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KOLEY ■ JESSEN

RECEIVED

December 18, 2014

DEC 19 2014

Pat Rice, Acting Director
Nebraska Department of Environmental Quality
1200 'N' Street, Suite 400
P.O. Box 98922
Lincoln, NE 68509

Nebraska Dept of Environmental Quality

By: _____ DEQ# 059 _____

Re: Petition for Rule Change
Our File No. 16633-0000

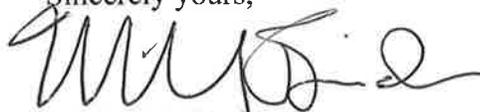
Dear Mr. Rice:

Enclosed please find a Petition for Rule Change and supporting documentation submitted by Tyson Foods, Inc. ("Tyson"). It is Tyson's desire to include this matter on the agenda of the Environmental Quality Council's next regular meeting in February 2015 or to otherwise act on it within sixty (60) days of submission.

As you may know, Tyson has been discussing this topic with the NDEQ Waste Division to explore options to address the concern of disposal of leather products. Tyson appreciates the willingness of the NDEQ to understand the issue and look for ways to address it in a reasonable manner. Tyson desires to continue those discussions while pursuing the rule change.

Tyson understands that it will be expected to be present at the EQC meeting to explain the proposed regulatory change. Please provide us with any other particular details in order to prepare for this meeting. Also, if the NDEQ or EQC need further information or have any questions, please contact the undersigned.

Sincerely yours,



Michael J. Linder

Enclosures

cc: Annette Kovar, NDEQ Legal Counsel
Kim Dirks, Tyson Foods, Inc.

MICHAEL J. LINDER

DIRECT. 402.343.3755

MICHAEL.LINDER@KOLEYJESSEN.COM

PETITION FOR RULEMAKING
BEFORE THE NEBRASKA DEPARTMENT
OF ENVIRONMENTAL QUALITY

DEC 19 2014

Tyson Foods, Inc.,
Petitioner
Filed with:
Nebraska Environmental Quality Council
Attn: Joe Citta, Chairperson
1200 N Street, Suite 400
Lincoln, Nebraska 68509

Nebraska Dept of Environmental Quality

By: _____ DEQ# 059 _____

Petition for Rule Change

COMES NOW the Petitioner, Tyson Foods, Inc., pursuant to Neb. Rev. Stat. § 84-909 and § 84-907.08, and 115 Neb. Admin. Code, ch. 10, § 001, and hereby petitions the Nebraska Environmental Quality Council to amend their rules and regulations as set forth in this Petition.

In support of this petition, the Petitioner states as follows:

- 1. Petitioner seeks to amend existing Title 128 Neb. Admin. Code, ch. 2, § 009.09D (the "Rule").
2. Petitioner seeks to add the following language to the Rule:

009.09 Wastes which fail the test for the Toxicity Characteristic because chromium is present or are listed in Chapter 3, 013 through 018 due to the presence of chromium, which do not fail the test for the Toxicity Characteristic for any other constituent or are not listed due to the presence of any other constituent, and which do not fail the test for any other characteristic, if it is shown by a waste generator or by waste generators that:

009.09A The chromium in the waste is exclusively (or nearly exclusively) trivalent chromium; and

009.09B The waste is generated from an industrial process which uses trivalent chromium exclusively (or nearly exclusively) and the process does not generate hexavalent chromium; and

009.09C The waste is typically and frequently managed in non-oxidizing environments.

009.09D Specific wastes which meet the conditions of Sections 009.09A through 009.09C of this Chapter (so long as they do not fail the test for Toxicity Characteristic for any other constituent, and do not fail the test for any other characteristics) are:

009.09D1 Chrome (blue) trimmings generated by the following subcategories of the leather tanning and finishing industry; hair

pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

009.09D2 Chrome (blue) shavings generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

009.09D3 Buffing dust generated by the following subcategories of the leather tanning and finishing industry; hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue.

009.09D4 Sewer screenings generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

009.09D5 Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

009.09D6 Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; and through-the-blue.

009.09D7 Waste scrap leather from the leather tanning industry, the shoe manufacturing industry, and other leather product manufacturing industries.

