

20195

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

2006-CP-37-00030

Scott F. Lawing and Tammy R. Lawing, ... Appellants,

v.

Univar, USA, Inc., Trinity Manufacturing Inc.,
and Matrix Outsourcing, LLC, Defendants,

Of Whom Trinity Manufacturing, Inc. and
Matrix Outsourcing, LLC are Respondents.

RECORD ON APPEAL - Volume IV

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49 CFR 173.212

§ 173.212 Non-bulk packagings for solid hazardous materials in Packing Group II.

(a) When § 172.101 of this subchapter specifies that a solid hazardous material be packaged under this section, only non-bulk packagings prescribed in this section may be used for its transportation. Each package must conform to the general packaging requirements of subpart B of part 173, to the requirements of part 178 of this subchapter at the Packing Group I or II performance level, and to the requirements of the special provisions of Column 7 of the § 172.101 Table.

(b) The following combination packagings are authorized:

Outer packagings:

Steel drum: 1A1 or 1A2

Aluminum drum: 1B1 or 1B2

Metal drum other than steel or aluminum: 1N1 or 1N2

Plywood drum: 1D

Fiber drum: 1G

Plastic drum: 1H1 or 1H2

Wooden barrel: 2C2

Steel jerrican: 3A1 or 3A2

Plastic jerrican: 3H1 or 3H2

Aluminum jerrican: 3B1 or 3B2

Steel box: 4A

Aluminum box: 4B

Natural wood box: 4C1 or 4C2

Plywood box: 4D

Reconstituted wood box: 4F

Fiberboard box: 4G

Solid plastic box: 4H2

Inner packagings:

Glass or earthenware receptacles

Plastic receptacles

Metal receptacles

Glass ampoules

(c) Except for transportation by passenger aircraft, the following single packagings are authorized:

Steel drum: 1A1 or 1A2

Aluminum drum: 1B1 or 1B2

Plywood drum: 1D

Plastic drum: 1H1 or 1H2

Fiber drum: 1G

Metal drum other than steel or aluminum: 1N1 or 1N2

Wooden barrel: 2C1 or 2C2

Steel jerrican: 3A1 or 3A2

Plastic jerrican: 3H1 or 3H2

Aluminum jerrican: 3B1 or 3B2

Steel box: 4A

Steel box with liner: 4A

Aluminum box: 4B

Aluminum box with liner: 4B

Natural wood box: 4C1

Natural wood box, sift proof: 4C2

Plywood box: 4D

Reconstituted wood box: 4F

Fiberboard box: 4G

Expanded plastic box: 4H1

Solid plastic box: 4H2

Bag, woven plastic: 5H1, 5H2 or 5H3

Bag, plastic film: 5H4

Bag, textile: 5L1, 5L2 or 5L3

Bag, paper, multiwall, water resistant: 5M2

Plastic receptacle in steel, aluminum, plywood, fiber or plastic drum: 6HA1, 6HB1, 6HD1, 6HG1 or 6HH1

Plastic receptacle in steel, aluminum, wood, plywood or fiberboard box: 6HA2, 6HB2, 6HC, 6HD2 or 6HG2

Glass, porcelain or stoneware in steel, aluminum, plywood or fiber drum: 6PA1, 6PB1, 6PD1 or 6PG1

Glass, porcelain or stoneware in steel, aluminum, wooden or fiberboard box: 6PA2, 6PB2, 6PC, or 6PG2

Glass, porcelain or stoneware in expanded or solid plastic packaging: 6PH1 or 6PH2

Cylinders, as prescribed for any compressed gas, except for Specification 8 and 3HT

HISTORY:

[55 FR 52643 Dec. 21, 1990; 59 FR 67511, 67518, Dec. 29, 1994; 62 FR 24690, 24734, May 6, 1997; 69 FR 76044, 76157, Dec. 20, 2004; 70 FR 34381, 34398, June 14, 2005]

AUTHORITY:

AUTHORITY NOTE APPLICABLE TO ENTIRE PART:

49 U.S.C. 5101-5128, 44701; 49 CFR 1.45, 1.53.

NOTES:

IMDG CODE

IMDG
CODE

2004 Edition

2004 Edition

0. PL

175

12

104

IMO



For bulk containers other than freight containers, the following statement shall be shown on the transport document (see 6.9.4.6):

"Bulk container BK2 approved by the competent authority of ..."

5.4.1.6 Certification

5.4.1.6.1 The dangerous goods transport document shall include a certification or declaration that the consignment is acceptable for transport and that the goods are properly packaged, marked and labelled, and in proper condition for transport in accordance with the applicable regulations. The text for this certification is:

"I hereby declare that the contents of this consignment are fully and accurately described above by the Proper Shipping Name, and are classified, packaged, marked and labelled/placarded, and are in all respects in proper condition for transport according to applicable international and national government regulations."

The certification shall be signed and dated by the consignor. Facsimile signatures are acceptable where applicable laws and regulations recognize the legal validity of facsimile signatures.

5.4.1.6.2 If the dangerous goods documentation is presented to the carrier by means of electronic data processing (EDP) or electronic data interchange (EDI) transmission techniques, the signature(s) may be replaced by the name(s) (in capitals) of the person authorized to sign.

5.4.2 Container/vehicle packing certificate

5.4.2.1 When dangerous goods are packed or loaded into any container¹ or vehicle, those responsible for packing the container or vehicle shall provide a "container/vehicle packing certificate" specifying the container/vehicle identification number(s) and certifying that the operation has been carried out in accordance with the following conditions:

- 1 The container/vehicle was clean, dry and apparently fit to receive the goods;
- 2 Packages which need to be segregated in accordance with applicable segregation requirements have not been packed together onto or in the container/vehicle (unless approved by the competent authority concerned in accordance with 7.2.2.3);
- 3 All packages have been externally inspected for damage, and only sound packages have been loaded;
- 4 Drums have been stowed in an upright position, unless otherwise authorized by the competent authority, and all goods have been properly loaded and, where necessary, adequately braced with securing material to suit the mode(s)² of transport for the intended journey;
- 5 Goods loaded in bulk have been evenly distributed within the container/vehicle;
- 6 For consignments including goods of class 1 other than division 1.4, the container/vehicle is structurally serviceable in accordance with 7.4.6;
- 7 The container/vehicle and packages are properly marked, labelled and placarded, as appropriate;
- 8 When solid carbon dioxide (CO₂ - dry ice) is used for cooling purposes, the container/vehicle is externally marked or labelled in a conspicuous place, such as, at the door end, with the words: "DANGEROUS CO₂ (DRY ICE) INSIDE. VENTILATE THOROUGHLY BEFORE ENTERING"; and
- 9 A dangerous goods transport document, as indicated in 5.4.1, has been received for each dangerous goods consignment loaded in the container/vehicle.

Note: The container/vehicle packing certificate is not required for portable tanks.

¹ It is recognized that a segregation group is not applicable in all cases and may, therefore, not appear in the transport document.

² See definition of "freight container" in 1.2.1.

³ See IMO/ILO/UN ECE Guidelines for Packing of Cargo Transport Units.

certificates may be incorporated into a single document; if not, these documents shall be attached one to the other. If the information is incorporated into a single document, the document shall include a signed declaration such as "It is declared that the packing of the goods into the container/vehicle has been carried out in accordance with the applicable provisions". This declaration shall be dated and the person signing this declaration shall be identified on the document.

5.4.3 Documentation required aboard the ship

5.4.3.1 Each ship carrying dangerous goods and marine pollutants shall have a special list or manifest^{*} setting out, in accordance with regulation 4.5 of chapter VII of SOLAS 1974, as amended, and with regulation 4(3) of Annex III of MARPOL 73/78, the dangerous goods and marine pollutants and the location thereof. A detailed stowage plan, which identifies by class and sets out the location of all dangerous goods and marine pollutants, may be used in place of such a special list or manifest. This dangerous goods or marine pollutants list or manifest shall be based on the documentation and certification required in this Code and shall at least contain, in addition to the information in 5.4.1.4 and 5.4.1.5, the stowage location and the total quantity of the dangerous goods and marine pollutants. A copy of one of these documents shall be made available before departure to the person or organization designated by the port State authority.

5.4.3.2 Emergency response information

5.4.3.2.1 For consignments of dangerous goods, appropriate information shall be immediately available at all times for use in emergency response to accidents and incidents involving dangerous goods in transport. The information shall be available away from packages containing the dangerous goods and immediately accessible in the event of an incident. Methods of compliance include:

- .1 appropriate entries in the special list, manifest or dangerous goods declaration; or
- .2 provision of a separate document such as a safety data sheet; or
- .3 provision of separate documentation, such as the *Emergency Response Procedures for Ships Carrying Dangerous Goods (EmS Guide)* for use in conjunction with the transport document and the *Medical First Aid Guide for Use in Accidents Involving Dangerous Goods (MFAG)*.

5.4.4 Other required information and documentation

5.4.4.1 In certain circumstances, special certificates or other documents are required such as:

- .1 a weathering certificate as required in the individual entries of the Dangerous Goods List;
- .2 a certificate exempting a substance, material or article from the provisions of the IMDG Code (such as, see individual entries for charcoal, fishmeal, seedcake);
- .3 for new self-reactive substances and organic peroxides or new formulation of currently assigned self-reactive substances and organic peroxides, a statement by the competent authority of the country of origin of the approved classification and conditions of transport.

5.4.4.2 Fumigated units

The transport document for a fumigated unit shall show the type and amount of fumigant used and the date and time of fumigation. In addition, instructions for disposal of any residual fumigant, including fumigation devices, if used, shall be provided.

5.4.5 Multimodal Dangerous Goods Form

5.4.5.1 This form meets the requirements of SOLAS 74, chapter VII, regulation 4, MARPOL 73/78, Annex III, regulation 4 and the provisions of this chapter. The information required by the provisions of this chapter is mandatory; however the layout of this form is not mandatory.

^{*} FAL 2/Circ.51/Rev.1 may be used for this purpose.

Offshore supply vessel: a cargo vessel of less than 500 gross tons that regularly transports goods, supplies or equipment in support of exploration or production of offshore mineral or energy resources.

Oil: oil of any kind or in any form, including, but not limited to, petroleum, vegetable oil, animal oil, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

Operator: a person who controls the use of an aircraft, vessel, or vehicle.

Organic peroxide: any organic compound containing oxygen (O) in the bivalent -O-O- structure and which may be considered a derivative of hydrogen peroxide, where one or more of the hydrogen atoms have been replaced by organic radicals; unless any of the exceptions listed at 49 CFR 173.128(a) apply.

ORM: other regulated material. See 49 CFR 173.144.

Outage or ullage: the amount by which a packaging falls short of being liquid full, usually expressed in percent by volume.

Outer packaging: the outermost enclosure of a composite or combination packaging together with any absorbent materials, cushioning and any other components necessary to contain and protect inner receptacles or inner packagings.

Overpack except when referenced to a packaging specified in 49 CFR Part 178: an enclosure that is used by a single consignor to provide protection or convenience in handling of a package or to consolidate two or more packages. "Overpack" does not include a freight container.

Oxidizer: a material that may, generally by yielding oxygen, cause or enhance the combustion of other materials.

Package or Outside Package: a packaging plus its contents. For radioactive materials, the packaging together with its radioactive contents as presented for transport.

Packaging: a receptacle and any other components or materials necessary for the receptacle to perform its containment function in conformance with the minimum packing requirements of the DOT regulations for shippers, transporters, and manufacturers. For radioactive materials packaging, the assembly of components necessary to ensure compliance with the packaging requirements of 49 CFR Part 173, Subpart I. It may consist of one or more receptacles, absorbent materials, spacing structures, thermal insulation, radiation shielding, and devices for cooling or absorbing mechanical shocks. The conveyance, tie-down system, and auxiliary equipment may sometimes be designated as part of the packaging.

Packing group: a grouping according to the degree of danger presented by hazardous materials. Packing Group I indicates great danger; Packing Group II, medium danger; Packing Group III, minor danger. In the 49 CFR 172.101 Table, Column 5 specifies one or more packing groups assigned to a material corresponding to the proper shipping name and hazard class for that material. Classes 2 and 7 materials and ORM-D materials do not have packing groups. If more than one packing group is indicated for an entry, the packing group for the hazardous material is determined using the criteria for assignment of packing groups specified in subpart D of Part 173. See 49 CFR 172.101(f).

Passenger (With respect to vessels and for the purposes of 49 CFR Part 176 only): a person being carried on a vessel other than:

- (1) The owner or his representative;
- (2) The operator;
- (3) A bona fide member of the crew engaged in the business of the vessel who has contributed no consideration for his carriage and who is paid for his services; or
- (4) A guest who has not contributed any consideration directly or indirectly for his carriage.



DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

ENTRY SUMMARY

Page 1 of 1 100
C.H. BOX 100
THE HIPAGE CO INC
PO BOX 62199
CHARLESTON SC 29419
9. Ultimate Consignee Name and Address

1. Entry No. 0349213-8	2. Entry Type Code 01 ABI/A	3. Entry Summary Date 423 ** Paperless ** 02-20-04
4. Entry Date	5. Port Code 1601	6. Broker / Importer File No. 30.149213 (angle)
6. Bond No. 891	7. Bond Type Code 8	10. Consignee No. SAME
10. Consignee No. SAME	11. Importer of Record Name and Address MATRIX OUTSOURCING, LL P.O. BOX 1169 HAMLET, NC. 28345	12. Importer No. 58-2568580
13. Exporting Country CN	14. Export Date 01-15-04	15. Country of Origin CN
16. Missing Documents	17. LT. No.	18. LT. Date
19. B/L or AWB No. NKL01A0014256	20. Mode of Transportation 11	21. Manufacturer I.D. CNLIAYUA128LIA
23. Importing Carrier YM SAVANNAH	24. Foreign Port of Lading 37031	25. Location of Goods/G.O. No. L402 COLUMBUS STREET TERMINAL/023E
26. U.S. Port of Unlading 1601	27. Import Date 02-06-04	22. Reference No.

28. Line No.	29. Description of Merchandise			33. A. Entered Value B. CHGS C. Relationship	34. A. T.S.U.S.A. Rate B. ADA/CVD Rate C. LRC Rate D. Visa No.	35. Duty and I.R. Tax	
	30. A. T.S.U.S.A. No. B. ADA/CVD Case No.	31. A. Gross Weight B. Manifest Qty	32. Net Quantity in T.S.U.S.A. Units			Dollars	Cents
001	SODIUM BROMATE 2829.90.2500 1B144	18000 KG	INVOICE # 1 NOT RELATED	26400 02300	FREE	0.00	
	HPF Harbor Maintenance Fee				0.21% 0.125%	35.44 34.00	
	INV. VALUE	26400					
	REV.	26400					
	Block 39 Summary:						
	HPF	499		55.44			
	Harbor Maintenance Fee	301		33.00			
	Total:			88.44			
	Total Invoices 1EV US \$			26,400			

PLAINTIFF'S
EXHIBIT
100

36. Declaration of Importer of Record (Owner or Purchaser) or Authorized Agent		U.S. CUSTOMS USE		TOTALS	
I declare that I am the ☐ importer of record and that the actual owner, purchaser, or consignee for customs purposes is as shown above. I further declare that the merchandise was obtained pursuant to a purchase or agreement to purchase and that the prices set forth in the invoice are true. I also declare that the statements in the documents herein filed fully disclose to the best of my knowledge and belief the true prices, values, quantities, rebates, drawbacks, fees, commissions, and royalties and are true and correct, and that all goods or services provided to the seller of the merchandise either free or at reduced cost are fully disclosed. I will immediately furnish to the appropriate customs officer any information showing a different state of facts.		A. U.S. Code B. Ascertained Duty C. Ascertained Tax D. Ascertained Other E. Ascertained Total		37. Duty 38. Tax 39. Other 40. Total	
Notice required by Paperwork Reduction Act of 1980. This information is needed to ensure that Importers/exporters are complying with U.S. Customs laws, to allow us to compute and collect the right amount of money, to enforce other agency requirements, and to collect accurate statistical information of imports. Your response is mandatory.		41. Signature of Declarant, Title, and Date THE HIPAGE CO INC 02-06-04			

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICEForm Approved
OMB No. 1515-0069

PAGE 1 OF 1

CST-423

ENTRY/IMMEDIATE DELIVERY

THE HIPAGE CO INC (angie)

PO BOX 62199

CHARLESTON SC 29419

C.H. BOX 100

19 CFR 142.3, 142.16, 142.22, 142.24

ABI CERTIFIED (100)

1. ARRIVAL DATE 020604	2. ELECTED ENTRY DATE	3. ENTRY TYPE CODE/NAME 01 ID	4. ENTRY NUMBER 100-0349213-8
5. PORT 1601	6. SINGLE TRANS. BOND	7. BROKER/IMPORTER FILE NUMBER 30.149213	9. IMPORTER NUMBER SAME
10. ULTIMATE CONSIGNEE NAME MATRIX OUTSOURCING, LLC P.O. BOX 1189 HAMLET, NC 28345		11. IMPORTER OF RECORD NAME /SAHE	
12. CARRIER CODE KKLU	13. VOYAGE/FLIGHT/TRIP 023E	14. LOCATION OF GOODS-CODE(S)/NAME(S) L402 COLUMBUS STREET TE	
15. VESSEL CODE/NAME YM SAVANNAH		19. TOTAL VALUE 26400	
16. U.S. PORT OF UNLADING 1601	17. MANIFEST NUMBER	18. G.O. NUMBER	
20. DESCRIPTION OF MERCHANDISE SODIUM BROMATE, CLASS 5.1, UN 1494			
21. IT/BL/AWB CODE ME7051KKLUTAD0014256	22. IT/BL/AWB NO.	23. MANIFEST QUANTITY 720	24. H.S. NUMBER 2829.90.2500
25. COUNTRY OF ORIGIN CN		26. MANUFACTURER ID CNLIAYUA128LIA	

27. CERTIFICATION

I hereby make application for entry/immediate delivery. I certify that the above information is accurate, the bond is sufficient, valid and current, and that all requirements of 19 CFR Part 142 have been met.

SIGNATURE OF APPLICANT

X THE HIPAGE CO INC (100)

PHONE NO.

843-554-4111

DATE

02-05-04

29. BROKER OR OTHER GOVT. AGENCY USE

VES SITE

CONTAINER NUMBER :

KKTU7082805

28. CUSTOMS USE ONLY

☐ OTHER AGENCY ACTION REQUIRED, NAMELY:

☐ CUSTOMS EXAMINATION REQUIRED.

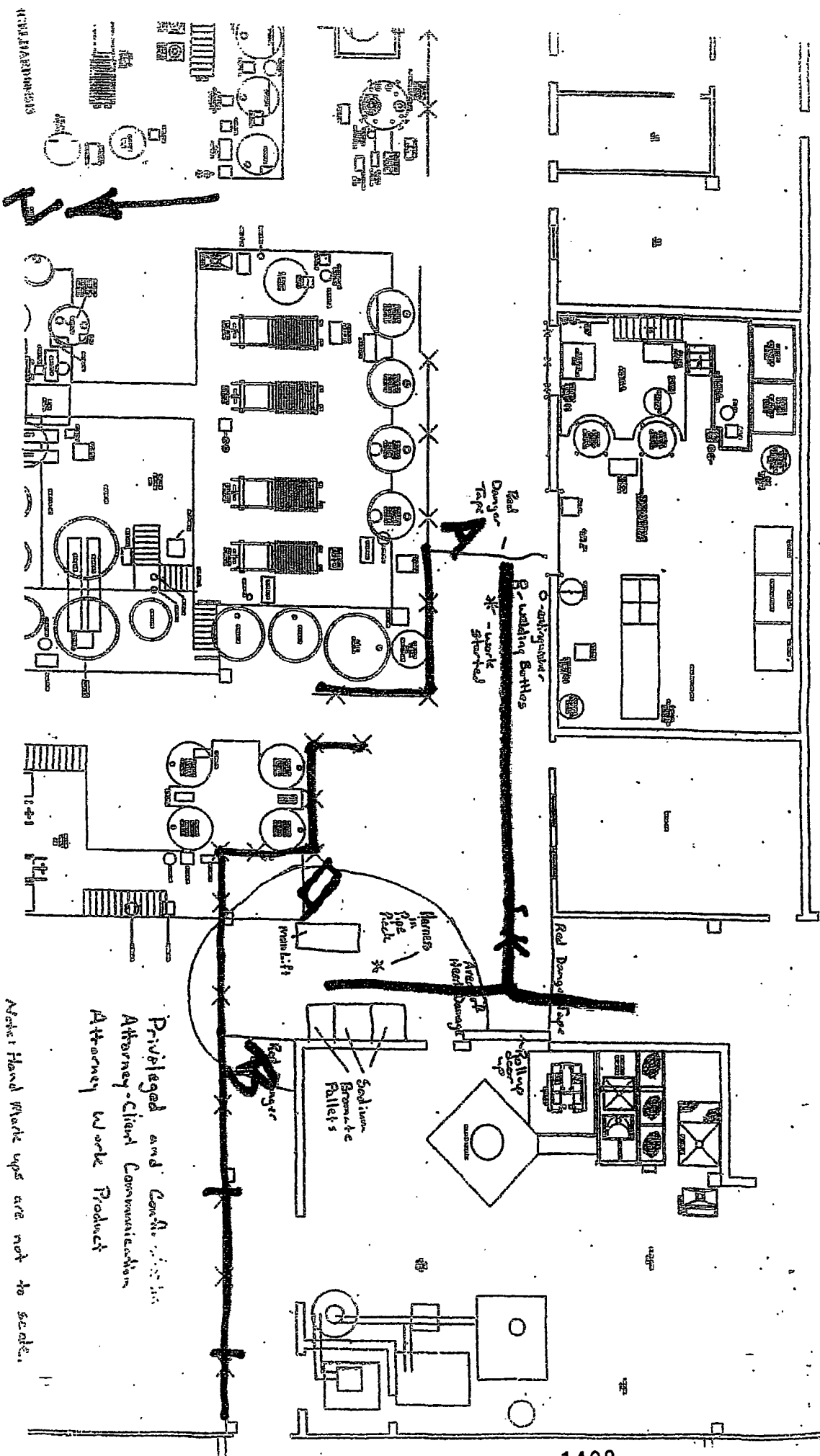
☐ ENTRY REJECTED, BECAUSE:
DELIVERY
AUTHORIZED

SIGNATURE

DATE



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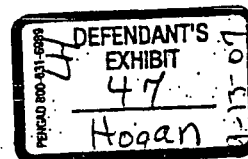


Privileged and Confidential
Attorney-Client Communication
Attorney Work Product

Agave and yucca are not to scale.

Def Ex

Don Hogan 6/11/09 file - not
produced



ENGELHARD004512

DEFENDANT'S
EXHIBIT 12

MAINTENANCE INCIDENT ANALYSIS

JUNE 01, 2004 INCIDENT

DRAFT REPORT

Report drafted by the investigation team:

Dan Hogan, Safety Manager
James Norris, Process Engineer
Joe Pilgrim, Maintenance Supervisor

Doug Mack, Technical Manager
Sean Spann, EAF Area Manager

*15.0.1's
+ 1st cut at
conclusion of
comm. He
6/18/04*

SUMMARY

On Tuesday June 1st, at approximately 1135, three Engelhard maintenance mechanics and a Fluor contractor mechanic were removing leaking condensate return piping from the pipe rack outside of Area 12 in the Refinery when a piece of hot slag contacted a nearby pallet of sodium bromate. Within seconds, a large "fire" engulfed the palletized chemicals. One Engelhard mechanic in the pipe rack jumped to the floor and was dragged out of the area by the Engelhard lead mechanic who was directing the operation from floor level. The Fluor mechanic in the manlift and the other Engelhard mechanic in the pipe rack maneuvered themselves to safety. An additional Engelhard associate in the area assisting the work effort was able to exit unharmed. Two Engelhard mechanics and the Fluor mechanic sustained burns/other injuries and were systematically treated by onsite emergency medical personnel, local ambulance personnel, local hospital emergency room personnel and a local burn unit staff. The other two Engelhard associates involved were not injured. Onsite emergency response personnel coupled with the facility-installed sprinkler system extinguished the blaze.

SEQUENCE OF EVENTS

As part of the fact-finding portion of the incident analysis, the following associates who were either directly or indirectly involved were interviewed: Mark Powell, Tim Wald, Dan Hogan, Steve Knox, Gary Shook, Mike Garcia, James Ezell, Judy Swaney

Note: At the time of this writing, the three victims, for obvious reasons, have not been interviewed.

