hazardous waste per Section 261.21. You indicated that this determination is based on Galecron 4E's formulation with xylene-based solvents. We agree that the unused chlordimeform formulations are not listed hazardous wastes; however, assuming the unused formulation exhibits the characteristic of ignitability, it is a hazardous waste. Thus, the end-users (who are the generators under the circumstances you have described) are responsible for managing their unused chlordimeform stocks consistent with the federal hazardous waste regulations. These regulations have varying requirements, depending on the monthly quantities of hazardous waste generated at a site. In some cases, an EPA Identification Number may not be required for the generator, and there may be no manifesting requirements. (See 40 CFR Section 261.5.)

For those situations where an EPA Identification Number is required, EPA has established a system whereby generators can obtain provisional identification numbers in an expedited manner (see 45 FR 85023, December 24, 1980). The telephone numbers listed in that notice are somewhat outdated; I suggest that you contact the RCRA/Superfund Hotline ((800) 424-9346) for the most up-to-date numbers and assistance.

In addition, distributors acting as intermediate collection points in the recall process may qualify as "transfer facilities," depending on the specific circumstances. In the federal hazardous waste regulations, transporters who store manifested shipments of hazardous waste under certain circumstances may store these wastes for ten days or less without a permit for the storage. (See 40 CFR 263.12.)

Finally, the requirements described in this letter are the federal hazardous waste regulations in 40 CFR Parts 260 - 272. States may have additional requirements that are more stringent, or broader in scope. I suggest that you contact the appropriate state waste management agencies for further information on state requirements.

Sincerely,

Original Document signed

Sylvia Lowrance, Director
Office of Solid Waste

cc: Paul Parsons, OPP (H7508C)