009.09D8 Wastewater treatment sludges from the production of titanium dioxide pigment using chromium-bearing ores by the chloride process.

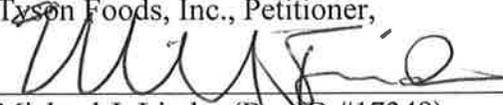
009.09D9 Discarded leather products including, but not limited to, shoes, gloves, aprons, tool belts/pouches, lifting belts, and similar products.

3. Discarded leather products should be exempted from the definition of Hazardous Waste because they meet all three requirements found in § 009.09A, B, and C.
 - a. *The chromium in the waste is exclusively (or nearly exclusively) trivalent chromium.* Petitioner has performed TCLP tests on a representative sample of its leather products, including both new and used products. The TCLP tests indicated the leather products contained 30 mg/L total chromium, which was exclusively trivalent chromium. No hexavalent chromium was detected in the tests.

- b. *The waste is generated from an industrial process which uses trivalent chromium exclusively (or nearly exclusively) and the process does not generate hexavalent chromium.* Petitioner does not produce chromium in its industrial processes in Nebraska. Petitioner is involved in the production of food products, particularly chicken, pork and beef products. Processes for rendering these products do not generate chromium and do not expose the leather products to chromium.
 - c. *The waste is typically and frequently managed in non-oxidizing environments.* Leather products used by Petitioner are exposed to blood, fat, oil, and equipment grease. The leather products are not exposed to solvents or other conditions which would create an oxidizing environment.
 - d. A letter submitted by Petitioner to the Nebraska Department of Environmental Quality dated November 14, 2014 is attached to this petition which contains additional evidence supporting the statements above.
4. The U.S. Environmental Protection Agency (“EPA”) has indicated it will defer to implementing state agencies on treatment of leather products.
- a. In 2004, a company operating in South Carolina requested interpretations from the South Carolina Department of Health and Environmental Control (“SCDHEC”) and from the EPA of S.C. Code Regs. 61-79.261.4 and 40 CFR § 261.4(b)(6). These regulations mirror Nebraska’s current Rule.
 - b. In a letter from John T. Litton, Waste Management Director of the SCDHEC, the SCDHEC explained that, as long as the three requirements of the regulation were met (as discussed in Paragraph 3 herein), the leather products would meet the requirements of the exception and would not be considered hazardous waste. A copy of the letter is attached to this Petition.
 - c. In a letter from Matt Hale, Director of the Office of Solid Waste of the EPA, the EPA explained that “it is most appropriate for your client to obtain the position of the implementing agency” and found that the SCDHEC had made a reasonable determination in its letter. EPA’s official policy data base, RCRA Online, references this letter and a copy is attached to this Petition.
5. Petitioner is available during regular work hours at the following address:
- Mr. Kim Dirks
Fresh Meats Senior Director, EHS Operations
Tyson Foods, Inc.
800 Stevens Port Drive, Suite DD709
Dakota Dunes, SD 57049
Business Phone: (605) 235-2036
Fax: 479-757-7079
Email: kim.dirks@tyson.com

6. For the reasons stated herein, Petitioner requests that the Environmental Quality Council initiate, or direct the Department to initiate, rulemaking proceedings at its next regular meeting to include an exception for spent leather products.

Dated: December 18, 2014.

Tyson Foods, Inc., Petitioner,
By: 
Michael J. Linder (Bar ID #17349)
Meagan J. Deichert (Bar ID #24666)
Koley Jessen P.C., L.L.O.
1125 South 103rd Street, Suite 800
Omaha, NE 68124
(402) 390-9500
(402) 390-9005 - Fax



Tyson Foods, Inc.

November 14, 2014

Mr. Eric Waiss, PG
Nebraska Department of Environmental Quality
P. O. Box 98922
Lincoln, NE 68509-8922

RE: Characterization of Leather Waste for Hazardous Constituents

Dear Mr. Waiss:

This information contained herein is in follow-up to your letter dated October 29, 2014, requesting additional information regarding leather gloves and leather products utilized at Tyson facilities in order to provide a determination on Tyson Foods, Inc. and its subsidiaries request for an exemption under Title 128 – Hazardous Waste Regulations.