5/20 - Two stacks of two pallets each of sodium bromate are delivered to the normal staging area for Refinery Area 12. Each pallet contains approximately 2000 lbs. of sodium bromate in 50 lb. cloth bags. The pallets are wrapped in clear plastic and each bag displays the yellow "Oxidizer" label. In addition, Distribution personnel reports a partial pallet in place prior to the delivery. We estimate the total amount of sodium bromate stored at this location to be approximately 10,000 pounds.

6/1 - Plant Maintenance Shutdown begins at 0600. One job scheduled to begin right away is the replacement of a section of condensate return piping running down the main hallway in front of the Refinery towards wastewater. Steve Knox (lead), Scott Lawing and Keith Black (Engelhard) and Curtis Martin (Fluor) are assigned. Also assigned is Mark Powell as a "helper".

6/1 @ 0815 - Tim Wald issues the hazardous work "line break" and "hot work" permits. Work begins with the torch cutting/removal of the old piping just outside the Unitrode area of the Refinery.

6/1 @ 1130 - The work progresses to the area in front of the Refinery Area 12 leach platform, approximately 3 feet horizontal/20 feet vertical from the palletized chemicals.

6/1 @ 1135 - A piece of hot slag contacts the palletized chemicals; a small fire begins. One Associate on the floor attempts to reach the fire extinguisher but before he can, the sodium bromate exothermic reaction begins and the fire size rapidly increases.

6/1 @ 1137 - The fire alarm sounds. First reports from the scene indicate one individual still missing.

6/1 @ 1140 - Local ambulance summoned. All personnel accounted for.

6/1 @ 1145 - Fire reported to be extinguished.

6/1 @ 1148 - Local Fire Department arrives at the North Gate.

6/1 @ 1150 - First ambulance arrives on site. Second ambulance arrives at 1159.

6/1 @ 1153 - Site evacuation initiated.

6/1 @ 1214 - Last victim departs site in local ambulance.

6/1 @ approx. 1315 - Secure from Site evacuation. Decision made for all non-essential personnel to leave.

ACTION/CONDITION ANALYSIS

COMMENTS:

1. Due to prompt action by all concerned, affected employees arrived at Augusta Burn Center within 3 hours of event.
2. The Plant alarm system was activated and all on-site personnel notified of the event in a timely manner.
3. Appropriate work permits and equipment lockout were completed as required.
4. Facility-installed sprinklers functioned as designed.
5. ERT responded quickly with available personnel.
6. Management made decision to evacuate site based upon available information.
7. Local ambulance and fire department responded in a timely manner.
8. The employees involved had washed down the piperack area prior to the start of work as a precautionary measure against inhalation and fire hazards.

POTENTIAL ISSUES:

1. A fire extinguisher remained in the location of the start of the work, but was not moved as the work progressed.
2. Hot work was performed directly over palletized chemicals.
3. The Facility Work Permit procedure was not followed as written; the work area was not cleared of all flammable and/or combustible materials as required.
4. Non-members of the ERT responded to the emergency scene.

LESSONS LEARNED/OPPORTUNITIES

1. Area personnel were not part of the permit process for the work.
2. The Plant's natural gas system wasn't immediately secured.
3. The Facility roof was not inspected for the presence of fire during the event.
4. Unauthorized traffic was allowed to proceed to the Plant after the site evacuation was initiated.
5. One available safety shower, when activated, produced dirty water.
6. Area storage of sodium bromate can be enhanced.
7. Site evacuation alarm could not be activated once the fire alarm had sounded.
8. Personnel did not appear to have an inadequate level of knowledge on the hazards of area chemicals.
9. Wooden pallets containing cloth bags of material (sodium bromate) wrapped in plastic should have been removed from the work area.

RECOMMENDATIONS:

1. Review permit process with emphasis on the role/responsibilities/training requirements of a Fire Watch and the assignment/acknowledgement of that assignment.
2. Review permit process with focus on work that may involve/require an elevated level of scrutiny/approval.
3. Review hazardous chemical storage practices.
4. Review adequacy of the current HazCom Program and the process by which new chemicals are introduced for Plant operations.
5. Review Shutdown policies with emphasis on material storage, ERT coverage, and permit practices.
6. Investigate and correct deficiencies with the Site emergency alarm system.
7. Review evacuation procedures with emphasis on access control and responsible personnel.
8. Review Emergency Response Team response and coverage procedures/requirements for routine and non-routine situations and/or evolutions.
9. Establish checklists as required for foreseeable emergencies to manage items such as shutdown of the bulk chemical system, securing the natural gas system, inspecting the roof, etc.

CONCLUSION

The "fire" that occurred was initiated by a hot piece of slag dropping from the overhead cutting operation onto a pallet containing sodium bromate. The heat from the slag not only caused the packaging materials to begin to burn, but the energy was sufficient to initiate an exothermic decomposition of the sodium bromate. Although the "fire" was a combination of the combustion of the packaging materials, and the thermal energy released as a result of the decomposition reaction, the majority of the heat was generated from the chemical reaction.

Primary Cause:

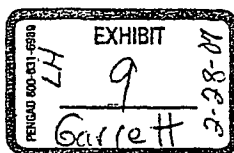
The primary cause of the accident was a failure of the execution of the hazardous work permit system. Paragraph 6.3.3 of Procedure # 2003, "Work Permits", states, "Immediately prior to the start of Hotwork, the Work Supervisor (or designee) shall perform a thorough inspection of the immediate work area and all areas adjacent for the presence of combustible and/or flammable materials. All such materials will be removed to a safe location for the duration of the hotwork....". Even if the potential hazard of sodium bromate was not recognized, the packaging materials were clearly combustible, and by procedure, the materials should have been moved. It is not clear at this time if the required inspection was omitted, if it was inadequately performed, or if it was not recognized by the person completing the inspection that the pallets of sodium bromate constituted "combustible and/or flammable materials".

Contributing Factors:

Failure of HazCom Training: The workers involved in the incident were not adequately aware of the potential hazards of the chemicals in the workplace.

Hotwork Procedure, paragraph 6.3.5: "The fire watch shall have a fire extinguisher, appropriate for the type of work, immediately available for use." Although the team had a fire extinguisher in the general work area, it was not "immediately available". Although it is not clear whether the fire could have been extinguished had the extinguisher been "immediately available", that possibility exists.

Storage of hazardous chemicals: Although it is not clear if the severity of the incident would have been lessened if a smaller quantity of chemicals had been stored in the operations area, the accident would not have occurred had there been no storage in the work area. No specific guidelines or procedures for intermediate storage of hazardous chemicals currently exist.



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Engelhard Accident Investigation Notes

Date of Accident: Tuesday, June 1, 2004

Date of Investigation: Wednesday, June 2, 2004

1. Please refer to Preliminary Accident Report Investigation for overall summary of accident.
 2. On Wednesday, June 2, 2004, Dave Herrington and myself met with a number of Engelhard employees at their Seneca, SC site. Engelhard employees included:
 - a. Frank Lampsum-Scribner - Plant Manager
 - b. Dan Hogan - Health & Safety Manager
 - c. Tim Wald - Permit Supervisor (signed off permit)
 - d. Mark Powell - Firewatch @ accident site
 3. Dave and I also met briefly with Charles Price and Courtney Grant with OSHA from Columbia, SC office. The only information they requested from Fluor was Curtis Martin's DOB, Fluor's Federal Tax I.D. number and a copy of Fluor's OSHA 300 log. Charles Price said this investigation would remain open for some time due to injuries sustained and being able to discuss with the injured information about the accident. He did state OSHA would schedule and hold a final conference at the close of the investigation.
 4. Engelhard explained how assignments of work took place. Basically, an Engelhard planner assigns specific people (both Engelhard and Fluor) to work orders and informs the Engelhard Lead of the work. In this case Curtis was assigned to this work order working with four Engelhard employees including Steve Knox who was the Engelhard lead. Steve coordinated getting the permit signed off by Tim Wald the Engelhard Permit supervisor after which the work began. As stated in the accident report, Tim Wald assumed the only work was in the location of the manlift and was not aware the team was removing pipe down the aisle way and into the intersecting aisle where the sodium bromate was stored.
 5. We viewed pallets of Sodium Bromate in the Engelhard warehouse and note there were 36 each 25KG bags to a pallet. Each plastic bag was labeled with OXIDIZER and the emblem illustrating a yellow flame. Dave Herrington has a MSDS sheet on Sodium Bromate.
 6. Engelhard provided us copies of the Hazardous work permit # 2980 as well as a copy of the Work Order for this work.
 7. We interviewed Tim Wald, Engelhard's person who signed off the permit.
- Items discussed:

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- a. Tim is a Raw Mat'l coordinator – in this position for 1 ½ yrs. Has worked with Engelhard a total of 9 yrs.
 - b. Steve Knox requested Tim to sign off the permit. Tim was selected only because he was free at the time. Several could have signed off this permit.
 - c. Tim stated he did not know who was assigned as the firewatch. He knew that Steve Knox would be on the ground observing the operation
 - d. Tim was not informed the extent of pipe removal. He assumed the team would only be working in the area of the manlift therefore this was the only area he sniffed for air quality prior to signing the permit.
 - e. Tim did not know what Sodium Bromate was but stated had he known the scope of work came into the vicinity of the pallets of sodium bromate he would have asked someone prior to releasing the work.
 - f. Tim reviewed the permit with the 4 workers and no questions were asked.
 - g. When asked if he had worked with Curtis he responded yes and stated Curtis was an excellent worker, always safe and wished they had a 100 more like him.
 - h. Dave Herrington asked the question if any Fluor supervisor was involved with this work and Tim stated, "No".
 - i. Dan Hogan, Engelhard's safety manager was present during the interview and Dave had asked if this team had worked in this specific pipe rack in the past. Dan felt certain all had previous experience working in this rack and had even witnessed some of them since this area is located close to Dan's office.
8. Interview with Mark Powell

- a. Mark is a production technician (operates equipment) – Has been with Engelhard for 7 ½ yrs. In this position.
- b. His responsibility was to keep people out of the area. The area was barricaded with red tape.
- c. Mark said he had not have formal firewatch training however after he left Dan Hogan stated Mark had been to a 2 day fire training school.
- d. Steve had assigned this responsibility to Mark.
- e. Mark said that Tim did not discuss activities with him.
- f. Mark was not aware of what Sodium Bromate was and also stated he had not worked with Curtis in the past.
- g. Mark was uncertain who was using the torch in the rack and said he best recollection was that Curtis was in the manlift and Keith and Scott were in the pipe rack at the time of the accident.
- h. When asked if that was his signature on the permit Mark could not or would not verify the signature shown was his own.
- i. His account of the accident: Mark was standing close to the pallets of sodium bromate when the spark or slag ignited the sodium bromate.

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- j. When he noticed the flame it was only a few inches high. Mark ran approx. 30 feet to get a fire extinguisher hanging on a wall and when he turned around the flames were several feet high. He realized he could not do any good with the fire extinguisher and vacated the area.
9. Prior to leaving the plant site, we had a discussion with Fluor's Maintenance foreman, Donnie McKern, who Curtis Martin reports to. We have a signed statement from Donnie saying Engelhard leads and schedulers assign the work for his employees.

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Preliminary Accident Report Investigation for Engelhard, Seneca, SC

Date of Incident: Tuesday, June 1, 2004

Time of Incident: 11:35 a.m. EST

Date of this Report: Wednesday, June 02, 2004

Name of Fluor Employee injured: James Curtis Martin

Injuries sustained: 2nd degree burns to 25% of body

Description of Accident: At 8:15 a.m. on the day of the incident Tim Ward with Engelhard signed off the Hazardous Work permit for a team of four (4) Engelhard employees and Curtis Martin to remove a section of 4" sch. 40 C.S. Condensate piping from an existing elevated piperack located in the Ret. (???) Hallway inside the building. The piperack elevation is approximately 17 +/- feet above finish floor. An acetylene torch was used to cut the piping into sections such that the piping could be lowered by hand to the floor. The plant had encountered continuous leaks on the condensate header and the plan was to continue removing piping until all bad piping had been removed at which time a new condensate line was to be reinstalled.

When Tim Ward signed off the permit no communication was given to him other than the team was to be working in the current location of the manlift. Tim checked (sniffed) this one spot for oxygen and toxicity levels and found to be a safe environment to work. Work progressed south down the existing aisle way (approx. 25-30 feet) and the condensate line turned 90 degrees to the right at the end of the aisle. When the team made the turn 2 or 3 pallets (unable to determine count) of Sodium Bromate was against one of the aisle way walls. Engelhard was not certain how many 25 KGS bags were on the pallets but in the warehouse each pallet contained 36 bags. These bags were clearly marked with "OXIDIZER" on the bag along with the oxidizer label signifying a fire hazard.

One Engelhard employee plus Curtis Martin was in the rack with another Engelhard employee in the manlift at elevation just under the piperack. An Engelhard employee acting as a firewatch plus the Engelhard lead responsible for the work was at floor level. At approximately 11:35 a.m. a spark or piece of metal from the cutting of the pipe above landed on the pallet of sodium bromate igniting the plastic bag containing the sodium bromate. The firewatch tried to get to a fire extinguisher located on the wall approx. 30 feet from his location but by the time he turned to face the pallets the flames were several feet high.

The two Engelhard employees on the floor managed to escape with no injuries. The other three working in the piperack and in the manlift all sustained smoke inhalation and burns to the body.

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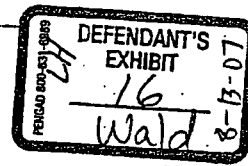
All three were transported to Oconee Hospital then airlifted to the Burn Center located in Augusta, GA.

Possible causes of this accident:

1. Lack of communication between the Engelhard lead and the Engelhard Permit supervisor. The Permit supervisor had assumed they would only be working in the area of the manlift.
2. Lack of Hazardous Communication understanding the volatility of the sodium bromate. No one seemed aware of this danger.
3. Use of a cutting torch and lack of spark control. The floor had been wetted however no precaution to move or cover the pallets of Sodium Bromate. Could a Port-a-band saw been used versus a cutting torch?
4. Firewatch had to travel a longer distance than necessary to gain access to a fire extinguisher. Was not prepared for such an emergency.

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DEFENDANT'S
EXHIBIT 21



Engelhard Corporation
Chemical Catalyst Group
554 Engelhard Drive Seneca, SC 29678

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Procedure

Title: Work Permits Doc Number 2003
Revision: 5

Department:

Site:

Area:

EH&S

Approved & Released Procedure

Implementation Date: 09/27/2003

Type of Document:

Industrial Safety

Standard Element:

ISO 9000 - ISO9001:2000 4.2 Documentation requirements

1.0 Work Permits

2.0 Purpose:

This document is designed to provide requirements and guidance for the performance of hazardous and non-hazardous work within the ECSF operating areas. Hazardous work is defined as all hot work, line breaks (as designated) and roof access (as designated).

3.0 Scope:

These requirements pertain to all affected operations conducted at Engelhard Corporation Seneca Facility (ECSF).

4.0 Responsibilities:

- 4.1 The General Manager has ultimate responsibility for all operations, events, and occurrences associated with this site.
- 4.2 The Operation Managers are responsible for the programmatic implementation of these requirements within their respective areas.
- 4.3 The Safety Manager is a technical resource for operations; and as such, is responsible for providing accurate information and guidance as required.
- 4.4 Area Managers are responsible for ensuring these requirements are promulgated and enforced within the confines of their operation/area.

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4.5 Lead Operators/Supervisors are responsible for direct oversight of associates and the routine enforcement of these regulations.

4.6 All Associates, contractors, and temporary employees are responsible to read, understand, and comply with the requirements contained herein.

5.0 Definitions:

5.1 A Line Break is defined as the opening, disconnection, or otherwise exposure of system internals of installed equipment and/or piping. This definition does not apply to equipment/piping that is connected and disconnected by Operations Personnel as part of routine operations such as quick disconnect fitted hoses.

5.2 Hazardous Material is defined as any substance or compound that has the capability of producing adverse effects on the health and safety of humans during normal use.

5.3 Non-Hazardous Work is defined as all work performed by personnel outside of the affected operating group not otherwise classified as Hazardous Work.

5.4 Hazardous Work Permit is defined as the controlling document used to detail and plan the requirements for hazardous work.

5.5 Hot Work is defined as welding, cutting, grinding, and/or any other evolution that does or could produce a source of ignition for combustible and flammable materials.

5.6 Designated Roof Areas are defined as the area from the center to within 8 feet of the edge of the main building (Manufacturing and Warehouse facility) and the High Bay. This area is clearly marked with a red line so that employees on the roof will be aware of the danger that exists beyond the line and the requirements that must be met prior to crossing. Also "designated" is that portion of the "S" Building roof from the point of access to the red demarcation line.

5.7 High Risk Roof Areas are defined as all roofs not specifically listed as "designated".

5.8 Fall Protection is defined as the equipment and procedures in place to avoid injury or death by an accidental fall.

5.9 Fall Protection Equipment Cabinet is defined as the storage location for roof fall protection equipment. It is located on the roof.

5.10 Anchor Points are defined as the approved fall protection tie off points located at designated, marked locations of the roof.

5.11 The Permit Supervisor is the senior responsible individual that verifies and issues the work permit (Lead Operator, Senior Lead, Maintenance Supervisor, etc)

6.0 Procedure:

6.1 General

6.1.1 The Hazardous Work Permit (Form EC-SENECA 027) will be valid only for the time required to complete the assigned task or job identified on the permit.

6.1.2 On projects requiring more than a single work shift, the oncoming shift shall review and approve the existing permit after a formal turnover (face to face communications) from the offgoing shift. In those cases where a formal turnover is not possible, a new permit shall be completed at the start of the new work shift. For complicated/extended work, the Safety Manager and

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cognizant Area Manager shall evaluate and determine appropriate schedules for issuance of new permits.

- 6.1.3 The permit shall be displayed at the project site and signed by the applicable Permit Supervisor.

Note: A list of those individuals qualified to initiate and approve Hazardous Work Permits will be maintained by the Safety Manager as applicable.

- 6.1.4 Completion of the permit shall be as follows:

- 6.1.4.1 The Permit Supervisor shall obtain the next sequential permit number from the Work Permit log. This log will be available electronically and maintained by the Site Safety Manager. The log will contain the following information:

- *The work permit number. This number will consist of the year designation (2003, 2004, etc.), followed by HAZARD to indicate a Hazardous Work Permit (as opposed to CSE which indicates a Confined Space Entry Permit in the same system), followed by a sequential four digit number in the form 0001, 0002, etc.
- *The purpose and nature of the work
- *The location and or equipment
- *The date
- *The name of the Permit Supervisor

- 6.1.4.2 The Permit Supervisor will complete or ensure the proper completion of the top two sections of the permit entitled "Information" and "Equipment/Conditions Required".

- 6.1.4.3 The Permit Supervisor shall then initiate the work by completing the "Work" portion of the permit (worker signatures also required).

- 6.1.4.4 Once the work is completed, an Area Representative shall verify "work complete" and that the Area is at least as clean as when work started and indicate such in the "Post-Work" section of the permit.

- 6.1.4.5 The permit must then be forwarded to the Permit Supervisor for review and closeout.

- 6.1.4.6 The completed permit will then be forwarded to the Safety Manager for review and retention.

- 6.1.5 All Lockout/Tagouts initiated as a result of these instructions shall be performed in accordance with the requirements of EH&S 2001 The Control of Hazardous Energy. Any work for which a Machine Specific procedure is not applicable (such as the LOTO for a single valve replacement) shall be documented and reviewed via this Permit process.

- 8.2 Line Break: Whenever a line break is to be performed on piping and/or equipment either known or suspected to contain hazardous materials, the safety portions of the work shall be documented via a Hazardous Work Permit.

- 6.2.1 The appropriate sections of a Hazardous Work Permit will be filled out by the responsible Permit Supervisor as described in Section 6.1 above.

- 6.2.2 The Permit shall contain all data/information known or suspected in reference to the work to be performed and the system on which it will be performed. In all cases, a conservative approach will be used when determining PPE

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requirements and other relevant safety features. All individuals involved in the work shall review, approve, and sign the Permit. If any questions or doubts are encountered, personnel shall contact the Safety Manager for clarification and guidance.

- 6.2.3 All line breaks performed where hazardous materials may be encountered will use a "Stand-By" person in the event of an emergency.

6.2.3.1 The "Stand-By" will be dressed out in the same PPE ensemble as the person performing the break.

6.2.3.2 The "Stand-By" person will not be involved in the work effort. Their purpose is as an observer and a safety backup only.

- 6.2.4 Minimum PPE for any line break involving hazardous material is coated tyvek or chemical protective suit, chemical protective overshoes over steel toed boots (or chemical protective steel toed boots), double nitrile gloves, face shield, safety glasses and a hard hat. All other line breaks require, as a minimum, face shield, safety glasses, appropriate gloves, hard hat, and steel toe shoes.

- 6.2.5 A charged H₂O water hose is required to be immediately available when performing a line break involving hazardous materials.

- 6.2.6 Additional PPE requirements will be based upon the circumstances of and hazardous materials involved in the line break on a case by case basis. This additional equipment may include, but is not limited to: respiratory protection, full head protection, hood, PVC or Silver Shield gloves, life line, and body harness. Any and all questions regarding the correct selection and/or proper application of PPE in any particular case shall be addressed to either the Safety Manager or the Staff Industrial Hygienist.

- 6.2.7 Prior to performing a line break, lines should be verified to be properly locked out, depressurized (if applicable), empty, cleaned and flushed to the greatest extent possible. Any and all drain lines should be tagged open (if applicable).

Note: If, for any reason a line to be broken cannot be verified to be depressurized, cleaned and flushed to the greatest extent possible, approval must be obtained from the applicable Manager and the Safety Manager prior to the start of work.

- 6.2.8 The operational practice that will be followed for line breaks involving flanged parts is to remove the nuts on the lower side opposite that which the person is standing and then allow the line to separate in a manner such that any spillage will be away from all personnel. On vertical arrangements, the lower flange should be broken first unless extenuating circumstance dictates variation. In all cases, line breaks are to be performed in a manner consistent with a controlled release of contents in a direction and manner for maximum personnel safety.

- 6.3 **Hotwork:** Whenever Hotwork is to be performed within the confines of ECSF, the safety portions of the work shall be documented via a Hazardous Work Permit.

NOTE: ECSF contains 2 designated welding/hotwork areas exempt from this requirement.

- 6.3.1 The appropriate sections of a Hazardous Work Permit will be filled out by the responsible Permit Supervisor as described in Section 6.1 above.

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- 6.3.2 The Permit shall contain all data/information known or suspected in reference to the work to be performed and the system on which it will be performed. In all cases, a conservative approach will be used when determining PPE requirements and other relevant safety features. All individuals involved in the work shall review, approve, and sign the Permit. If any questions or doubts are encountered, personnel shall contact the Safety Manager for clarification and guidance.
- 6.3.3 Immediately prior to the start of Hotwork, the Work Supervisor (or designee) shall perform a thorough inspection of the immediate work area and all areas adjacent for the presence of combustible and/or flammable materials. All such materials will be removed to a safe location for the duration of the Hotwork. All Hotwork performed on the inside of a building must have atmospheric monitoring performed prior to the start of the work evolution.
- 6.3.4 Hotwork will not be performed on pressurized systems or systems that contain hazardous materials without the prior approval of the Safety and Maintenance Managers.
- Note:** Any decision to leave flammable and/or combustible material in the vicinity of Hotwork must be approved in advance by the Area Manager and the Safety Manager.
- 6.3.5 All Hotwork shall be performed with a stand-by person (fire watch) stationed at the work location. The fire watch shall have a fire extinguisher, appropriate for the type of work, immediately available for use.
- 6.3.5.1 Extinguishers used for this purpose shall not be taken from those stationed throughout the Plant for emergency use nor can the welding rig extinguishers be used. Extinguishers needed for Hotwork duty can be obtained from the Plant replacement supply.
- 6.3.5.2 Prior to leaving the Area, it is the responsibility of the fire watch to ensure that there is no longer a threat of fire as a result of the work performed.
- 6.4 **Roof Access:** Roof access that is limited to a Designated Area shall be governed by a Non-Hazardous Work Permit as described in section 6.5 of this document. Any and all roof access that involves personnel in areas designated, as "High Risk" must be approved in advance via the Hazardous Work Permit process as follows.
- 6.4.1 The appropriate sections of a Hazardous Work Permit will be filled out and approved by the responsible Permit Supervisor prior to the start of work as described in section 6.1.
- 6.4.2 The Permit shall contain all data/information known or suspected in reference to the work to be performed and the system on which it will be performed. In all cases, a conservative approach will be used when determining PPE requirements and other relevant safety features. All individuals involved in the work shall review, approve, and sign the Permit. If any questions or doubts are encountered, personnel shall contact the Safety Manager for clarification and guidance.
- 6.4.3 Fall protection for all "High Risk" area access shall consist of MightyLite Self-Retracting 65' Lifeline, or other approved device suitable for the scope of work, with tie off (all necessary fall protection equipment is located on the roof in the Fall Protection Equipment Cabinet, the key can be checked out of the tool room) anchored at one of the below listed approved Anchoring Points (Map as Attachment A):

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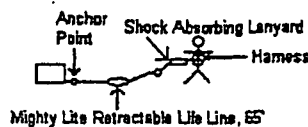
AP 1 - 0110BW040 Frame	AP 11 - Exhaust Duct Support Frame
AP 2 - 0110BW050 Frame	AP 12 - 0395MA010 Eyebolt
AP 3 - 1905BW010 Frame	AP 13 - 0495MA010 Eyebolt
AP 4 - 1530BW010 Frame	AP 14 - 0610BW040 Frame
AP 5 - 1520BW020 Frame	AP 15 - Mobile Stack Support Wire Eyebolt
AP 6 - Pipe Rack Support Frame	AP 16 - 1940BW130 Frame
AP 7 - Exhaust Duct Support Frame	AP 17 - 0295AC140 Eyebolt
AP 8 - Exhaust Duct Support Frame	AP 18 - 0285AC150 Eyebolt
AP 9 - 1395MA010 Eyebolt	AP 19, 20, 21 - On the High Bay
AP 10 - Exhaust Duct Support Frame	AP 22 - East side of LSD platform floor eye in bolt in lower channel flange

6.4.3.1 All Anchor Points are marked with 4" wide Red Tape w/White Letters. Example "AP 1"

6.4.3.2 The use of any other location as an Anchor Point must be approved in advance by Supervision and the Safety Manager.

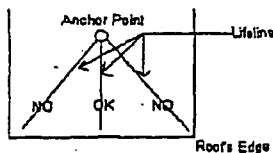
- 6.4.4 If safe access to a particular roof location cannot be made from one of the listed Anchor Points, contact Supervision and the Safety Manager for resolution prior to proceeding with the work.
- 6.4.5 The individual that checks out the key to the Fall Protection Equipment Cabinet is responsible for ensuring that all equipment is in the cabinet before and after the job. If any equipment is missing notify the tool room attendant immediately.
- 6.4.6 When in use, Care should be taken to ensure the Mighty Lite self-retracting line does not cut the roof membrane. This unit weighs approximately 30 pounds and must lay on the roof membrane while in use. Ensure the unit is laying flat on the side without the protruding screw head or laying on something other than the roof membrane such as a piece of plywood.
- 6.4.7 Employees are cautioned to avoid pendulum swing when anchoring fall protection. Anchoring devices must be as close as possible to perpendicular with the roof's edge in relation to the work location (see below illustration for reference). Direct any and all questions to Supervision or Safety.

Typical Fall Protection Hook-Up



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6.4.8 All Contractors needing access to the roof (excluding permanently assigned Fluor Daniel and Pinnacle Associates) will require either a Non-Hazardous or a Hazardous Work Permit, depending on the nature and location of their work. They will also require an escort at all times that they are on the roof.

6.4.9 Employees are also cautioned that the roof's surface is extremely slippery when wet and/or has a light layer of frost or ice. Due to the roof membrane color (it is white) these slippery conditions can be very hard to detect. Personnel should stay on the black walkways when ever possible.

6.4.10 During bright sunshine conditions, dark tinted safety glasses are required.

6.5 Non-Hazardous Work: All work performed by Maintenance or an outside contractor and/or vendor that is not addressed by the requirements of sections 6.1 - 6.4 of this document must have a Non-Hazardous Work Permit (Form No. EC-5341) properly completed and approved prior to the start of work.

6.5.1 The Non-Hazardous Work Permit is designed as an informational and communication tool to ensure all personnel in the affected Area are aware of the work in progress.

6.5.2 The Permit must be signed and approved by both the designated Area Representative and the designated Maintenance/Contractor Representative.

7.0 References

7.1 29CFR1910 OSHA Standards for General Industry

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ATTACHMENT A
ROOF FALL PROTECTION ANCHOR POINT LOCATION MAP

1). ALL REGULATIONS, DESIGNATIONS AND GUIDELINES
ARE IN ACCORDANCE WITH PLANT SAFETY PROCEDURE
7.5 AND WITH OSHA REGULATIONS 1910.21(b) &
APPENDIX C TO 1910.66

MAIN BUILDING ROOF

AP-1 0110BW040 - FRAMEWORK
AP-2 0110BW060 - FRAMEWORK
AP-3 1905BW010 - FRAMEWORK
AP-4 1830BW010 - FRAMEWORK
AP-5 1830BW020 - FRAMEWORK
AP-6 PIPE RACK SUPPORT FRAMEWORK
AP-7 EXHAUST DUCTWORK SUPPORT FRAME
AP-8 EXHAUST DUCTWORK SUPPORT FRAME
AP-9 1395MA010 ANCHOR SHACKLE
AP-10 EXHAUST DUCTWORK SUPPORT FRAME
AP-11 EXHAUST DUCTWORK SUPPORT FRAME
AP-12 0395MA010 ANCHOR SHACKLE
AP-13 0495MA010 ANCHOR SHACKLE
AP-14 08105WD40 SUPPORT FRAMEWORK
AP-15 MOBIL EXHAUST STACK ANCHOR SHACKLE
AP-16 19405W130 SUPPORT FRAMEWORK

HIGH BAY AREA ROOF

AP-19 BLOWER STAND IN CENTER (EMPTY)
AP-20 SHACKLE ASSEMBLY 2 SIDES OF 1995MA020
AP-21 BLOWER STAND 19405W130

WAREHOUSE ROOF

NOTE: AS POSTED ON WAREHOUSE ROOF, DO NOT WALK
ON OR DISTURB RED WARNING STRIPE DUE TO NATURE OF
ITS APPLICATION ON ROOFING MEDIA.

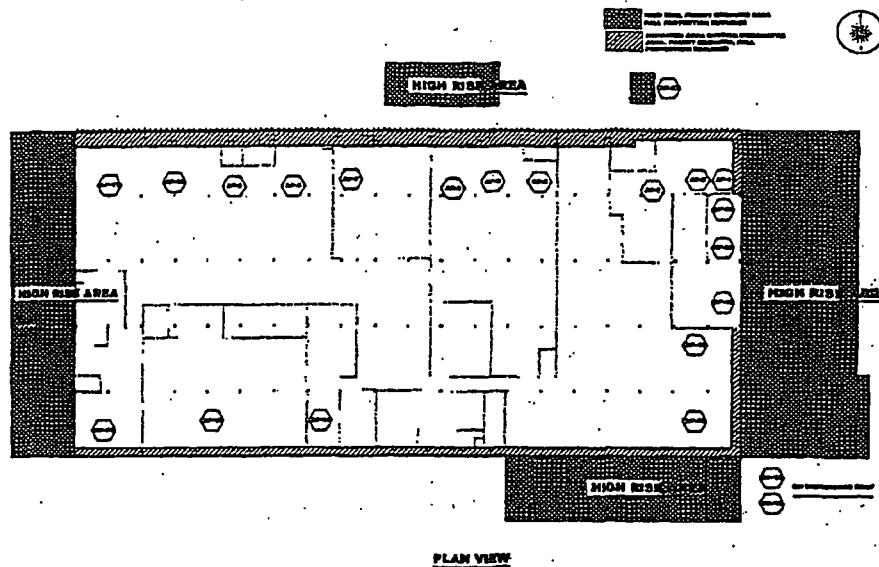
AP-17 0295AC140 - LIFTING EYEBOLT

LARGE SPRAY DRYER SCRUBBER ROOM ROOF

AP-22 EAST SIDE OF L3D PLATFORM FLOOR
EYE BOLT IN LOWER CHANNEL FLANGE

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Associated Documents:

EC-SENECA 027 – Hazardous Work Permit

Document Revision History:

Revision: 5 Date Version 1 Created: 3/11/2002
 Date of Last Revision: 09/27/2003 Last Approval Date: 09/27/2003

Document Author: Dan Hogan Document Manager: Kathie England

Approvals:

Name: Ruel Cheatham 8/27/2003 - Approved by: Ruel Cheatham
 Title: Site Manager

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ENGELHARD

Change the nature of things.

Engelhard Corporation
Chemical Catalyst Group
554 Engelhard Drive Seneca, SC 29678

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Procedure

Title: Receiving - Inspection and Verification of Materials Delivered to Engelhard Seneca

Doc Number 743-02
Revision: 2

Department:
Site

*Approved & Released
Procedure*

Implementation Date:
04/25/2003

Area:
Quality Management

Type of Document:
ISO9001:2000

Standard Element:
ISO 9000 - ISO9001:2000 7.4 Purchasing

1.0 Purpose

This procedure outlines the Receiving, Inspection and Verification of Materials Delivered to the Engelhard Seneca Plant.

2.0 Scope

- 2.1 The procedure applies to the receipt and verification of Purchased Materials, Precious Metals, Customer Property, Refinable Materials, Returned Goods, MRO purchases, Materials purchased using the American Express "P" Card, Bulk Liquid Chemicals and Small Packages.

3.0 Definitions

3.1 Purchased Materials

Raw Materials purchased by the Purchasing Department.

3.2 Refinable Materials

Materials containing precious metals delivered to Engelhard Seneca for preparation and sampling.

3.3 Returned Goods

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**DEFENDANT'S
EXHIBIT 25**

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Engelhard Seneca products returned by customers.

3.4 CIMS

Customer Information Management System.

3.5 Small Packages

Packages not included in any other classification, typically these packages are delivered by a delivery service (Fedex, UPS etc.) and contain samples from vendors, samples from other Engelhard sites, samples of refinable materials for evaluation.

3.6 Titled Materials

Seneca owned materials processed and returned to Seneca by a sub-contractor.

4.0 Procedure

4.1 Purchased Materials

Raw materials purchased by the Purchasing Department and Titled Materials are received in the Shipping/Receiving Area of the Warehouse and, after appropriate verification and inspection, are accepted into CIMS inventory by the Receiving Department. Acceptable raw materials are stored in the warehouse until required by the Production Departments.

(Reference Procedures: 741-01 "Tolling Services"

743-01 "Receipt of Raw Materials"

D-018 "Sample Flow of Raw Materials"

D-019 "Receipt of Purchased Small Packages"

4.2 Precious Metals.

Precious metals from the Material Services Group Vault are delivered to the Refinery Warehouse, moved to the Seneca Vault escorted by Security Officers. Vault personnel verify the quantity delivered and update CIMS inventory.

(Reference Procedure: V-001 "Vault Receiving Procedure"

4.3 Customer Property

Customer owned precious metal salts and precious metal solutions sent to Seneca for use in the manufacture of product are received in the Shipping/Receiving of the Warehouse and after appropriate inspection and verification are stored in the secure area of the Warehouse or in the Vault.

(Reference Procedure: 754-01 "The Receipt and Tracking of Customer Owned Precious Metal Salts & Solutions")

4.4 Refinable Materials

Refinable materials are received in the Refinery Warehouse by Refinery Preparation personnel and, after appropriate inspection and verification, are stored in the Refinery Warehouse pending treatment.

(Reference Procedure: 1-150-8999-REC-92 "Receipt of Material into the Preparation Department")

4.5 Returned Goods

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Products returned to Engelhard, Seneca under a "Returned Material Authorization", are received by the Shipping Department in the Warehouse. After appropriate verification and inspection activities the returned goods are dispositioned.
(Reference Procedure: 723-02 "Returned Material Policy")

4.6 Central Stores Purchases

Packages of materials purchased by the Central Stores are initially delivered to and received by the Receiving Department in the Warehouse. The Receiving Department delivers these packages to the Central Stores by where inspection and verification takes place.
(Reference Procedure: P-024 "Central Stores Receiving Procedure")

4.7 "P" Card Purchases

Packages of materials purchased using "P" Cards are initially delivered to and received by the Receiving Department in the Warehouse. The Receiving Department delivers these packages to the appropriate cardholder for inspection, verification and action as appropriate.
(Reference Procedure: (Referenced in 741-01, "Purchasing Procedure")

4.8 Bulk Liquid Chemicals

The Utilities Department is responsible for the Receiving and verification of Bulk Liquid Chemicals.

(Reference Procedure: UT 109 "93% Bulk Sulfuric Acid Offloading Procedure"
UT 110 "50% Bulk Caustic Offloading Procedure"
UT 111 "67% Nitric Acid Offloading Procedure"
UT 112 32% HCl Acid Offloading Procedure"
UT 113 Bulk Propane Offloading Procedure"
UT 909 Unloading Log for Bulk Acids - Caustics")

4.9 Small Packages

Small packages are initially delivered to and received by the Receiving Department in the Warehouse. The Receiving Department delivers these packages to the addressee for inspection and action as appropriate.
(Reference Procedure: D-019)

5.0 Approval/Change

5.1 This procedure (743-02) is approved by the Plant Manager

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- Document Revision History:**

Date of Last Revision: 04/25/2003

Document Manager:
Kathie England

Revision:	Sec/Para Changed	Change Made:	Date
1	N/A	Initial Issue of Document ☐	05/24/02
2.0	4.1	☐ See DCR Link	04/25/03

Sonesta_QSI_Readers

First Approver's Signature

4/25/03 - Approved by: Charles Henkey

Second Approver's Signature

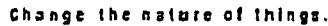
4/25/2003 - Approved by: Ruel Cheatham

1522

▼ 743-02

- 1 06/06/2002 Receiving - Inspection and Verification of Materials
Delivered to Engelhard Seneca
- 2 04/25/2003 Receiving - Inspection and Verification of Materials
Delivered to Engelhard Seneca
- 3 05/01/2006 Receiving - Inspection and Verification of Materials
Delivered to Engelhard Seneca
- 4 11/15/2007 Receiving - Inspection and Verification of Materials
Delivered to BASF Seneca

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Type of Document:
ISO9001:2000

Standard Element:

4.0 PROCEDURE

- 4.1 The Distribution Associate will compare the Carrier's Document's against the material being delivered. The Associate will also review the PO comments in the CIMS system to ensure the shipment meets requirements. If the material delivered is:
 - 4.1.1 Packaging material (drums, drum liners, etc.) to be used for packaging products manufactured by Engelhard - Seneca.
 - 4.1.1.1 If the material is not damaged and the quantity is correct the Distribution Associate will receive the delivered material into CIMS.
 - 4.1.2 Raw Materials for Manufacturing Product.
 - 4.1.2.1 If material is verified as correct, the Distribution Associate will enter the quantity of material received under the part number in CIMS. (See Exhibit 5.1, Material Received Into the Manufacturing Warehouse Flow Chart)
 - 4.1.2.2 A Certificate of Analysis (C of A) will be sent to the Purchasing department by the Vendor to the attention of the Purchasing Department before the time of shipment. Distribution cannot physically release the raw material until evaluation of the raw material has been approved against the specification for the raw material part number in CIMS. The Lab will be responsible for finalization of the request. CIMS will re-classify the raw material inventory.
 - 4.1.2.3 Purchased Raw Materials approved for use by plant production by CIMS will be located in the warehouse.
 - 4.1.2.4 Lots will be designated approved ("APPR") within CIMS.
 - 4.1.3 Purchased Raw Materials rejected for use by plant production by CIMS will be handled in the following ways until a decision on the disposition of the material by the Manufacturing Unit Coordinator and Purchasing Manager is made:
 - 4.1.3.1 Rejected material will be maintained in CIMS as quarantined. CIMS will be the document of record. See procedure 830-02, Nonconforming Purchased Raw Material.
 - 4.1.4 Customer supplied raw material not subject to Engelhard Seneca procedures as outlined in 741-01, Purchase Procedure; 741-03, Raw Material Profile; 743-01, Receipt of Purchased Material; and 753-01, Identification of Inspection and Test Status.
 - 4.1.5 The Distribution department will check material received to verify quality of packaging, labeling, quantity, and timeliness. Any nonconformance will be noted on the receiving paperwork and a NCMR will be initiated.
 - 4.1.5.1 If quantity received is +/- 10% the PO is considered complete.
 - 4.1.6 The Distribution Department will spot check inbound raw material for weight shortages. Any shortages will be noted on the package and noted on the receiving paperwork. It will also be entered into the Raw Material Nonconformance board. The Distribution Associate will provide the Purchasing Manager with the Vendor Name, package type, part number, lot number, and the

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indicated weight as well as the actual weight. The Purchasing Manager will work these issues with the supplier.

4.2 Undamaged Incoming Material

- 4.2.1. The number of packages received will be noted on the carrier's Bill of Lading and will be signed and dated by the Distribution Associate.
- 4.2.2. The Distribution Team will keep a copy of the packing list in the received raw material file.

4.3 Damaged Incoming Materials and Other Vendor Complaints

- 4.3.1 The damage will be noted on the carrier's bill of lading.
- 4.3.2 The Purchasing Manager will be notified via the NCMR that material is damaged or other nonconforming problems exist. (e.g. late delivery, wrong item, no COA). See procedure 830-02
- 4.3.3 The damaged material will then be held and entered into CIMS under quarantine status.
- 4.3.4. The Purchasing department and Process Engineer decides the disposition of material. If material is to be returned to the supplier, a Debit Memo (see 751-06) will be completed by the Purchasing Department and the damaged material sent to the Shipping Department for shipment to the supplier. Purchasing will then execute a "RV Transaction" (Return to Vendor) in CIMS to update the database.
- 4.3.5 A Vendor Complaint will be issued by the Purchasing Department (see procedure 830-02).

4.4 Receipt of Returned Goods

- 4.4.1 The return of finished good products will be received through the Manufacturing warehouse and is subject to procedure 723-02.

4.5 Receipt of Plant Equipment

- 4.5.1 Receipt of equipment at the plant facility will be done by the Maintenance/Projects per Maintenance Directive 92-01 (see Exhibit 5.2).

4.6 Handling and Storage of Raw Materials

- 4.6.1 All raw materials will be stored in an enclosed building protected from the weather. Materials warranting climate control will be stored in designated areas in the plant to prevent deterioration of the product. A cold storage building is located in the Components Catalyst Area for material needing to be temperature controlled.
- 4.6.2 All materials received will be handled either manually or mechanically to prevent damage or spillage ~~off to the container~~. All drums are stored on pallets for ease of movement and storage.

4.7 Receipt of Hazardous Materials

- 4.7.1 Hazardous materials will not be accepted from any unknown vendors,

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carriers or haulers.

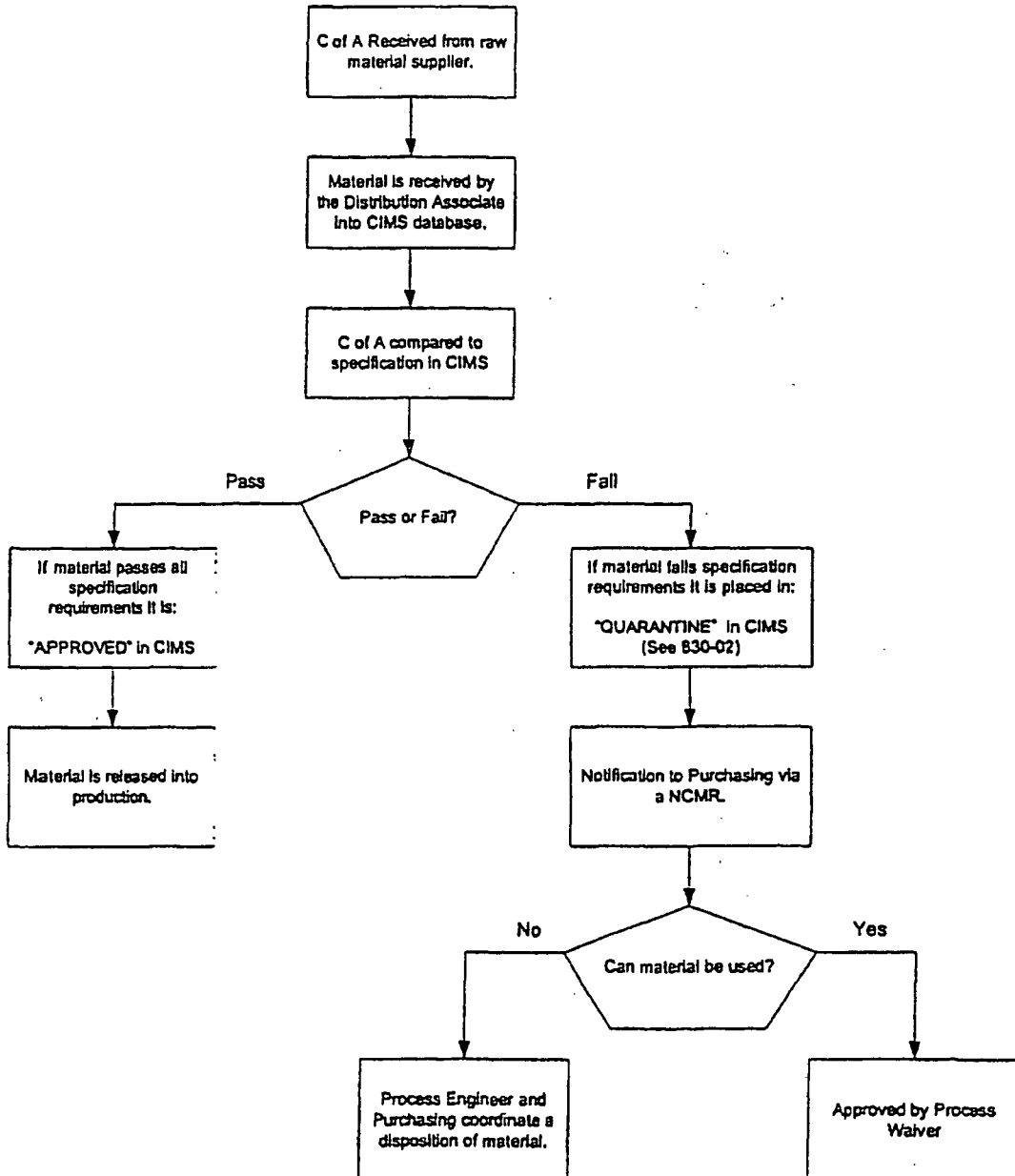
- 4.7.2 Only approved hazardous material suppliers and carriers will be used. A carrier or supplier will not be considered approved for use until they have signed and returned a certification letter (see procedure 630-03). Copies of signed letters will be kept in the Logistic managers office.
- 4.7.3 Conversation with outside carriers should be limited on hazardous material products produced or used at the site.
- 4.7.4 Hazardous materials should be inspected and verified by two individuals when shipping or receiving.
- 4.7.5 Any security incident involving hazardous materials will be reported to the Security Manager or his designee immediately.

5.0 EXHIBITS

- 5.1 Raw Material Received into the MF Warehouse Flow Chart
- 5.2 Maintenance Directive 92-01

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EXHIBIT 5.1 RAW MATERIAL RECEIVED INTO THE MF WAREHOUSE



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Exhibit 5.2

ENGELHARD

TO		INTEROFFICE MEMORANDUM	
Distribution	W. P. Griffin	92-168	
DATE	COPY TO	MAINT	MAINTENANCE
02 November 92			DIRECTIVE 91-01

RECEIPT OF EQUIPMENT

On receipt of glass lined, rubber lined or teflon coated vessels, the Maintenance Department must be notified. The same holds true for rubber coated agitators and dip tubes. The equipment should be inspected and tested before the truck driver leaves. Under no circumstances should the equipment be removed from the Receiving area without approval from the Maintenance Planner, Maintenance Superintendent, or Maintenance Supervisor.