Report Number 13-254-2026, provided by Midwest Laboratories, Inc., is included as Attachment "A". This report includes the results of the TCLP Metals Analysis from a representative group of new and used leather gloves gathered from multiple Tyson Fresh Meats, Inc. facilities which included facilities located in Nebraska. The analysis shows that the only characteristic which failed was chromium with a resultant concentration of 30 mg/L. Further analysis was performed on new leather gloves to determine whether the chromium in question was hexavalent or trivalent. The results of this testing came back as non-detectible for hexavalent chromium and are shown on Report Number 14-162-2130 v2, provided by Midwest Laboratories, Inc., included as Attachment "B". Due to restrictions placed by USDA on what substances can be used in a food plant, it is not expected that gloves used during normal maintenance practices would encounter a substance containing hexavalent chromium. Therefore, new gloves were felt to be the most appropriate and representative baseline sample to be used for determining the presence of hexavalent chromium in manufactured leather. If it was determined to be present, then it should be widely visible in all gloves, whether new or used.

A conservative estimate of leather waste from our Lexington, Nebraska facility would be approximately twenty (25) pounds per month which would include the following leather articles:

- Gloves
- Welding Aprons
- Lifting Belts/Tool Belts/Tool Pouches

Quantities from other Tyson Foods, Inc. facilities and subsidiaries would vary by location, yet the total monthly quantity would not be expected to exceed fifty (50) pounds.

Environmental, Health & Safety Services
800 Stevens Port Drive, DD #709 Dakota Dunes, SD 57049-8709
Telephone: 605-235-2061

Mr. Eric Waiss, PG
November 14, 2014
Page 2

The aforementioned leather products would be used throughout the facilities during maintenance activities on equipment and items associated with the production and distribution of food products. No activities occurring at these facilities would be considered oxidizing or reducing environments with respect to changing the valence state of Chromium from trivalent to hexavalent. Again, given the restriction placed by the USDA on what substances can be used in a food production facility, it would not be expected that the leather articles used during normal maintenance and production activities would encounter a substance containing hexavalent chromium.

The gloves previously tested came from multiple plants, yet whether or not they came from different manufacturers is unknown and can be deemed immaterial as the end product manufacturer can have several suppliers for tanned leather from which to produce a given article. The chrome tanning process itself is fairly standard globally across manufacturers as the leather articles can only take up so much chromium to produce the finished tanned product. The amount of chromium can vary across manufacturers, yet as was presented in our previous submittal and shown in the provided testing results, the chromium used in the tanning process is trivalent chromium.

Additional leather items requested to be included in the exemption along with the used gloves would be aprons, lifting belts, tool belts, and tool pouches. We appreciate the time and consideration that has been given in making this determination and look forward to hearing from you.

If you have any questions or require additional information, please contact me at 605.235.2003 or Christopher.logue@tyson.com.

Sincerely,

Christopher J. Logue by ml

Christopher J. Logue, P.E.
Senior Area Environmental Manager

Attachments

c: Kim Dirks
Eric Ikenberry
Kim Reed
Mike Linder, Koley Jessen P.C., L.L.O



Report Number
13-254-2026

13611 "B" Street • Omaha, Nebraska 68144-3693 • (402) 334-7770 • FAX (402) 334-9121
www.midwestlabs.com

REPORT OF ANALYSIS

For: (32302) TYSON FOODS FRESH MEATS
(605)235-2036

Mail to:
TYSON FOODS FRESH MEATS
KIM DIRKS
800 STEVENS PORT DR STE DD709
DAKOTA DUNES SD 57049

Date Reported: 09/11/13
Date Received: 08/29/13
Date Sampled: Not Supplied
Time Sampled: Not Supplied