W. P. Griffin 11/2/92
W. P. Griffin

Distribution
Maintenance
Distribution
Purchasing
Engineering

(Replaces Maintenance Directive 91-12 dated 10/24/91)

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▼ 743-01

1	03/01/2002	Receipt of Purchased Material
2	04/11/2002	Receipt of Purchased Material
3	05/28/2002	Receipt of Purchased Material
4	07/23/2002	Receipt of Purchased Material
5	03/04/2003	Receipt of Purchased Material
6	04/25/2003	Receipt of Purchased Material
7	10/20/2003	Receipt of Purchased Material
8	04/11/2006	Raw Material Receiving Procedure
9	01/14/2008	Raw Material Receiving Procedure

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MATERIAL SAFETY DATA SHEET

Sodium Bromate

Page 1 of 5

DISTRIBUTOR: Matrix Outsourcing, LLC. 11 E.V. Hogan Drive, Hamlet, NC Customer Service: 910-582-2477, ext. 120	DISTRIBUTOR EMERGENCY TELEPHONE: Emergency Phone: (704) 540-5977 Monday - Friday, 8:00 am - 5:00 pm EST 24-HOUR EMERGENCY TELEPHONE NUMBER: CHEMTREC: (800) 424-9300 (24 hours)
---	---

MSDS Preparation Date: March 24, 2003

SECTION 1: CHEMICAL PRODUCT IDENTIFICATION

Chemical Name:	Sodium Bromate
CAS#:	7789-38-0
EINECS:	232-160-4
Synonyms:	Bromic Acid Sodium Salt
Appearance:	White Crystalline Powder
Odor:	Odorless

SECTION 2: HAZARDOUS INGREDIENTS

C.A.S. No. 7789-38-0	SODIUM BROMATE	>99%
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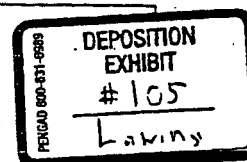
EXPOSURE LIMITS

Chemical Name	PEL	TLV - ACGIH	IDLH Immediately Dangerous to Life or Health	Mfg Recommendation
Sodium Bromate	None	None	None	None

SECTION 3: HAZARDS IDENTIFICATION

EMERGENCY OVERVIEW

Appearance: white
DANGER! OXIDIZER. Contact with other material may cause fire.
Target Organs: Kidneys
Potential Health Effects:
Eye and Skin: Causes eye and skin irritation.
Ingestion: Causes gastrointestinal irritation with nausea, vomiting and diarrhea.
Inhalation: May cause respiratory tract irritation.
The toxicological properties of this material have not been fully investigated.



NFPA Rating: (estimated) Health: 2 Flammability: 0 Reactivity: 1

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EXHIBIT 29



MATERIAL SAFETY DATA SHEET

Sodium Bromate

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SECTION 4: FIRST AID PROCEDURES

Skin:	Wash thoroughly with water and soap for 15 minutes. If skin irritation occurs, seek medical attention.
Eyes:	Flush immediately under running water for 15 minutes. If irritation occurs, seek medical attention immediately.
Inhalation:	Remove subject to fresh air.-Seek medical aid if lung irritation persists or breathing becomes difficult.
Ingestion:	DO NOT induce vomiting. Allow the victim to rinse his/her mouth then to drink 2-4 cups of water and seek medical attention.
Note to Physician:	Treat symptomatically. Renal failure, gastrointestinal irritation, respiratory depression, and deafness are usual findings. Hypotension may also occur early in the postingestion phase. Consider gastric lavage.

SECTION 5: FIRE & EXPLOSION DATA

Flash Point:	Not Applicable
Auto Ignition Temp.:	Not Applicable
Extinguishing Media:	Cool containers with flooding quantities of water until fire is well out. For small fires, use water only. Do not use dry chemicals, foams, CO ₂ or halons. For large fires, flood fire area with water from a distance. Apply water from as far a distance as possible. Move containers from fire area if you can do it without risk. Do not move cargo or vehicle if cargo has been exposed to heat.
Special Procedures:	Use Self-Contained Breathing Apparatus and full turnout gear.
Unusual Hazards:	During a fire, irritating and highly toxic gases may be generated by thermal decomposition. Oxidizer. Greatly increases the burning rate of combustible materials. Vapors may be heavier than air. They can spread along the ground and collect in low areas. May accelerate burning if involved in a fire. Containers may explode with heat. Prolonged exposure to fire or heat by the material may result in explosion.

SECTION 6: SPILL INFORMATION

Spills/Leaks:	Keep combustibles away from spilled material. Avoid run-off into sewers or waterways. Clean up spills immediately, observing precautions in the Protective Equipment section. <u>Small dry spills:</u> sweep up with clean shovel, then place into dry container and cover loosely. <u>Large spills:</u> dike far ahead of spill for later disposal.
---------------	--

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PROD02



MATERIAL SAFETY DATA SHEET

Sodium Bromate

Page 3 of 5

SECTION 7: STORAGE AND HANDLING

Handling and Storage:	Keep from contact with organic matter. Avoid getting on skin or in eyes when handling this product. Store in cool, dry place, out of direct rays of sun. Keep container closed when not in use.
Other Precautions:	Do not continue to wear clothing contaminated with product or with solutions of this product due to the oxidizing properties of substance.

SECTION 8: PERSONAL PROTECTIVE EQUIPMENT

Respiratory Protection:	For particulate exposure greater than $5\text{mg}/\text{M}^3$, use a NIOSH-approved respirator such as an N95 filtering facepiece (dust mask).
Protective Gloves:	Butyl Rubber, PVC, Neoprene
Eye Protection:	Safety glasses or chemical splash goggles
Ventilation:	Local or mechanical ventilation may be used
Other Protections:	Eyewash station and safety shower accessible

SECTION 9: PHYSICAL AND CHEMICAL PROPERTIES

Specific Gravity:	3.339 @ 17.5 °C.
Boiling Point:	1390 °C.
Melting Point:	381 °C.
Solubility in Water:	Decomposes (insoluble in ethyl alcohol) 27.5 g/100g H ₂ O @ 0 °C.
pH (in water):	7.0
Molecular Weight:	150.892
Molecular Formula:	Br-H-O ₃ Na
Corrosivity	Neutral in aqueous solution

SECTION 10: REACTIVITY DATA

Stability:	Stable
Conditions to Avoid:	Do not store next to combustible materials. Store in a well ventilated, cool, dry place. Keep off of clothing.
Hazardous Polymerization:	Does not occur
Incompatibility:	Strong reducing agents, finely powdered metals, sulfur, arsenic, metal sulfides, organic materials, phosphorus, copper, carbon, lubricant. Mixtures with grease are shock-sensitive at 120 °C.
Hazardous Decomposition:	Thermal decomposition may produce oxides of sodium, hydrogen bromide, and release of oxygen.

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MATERIAL SAFETY DATA SHEET

Sodium Bromate

Page 4 of 5

SECTION 11: HEALTH HAZARD DATA AND TOXICOLOGY

Route of Exposure:	Skin and eye contact, inhalation and ingestion. Ingestion is most common route of exposure with adverse health effects.
Short term exposure effects:	Delayed effects; irritation of eyes, skin and respiratory and digestive tracts; hypotension, methemoglobinemia; hypoxia; kidney and brain failure, sensorineural loss of hearing.
Chronic:	Not available
Listed Carcinogen:	None
Toxicity	LD ₅₀ Mouse: 140 mg/kg (ip) Rabbits died approximately 12 hours after oral administration of 0.5g/kg. Death in animals is apparently due to acute renal failure resulting from nephritic action of bromate ion.
Mutagenicity	Significant mutagenic effect in a dose-dependent manner in the mouse micronucleus test system.
Ames Test	Negative

SECTION 12: ECOLOGICAL INFORMATION

Not available

SECTION 13: DISPOSAL INFORMATION

Waste Disposal:	Dispose in accordance with Federal, State and Local regulations.
RCRA Hazardous Waste:	Not P or U listed. Chemical waste generators must determine whether a discarded chemical is classified as a hazardous waste. US EPA guidelines for the classification determination are listed in 40 CFR Parts 261.3.

SECTION 14: TRANSPORTATION

US DOT:

Shipping Name:	Sodium Bromate
Hazard Class:	5.1
UN/NA number:	UN1494
Packing Class:	II
Label	Oxidizer

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PROD04



MATERIAL SAFETY DATA SHEET

Sodium Bromate

Page 5 of 5

SECTION 15: REGULATORY INFORMATION

TSCA

Inventory:	C.A.S. Number 7789-38-0 is listed
Health & Safety Reporting List:	Not listed
Chemical Test Rules:	Not listed under these rules
Section 12b:	Not listed under this section
Significant New Use Rule:	Not listed under this rule

SARA

Section 302 (RQ):	Sodium Bromate does not have an RQ (Reportable Quantity)
Section 302 (TPQ):	Sodium Bromate does not have a TPQ (Threshold Planning Quantity)
Sara Codes:	Sodium Bromate, CAS# 7789-38-0 Acute, Flammable
Section 313:	No chemicals reported under section 313

STATE REGULATORY INFO:

Sodium Bromate can be found on the following states right-to-know lists:	
New Jersey	Yes
California:	No No significant risk level - not listed
Pennsylvania:	No
Massachusetts	No

FDA/USDA: Not registered with the FDA/USDA.

SECTION 16: LABEL INFORMATION

Label Hazards:	Oxidizer
Label Precautions:	Avoid contact with skin, eyes or clothing. Wash thoroughly after handling. Wear proper protective equipment. Keep container closed when not in use.

The information above is believed to be accurate and represents the best information currently available to us. However, we make no warranty of merchantability or any other warranty, express or implied, with respect to such information, and we assume no liability resulting from its use. Users should make their own investigations to determine the suitability of the information for their particular purposes.

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PROD05

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W. Howard Boyd, Jr.
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"ald G. Tate, Jr.
"borah Casey Brown*
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C. William McGee
Ronald K. Wray II
Luanne Lambert Runge
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September 14, 2004

Andres M. Hawkins
Jeremy A. Dantin*
Laura T. McDonald
Jason M. Imhoff
J. Timothy Wooten*
Ryan S. Montgomery
Roshella James
Fred W. Suggs, III
Jason T. Keltner
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* ALSO MEMBER OF THE DISTRICT BAR
* ALSO MEMBER OF THE DISTRICT BAR
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* ALSO MEMBER OF THE DISTRICT BAR
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Mr. Robert P. Foster
Foster Law Firm, LLP
P.O. Box 2123
Greenville, SC 29602

Re: James Martin vs. Engelhard Corporation
SCWCC No.: 0406810

Brantley (Keith) Black vs. Engelhard Corporation
SCWCC No.: 0406812

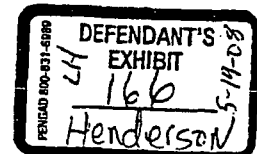
Dear Robin:

Per your request and under the purview of our agreed upon stipulation and protective order, we have enclosed the following:

- 1) A material safety data sheet for sodium bromate as provided by Engelhard's distributor of same, Matrix Outsourcing, LLC;
- 2) Numerous photographs taken immediately after the incident giving rise to these claims; and
- 3) Numerous photographs taken by Dr. Richard Henderson during your inspection of Engelhard's facility.

Additionally, representatives of Engelhard will be providing your expert with a section of shrink-wrap believed to be identical to the shrink-wrap which was on the pallet of sodium bromate giving rise to these claims. This shrink-wrap will be taken directly from a pallet of sodium bromate received by Engelhard from Matrix Outsourcing. Finally, I have learned that Engelhard did not perform any quality assurance testing on the sodium bromate giving rise to these claims.

Please give me a call if you have any questions or need any further assistance.



PL-HENDERSON000043

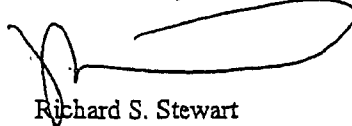
DEFENDANT'S
EXHIBIT 85

1537

Mr. Robert P. Foster
September 14, 2004
Page 2

With kind regards,

GALLIVAN, WHITE & BOYD, P.A.



Richard S. Stewart

RSS/mlo
Enclosures

Direct Dial: (864) 271-5416
rstewart@gwblawfirm.com

PL-HENDERSON000044

PREPARED

00/00/0000

PRODUCT CODE: 1015

GROSS WT: 25.2 KGS

NET WT: 0.2 KGS

167

1101 WT: 25 KGS

1101 NUMBER: 200000012

1101 ORIGIN: 200000012

348

348

DN/370707

PI: 0000

DEFENDANT'S

P/008

P/008

P/008

011/040

ENGELHARD

PLEASE REFERENCE ENGELHARD
 ① PURCHASE ORDER NUMBER
 ② SUPPLIER
 ③ SHIP TO ADDRESS
 ON ALL INVOICES AND SHIPPING DOCUMENTS.

① PURCHASE ORDER: 8006011

DATE: 12/09/03

PAGE 1
1/06/04

② TO: 125968
 UNIVAR USA INC.
 2750 SOUTHPORT ROAD
 SPARTANBURG, S.C. 29302

③ SHIP TO: ENGELHARD CORPORATION
 554 ENGELHARD DRIVE
 SENECA, SOUTH CAROLINA 29678

INVOICE IN TRIPLICATE TO:

ENGELHARD CORPORATION
 ACCOUNTS PAYABLE DEPARTMENT
 P.O. BOX 129
 SENECA, SC 29679
 864 882-9841

*** CONFIRMED ***

JOHN

ENGELHARD CODE NUMBER (IF USED) MUST BE REFERENCED ON ALL INVOICES AND PACKAGES

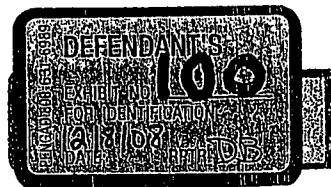
SHIP VIA:		FOB: SHP	SALES / USE TAX: NO		AUTHORIZED: USD		TERMS: NET 30	REVISION:
SHIP TO ARRIVE	ENGELHARD CODE	DESCRIPTION	U/M	REL	REV	QUANTITY	UNIT PRICE	EXTENDED COST
12/31/04	1003	AMMONIUM HYDROXIDE AQUA 26 BE AMMONIUM HYDROXIDE AQUA AMMONIUM, 26 BE COMMERCIAL GRADE AS PER SPEC 1003, REV 3.0, DATED 12-MAR-92. 385 LBS PER DRUM/1540 LBS PER PALLET. DRUM DEPOSIT.	LB	1		10000.0000	.1600	1600.00
12/31/04	1003T	AMMONIUM HYDROXIDE AQUA 26 BE AMMONIUM HYDROXIDE AQUA AMMONIUM, 26 BE COMMERCIAL GRADE AS PER SPEC 1003, REV 3.0, DATED 12-MAR-92. 385 LBS PER DRUM/1540 LBS PER PALLET. DRUM DEPOSIT.	LB	1		60000.0000	.1600	9600.00
12/31/04	1004T	AMMONIUM HYDROXIDE REAGENT AMMONIUM HYDROXIDE REAGENT GRADE AS PER SPEC 1004, REV 4.0, DATED 11-MAY-02. 385 LBS PER DRUM/1540 LBS PER PALLET. DRUM DEPOSIT.	LB	1		25000.0000	.3300	8250.00
12/31/04	1070	ACID, NITRIC, TECHNICAL, 42 BE NITRIC ACID TECHNICAL GRADE 42 BE AS PER SPEC 1070 /1104, ISSUE 3.0, DATED 17-JAN-03. Purchase Order Continued...	LB	1		150000.0000	.2000	30000.00

ENGELHARD AUTHORIZED AGENT

REFER ANY QUESTIONS REGARDING THIS ORDER
 TO THE ABOVE

THIS PURCHASE ORDER IS SUBJECT TO THE PROVISIONS ON THE
 FACE HEREOF AND THE INSTRUCTIONS, TERMS AND CONDITIONS
 ON THE REVERSE SIDE. PLEASE REVIEW THEM CAREFULLY. THEY
 WILL CONSTITUTE OUR CONTRACT UNLESS WE AGREE IN WRITING
 TO CHANGES OR ADDITIONS.

CONFIDENTIAL
 ENGELHARD 005370



1541

03/19/2008 WED 13:07 FAX

TERMS AND CONDITIONS

EXCEPT AS MAY OTHERWISE BE SPECIFICALLY PROVIDED ON THE FACE SIDE HEREOF THE PARTIES AGREE THAT THE FOLLOWING TERMS AND CONDITIONS SHALL GOVERN THE TRANSACTION DESCRIBED ON THE FACE HEREOF. AS USED HEREIN THE TERM "BUYER" SHALL MEAN AND INCLUDE ENGELHARD CORPORATION AND/OR ITS SUBSIDIARIES.

1. ACCEPTANCE AND MODIFICATION

This Purchase Order ("Order") can be accepted only upon the terms and conditions expressed herein, which may not be modified, amended or waived except by express written consent signed by an officer or Buyer. Objection is hereby given to any additional or different terms or conditions, whether or not material, contained in any acknowledgment or confirmation of this Order. This Vendor, upon signing the Acceptance Copy, of commencing performance hereunder or by any other means which reasonably manifest Vendor's assent to be bound by the provisions hereon.

2. PERFORMANCE

Time is of the essence of this Order, and performance must actually be completed within the time stated on the face side hereof. In the event of Vendor's delay in performance or failure to perform, Buyer reserves the right, in addition to all other rights provided by law, to cancel this Order immediately upon giving notice and hold Vendor liable for any excess cost incurred, plus all other allowable damages. Neither Vendor nor Buyer shall be liable for delay in performance or failure to perform if such delay or failure is caused by any occurrence or contingency beyond the reasonable control of the affected party, which by the exercise of due diligence such party would be unable to overcome, or by compliance in good faith with any applicable foreign or domestic governmental requirement provided the affected party notifies the other party of such occurrence. Quantities affected by any such delay or failure may be deleted from this Order. Vendor shall deliver all goods to and perform all services at the premises designated on the face side hereof, and all prices stated herein shall be for such delivery or performances, free of all other costs and expenses. Buyer may inspect all goods provided and all services performed hereunder prior to being obligated to make payment, whether partial, full or final, on account thereof.

Vendor agrees to sell or otherwise make available to Buyer spare and replacement parts and component systems for each item of equipment or other goods to be provided hereunder on commercially reasonable terms and conditions throughout the entire reasonable life expectancy of each such item.

3. WARRANTY

Acceptance of this Order constitutes an express warranty by Vendor that (a) with respect to all goods to be provided hereunder Vendor has, or at the time of performance shall have, and shall transmit to Buyer good and marketable title thereto, free and clear of liens and encumbrances of any kind whatsoever, (b) all services to be performed hereunder shall be performed in a good and workmanlike manner and in accordance with sound generally accepted practices, involve no unreasonable risk of injury or damage, conform to all applicable specifications and governmental requirements, and be without fault and free from all defects, and (c) all goods to be provided hereunder shall be merchantable, fit for the purpose intended and of first quality, involve no unreasonable risk of injury or damage when used as intended, conform to all applicable specifications and samples and be free from all defects in design, materials and workmanship. Buyer may accept or reject any or all goods or services which are in breach of this provision and in any event, hold Vendor liable for all damages resulting from such breach.

4. COMPETITIVE OFFERS

At any time, Buyer may notify Vendor that it has received a bona fide offer to deliver similar goods in approximately the same quantity as the undelivered portion hereunder at a lower price than that which is then in effect under this Order, all within fifteen (15) days of its receipt of such notice. Vendor shall not reduce its price hereunder sufficiently to meet the terms of such offer and advise Buyer of such reduction. Buyer may purchase any or all of the undelivered portions of goods hereunder from such offeror. All quantities so purchased shall be deleted from this Order.

If at any time during the duration of this Order, Vendor sells or offers to sell comparable quantities of similar grades of products as the goods to be provided hereunder at a price lower than Vendor's price to Buyer then in effect or upon other terms and conditions more favorable to buyers than the terms and conditions hereof, Vendor shall promptly notify Buyer thereof and offer such lower price or such other more favorable terms and conditions to Buyer during the period in which such lower price or such other more favorable terms and conditions are in effect.

5. COMPLIANCE WITH APPLICABLE LEGAL STANDARDS

Vendor further warrants that all goods provided and all services performed hereunder will be in compliance with all requirements of the Fair Labor Standards Act of 1938, as amended. Also, in respect of all performance due hereunder, Vendor warrants that it is and will be in compliance with all applicable provisions of federal, state and local laws and the rules, regulations and standards promulgated thereunder, including without limitation the following, as amended from time to time: (a) Occupational Safety and Health Act of 1970, (b) Executive Order 11246, including the "equal opportunity" clause set forth therein (incorporated herein by reference), (c) Rehabilitation Act of 1973 (incorporated herein by reference) and Vietnam Era Veterans Readjustment Assistance Act of 1974 (incorporated herein by reference), including the "affirmative action" clauses set forth herein and (d) Toxic Substances Control Act of 1976. If the goods provided hereunder are chemical substances or mixtures of chemical substances, as these terms are defined in the Toxic Substances Control Act, Vendor certifies that such chemical substances of all component chemical substances of mixtures are included in the inventory of Chemical Substances as provided in the Toxic Substances Control Act of 1976.

6. SAFETY

Vendor agrees to observe all safety and security rules, instructions and requests of Buyer whenever in its performance hereunder Vendor or its employees or agents enter upon any Buyer location. If the goods provided or to be provided or the services performed or to be performed hereunder involve or may involve any risk of injury or death to persons or damage to property, Vendor shall provide Buyer with a written description of the nature and extent of any such risk, including a description of any precautions which should be taken to minimize the risk of death, injury or damage occurring and to minimize the injury, damage or loss in the event of any such occurrence. Upon request Vendor agrees to complete Buyer's standard chemical control form (currently titled "Material Safety Data Sheet") with respect to any chemical substance to be provided hereunder.

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Vendor shall indemnify and hold harmless Buyer, its agents and employees, from and against all claims, damages, losses and expenses, including attorney's fees, arising out of or resulting from all goods provided and all services performed hereunder, provided that any such claim, damage, loss or expense is caused in whole or in part by a breach of this Order or by a negligent, reckless or intentional act or omission of Vendor, its agents, employees or subcontractors. The obligations of Vendor hereunder shall not extend to any liability with respect to or arising out of any claim, damage, loss or expense which is attributable to an act or omission of Buyer, its agents or employees.

012/040

ENGELHARD

PLEASE REFERENCE ENGELHARD
 ① PURCHASE ORDER
 ② SUPPLIER
 ③ SHIP TO ADDRESS
 ON ALL INVOICES AND SHIPPING DOCUMENTS.

① PURCHASE ORDER: 8006011

DATE: 12/09/03

PAGE 2
1/06/04

② TO: 125968
 UNIVAR USA INC.
 2750 SOUTHPORT ROAD
 SPARTANBURG, S.C. 29302

③ SHIP TO: ENGELHARD CORPORATION
 554 ENGELHARD DRIVE
 SENECA, SOUTH CAROLINA 29678

INVOICE IN TRIPLICATE TO:

ENGELHARD CORPORATION
 ACCOUNTS PAYABLE DEPARTMENT
 P.O. BOX 129
 SENECA, SC 29679
 864 882-9841

*** CONFIRMED ***

JOHN

ENGELHARD CODE NUMBER (IF USED) MUST BE REFERENCED ON ALL INVOICES AND PACKAGES

SHIP VIA:	FOB:	SHIP	SALES/USE TAX:	NO	AUTHORIZED:	USD	TERMS:	NET 30	REVISION:
SHIP TO ARRIVE	ENGELHARD CODE	DESCRIPTION	U/M	REL	REV	QUANTITY	UNIT PRICE	EXTENDED COST	
		600 LBS PER DRUM/2400 LBS PER PALLET. DRUM DEPOSIT.							
12/31/04	1246	SODIUM CHLORATE, TECH., GRANULAR	LB	1		100000.0000	.4750	47500.00	
		SODIUM CHLORATE GRANULAR TECHNICAL GRADE WITHOUT ADDITIVES AS PER SPEC 1246, REV 3.0, DATED 05-DEC-91.							
		15 X 100 DRMS PER PALLET OR 450 LBS DRUMS PALLETIZED AND Banded							
12/31/04	1267	CELITE 545	LB	1		5000.0000	.4200	2100.00	
12/31/04	1394	ETHYLENEDIAMINE, REAGENT 99+ HP	LB	1		20000.0000	1.5800	31600.00	
12/31/04	1400	ACID, BORIC, TECHNICAL NF GRADE	LB	1		10000.0000	1.2000	12000.00	
		BORIC ACID TECHNICAL NF GRADE AS PER SPEC 1400, REV 4.0, DATED 08-JUNE-92. 100 LBS PER FIBER DRUM/2200 LBS PER PALLET.							
12/31/04	1616	SODIUM BROMATE (PREP REFINERY)	LB	1		340000.0000	.6900	234600.00	
		SODIUM BROMATE LOW GRADE AS PER SPEC 1616 ISSUE 1.0 DATED 13-FEB-02. Purchase Order Continued...							

ENGELHARD AUTHORIZED AGENT

REFER ANY QUESTIONS REGARDING THIS ORDER
 TO THE ABOVE

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 FACE HEREOF AND THE INSTRUCTIONS, TERMS AND CONDITIONS
 ON THE REVERSE SIDE. PLEASE REVIEW THEM CAREFULLY. THEY
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 TO CHANGES OR ADDITIONS.

CONFIDENTIAL
 ENGELHARD 005371

D100/2
1543

03/19/2008 WED 13:08 FAX

TERMS AND CONDITIONS

EXCEPT AS MAY OTHERWISE BE SPECIFICALLY PROVIDED ON THE FACE SIDE HEREOF THE PARTIES AGREE THAT THE FOLLOWING TERMS AND CONDITIONS SHALL GOVERN THE TRANSACTION DESCRIBED ON THE FACE HEREOF. AS USED HEREIN THE TERM "BUYER" SHALL MEAN AND INCLUDE ENGELHARD CORPORATION AND/OR ITS SUBSIDIARIES.

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2. PERFORMANCE

Time is of the essence of this Order, and performance must actually be completed within the time stated on the face side hereof. In the event of Vendor's delay in performance or failure to perform, Buyer reserves the right, in addition to all other rights provided by law, to cancel this Order immediately upon giving notice and hold Vendor liable for any excess cost incurred, plus all other allowable damages. Neither Vendor nor Buyer shall be liable for delay in performance or failure to perform if such delay or failure is caused by any occurrence or contingency beyond the reasonable control of the affected party, which by the exercise of due diligence such party would be unable to overcome, or by compliance in good faith with any applicable foreign or domestic governmental requirement provided the affected party notifies the other party of such occurrence. Quantities affected by any such delay or failure may be deleted from this Order. Vendor shall deliver all goods to and perform all services at the premises designated on the face side hereof, and all prices stated herein shall be for such delivery or performances, free of all other costs and expenses. Buyer may inspect all goods provided and all services performed hereunder prior to being obligated to make payment, whether partial, full or final, on account thereof.

Vendor agrees to sell or otherwise make available to Buyer spare and replacement parts and component systems for each item of equipment or other goods to be provided hereunder on commercially reasonable terms and conditions throughout the entire reasonable life expectancy of each such item.

3. WARRANTY

Acceptance of this Order constitutes an express warranty by Vendor that (a) with respect to all goods to be provided hereunder Vendor has, or at the time of performance shall have, and shall transmit to Buyer good and marketable title thereto, free and clear of liens and encumbrances of any kind whatsoever, (b) all services to be performed hereunder shall be performed in a good and workmanlike manner and in accordance with sound generally accepted practices, involve no unreasonable risk of injury or damage, conform to all applicable specifications and governmental requirements, and be without fault and free from all defects, and (c) all goods to be provided hereunder shall be merchantable, fit for the purpose intended and of first quality, involve no unreasonable risk of injury or damage when used as intended, conform to all applicable specifications and samples and be free from all defects in design, materials and workmanship. Buyer may accept or reject any or all goods or services which are in breach of this provision and in any event, hold Vendor liable for all damages resulting from such breach.

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6. SAFETY

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Vendor shall indemnify and hold harmless Buyer, its agents and employees, from and against all claims, damages, losses and expenses, including attorney's fees, arising out of or resulting from all goods provided and all services performed hereunder, provided that any such claim, damage, loss or expense is caused in whole or in part by a breach of this Order or by a negligent, reckless or intentional act or omission of Vendor, its agents, employees or subcontractors. The obligations of Vendor hereunder shall not extend to any liability with respect to or arising out of any claim, damage, loss or expense which is attributable to an act or omission of Buyer, its agents or employees.

013/040

ENGELHARD

PLEASE REFERENCE ENGELHARD
 ① PURCHASE ORDER NUMBER
 ② SUPPLIER
 ③ SHIP TO ADDRESS
 ON ALL INVOICES AND SHIPPING DOCUMENTS.

① PURCHASE ORDER: 8006011

DATE: 12/09/03

PAGE 3
1/06/04

② TO: 125968
 UNIVAR USA INC.
 2750 SOUTHPORT ROAD
 SPARTANBURG, S.C. 29302

③ SHIP TO: ENGELHARD CORPORATION
 554 ENGELHARD DRIVE
 SENECA, SOUTH CAROLINA 29678

INVOICE IN TRIPLICATE TO:

ENGELHARD CORPORATION
 ACCOUNTS PAYABLE DEPARTMENT
 P.O. BOX 129
 SENECA, SC 29678
 864 882-9841

*** CONFIRMED ***

JOHN

ENGELHARD CODE NUMBER (IF USED) MUST BE REFERENCED ON ALL INVOICES AND PACKAGES

SHIP VIA:	FOB:	SHIP	SALES/USE TAX:	NO	AUTHORIZED:	USD	TERMS:	REV 30	REVISION:
SHIP TO ARRIVE	ENGELHARD CODE	DESCRIPTION	U/M	REL	REV	QUANTITY	UNIT PRICE	EXTENDED COST	

REFINERY USE ONLY
 PACKAGED: 110 LB DRUMS

CONTAINERS OF APPROXIMATELY 40,000 LBS EACH ARE
 SCHEDULED TO ARRIVE EVERY 6-7 WEEKS UNLESS
 OTHERWISE COMMUNICATED TO UNIVAR BY ENGELHARD

SHIP TO ARRIVE	ENGELHARD CODE	DESCRIPTION	U/M	REL	REV	QUANTITY	UNIT PRICE	EXTENDED COST
12/31/04	1012	METHOCEL F4MP (PREMIUM)	LB	1		5000.0000	5.6000	28000.00
12/31/04	1320	SODIUM PERCARBONATE	LB	1		10000.0000	.0100	100.00

SODIUM PERCARBONATE, UNCOATED AND UNSTABILIZED, AS
 PER SPECIFICATION 1320, REV. 1 DATED 07-MARCH-03

CALCIUM CHLORIDE REGULAR FLAKE

SHIP TO ARRIVE	ENGELHARD CODE	DESCRIPTION	U/M	REL	REV	QUANTITY	UNIT PRICE	EXTENDED COST
12/31/04	1428	METHOCEL F4M	LB	1		40000.0000	3.7500	150000.00
12/31/04	1725	POTASSIUM HYDROXIDE, 45% AS PER SPEC 1725,	LB	1		40000.0000	.0100	400.00

POTASSIUM HYDROXIDE, 45% AS PER SPEC 1725,
 REV 5.0, DATED 16-SEPT-03
 12.0 LBS PER GALLON
 660 LBS PER DRUM

Purchase Order Continued...

ENGELHARD AUTHORIZED AGENT

REFER ANY QUESTIONS REGARDING THIS ORDER
 TO THE ABOVE

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 TO CHANGES OR ADDITIONS.

CONFIDENTIAL
 ENGELHARD 005372

1545
5160/3

FAX 80:01 WED 8002/61/00

TERMS AND CONDITIONS

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0014/040

ENGELHARD

PLEASE REFERENCE ENGELHARD
 ① PURCHASE ORDER NUMBER
 ② SUPPLIER
 ③ SHIP TO ADDRESS
 ON ALL INVOICES AND SHIPPING DOCUMENTS.

① PURCHASE ORDER: S006011

DATE: 12/09/03

PAGE 4
2/06/04

② TO: 125968
 UNIVAR USA INC.
 2750 SOUTHPORT ROAD
 SPARTANBURG, S.C. 29302

③ SHIP TO: ENGELHARD CORPORATION
 554 ENGELHARD DRIVE
 SENECA, SOUTH CAROLINA 29678

INVOICE IN TRIPLICATE TO:

ENGELHARD CORPORATION
 ACCOUNTS PAYABLE DEPARTMENT
 P.O. BOX 129
 SENECA, SC 29679
 864 882-9841

*** CONFIRMED ***

JOHN

ENGELHARD CODE NUMBER (IF USED) MUST BE REFERENCED ON ALL INVOICES AND PACKAGES

SHIP VIA:		FOB:	SALES / USE TAX:	NO	AUTHORIZED:	USD	TERMS:	NET 30	REVISION:	
SHIP TO ARRIVE	ENGELHARD CODE	DESCRIPTION			U / M	REL	REV	QUANTITY	UNIT PRICE	EXTENDED COST

LO SODIUM - <300 PPM

 * CONFIRMING TELECOM ORDER *
 * DO NOT DUPLICATE *

ENGELHARD-SENECA DELIVERY HOURS:
 8AM-4 PM
 MONDAY THROUGH FRIDAY

CERTIFICATE OF ANALYSIS: FAX A CERTIFICATE OF
 ANALYSIS OR TEST REPORT ON THE MATERIAL PRODUCED
 REFERENCE ENGELHARD SPECIFICATIONS, ENGELHARD
 CODES AND PURCHASE ORDER NUMBER TO THE FOLLOWING:

 * ENGELHARD-SENECA *
 * Purchasing Department 864-885-1373 *

SELLER TO PROVIDE BUYER WITH MATERIAL SAFETY DATA
 SHEETS ON CHEMICAL SUBSTANCES AND MIXES SUPPLIED
 PRIOR TO MATERIAL RECEIPT.

 *MAIL MSDS TO THE ATTENTION OF PURCHASING DEPT. *
 Purchase Order Continued...

ENGELHARD AUTHORIZED AGENT

REFER ANY QUESTIONS REGARDING THIS ORDER
 TO THE ABOVE

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 TO CHANGES OR ADDITIONS.

CONFIDENTIAL
 ENGELHARD 005373

D15A7

03/18/2008 WED 13:09 FAX

TERMS AND CONDITIONS

EXCEPT AS MAY OTHERWISE BE SPECIFICALLY PROVIDED ON THE FACE SIDE HEREOF THE PARTIES AGREE THAT THE FOLLOWING TERMS AND CONDITIONS SHALL GOVERN THE TRANSACTION DESCRIBED ON THE FACE HEREOF. AS USED HEREIN THE TERM "BUYER" SHALL MEAN AND INCLUDE ENGELHARD CORPORATION AND/OR ITS SUBSIDIARIES.

1. ACCEPTANCE AND MODIFICATION

This Purchase Order ("Order") can be accepted only upon the terms and conditions expressed herein, which may not be modified, amended or waived except by express written consent signed by an officer or Buyer. Objection is hereby given to any additional or different terms or conditions, whether or not material, contained in any acknowledgment or confirmation of this Order. This Vendor upon signing the Acceptance Copy, of commencing performance hereunder or by any other means which reasonably manifest Vendor's assent to be bound by the provisions hereon.

2. PERFORMANCE

Time is of the essence of this Order, and performance must actually be completed within the time stated on the face side hereof. In the event of Vendor's delay in performance or failure to perform, Buyer reserves the right, in addition to all other rights provided by law, to cancel this Order immediately upon giving notice and hold Vendor liable for any excess cost incurred, plus all other allowable damages. Neither Vendor nor Buyer shall be liable for delay in performance or failure to perform if such delay or failure is caused by any occurrence or contingency beyond the reasonable control of the affected party, which by the exercise of due diligence such party would be unable to overcome, or by compliance in good faith with any applicable foreign or domestic governmental requirement provided the affected party notifies the other party of such occurrence. Quantities affected by any such delay or failure may be deleted from this Order. Vendor shall deliver all goods to and perform all services at the premises designated on the face side hereof, and all prices stated herein shall be for such delivery or performances, free of all other costs and expenses. Buyer may inspect all goods provided and all services performed hereunder prior to being obligated to make payment, whether partial, full or final, on account thereof.

Vendor agrees to sell or otherwise make available to Buyer spare and replacement parts and component systems for each item of equipment or other goods to be provided hereunder on commercially reasonable terms and conditions throughout the entire reasonable life expectancy of each such item.

3. WARRANTY

Acceptance of this Order constitutes an express warranty by Vendor that (a) with respect to all goods to be provided hereunder Vendor has, or at the time of performance shall have, and shall transmit to Buyer good and marketable title thereto, free and clear of liens and encumbrances of any kind whatsoever, (b) all services to be performed hereunder shall be performed in a good and workmanlike manner and in accordance with sound generally accepted practices, involve no unreasonable risk of injury or damage, conform to all applicable specifications and governmental requirements, and be without fault and free from all defects, and (c) all goods to be provided hereunder shall be merchantable, fit for the purpose intended and of first quality, involve no unreasonable risk of injury or damage when used as intended, conform to all applicable specifications and samples and be free from all defects in design, materials and workmanship. Buyer may accept or reject any or all goods or services which are in breach of this provision and in any event, hold Vendor liable for all damages resulting from such breach.

4. COMPETITIVE OFFERS

At any time, Buyer may notify Vendor that it has received a bona fide offer to deliver similar goods in approximately the same quantity as the undelivered portion hereunder at a lower price than that which is then in effect under this Order. If within fifteen (15) days of its receipt of such notice Vendor shall not reduce its price hereunder sufficiently to meet the terms of such offer and advise Buyer of such reduction, Buyer may purchase any or all of the undelivered portions of goods hereunder from such offeror. All quantities so purchased shall be deleted from this Order.

If at any time during the duration of this Order, Vendor sells or offers to sell comparable quantities of similar grades of products as the goods to be provided hereunder at a price lower than Vendor's price to Buyer then in effect or upon other terms and conditions more favorable to buyers than the terms and conditions hereof, Vendor shall promptly notify Buyer thereof and offer such lower price or such other more favorable terms and conditions to Buyer during the period in which such lower price or such other more favorable terms and conditions are in effect.

5. COMPLIANCE WITH APPLICABLE LEGAL STANDARDS

Vendor further warrants that all goods provided and all services performed hereunder will be in compliance with all requirements of the Fair Labor Standards Act of 1938, as amended. Also, in respect of all performance due hereunder, Vendor warrants that it is and will be in compliance with all applicable provisions of federal, state and local laws and the rules, regulations and standards promulgated thereunder, including without limitation the following, as amended from time to time: (a) Occupational, Safety and Health Act of 1970; (b) Executive Order 11246, including the "equal opportunity" clause set forth therein (incorporated herein by reference); (c) Rehabilitation Act of 1973 (incorporated herein by reference) and Vietnam Era Veterans Readjustment Assistance Act of 1974 (incorporated herein by reference), including the "affirmative action" clauses set forth herein; and (d) Toxic Substances Control Act of 1976. If the goods provided hereunder are chemical substances or mixtures of chemical substances, as these terms are defined in the Toxic Substances Control Act, Vendor certifies that such chemical substances of all component chemical substances of mixtures are included in the inventory of Chemical Substances as provided in the Toxic Substances Control Act of 1976.

6. SAFETY

Vendor agrees to observe all safety and security rules, instructions and requests of Buyer whenever in its performance hereunder Vendor or its employees or agents enter upon any Buyer location. If the goods provided or to be provided or the services performed or to be performed hereunder involve or may involve any risk of injury or death to persons or damage to property, Vendor shall provide Buyer with a written description of the nature and extent of any such risk including a description of any precautions which should be taken to minimize the risk of death, injury or damage occurring and to minimize the injury, damage or loss in the event of any such occurrence. Upon request Vendor agrees to complete Buyer's standard chemical control form (currently titled "Material Safety Data Sheet") with respect to any chemical substance to be provided hereunder.

7. INDEMNIFICATION

Vendor shall indemnify and hold harmless Buyer, its agents and employees, from and against all claims, damages, losses and expenses, including attorney's fees, arising out of or resulting from all goods provided and all services performed hereunder, provided that any such claim, damage, loss or expense is caused in whole or in part by a breach of this Order or by a negligent, reckless or intentional act or omission of Vendor, its agents, employees or subcontractors. The obligations of Vendor hereunder shall not extend to any liability with respect to or arising out of any claim, damage, loss or expense which is attributable to an act or omission of Buyer, its agents or employees.

0015/040



PLEASE REFERENCE ENGELHARD
① PURCHASE ORDER NUMBER
② SUPPLIER
③ SHIP TO ADDRESS
ON ALL INVOICES AND SHIPPING DOCUMENTS.

① PURCHASE ORDER: 8006011

DATE: 12/09/03

PAGE 5
1/06/04

② TO: L25958
UNIVAR USA INC.
2750 SOUTHPORT ROAD
SPARTANBURG, S.C. 29302

③ SHIP TO: ENGELHARD CORPORATION
554 ENGELHARD DRIVE
SENECA, SOUTH CAROLINA 29678

INVOICE IN TRIPLICATE TO:

ENGELHARD CORPORATION
ACCOUNTS PAYABLE DEPARTMENT
P.O. BOX 129
SENECA, SC 29678
864 882-8841

*** CONFIRMED ***

JOHN

ENGELHARD CODE NUMBER (IF USED) MUST BE REFERENCED ON ALL INVOICES AND PACKAGES

SHIP VIA:	FOB:	SALES/USE TAX:	NO	AUTHORIZED:	USD	TERMS:	REV 30	REVISION:
SHIP TO ARRIVE	ENGELHARD CODE	DESCRIPTION	U/M	REL	REV	QUANTITY	UNIT PRICE	EXTENDED COST

+ ENGELHARD-SENECA FACILITY +

PACKAGE MARKINGS: THE FOLLOWING INFORMATION MUST
APPEAR ON THE SIDE OF EACH PACKAGE:

1. NAME OF MATERIAL
2. ENGELHARD'S CODE NUMBER
3. MANUFACTURER'S LOT NUMBER
4. NET WEIGHT PER PACKAGE

FAILURE TO MARK PACKAGES AS INDICATED ABOVE MAY
RESULT IN THE SHIPMENT BEING REFUSED BY ENGELHARD.

EACH PACKAGE MUST BE MARKED TO COMPLY WITH THE
OCCUPATIONAL SAFETY AND HEALTH ASSOCIATION (OSHA)
1910.1200 REQUIREMENTS FOR PACKAGING AND LABELING
AND THE DEPARTMENT OF TRANSPORTATION CODE OF
FEDERAL REGULATIONS (CFR) 49 REQUIREMENTS. FAILURE
TO COMPLY MAY RESULT IN THE CANCELLATION OF THIS
AGREEMENT AND REFUSEL OF ANY OR ALL MATERIAL
SHIPPED AGAINST THIS ORDER.

THIS ORDER IS ENTERED WITH THE CONDITION THAT ANY
DEVIATION FROM THE PRICE SHOWN HEREON MUST BE
APPROVED IN WRITING BY THE BUYER.

THIS ORDER IS ENTERED WITH THE CONDITION THAT ANY
Purchase Order Continued...

ENGELHARD AUTHORIZED AGENT

REFER ANY QUESTIONS REGARDING THIS ORDER
TO THE ABOVE

THIS PURCHASE ORDER IS SUBJECT TO THE PROVISIONS ON THE
FACE HEREON AND THE INSTRUCTIONS, TERMS AND CONDITIONS
ON THE REVERSE SIDE. PLEASE REVIEW THEM CAREFULLY. THEY
WILL CONSTITUTE OUR CONTRACT UNLESS WE AGREE IN WRITING
TO CHANGES OR ADDITIONS.

CONFIDENTIAL
ENGELHARD 005374

1549
D100/5

03. 12/2008 WED 13:08 FAX

TERMS AND CONDITIONS

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Vendor shall indemnify and hold harmless Buyer, its agents and employees, from and against all claims, damages, losses and expenses, including attorney's fees, arising out of or resulting from all goods provided and all services performed hereunder, provided that any such claim, damage, loss or expense is caused in whole or in part by a breach of this Order or by a negligent, reckless or intentional act or omission of Vendor, its agents, employees or subcontractors. The obligations of Vendor hereunder shall not extend to any liability with respect to or arising out of any claim, damage, loss or expense which is attributable to an act or omission of Buyer, its agents or employees.

03/10/04

ENGELHARD

PLEASE REFERENCE ENGELHARD
 ① PURCHASE ORDER NUMBER
 ② SUPPLIER
 ③ SHIP TO ADDRESS
 ON ALL INVOICES AND SHIPPING DOCUMENTS.

① PURCHASE ORDER: 8006011

DATE 12/09/03

PAGE 6
 1/05/04

② TO: 125968
 UNIVAR USA INC.
 2750 SOUTHPORT ROAD
 SPARTANBURG, S.C. 29302

③ SHIP TO: ENGELHARD CORPORATION
 554 ENGELHARD DRIVE
 SENECA, SOUTH CAROLINA 29678

INVOICE IN TRIPLICATE TO:

ENGELHARD CORPORATION
 ACCOUNTS PAYABLE DEPARTMENT
 P.O. BOX 128
 SENECA, SC 29678
 864 882-9841

*** CONTINUED ***

JOHN

ENGELHARD CODE NUMBER (IF USED) MUST BE REFERENCED ON ALL INVOICES AND PACKAGES

SHIP VIA:		FOB:	SALES/USE TAX:	AUTHORIZED:	TERMS:	REVISION:			
SHIP TO ARRIVE	ENGELHARD CODE	DESCRIPTION		U/M	REL	REV	QUANTITY	UNIT PRICE	EXTENDED COST

DEVIATION FROM THE DELIVERY SCHEDULE HEREON MUST
 BE APPROVED IN WRITING BY THE BUYER.

QUALIFICATION

- A. ONLY VENDORS WHOSE PRODUCTS HAVE
 DEMONSTRATED COMPLIANCE WITH THE
 REQUIREMENTS OF THIS SPECIFICATION
 OF THIS SPECIFICATION WILL BE
 DESIGNATED AS QUALIFIED VENDORS.
- B. QUALIFICATION TO PROVIDE MATERIALS
 AGAINST THIS SPECIFICATION MUST BE
 RECEIVED IN WRITING FROM ENGELHARD
 CORPORATION PRIOR TO COMMENCEMENT OF
 ANY MANUFACTURE FOR ENGELHARD CORPORATION.
- C. FOR INFORMATION PERTAINING TO
 QUALIFICATION REQUIREMENTS, CONTACT
 THE ENGELHARD CORPORATION PURCHASING
 DEPARTMENT.

MANUFACTURING CHANGES

- A. THE SUPPLIER MUST NOTIFY ENGELHARD
 CORPORATION OF ANY CHANGES IN THE
 DESIGN, PROCESS OR COMPOSITION THAT
 Purchase Order Continued...

ENGELHARD AUTHORIZED AGENT

REFER ANY QUESTIONS REGARDING THIS ORDER
 TO THE ABOVE

THIS PURCHASE ORDER IS SUBJECT TO THE PROVISIONS ON THE
 REVERSE SIDE AND THE INSTRUCTIONS, TERMS AND CONDITIONS
 ON THE REVERSE SIDE. PLEASE REVIEW THEM CAREFULLY. THEY
 WILL CONSTITUTE OUR CONTRACT UNLESS WE AGREE IN WRITING
 TO CHANGES OR ADDITIONS.

03/10/04 WED 13:10 FAX

CONFIDENTIAL
 ENGELHARD 005375

D100/6 1551

TERMS AND CONDITIONS

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0017/040

ENGELHARD

PLEASE REFERENCE ENGELHARD
 ○ PURCHASE ORDER NUMBER
 ○ SUPPLIER
 ○ SHIP TO ADDRESS
 ON ALL INVOICES AND SHIPPING DOCUMENTS.

○ PURCHASE ORDER: 5006011

DATE: 12/09/03

PAGE 7

TO: 125968
 UNIVAR USA INC.
 2750 SOUTHPORT ROAD
 SPARTANBURG, S.C. 29302

SHIP TO: ENGELHARD CORPORATION
 554 ENGELHARD DRIVE
 SENeca, SOUTH CAROLINA 29678

INVOICE IN TRIPLICATE TO:

ENGELHARD CORPORATION
 ACCOUNTS PAYABLE DEPARTMENT
 P.O. BOX 128
 SENeca, SC 29678
 864 882-8841

*** CONFIRMED ***

JOHN

ENGELHARD CODE NUMBER (IF USED) MUST BE REFERENCED ON ALL INVOICES AND PACKAGES

SHIP VIA:	FOR:	SALES / USE TAX:	AUTHORIZED:	TERMS:	REVISION:
SHIP TO ARRIVE	ENGELHARD CODE	DESCRIPTION	U / M	REL	REV
		QUANTITY		UNIT PRICE	EXTENDED COST

WILL AFFECT ANY CHARACTERISTIC OF MATERIAL SUPPLIED.