TCLP METALS ANALYSIS

Lab number: 2176209 Sample ID: WHOLE GLOVES

Analysis	Level Found	Units	Detection Limit	Method	Analyst-Date	Verified-Date
Arsenic (TCLP)	n.d.	mg/L	0.5	EPA 6010/1311	cjm-09/04	bab-09/11
Barium (TCLP)	0.03	mg/L	0.005	EPA 6010/1311	cjm-09/04	bab-09/11
Mercury (TCLP)	n.d.	mg/L	0.001	EPA 7470/1311	cjm-09/04	bab-09/11
Selenium (TCLP)	n.d.	mg/L	0.10	EPA 6010/1311	cjm-09/04	bab-09/11
Silver (TCLP)	n.d.	mg/L	0.01	EPA 6010/1311	cjm-09/04	bab-09/11
Chromium (TCLP)	30.0	mg/L	0.01	EPA 6010/1311	cjm-09/04	bab-09/11
Lead (TCLP)	n.d.	mg/L	0.05	EPA 6010/1311	cjm-09/04	bab-09/11
Cadmium (TCLP)	0.07	mg/L	0.005	EPA 6010/1311	cjm-09/04	bab-09/11

Notes:

n.d. - Not Detected.
MAXIMUM PERMISSIBLE LEVELS FOR TCLP EXTRACTS (in mg/L): Arsenic- 5.0
barium- 100, cadmium- 1.0, chromium- 5.0, lead- 5.0, mercury- 0.2,
selenium- 1.0, silver- 5.0.
Sample analysis identified as "(TCLP)" were extracted by EPA method
1311 prior to analysis.

For questions contact

Heather Ramig
Heather Ramig
Client Service Representative
heather@midwestlabs.com (402)829-9891

Attachment A

The result(s) issued on this report only reflect the analysis of the sample(s) submitted. For applicable test parameters, Midwest Laboratories is in compliance with NELAP requirements. Our reports and letters are for the exclusive and confidential use of our clients and may not be reproduced in whole or in part, nor may any reference be made to the work, the results, or the company in any advertising, news release, or other public announcements without obtaining our prior written authorization.



Report Number:
13-254-2026
Account:
32302

TYSON FOODS FRESH MEATS
KIM DIRKS
800 STEVENS PORT DR STE DD709
DAKOTA DUNES SD 57049

1 "B" Street • Omaha, Nebraska 68144-3693 • (402) 334-7770 • FAX (402) 334-9121
www.midwestlabs.com

Date Reported: 09/11/13
Date Received: 08/29/13

TCLP METALS ANALYSIS

COMMENTS

MAXIMUM PERMISSIBLE LEVELS FOR TCLP EXTRACTS (in mg/L): Arsenic- 5.0 ,
barium- 100, cadmium- 1.0, chromium- 5.0, lead- 5.0, mercury- 0.2,
selenium- 1.0, silver- 5.0 .

Sample analysis identified as "(TCLP)" were extracted by EPA method
1311 prior to analysis.



Report Number
14-162-2130 v2

13611 "B" Street • Omaha, Nebraska 68144-3693 • (402) 334-7770 • FAX (402) 334-9121
www.midwestlabs.com

REPORT OF ANALYSIS

For: (6686) TYSON FOODS
(605)235-2274

Mail to: TYSON FOODS
ANGEL BENNIER
800 STEVENS PORT DR #DC249
DAKOTA DUNES SD 57049

PO/Proj. #: ???
SAMPLE ANALYSIS

Lab number: 2275032 Sample ID: LEATHER GLOVES

Analysis Level Found Units
Hexavalent chromium n.d. mg/kg

Detection Limit Method
2.0 FILK/EPA 7196

Analyst- Verified-
Date Date
jjd-06/11 cmw-06/11

Notes:

n.d. - Not Detected.
Sample was shaken for four hours with deionized water. The water
was then analyzed for hexavalent chromium.

For questions contact

Heather Ramig
Heather Ramig
Client Service Representative
heather.ramig@midwestlabs.com (402)829-9891

This report supersedes all prior reports for the following reason(s): Changed comment.

Date Reported: 06/23/14
Date Received: 05/30/14
Date Sampled: Not Supplied
Time Sampled: Not Supplied

The result(s) issued on this report only reflect the analysis of the sample(s) submitted. For applicable test parameters, Midwest Laboratories is in compliance with NELAP requirements. Our reports and letters are for the exclusive and confidential use of our clients and may not be reproduced in whole or in part, nor may any reference be made to the work, the results, or the company in any advertising, news release, or other public announcements without obtaining our prior written authorization.