B. IN CASE SUCH CHANGES ARE MADE, NO SHIPMENT OF MATERIAL AGAINST THIS DOCUMENT CAN BE MADE WITHOUT PRIOR WRITTEN APPROVAL FROM ENGELHARD CORPORATION.

CANCELLATION

THIS ORDER CAN BE CANCELLED IN ITS ENTIRETY IF THE BUYERS CUSTOMER REQUIREMENTS CHANGE NEGATING THE NEED FOR THE MATERIAL ORDERED.

DELIVERY

TRUCKER MUST MAKE AN APPOINTMENT WITH THE RECEIVING DEPARTMENT FOR MATERIAL DELIVERY.
 CONTACT - JUDY SWANEY
 PHONE: 864-885-1262

A PACKING LIST DETAILING THE NUMBER OF PACKAGES IN THE SHIPMENT, THE NET WEIGHT OF EACH PACKAGE AND A TOTAL NET WEIGHT OF THE COMPLETE SHIPMENT MUST BE ATTACHED ONE OF THE INCOMING PACKAGES.
 Purchase Order Continued...

Paul J. Sil

ENGELHARD AUTHORIZED AGENT

REFER ANY QUESTIONS REGARDING THIS ORDER TO THE ABOVE

THIS PURCHASE ORDER IS SUBJECT TO THE PROVISIONS ON THE FACE HEREOF AND THE INSTRUCTIONS, TERMS AND CONDITIONS ON THE REVERSE SIDE. PLEASE REVIEW THEM CAREFULLY. THEY WILL CONSTITUTE OUR CONTRACT UNLESS WE AGREE IN WRITING TO CHANGES OR ADDITIONS.

03/20/2008 WED 13:10 FAX

CONFIDENTIAL
 ENGELHARD 005376

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At any time, Buyer may notify Vendor that it has received a bona fide offer to deliver similar goods in approximately the same quantity as the undelivered portion hereunder at a lower price than that which is then in effect under this Order. If within fifteen (15) days of its receipt of such notice Vendor shall not reduce its price hereunder sufficiently to meet the terms of such offer and advise Buyer of such reduction, Buyer may purchase any or all of the undelivered portions of goods hereunder from such offeror. All quantities so purchased shall be deleted from this Order.

If at any time during the duration of this Order, Vendor sells or offers to sell comparable quantities of similar grades of products as the goods to be provided hereunder at a price lower than Vendor's price to Buyer then in effect or upon other terms and conditions more favorable to buyers than the terms and conditions hereof, Vendor shall promptly notify Buyer thereof and offer such lower price or such other more favorable terms and conditions to Buyer during the period in which such lower price or such other more favorable terms and conditions are in effect.

5. COMPLIANCE WITH APPLICABLE LEGAL STANDARDS

Vendor further warrants that all goods provided and all services performed hereunder will be in compliance with all requirements of the Fair Labor Standards Act of 1938, as amended. Also, in respect of all performance due hereunder, Vendor warrants that it is and will be in compliance with all applicable provisions of federal, state and local laws and the rules, regulations and standards promulgated thereunder, including without limitation the following, as amended from time to time: (a) Occupational Safety and Health Act of 1970, (b) Executive Order 11246, including the "equal opportunity" clause set forth therein (incorporated herein by reference), (c) Rehabilitation Act of 1973 (incorporated herein by reference) and Vietnam Era Veterans Readjustment Assistance Act of 1974 (incorporated herein by reference), including the "affirmative action" clauses set forth herein and (d) Toxic Substances Control Act of 1976. If the goods provided hereunder are chemical substances or mixtures of chemical substances, as these terms are defined in the Toxic Substances Control Act, Vendor certifies that such chemical substances or all component chemical substances of mixtures are included in the inventory of Chemical Substances as provided in the Toxic Substances Control Act of 1976.

6. SAFETY

Vendor agrees to observe all safety and security rules, instructions and requests of Buyer whenever in its performance hereunder Vendor or its employees or agents enter upon any Buyer location. If the goods provided or to be provided or the services performed or to be performed hereunder involve or may involve any risk of injury or death to persons or damage to property, Vendor shall provide Buyer with a written description of the nature and extent of any such risk including a description of any precautions which should be taken to minimize the risk of death, injury or damage occurring and to minimize the injury, damage or loss in the event of any such occurrence. Upon request Vendor agrees to complete Buyer's standard chemical control form (currently titled "Material Safety Data Sheet") with respect to any chemical substance to be provided hereunder.

7. INDEMNIFICATION

Vendor shall indemnify and hold harmless Buyer, its agents and employees, from and against all claims, damages, losses and expenses, including attorney's fees, arising out of or resulting from all goods provided and all services performed hereunder, provided that any such claim, damage, loss or expense is caused in whole or in part by a breach of this Order or by a negligent, reckless or intentional act or omission of Vendor, its agents, employees or subcontractors. The obligations of Vendor hereunder shall not extend to any liability with respect to or arising out of any claim, damage, loss or expense which is attributable to an act or omission of Buyer, its agents or employees.

0018/040

ENGELHARD

PLEASE REFERENCE ENGELHARD
 ○ PURCHASE ORDER NUMBER
 ○ SUPPLIER
 ○ SHIP TO ADDRESS
 ON ALL INVOICES AND SHIPPING DOCUMENTS.

○ PURCHASE ORDER: 5006011

DATE: 12/09/03

PAGE 8
1/06/08

○ TO: 125968
 UNIVAR USA INC.
 2750 SOUTHPORT ROAD
 SPARTANBURG, S.C. 29302

○ SHIP TO: ENGELHARD CORPORATION
 554 ENGELHARD DRIVE
 SENECA, SOUTH CAROLINA 29678

INVOICE IN TRIPLICATE TO:

ENGELHARD CORPORATION
 ACCOUNTS PAYABLE DEPARTMENT
 P.O. BOX 129
 SENECA, SC 29678
 864 882-8841

*** CONFIRMED ***

JOHN

ENGELHARD CODE NUMBER (IF USED) MUST BE REFERENCED ON ALL INVOICES AND PACKAGES

SHIP VIA:	FOB:	SALES/USE TAX:	AUTHORIZED:	TERMS:	REVISION:
EST	NO	USD	EST 30		

SHIP TO ARRIVE	ENGELHARD CODE	DESCRIPTION	U/M	REL	REV	QUANTITY	UNIT PRICE	EXTENDED COST
----------------	----------------	-------------	-----	-----	-----	----------	------------	---------------

BOTH PARTIES ACKNOWLEDGE THAT THE QUANTITIES
 STATED IN THIS ORDER ARE ESTIMATES ONLY AND
 NO MINIMUM AMOUNT OTHER THAN ACTUALLY DETERMINED
 BY CUSTOMER ORDERS IS GUARANTEED. TO THAT END,
 WE WILL PROVIDE YOU WITH OUR BEST PROJECTION
 OF USAGE AS OFTEN AS YOU MAY REASONABLY REQUEST.

RELEASES OF THE ABOVE MATERIAL TO BE CALLED IN AS
 REQUIRED BY DAVID WILLIAMS/TONY NIEB/JUDY STANLEY.

CONTACT DAVID WILLIAMS PHONE 864-886-1204/
 TONY NIEB PHONE 864-886-9101
 IN REGARDS TO PRICING, FORECAST OR TECHNICAL
 INFORMATION

12/31/04	1033	ACID, SULFURIC, TECHNICAL, 66% SULFURIC ACID TECHNICAL GRADE 66 BS AS PER SPEC 1033, REV 6.0, DATED 15-NOV-02. 600 LBS PER DRUM/2400 LBS PER PALLLET. DEDM DEPOSIT. WAS DOWN IN JANUARY	LB	1		25000.0000	.1200	3000.00
----------	------	--	----	---	--	------------	-------	---------

End of Purchase Order

559750.00

DAVID WILLIAMS

ENGELHARD AUTHORIZED AGENT

NEVER SIGN ORDERS REDUCING THIS ORDER
 TO THIS ABOVE

THIS PURCHASE ORDER IS SUBJECT TO THE PROVISIONS ON THE
 FACE HEREOF AND THE INSTRUCTIONS, TERMS AND CONDITIONS
 ON THE REVERSE SIDE. PLEASE REVIEW THEM CAREFULLY. THEY
 WILL CONSTITUTE OUR CONTRACT UNLESS WE AGREE IN WRITING
 TO CHANGES OR ADDITIONS.

03/19/2008 WED 13:11 FAX

CONFIDENTIAL
 ENGELHARD 005377

1555
 D100/8

TERMS AND CONDITIONS

EXCEPT AS MAY OTHERWISE BE SPECIFICALLY PROVIDED ON THE FACE SIDE HEREOF THE PARTIES AGREE THAT THE FOLLOWING TERMS AND CONDITIONS SHALL GOVERN THE TRANSACTION DESCRIBED ON THE FACE HEREOF. AS USED HEREIN THE TERM "BUYER" SHALL MEAN AND INCLUDE ENGELHARD CORPORATION AND/OR ITS SUBSIDIARIES.

1. ACCEPTANCE AND MODIFICATION

This Purchase Order ("Order") can be accepted only upon the terms and conditions expressed herein, which may not be modified, amended or waived except by express written consent signed by an officer of Buyer. Objection is hereby given to any additional or different terms or conditions, whether or not material, contained in any acknowledgment or confirmation of this Order. This Vendor, upon signing the Acceptance Copy, or commencing performance hereunder or by any other means which reasonably manifest Vendor's assent to be bound by the provisions hereon.

2. PERFORMANCE

Time is of the essence of this Order, and performance must actually be completed within the time stated on the face side hereof. In the event of Vendor's delay in performance or failure to perform, Buyer reserves the right, in addition to all other rights provided by law, to cancel this Order immediately upon giving notice and hold Vendor liable for any excess cost incurred, plus all other allowable damages. Neither Vendor nor Buyer shall be liable for delay in performance or failure to perform if such delay or failure is caused by any occurrence or contingency beyond the reasonable control of the affected party, which by the exercise of due diligence such party would be unable to overcome, or by compliance in good faith with any applicable foreign or domestic governmental requirement provided the affected party notifies the other party of such occurrence. Quantities affected by any such delay or failure may be deleted from this Order. Vendor shall deliver all goods to and perform all services at the premises designated on the face side hereof, and all prices stated herein shall be for such delivery or performances, free of all other costs and expenses. Buyer may inspect all goods provided and all services performed hereunder prior to being obligated to make payment, whether partial, full or final, on account thereof.

Vendor agrees to sell or otherwise make available to Buyer spare and replacement parts and component systems for each item of equipment or other goods to be provided hereunder on commercially reasonable terms and conditions throughout the entire reasonable life expectancy of each such item.

3. WARRANTY

Acceptance of this Order constitutes an express warranty by Vendor that (a) with respect to all goods to be provided hereunder Vendor has, or at the time of performance shall have, and shall transmit to Buyer good and marketable title thereto, free and clear of liens and encumbrances of any kind whatsoever, (b) all services to be performed hereunder shall be performed in a good and workmanlike manner and in accordance with sound generally accepted practices, involve no unreasonable risk of injury or damage, conform to all applicable specifications and governmental requirements, and be without fault and free from all defects, and (c) all goods to be provided hereunder shall be merchantable, fit for the purpose intended and of first quality, involve no unreasonable risk of injury or damage when used as intended, conform to all applicable specifications and samples and be free from all defects in design, materials and workmanship. Buyer may accept or reject any or all goods or services which are in breach of this provision and in any event, hold Vendor liable for all damages resulting from such breach.

4. COMPETITIVE OFFERS

At any time, Buyer may notify Vendor that it has received a bona fide offer to deliver similar goods in approximately the same quantity as the undelivered portion hereunder at a lower price than that which is then in effect under this Order. If within fifteen (15) days of its receipt of such notice Vendor shall not reduce its price hereunder sufficiently to meet the terms of such offer and advise Buyer of such reduction, Buyer may purchase any or all of the undelivered portions of goods hereunder from such offeror. All quantities so purchased shall be deleted from this Order.

If at any time during the duration of this Order, Vendor sells or offers to sell comparable quantities of similar grades of products as the goods to be provided hereunder at a price lower than Vendor's price to Buyer then in effect or upon other terms and conditions more favorable to buyers than the terms and conditions hereof, Vendor shall promptly notify Buyer thereof and offer such lower price or such other more favorable terms and conditions to Buyer during the period in which such lower price or such other more favorable terms and conditions are in effect.

5. COMPLIANCE WITH APPLICABLE LEGAL STANDARDS

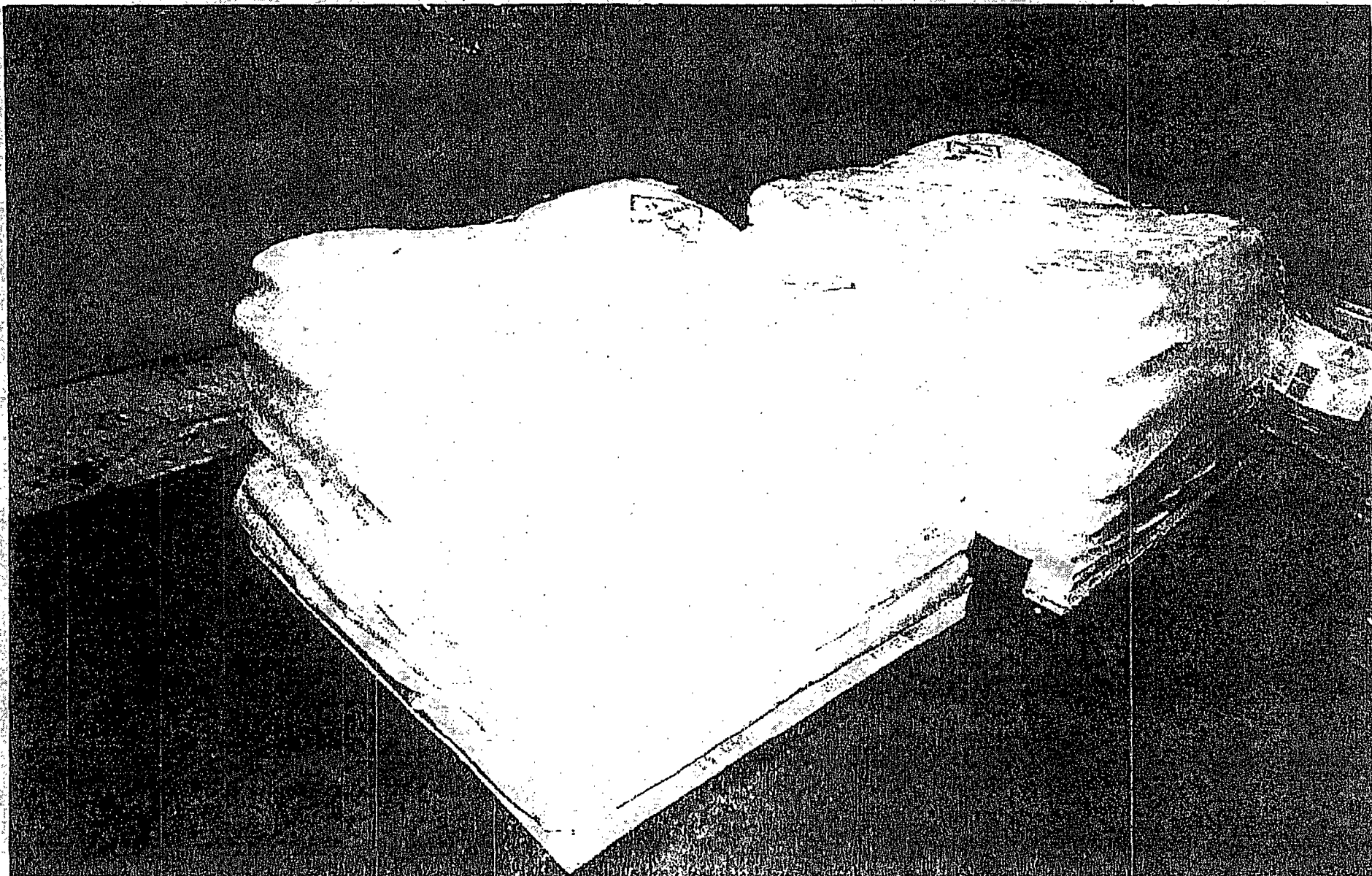
Vendor further warrants that all goods provided and all services performed hereunder will be in compliance with all requirements of the Fair Labor Standards Act of 1938, as amended. Also, in respect of all performance due hereunder, Vendor warrants that it is and will be in compliance with all applicable provisions of federal, state and local laws and the rules, regulations and standards promulgated thereunder, including without limitation the following, as amended from time to time: (a) Occupational Safety and Health Act of 1970; (b) Executive Order 11246, including the "equal opportunity" clause set forth therein (incorporated herein by reference); (c) Rehabilitation Act of 1973 (incorporated herein by reference) and Vietnam Era Veterans Readjustment Assistance Act of 1974 (incorporated herein by reference) including the "affirmative action" clauses set forth herein and (d) Toxic Substances Control Act of 1976. If the goods provided hereunder are chemical substances or mixtures of chemical substances, as these terms are defined in the Toxic Substances Control Act, Vendor certifies that such chemical substances or all component chemical substances of mixtures are included in the inventory of Chemical Substances as provided in the Toxic Substances Control Act of 1976.

6. SAFETY

Vendor agrees to observe all safety and security rules, instructions and requests of Buyer whenever in its performance hereunder Vendor or its employees or agents enter upon any Buyer location. If the goods provided or to be provided or the services performed or to be performed hereunder involve or may involve any risk of injury or death to persons or damage to property, Vendor shall provide Buyer with a written description of the nature and extent of any such risks including a description of any precautions which should be taken to minimize the risk of death, injury or damage occurring and to minimize the injury, damage or loss in the event of any such occurrence. Upon request Vendor agrees to complete Buyer's standard chemical control form (currently titled "Material Safety Data Sheet") with respect to any chemical substance to be provided hereunder.

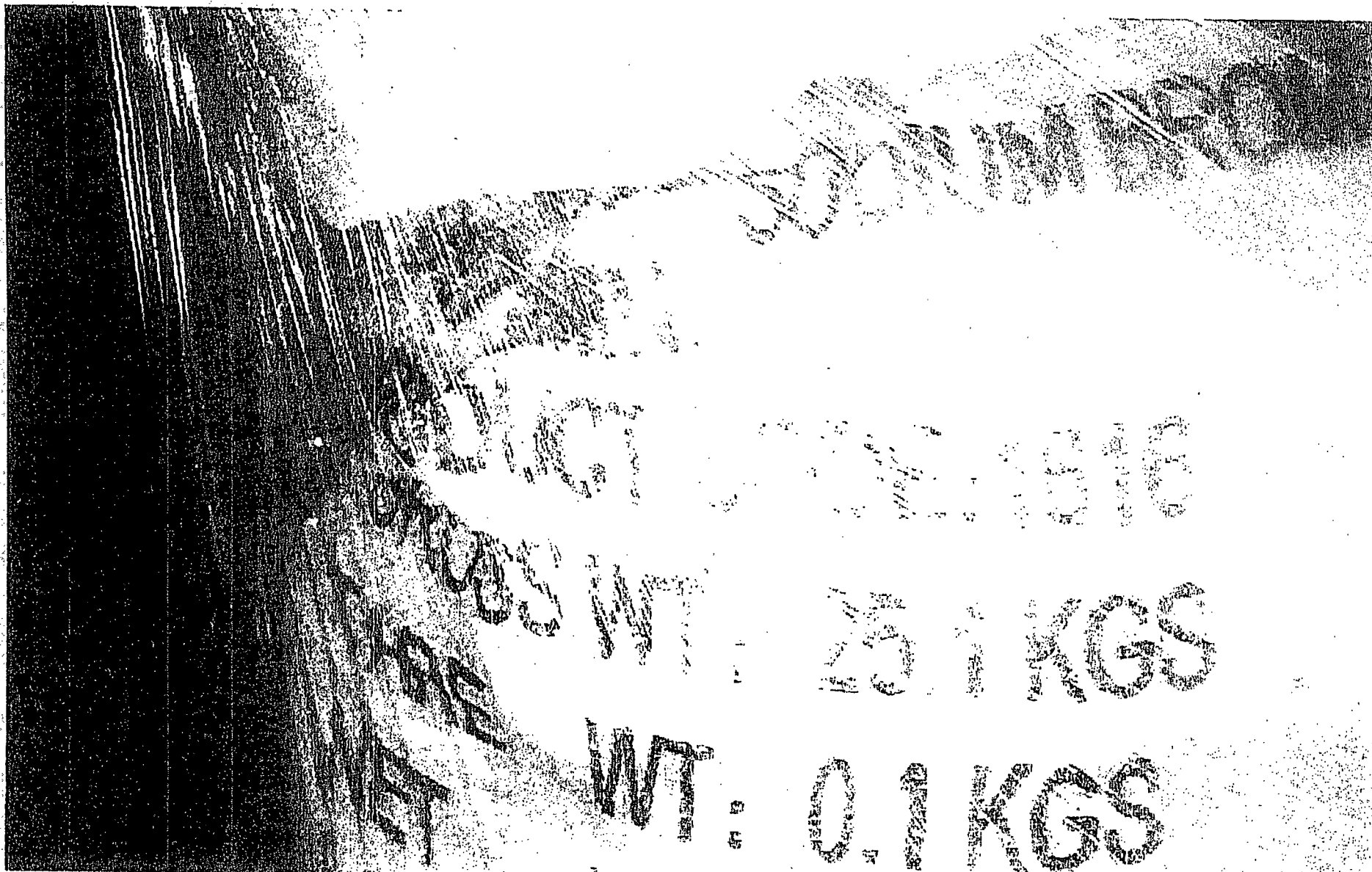
7. INDEMNIFICATION

Vendor shall indemnify and hold harmless Buyer, its agents and employees, from and against all claims, damages, losses and expenses, including attorney's fees, arising out of or resulting from all goods provided and all services performed hereunder, provided that any such claim, damage, loss or expense is caused in whole or in part by a breach of this Order or by a negligent, reckless or intentional act or omission of Vendor, its agents, employees or subcontractors. The obligations of Vendor hereunder shall not extend to any liability with respect to or arising out of any claim, damage, loss or expense which is attributable to an act or omission of Buyer, its agents or employees.



DEFENDANT'S
EXHIBIT 103

PL-HENDERSON000142



N/3707

18/08/84

IN

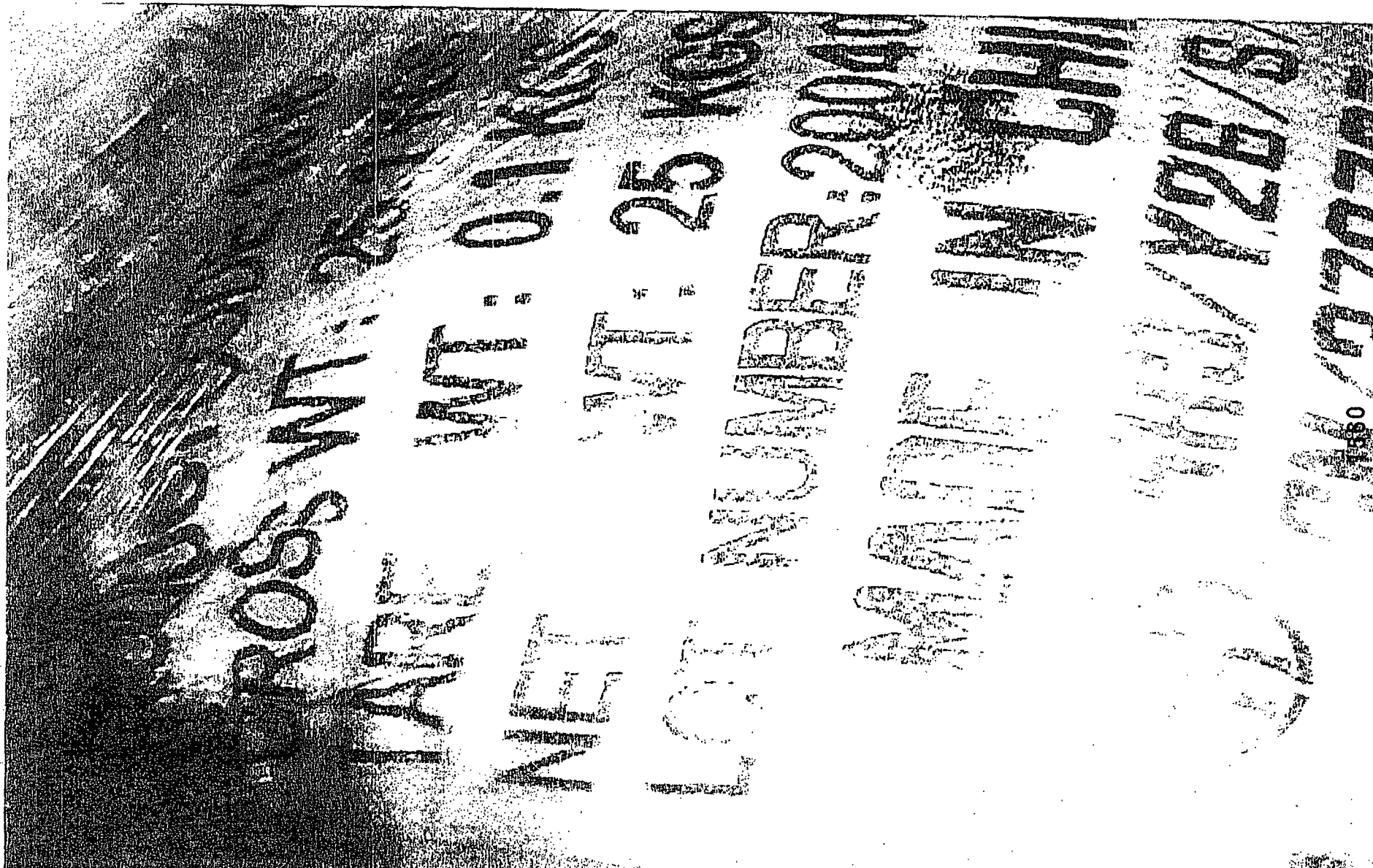
NUMBER 2000000000

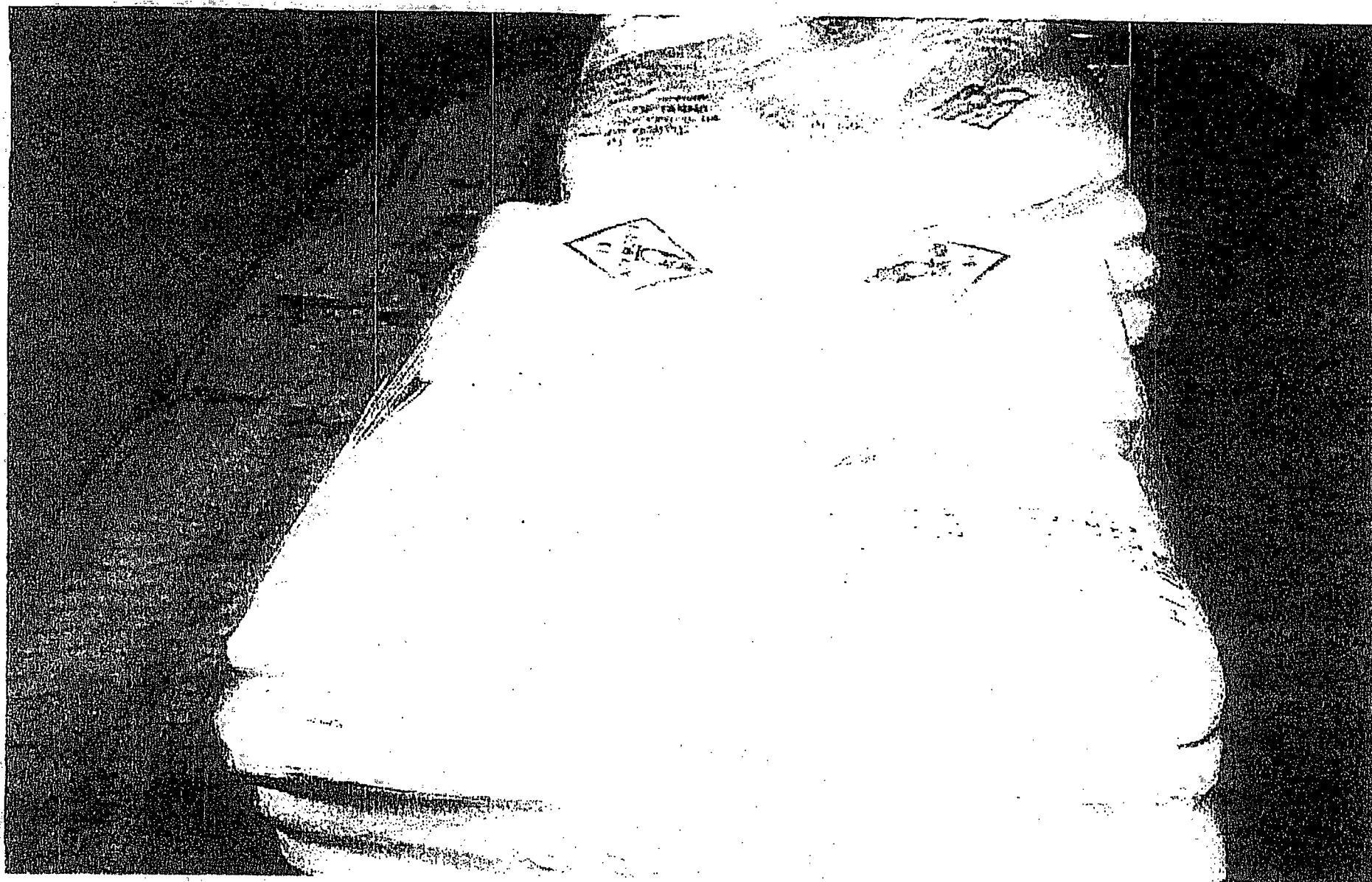
WT: 25 KGS

WT: 0.1 KGS

WT: 25.1 KGS

WT: 25.1 KGS

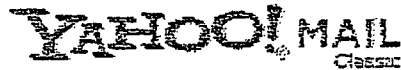




PL-HENDERSON000145

NET WT: 25 KGS
GROSS WT: 0.1 KGS
NET WT: 25 KGS
NUMBER 20090520
MADE IN CHINA





FW: Sodium Bromate

Thursday, October 23, 2008 11:23 AM

From: "Angela Granados" <AGranados@matrixoutsourcing.com>

To: redsonya511@yahoo.com

Best Regards,

Angela Granados
Matrix Outsourcing, LLC
11 E.V. Hogan Drive, Hamlet, NC 28345
Tel: 704-540-5977
Fax: 704-540-8718

From: Tim Griffin [mailto:tagriffin@trinitymfg.com]

Sent: Friday, April 26, 2002 8:01 AM

To: ageorge@matrixoutsourcing.com

Cc: Chuck Davis

Subject: Sodium Bromate

Angela,

One of my friends at Vopak has requested our help sourcing subject material. His customer is Engelhard in Seneca, SC.

Requirements as follows:

VOLUME: 205,000 pounds per year

PACKAGE: 50# bags (25 kg?)

MODE: Full containers

Current Supplier: Brenntag (Chinese?)

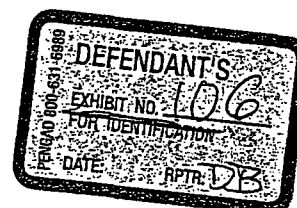
Based on existing price levels, Vopak intends to submit a price of \$0.88/pound del 'd.

Can you assist with sourcing and moving material direct to Seneca, SC as a "turn key" deal? I would prefer to give Vopak a delivered price and Matrix handle the particulars of logistics.

I will be in my office today if you wish to discuss further, 704-660-5688.

Regards,

Tim



—Original Message—

From: Sherry Greene [mailto:SGreene@matrixoutsourcing.com]
Sent: Wednesday, July 17, 2002 2:30 PM
To: Tim Griffin (E-mail)
Cc: Angela George (E-mail)
Subject: Follow up on Sodium Bromate

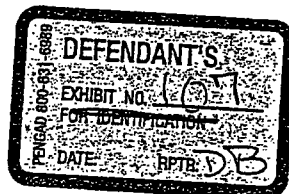
Hello Tim,

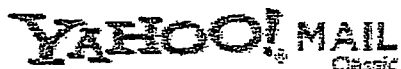
I hope you have been doing well. I just wanted to follow up on the progress with Sodium Bromate. Have you had the opportunity to speak with Mr. Munson @ Vopak? Please let me know if you or Mr. Munson require any additional information regarding this product. I know he was out on vacation, but perhaps he has had enough time to catch up on his workload and is available to discuss this project further.

Just keep me informed, please. I look forward to hearing from you!

Thanks for your time.

Sherry M. Greene
Customer Service Coordinator
Matrix Outsourcing, LLC.
Phone: 1 (704) 344-0608 ext. 100
Fax: 1 (704) 344-0609





FW: Follow up on Sodium Bromate

Thursday, October 23, 2008 11:25 AM

From: "Angela Granados" <AGranados@matrixoutsourcing.com>

To: redsonya511@yahoo.com

Best Regards,

Angela Granados
Matrix Outsourcing, LLC
11 E.V. Hogan Drive, Hamlet, NC 28345
Tel: 704-540-5977
Fax: 704-540-8718

—Original Message—

From: Angela Granados [mailto:AGranados@matrixoutsourcing.com]

Sent: Thursday, October 23, 2008 11:25 AM

To: 'Loftis, Sonya'

Subject: FW: Follow up on Sodium Bromate

Best Regards,

Angela Granados
Matrix Outsourcing, LLC
11 E.V. Hogan Drive, Hamlet, NC 28345
Tel: 704-540-5977
Fax: 704-540-8718

—Original Message—

From: Tim A Griffin [mailto:tagriffin@trinitymfg.com]

Sent: Thursday, July 18, 2002 4:53 PM

To: Sgreene@matrixoutsourcing.com

Cc: 'Angela George (E-mail)'; Chuck Davis

Subject: RE: Follow up on Sodium Bromate

Hello Sherry,

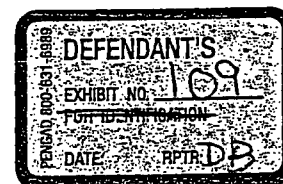
I spoke with John Munson this afternoon. He had a meeting with the technical department yesterday. They decided to eliminate the optical density parameter on the spec. This means they have approved our specification on the sodium bromate. The sample has been delivered to the plant. They are to run lab trials and advise results. John reminded me that Engelhard does not move very fast but he was very encouraged with progress to date.

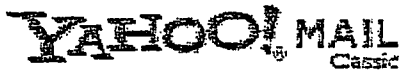
I will be expecting good news soon. Then we can work-out the supply agreement and logistics with Univar.

Thanks for patience.

Tim

1566





FW: Sodium Bromate

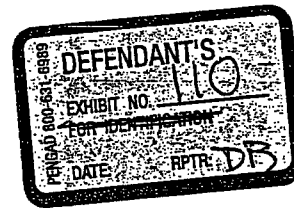
Thursday, October 23, 2008 11:25 AM

From: "Angela Granados" <AGranados@matrixoutsourcing.com>

To: redsonya511@yahoo.com

Best Regards,

Angela Granados
Matrix Outsourcing, LLC
11 E.V. Hogan Drive, Hamlet, NC 28345
Tel: 704-540-5977
Fax: 704-540-8718



-----Original Message-----

From: Tim A Griffin [mailto:tagriffin@trinitymfg.com]

Sent: Monday, September 09, 2002 8:10 AM

To: Sgreene@matrixoutsourcing.com

Cc: 'Angela George (E-mail)'

Subject: RE: Sodium Bromate

Sherry,

I spoke with J. Munson (Univar) last week. He said that a lunch meeting is scheduled with the buyer for this week wherein he hopes to find out when the first order will be placed.

According to Munson, there are no obstacles (price, quality, etc) that would preclude us from participating in this business. John just needs to close the deal.

I'll keep you advised as soon as I hear something.

Regards,

Tim

-----Original Message-----

From: Sherry Greene [mailto:Sgreene@matrixoutsourcing.com]

Sent: Friday, September 06, 2002 2:54 PM

To: Tim Griffin (E-mail)

Cc: Angela George (E-mail)

Subject: Sodium Bromate

Hi there Tim!

I hope this email finds you doing exceptionally well. Just wanted to drop a

note to check on the progress of Sodium Bromate.

So...How are we doing with this? Do you need anything from me to help it along? Just let me know....I'll be more than willing to assist.

Give me an update when you have a chance. Have a great weekend!

Talk to you soon,

1567

Sherry M. Greene
Customer Service Coordinator
Matrix Outsourcing, LLC.
Phone: 1 (704) 344-0608 ext.100
Fax: 1 (704) 344-0609

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

ENTRY SUMMARY

Page 1 of 1 100
C.H. BOX 100
THE HIPAGE CO INC
PO BOX 62199
CHARLESTON SC 29419

9. Ultimate Consignee Name and Address

1. Entry No. 0349213-8	2. Entry Type Code 01 ABI/A	3. Entry Summary Date 423 ** Paperless ** 02-20-04
4. Entry Date	5. Port Code 1601	6. Broker / Importer File No. 30.149213 (angle)
6. Bond No. 891	7. Bond Type Code S	
10. Consignee No. SAME	11. Importer of Record Name and Address MATRIX OUTSOURCING, LL P.O. BOX 1169 HAMLET, NC. 28345	12. Importer No. 58-2568880

NC
STATE

13. B L or AWB No. KKLU740014254	20. Mode of Transportation 11	21. Manufacturer I.D. CNLIAYUA128LIA	22. Reference No.
23. Importing Carrier YM SAVANNAH	24. Foreign Port of Lading 37031	25. Location of Goods/G.O. No. 1402 COLUMBUS STREET TERMINAL/023E	
26. U.S. Port of Unloading 1601	27. Import Date 02-06-04		

28. Line No.	30. A. T.S.U.S.A. No. B. ADA/CVD Case No.	31. A. Gross Weight B. Manifest Qty	32. Net Quantity in T.S.U.S.A. Units	33. A. Entered Value B. CHGS C. Relationship	34. A. T.S.U.S.A. Rate B. ADA/CVD Rate C. LRC Rate D. Visa No.	35. Duty and I.R. Tax	
						Dollars	Cents
001	SODIUM BROMATE 2829.90.2500	18144	18000 KG	26400 C2300	FREE 0.21% 0.125%	0.00	35.44
	MPF Harbor Maintenance Fee						36.00
	INV. VALUE REV	26400 26400					
	Block 39 Summary:						
	MPF	499		55.44			
	Harbor Maintenance Fee	301		33.00			
	Total:			88.44			
	Total Invoices REV US \$			26,400			

DEFENDANT'S
EXHIBIT 114

36. Declaration of Importer of Record (Owner or Purchaser) or Authorized Agent

I declare that I am the
owner, purchaser, or consignee for customs
purposes as shown above. OR I am the
owner or purchaser or
agent thereof.

I further declare that the merchandise
was obtained pursuant to a purchase or
agreement to purchase and that the prices
set forth in the invoice are true. OR
was not obtained pursuant to a purchase or
agreement to purchase and the statements
in the invoice as to value or price are true
to the best of my knowledge and belief.

I also declare that the statements in the documents herein filed fully disclose to the best of my knowledge
and belief the true prices, values, quantities, rebates, drawbacks, fees, commissions, and royalties and
are true and correct, and that all goods or services provided to the seller of the merchandise either free
or at reduced cost are fully disclosed. I will immediately furnish to the appropriate customs officer any
information showing a different state of facts.

Notice required by Paperwork Reduction Act of 1980. This information is needed to ensure that importers/exporters are complying with U.S. Customs laws, to allow us to compute and collect the right amount of money, to enforce other agency requirements, and to collect accurate statistical information on imports. Your response is mandatory.

U.S. CUSTOMS USE		TOTALS
A. Line Code	B. Ascertained Duty	37. Duty
	C. Ascertained Tax	38. Tax
	D. Ascertained Other	39. Other
	E. Ascertained Total	40. Total

41. Signature of Declarant, Title, and Date
THE HIPAGE CO INC
02-20-04

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

Form Approved
OMB No. 1515-0069
PAGE 1 OF 1
CST-423

ENTRY/IMMEDIATE DELIVERY

THE HIPAGE CO INC (angle)
PO BOX 62199
CHARLESTON SC 29419

C.H. BOX 100

19 CFR 142.3, 142.16, 142.22, 142.24 ABI CERTIFIED (100)

1. ARRIVAL DATE 020604	2. ELECTED ENTRY DATE	3. ENTRY TYPE CODE/NAME 01 ID	4. ENTRY NUMBER 100-0349213-B
5. PORT 1601	6. SINGLE TRANS. BOND	7. BROKER/IMPORTER FILE NUMBER 30.149213	
	8. CONSIGNEE NUMBER 58-2568880		9. IMPORTER NUMBER SAME
10. ULTIMATE CONSIGNEE NAME MATRIX OUTSOURCING, LLC P.O. BOX 1169 HAMLET, NC 28345		11. IMPORTER OF RECORD NAME /SAME	
12. CARRIER CODE KKLU	13. VOYAGE/FLIGHT/TRIP 023E	14. LOCATION OF GOODS CODE(S)/NAME(S) L402 COLUMBUS STREET TE	
15. VESSEL CODE/NAME YM SAVANNAH			
16. U.S. PORT OF UNLADING 1601	17. MANIFEST NUMBER	18. G.O. NUMBER	19. TOTAL VALUE 26400
20. DESCRIPTION OF MERCHANDISE SODIUM BROMATE, CLASS 5.1, UN 1494			
21. IT/BL/AWB CODE 157051KKLUTAD0014256	22. IT/BL/AWB NO.	23. MANIFEST QUANTITY 720	24. H.S. NUMBER 2829.90.2500
			25. COUNTRY OF ORIGIN CN
			26. MANUFACTURER ID CNLIAYUA128LIA

27. CERTIFICATION

I hereby make application for entry/Immediate delivery. I certify that the above information is accurate, the bond is sufficient, valid, and current, and that all requirements of 19 CFR Part 142 have been met.

SIGNATURE OF APPLICANT

X THE HIPAGE CO INC (100)

PHONE NO.

843-554-4111

DATE

02-05-04

29. BROKER OR OTHER GOVT. AGENCY USE

ES SITE
CONTAINER NUMBER :
KKTU7082805

28. CUSTOMS USE ONLY

☐ OTHER AGENCY ACTION REQUIRED NAMELY:

☐ CUSTOMS EXAMINATION REQUIRED

☐ ENTRY REJECTED BECAUSE:

DELIVERY
AUTHORIZED

SIGNATURE

DATE

FROM :

FAX NO. :865185509799

Jan. 17 2004 14:49 P4



SWAT INTERNATIONAL (U S A) INC.

BILL OF LADINGFOR COMBINED TRANSPORT / AND
PORT TO PORT SHIPMENT
NOT NEGOTIABLE UNLESS CONSIGNED TO ORDER

EXPORTER/SHIPPER LIANYUNGANG YUANTAI INT'L TRADE CO NO1-28 TONGGUAN SOUTH ROAD LIANYUNGANG CHINA		BILL OF LADING NUMBER KKLUTAO014256		CONTAINER NUMBER KKTU7082805/215664	
ZIP CODE		EXPORT REFERENCES DOC NO.: C1110Q			
CONSIGNEE TO TO THE ORDER OF BRANCH BANKING AND TRUST COMPANY, 7823 NATIONAL SERVICE ROAD SUITE 300 GREENSBORO, NC 27409		FORWARDING AGENT			
NOTIFY PARTY / INTERMEDIATE CONSIGNEE MATRIX OUTSOURCING LLC, 715-1 EAST BLVD., CHARLOTTE, NC 28203 ATTN SHERRY GREENE FAX 704 3440609		POINT(STATE) OF ORIGIN OF FTZ NUMBER THREE			
* PRE-CARRIAGE BY		* PLACE OF RECEIPT BY PRE-CARRIER			
EXPORTING CARRIER YM SAVANNAH V. 023E		PORT OF LOADING / EXPORT QINGDAO CHINA		LOADING PIER / TERMINAL PORT	
FOREIGN PORT OF UNLOADING PORT OF CHARLESTON, SC		* PLACE OF DELIVERY BY ON-CARRIER PORT OF CHARLESTON, SC		TYPE OF MOVE CONTAINERIZED ☐ YES ☐ NO	
PARTICULARS FURNISHED BY SHIPPER					
MARKS AND NUMBERS	NO. OF PACKAGES	DESCRIPTION OF PACKAGES AND GOODS		GROSS WEIGHT	MEASUREMENT
N/M	720 BAGS	CY/CY SHIPPER'S LOAD STOW & COUNT. 1X20' SODIUM BROMATE 99.7 PERCENT MIN. PO NO. SBM-0401-01 CLASS: 5.1 UN NO.: 1494 THIS SHIPMENT DOES NOT CONTAIN SOLID WOOD PACKING MATERIAL FREIGHT PREPAID BAF PREPAID DDC PREPAID SAY: SEVEN HUNDRED AND TWENTY BAGS ONLY.		18144KGS	20CBM
THESE COMMODITIES LICENSED BY THE U.S. FOR ULTIMATE DESTINATION <u>PORT OF CHARLESTON, SC</u> DIVERSION CONTRARY TO U.S. LAW PROHIBITED. DECLARED VALUE (see clause 6 on reverse hereof) In US\$ <u> </u> (for AD VALOREM purpose only).					
In accepting this bill of lading, any local customs or privileges to the contrary notwithstanding, the shipper, consignee and owner of the goods and the holder of this bill of lading, agree to be bound by all the stipulations, exceptions and conditions stated herein whether written, printed, stamped or incorporated on the front or reverse side hereof, as fully as if they were all signed by such shipper, consignee, owner or holder.					
In witness whereof (three (3) bill of lading, all of this tenor and date have been signed, one of which being accomplished, the others to stand void.					
SWAT INTERNATIONAL (U.S.A.) INC. AS AGENT FOR THE CARRIER SWAT INT'L BY <u> </u> AGENT FOR THE CARRIER SWAT INTERNATIONAL (USA) INC. PLACE OF ISSUE: QINGDAO		FREIGHT CHARGED ON 15 JAN 2004 PREPAID COLLECT FREIGHT PAYABLE TOTAL			

11 EV HOGAN DRIVE
PO BOX 1519
HAMLET NC 28345

COMMERCIAL INVOICE

SOLD TO: Trinity Mfg Inc
PO Box 1519
Hamlet NC 28345

SHIP TO: Englehard Corp
554 Englehard Drive
Seneca SC 29678

INVOICE # SBM-0401-01

INVOICE DATE: JANUARY 15, 2004

TERMS: Net 65 days FROM B/L

Gross Weight

Net Weight: 40000 LB.

MARKS: Sodium Bromate 99.7 percent min

QUANTITY	Description	Amount
720 bgs	Sodium Bromate	US\$ 26400.00
40,000 LB Net		
18,000 Kg Net		
TOTAL		US\$ 26400.00

NOTE:

Q 829. 90. 2500

Angela Grenados
Angela Grenados, Vice President

Packing List

Trinity P.O. #: 12573 (#7)

Shipping Marks:	No. of Drums:	Specifics:
Sodium Bromate, 99.7% Min.	720 bags	Sodium Bromate, 99.7% min. Packed in 25 Kgs bags, palletized and wrapped. 1x20' Standard Container
Content:		
Gross Weight:		
Tare WT:		
Net Wt:		
Made in China		

Total # of Drums: 720
Total Net Weight: 18000 kgs.
Total Gross Weight: 18,144 kgs.
Englehard Product Code: 1616
Date: January 01, 2004
Matrix Reference No.: SBM-0401-01

Matrix Outsourcing, LLC

11 EV Hogan Drive Hamlet NC 28345

Tel: 910-582-5650 Fax: 910-582-4433

Certificate of Analysis

Product: Sodium Bromate
CAS #: 7789-38-0
Synonyms: Bromic Acid Sodium Salt
Appearance: White Crystalline Powder
Lot #: 20040108
Content: 99.72%

Heavy Metal: 5ppm
Bromide: 0.03%
Sulphate: 0.09%
Iron (Fe): 4ppm
Arsenic (As): 2ppm
**Chloride &
Chlorate (with CL):** 0.004%
Loss on Drying: 0.07%
Ph (5W/V): 6.8
Date: January 12, 2004

LIANTUNGANG YUANTAI INT'L TRADE CO.
NO. 128 TUNGCHANG SOUTH ROAD, LIANTUNGANG CHINA

033054046

CERTIFICATE OF ORIGIN
OF
THE PEOPLE'S REPUBLIC OF CHINA

2. Consignee
TO WHOM IT MAY CONCERN

3. Means of transport and route
FROM QINZHOU CHINA PORT TO PORT OF CHARLESTON, SC
BY SEA

5. For certifying authority use only

CHINA COUNCIL FOR THE
PROMOTION OF INTERNATIONAL
TRADE IS CHINA CHAMBER OF
INTERNATIONAL COMMERCE

4. Country / region of destination
UNITED STATES

6. Marks and numbers

7. Number and kind of packages; description of goods

8. H.S. Code

9. Quantity
GW

10. Number
and date of
Invoices

N.M

SEVEN HUNDRED AND TWENTY (720) BAGS OF
SODIUM DROMATE 99.7 PERCENT MIN.