2600 Bull Street
Columbia, SC 29201-1708

April 26, 2004

Mr. Gerald Beaumont
Beaumont and Associates
209 Asheton Way
Simpsonville, SC 29681-4903

RE: Application of R.61-79.261.4 (b)(6) Exclusion for Leather Gloves and Shoes.

Dear Mr. Beaumont,

This letter is in response to your April 14, 2004 letter in which you request the South Carolina Department of Health and Environmental Control (Department) to provide an interpretation of the South Carolina Hazardous Waste Management Regulations (SCHWMRs) exclusion under 261.4(b)(6).

Specifically, your letter referenced leather gloves and shoes used in your client's operations. First, let me clarify that 261.4(b)(6)(ii)(G) excludes, as a hazardous waste, only leather trimmings and scrap leather from specific industries such as leather tanning, shoe manufacturing, and other leather product manufacturing. Secondly, the specific industries referenced in 261.4(b)(6)(ii)(G) must meet all the standards in paragraph 261.4(b)(6)(i) for the specific waste to be excluded as a hazardous waste.

Under the exclusion in the 261.4(b)(6) of the SCHWMRs, the waste will fail the TCLP test exclusively for chromium, or is listed in Subpart D (listed wastes) due to the presence of chromium, and does not exhibit any other hazardous waste characteristics of Subpart C. Please refer to the attached correspondence (M. Shapiro to D. Gallo, 6/11/96), in which it is clarified: "*...EPA originally exempted specific wastes from the leather tanning and finishing industry based upon information submitted to EPA to determine that the wastes 1) contained chromium exclusively or nearly exclusively in the trivalent form, 2) were generated from an industrial process using trivalent chromium exclusively (or nearly exclusively), and the process does not generate hexavalent chromium, and 3) the waste is typically and frequently managed in non-oxidizing environments.*"

Based on the above, and provided that the conditions of the exclusion in R.61-79.261.4 (b)(6)(i) remain true and applicable to the leather products mentioned in your letter, then the waste gloves and shoes that are the object of your inquiry will not be considered a hazardous waste. Please note that this interpretation is based on

Litton to Beaumont

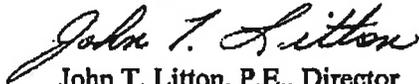
4-26-04

Page 2

your assertion that the gloves and shoes are not contaminated with any other hazardous waste. In addition, please note that it is the generator's responsibility to make a waste determination and to comply with appropriate management standards.

If you have any further questions, please feel free to contact Johnny Tapia at (803) 896-4179, or myself at (803) 896-4172.

Sincerely,



John T. Litton, P.E., Director
Waste Management Division
Bureau of Land and Waste Management

Attachment

cc: Miscellaneous File

Mr. Gerald Beaumont
Beaumont & Associates
209 Asheton Way
Simpsonville, SC 29681-4903

Dear Mr. Beaumont:

Thank you for your letter dated May 4, 2004, in which you asked whether EPA agreed with a regulatory determination provided to you in a letter from the South Carolina Department of Health and Environmental Control (SC-DHEC).¹ In that letter, Mr. Litton described to you how specific regulations under South Carolina's authorized Resource Conservation and Recovery Act (RCRA) program apply to discarded leather products such as shoes and gloves, in particular when these items fail the Toxicity Characteristic (TC) for chromium.

First, I would note that we have not received any data which demonstrate that discarded leather products (*i.e.*, gloves and shoes) exhibit the TC for chromium as a result of the tanning process. Assuming that these discarded leather products do fail the TC for chromium as a result of the tanning process, I believe that it is most appropriate for your client to obtain the position of the implementing agency (such as was done with the SC-DHEC) which is most familiar with the applicable state regulations. In our view, the SC-DHEC made a reasonable determination.

If your client has facilities throughout the USA, I recommend contacting the implementing agencies of those States in order to obtain their interpretations on this issue. If you have any additional questions, please contact Ross Elliott at 703-308-8748. Thank you for your interest in the safe management of spent leather products.

Sincerely yours,

Matt Hale, Director
Office of Solid Waste

¹Letter to Gerald Beaumont from John T. Litton, Director, Waste Management Division, Bureau of Land and Waste Management, South Carolina Department of Health and Environmental Control, April 26, 2004.