28275900

181-448GS

Q4LYT0061
JAN. 12, 2001

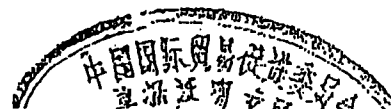
PO NO. SBL-0101-01

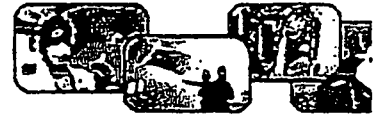
11. Declaration by the exporter

The undersigned hereby declares that the above details and statements
are correct, that all the goods were produced in China and that they comply
with the Rules of Origin of the People's Republic of China.

12. Certification

It is hereby certified that the declaration by the exporter is correct.





Regulations (Standards - 29 CFR)

Retention of DOT markings, placards and labels. - 1910.1201

[← Regulations \(Standards - 29 CFR\) - Table of Contents](#)

• Part Number:	1910
• Part Title:	Occupational Safety and Health Standards
• Subpart:	Z
• Subpart Title:	Toxic and Hazardous Substances
• Standard Number:	1910.1201
• Title:	Retention of DOT markings, placards and labels.

1910.1201(a)

Any employer who receives a package of hazardous material which is required to be marked, labeled or placarded in accordance with the U. S. Department of Transportation's Hazardous Materials Regulations (49 CFR Parts 171 through 180) shall retain those markings, labels and placards on the package until the packaging is sufficiently cleaned of residue and purged of vapors to remove any potential hazards.

1910.1201(b)

Any employer who receives a freight container, rail freight car, motor vehicle, or transport vehicle that is required to be marked or placarded in accordance with the Hazardous Materials Regulations shall retain those markings and placards on the freight container, rail freight car, motor vehicle or transport vehicle until the hazardous materials which require the marking or placarding are sufficiently removed to prevent any potential hazards.

1910.1201(c)

Markings, placards and labels shall be maintained in a manner that ensures that they are readily visible.

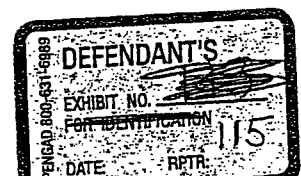
1910.1201(d)

For non-bulk packages which will not be reshipped, the provisions of this section are met if a label or other acceptable marking is affixed in accordance with the Hazard Communication Standard (29 CFR 1910.1200).

..1910.1201(e)

1910.1201(e)

For the purposes of this section, the term "hazardous material" and any other terms not defined in this section have the same definition as in the Hazardous Materials Regulations



(49 CFR Parts 171 through 180).

[59 FR 36695, July 19, 1994]

 [Next Standard \(1910.1450\)](#)

 [Regulations \(Standards - 29 CFR\) - Table of Contents](#)

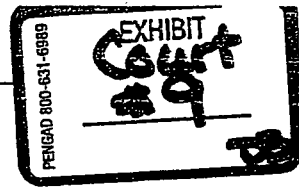


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Occupational Safety & Health Administration
200 Constitution Avenue, NW
Washington, DC 20210



1

2

MR. OUTTEN: Pursuant to our

3

discussion late yesterday afternoon I called

4

Ms. Hogan last night and I asked her to -- I told

5

her what the court told me to tell her, that is he's

6

under subpoena, he needs to be here, I am calling on

7

behalf of the court, he needs to be here at 11:00

8

tomorrow, today.

9

And she said that she would -- she said,

10

well, I can't talk to him until 8:00 the next

11

morning.

12

I said, ma'am, if he's at a hotel, you can

13

talk to him. I said you need to call him and get

14

the message to him and then call me back and

15

confirm.

16

She never did that. So I called her back

17

this morning on the home number and got her

18

answering machine, called her again on the way to

19

the courthouse this morning, got her answering

20

machine. Called his cell phone number that I had

21

and got a voice mail on his cell phone. So I can't

22

predict --

23

JUDGE NICHOLSON: Did you leave him a

24

message on his cell phone?

25

MR. OUTTEN: Oh, yes, sir. I sure

1 did.

2 JUDGE NICHOLSON: Same message you
3 gave to her?

4 MR. OUTTEN: Sure did.

5 JUDGE NICHOLSON: If you would, go
6 get in your files and find the affidavit that was
7 served him for the subpoena -- (inaudible) -- and
8 we'll make that a court record.

9 MR. OUTTEN: Yes, sir.

10 JUDGE NICHOLSON: It might take
11 awhile to find that. Mr. Johnston, do you have the
12 subpoena also?

13 MR. JOHNSTON: No, sir, Your Honor.
14 We sent out joint subpoenas.

15 JUDGE NICHOLSON: Just find the
16 subpoena and affidavit of service where he was
17 actually served.

18 MR. OUTTEN: And, Your Honor, we'll
19 take this up, of course, when the court tells us to,
20 but --

21 JUDGE NICHOLSON: So you called him
22 at 11:00?

23 MR. OUTTEN: Yes, sir.

24 JUDGE NICHOLSON: We don't know if
25 he's going to be here or not?

1 MR. OUTTEN: We don't, Your Honor.
2 And we have at least one thing we can do between now
3 and then and then I guess we'll deal with it at or
4 around 11:00. Because of the length of the trial,
5 because of our desire to get the case to the jury,
6 subject to the court's approval, of course, we would
7 like to move it along and not wait and hope that he
8 comes this afternoon. I don't know whether he's
9 going to come or not. And at some point we need to
10 address the issue of the court, I think, has said
11 that you don't believe that you're going to allow us
12 to play the videotape. And I'm not going to argue
13 that ruling, Your Honor, but I --

14 JUDGE NICHOLSON: I'll listen to your
15 arguments. I said that was my inclination, but I'll
16 listen to your arguments. I'll give you an
17 opportunity to change my mind.

18 MR. OUTTEN: That would be great.
19 Then whenever the court wants to take that up. I
20 guess we could -- Ellis, how long is the
21 interrogatories on the written questions going to
22 take?

23 MR. JOHNSTON: It's eight pages of
24 text. Not very long.

25 JUDGE NICHOLSON: Why don't we go

1 ahead and do that and then I'll listen. The only
2 thing I know to do then is wait until 11:00 to see
3 if he's going to show. I'll listen to your
4 arguments in the event he doesn't show concerning
5 the video, but in the meantime see if you can't find
6 that affidavit of service so I can make it a court
7 record because before I do anything I've got to have
8 some proof that he's actually been served.

9 MR. OUTTEN: Yes, sir, I understand
10 that. Here I'll put it in the record now, Your
11 Honor. What's the next Court's Exhibit?

12 THE COURT REPORTER: 15.

13 JUDGE NICHOLSON: And then I assume
14 that there's a mileage check also?

15 MR. OUTTEN: Yes, Your Honor.

16 JUDGE NICHOLSON: So the mileage
17 check was served?

18 MR. OUTTEN: Yes, Your Honor.

19 JUDGE NICHOLSON: The affidavit of
20 service we'll mark as a Court's Exhibit; is that
21 correct?

22 MR. OUTTEN: Yes, sir.

23 JUDGE NICHOLSON: And the subpoena
24 requested him to be here when?

25 MR. OUTTEN: Well, the letter says --

1 I want to make sure I get it right. The letter says
2 Monday, October 20, but it gives the number of
3 Ms. Couch, who is a paralegal for our firm, about
4 the specific date and time. And as you might
5 remember, Judge, this is --

6 JUDGE NICHOLSON: We set it
7 originally for two weeks and we're in our fourth
8 week.

9 MR. OUTTEN: And both Mr. Brandt and
10 I had called him intermittently during the time.
11 And we called him -- I called him this past Saturday
12 at 5:00 and told him I needed to discuss with him
13 his appearance this week. And I actually spoke with
14 him and he said that he was going to his father's
15 house and he couldn't talk.

16 And then we followed up. I believe
17 Ms. Roberts called him on Sunday and again left a
18 message with him. I can't speak to how many times
19 Mr. Brandt has called him, but I think Mr. Brandt
20 said he called him two or three times maybe. I
21 don't want to misstate that.

22 MR. BRANDT: I mean, I think that
23 that's --

24 JUDGE NICHOLSON: Here is where he's
25 supposed to be here.

1 MR. BRANDT: Well, I had him on -- we
2 had him under subpoena too. I talked to him a
3 couple times and we chose not to call him. I did
4 call him back and tell him that we would not be
5 calling him, but that he was under the subpoena for
6 the defense and I didn't know what they would do.

7 JUDGE NICHOLSON: They communicated
8 him to be here. They wanted him here this week.

9 MR. BRANDT: That was the last time
10 that --

11 MS. ROBERTS: I told him that we
12 would probably need him Wednesday or Thursday.

13 JUDGE NICHOLSON: And you haven't
14 heard from him since?

15 MS. ROBERTS: He never called back.
16 And I believe Ms. Couch called him also after I
17 called him on Sunday. Sam called him Saturday, I
18 called him Sunday, and she called him Monday.

19 JUDGE NICHOLSON: His wife last night
20 said she would call him this morning?

21 MR. OUTTEN: When she said that,
22 Judge, I said, Ms. Hogan, I think you need to call
23 his hotel and speak with him even if you have to go
24 through security. I said this is an important
25 matter and I said Judge Nicholson knows that I'm

1 calling you and has asked me to tell you that he
2 needs to be in court today. And I told her what you
3 asked me to tell her. So she knows that.

4 MR. BRANDT: My bird-dog talked with
5 her yesterday. If I may step out and make a phone
6 call, then I will find out if he knows how to get in
7 touch with her at this point today. I don't know
8 what time -- (inaudible) -- if he knows where she
9 works, how he did that. He might be able to get
10 back in touch with her and find out what she did, if
11 you care to do that.

12 JUDGE NICHOLSON: Well, I mean, why
13 don't we go ahead and listen to the deposition and
14 then give him a call and we'll see if he shows up.
15 It's just an hour and ten minutes from now. We'll
16 see if he shows up and we'll take whatever action we
17 ought to take. I think you all have done everything
18 you all can do to get him here. There's nothing
19 else you can do. So now it's up to the court to
20 take whatever action I need to take. Thank you very
21 much. Anything else before we bring the jury?

22 MR. JOHNSTON: Your Honor, we
23 submitted a deposition on written questions that was
24 taken in China. I don't think the plaintiffs
25 offered any additional questions. I'm going to be

1 Wu Bin.

2 JUDGE NICHOLSON: You're going to be

3 Wu Bin?

4 MR. JOHNSTON: I'm going to be Wu

5 Bin.

6 JUDGE NICHOLSON: Do you speak

7 Mandarin?

8 MR. JOHNSTON: Well, we have it

9 Mandarin and we can hand it up, but we have the
10 translated version.

11 JUDGE NICHOLSON: Oh, you've got the
12 translated version. Okay. How about that document
13 you've got in evidence that hasn't been translated
14 or did you all put that in?

15 MR. JOHNSTON: I don't know if we did
16 or not.

17 MR. BRANDT: Got the translator here?
18 I'm not going to make that objection. I'm not
19 making that objection.

20 MR. HOWARD: You want us to stop
21 trial and go to China and take the translator's
22 deposition?

23 MR. JOHNSTON: I think Josh is
24 hunting for photographs that he identifies that have
25 already been put in evidence.

1 JUDGE NICHOLSON: Let me know when
2 you're ready and we'll get the jury out.

3 (Off-the-record discussion.)

4 MR. WALKER: This response to comply
5 with Rule 30 C, E, and F. And this witness has
6 never sworn. There's no evidence that he was ever
7 sworn, unless I'm missing something. It's
8 notarized, but I didn't see where the guy was ever
9 sworn. Help me with that. If I'm missing
10 something, help me.

11 MR. JOHNSTON: These answers are true
12 to the best of my knowledge and belief.

13 JUDGE NICHOLSON: What rule are you
14 quoting from? Tell me what rule.

15 MR. WALKER: Okay. I am. 30 C, E,
16 and F. 30 C, examination and cross examination, the
17 witness may proceed as permitted at the trial under
18 the provisions of the rules of evidence.

19 (Inaudible) -- shall put the witness under oath.

20 JUDGE NICHOLSON: Tell me where
21 you're reading from.

22 MR. WALKER: I'm sorry, Your Honor.
23 Rule 30 C, second sentence.

24 JUDGE NICHOLSON: What was the other
25 rule you were referring to?

1 MR. WALKER: 30 C, 30 -- excuse me,
2 Your Honor. 30 C, E, and F. And on E when the
3 testimony is fully transcribed the deposition is to
4 be submitted for examination.

5 JUDGE NICHOLSON: What else? F?

6 MR. WALKER: And then F goes to the
7 transcription, but my main concern is --

8 JUDGE NICHOLSON: What's your
9 objection?

10 MR. WALKER: My objection is there's
11 no evidence in this document that the witness was
12 sworn pursuant to Rule 30 C.

13 JUDGE NICHOLSON: I haven't seen the
14 document. So I don't know.

15 MR. WALKER: I'll give it to you,
16 Your Honor.

17 JUDGE NICHOLSON: Mr. Johnston,
18 what's your -- have you got the original?

19 (Off-the-record discussion.)

20 MR. JOHNSTON: It says these answers
21 are true to the best of my knowledge and belief,
22 signature Wu Bin.

23 JUDGE NICHOLSON: All right. The
24 last page it says the above responses are true to
25 the best of my knowledge and belief, a statement by

1 Wu Bin. And then Zhang Lin, the lawyer of Wang Jing
2 & Company Law Firm made the above statement, which I
3 assume would be our equivalent of a notary that
4 confirmed it. So, I mean, what's wrong with that?
5 It may not use the technical language that we may
6 use in depositions or in affidavits, but --

7 MR. WALKER: I raised the point of
8 procedure because the rule says you have to be put
9 under oath. I don't know what they do in China, but
10 he's not been put under oath under our rules.

11 JUDGE NICHOLSON: I don't think you
12 can draw that assumption from having read the last
13 page.

14 MR. WALKER: Well, I don't think you
15 can draw the assumption he was put under oath. So
16 that's my objection. And I understand your ruling.

17 JUDGE NICHOLSON: Your objection is
18 going to be overruled. Having read it I think
19 that's the equivalent of a notary public notarizing
20 a statement even though the words in the -- I guess
21 the notary words that we use, under oath, aren't in
22 there, but I think it's equivalent to that.

23 MR. WALKER: All right, sir.

24 JUDGE NICHOLSON: Your objection is
25 overruled.

1 MR. WALKER: Thank you, Your Honor.

2 MR. JOHNSTON: I suppose we ought to
3 mark these as court exhibits. Make this one, two,
4 three, four.

5 (Off-the-record discussion.)

6 JUDGE NICHOLSON: Call your next
7 witness.

8 MR. HOWARD: Your Honor, defendants
9 call Wu Bin.

10 JUDGE NICHOLSON: Ladies and
11 gentlemen, this is a statement obtained --
12 (inaudible) -- we're going to present and we can do
13 it by question and answer. We're going to do it by
14 question and answer. So it will be the same as the
15 deposition in writing. You all have seen a video
16 deposition, I believe, but this is a written
17 deposition and it's going to be a question and
18 answer.

19 MR. JOHNSTON: Your Honor, with the
20 court's permission I'll attempt to be Wu Bin.

21 EXAMINATION

22 BY MR. HOWARD:

23 Q. What is your name?

24 A. Wu Bin.

25 Q. Are you employed by Lianyangang Yuantai

1 International Trade Company Limited?

2 A. I was engaged in chemicals exporting
3 business in Yuantai Company during August 2003 to
4 November 2004.

5 Q. What is your title?

6 A. I was engaged in chemicals exporting
7 business.

8 Q. Describe the business of Lianyungang
9 Yuantai International Trade Company Limited?

10 A. Yuantai Company is mainly engaged in
11 import and export business on chemicals,
12 construction materials, food, vehicles and other
13 aspects.

14 Q. Are you familiar with Matrix Outsourcing,
15 LLC?

16 A. I made acquaintance with Lucy Yang of
17 Matrix on Canton Fair in 2000, who was Matrix's
18 chief representative based in China. Matrix began
19 to purchase cargo from me since 16 December 2000 and
20 then I always keep chemicals exporting business with
21 it. Angela, a purchaser of Matrix, comes to China
22 in April and October every year and Lucy, Angela,
23 and I have some meetings together. Sometimes, I
24 take them to visit the factories.

25 Q. In 2003 and 2004 did you received purchase

1 orders for sodium bromate from Matrix?

2 A. Yes.

3 Q. Upon receiving the purchase orders from
4 Matrix, did you then purchase the requested sodium
5 bromate?

6 A. Yes.

7 Q. From whom did you purchase sodium bromate
8 in 2003 and 2004?

9 A. Weifang Haihua Yuanda Fine Chemical
10 Company Limited. The manufacturer's name indicated
11 on the purchase orders I received from Matrix is
12 Shangdong Haida, which refers to the same company.
13 In fact, before I purchased sodium bromate from this
14 company so as to supply the same to Matrix, I had
15 surveyed this company on scene and posted relevant
16 samples to Matrix. Upon Matrix's confirmation, I
17 purchased sodium bromate from Weifang Haihua Yuanda
18 Fine Chemical Company Limited. Therefore, the
19 purchase orders I received from Matrix during such
20 period all refer to the manufacturer as "Shangdong
21 Haida".

22 Q. After purchasing the sodium bromate, did
23 your company then invoice Matrix for each shipment
24 of sodium bromate?

25 A. Yes.

1 Q. Prior to August 2003, did you purchase.
2 sodium bromate in fiber drums?

3 A. Yes. I purchased sodium bromate in
4 50-kilogram fiberb drums.

5 Q. In summer of 2003, were you requested to
6 package sodium bromate in woven plastic bags?

7 A. Yes. Purchase order No. SBM-0306-05 sent
8 by Matrix to me on 9 June 2003 requested to pack
9 sodium bromate in fiber drums. However, Matrix
10 revised this purchase order on 1 October 2003 with
11 some contents changed including unit price of per
12 metric ton, package and other information. The
13 package was thus changed into bags. The letter of
14 credit No. 00228-01-000635 issued for this purchase
15 order thus indicated that the sodium bromate should
16 be packed in bags. What's more, I have to make
17 supplementary statement on the aforesaid facts as
18 follows: Although Matrix did not indicate to pack
19 the cargo in woven plastic bags in writing until the
20 purchase order was revised on 1 October 2003,
21 Matrix, Weifang Yuanda Fine Chemical Company Limited
22 and I had been keeping into contact for this
23 purchase order No. SBM-0306-05. We made
24 confirmation through telephone that the cargo under
25 purchase order No. SBM-0306-05 and the cargo shipped

1 thereafter would be packed in 25-kilogram woven
2 plastic bags on some day between 12 July 2003 (as
3 indicated by a copy of bill of lading kept by me),
4 on which I shipped sodium bromate in 50-kilogram
5 fiber drums under purchase order No. SBM-0306-04,
6 and 12 August 2003, on which the sodium bromate
7 under purchase order No. SBM-0306-05 was put into
8 production. The sodium bromate under purchase order
9 No. SBM-0306-05 was the first lot of cargo shipped
10 to Matrix in woven plastic bags. The attached
11 photos as Exhibit 1 and Exhibit 2 just show the
12 package of such shipment of cargo. Trade term
13 applying to purchase order No. SBM-0306-05 was CIF
14 Port of Charleston, South Carolina.

15 Q. In summer 2003, did you receive
16 confirmation that sodium bromate could be packaged
17 in woven plastic bags for shipment to the United
18 States?

19 A. See my answer to Question 11. What I need
20 to supplement is that the trade term applying to
21 purchase order No. SBM-0306-05 was CIF Port of
22 Charleston, South Carolina.

23 Q. When the change of packaging occurred from
24 drums to bags in 2003, did you inspect the first
25 shipment of bags? If so, on what date did your

1 inspection of the bags referenced above occur?

2 A. I only examined whether the markings
3 indicated on the bags consisted with those required
4 by Matrix. Whether there are marks like the mark of
5 hazardous substances or not on the bags shall be
6 prescribed and inspected by China Entry-Exit
7 Inspection and Quarantine Bureau (customarily
8 referred to as "CIQ"). CIQ takes charge of relevant
9 inspections over package and issuance of
10 certificates which certify the bags are suitable for
11 packaging hazardous substances out of the country.
12 Package of the products exported by Weifang Haihua
13 Yuanda Fine Chemical Company Limited to Matrix
14 through me abided by relevant provisions of our
15 country on entry-exit inspection. Otherwise, we
16 could not have gone through the export procedures at
17 all.

18 I cannot remember on what date I carried
19 out the inspection over the markings on those bags,
20 but what I can make sure is that I did inspect such
21 cargo on some day between the production date,
22 namely 12 August 2003, and cargo shipment (as
23 indicated by the Product Analysis Certificate
24 available to me presently, the invoice issuance date
25 of such cargo is 7 November 2003. Generally

1 speaking, the shipment date is about two days after
2 the invoice date. Therefore, according to my
3 deduction, such cargo was shipped on 9 or 10
4 November 2003.)

5 Q. Did you take photographs of the bags you
6 inspected?

7 A. When I checked to ascertain whether the
8 markings indicated on the bags consisted with those
9 required by Matrix, I took some photographs for the
10 bags.

11 Q. Are the photographs, attached as Exhibits
12 1 and 2 to this Deposition, true and accurate copies
13 of the photographs of bags that you personally saw
14 in August 2003?

15 A. The photographs, attached as Exhibits 1
16 and 2 to this Statement, are true and accurate
17 copies of the photographs of bags that I personally
18 saw. However, I am not sure whether it was in
19 August when these bags were inspected. Please see
20 my answer to Question 13.

21 Q. Were the attached photographs taken
22 contemporaneously with your inspection in August
23 2003?

24 A. The attached photographs were taken
25 contemporaneously with my inspection. However,

1 about the time of my inspection, please see my
2 answer to Question 13.

3 Q. Did you retain the attached photographs on
4 your computer?

5 A. Yes. I did.

6 Q. Can you tell from your computer when the
7 attached photographs were loaded onto your computer?
8 If so, on what date were they loaded onto the
9 computer?

10 A. Yes, I can. My computer indicates that I
11 loaded Exhibit 1 and Exhibit 2 onto my computer
12 respectively at 17:21 on January 1, 2004, and 17:20
13 on January 1, 2004.

14 Q. To your knowledge, was there ever a change
15 in the specifications of the bag material for the
16 bags of sodium bromate that your company sold to
17 Matrix between August 2003 and June 2004?

18 A. I don't quite understand what the
19 so-called "specifications of the bag material"
20 refers to. However, if it refers to specification
21 of the used bags such as materials and size, it's
22 just as what I answered to Question 11, from our
23 confirmation through telephone that the cargo would
24 be packed in bags to June 2004, I did not receive
25 any notice from Matrix requesting change in the

1 specifications of the bag material. I did not
2 notify the factory to make any change. Nor did the
3 factory notify me of any change. The factual
4 conditions of the materials used in these bags, such
5 as performance on leakage-proof, shall be
6 authenticated and certificated by CIQ.

7 Q. Are the markings, labels, and other
8 information pre-printed on each bag by the bag
9 manufacturer?

10 A. I required Weifang Haihua Yuanda Fine
11 Chemical Company Limited in our Purchase and Sales
12 Contract that the package provided by it shall meet
13 the product's own need and exporting requirements.
14 Furthermore, I otherwise faxed the markings provided
15 by my clients to this company. According to my
16 understanding from Weifang Haihua Yuanda Fine
17 Chemical Company Limited, markings, labels and other
18 information are pre-printed on each bag for each lot
19 by the bag manufacturer. And the process known by
20 me, as an exporter of hazardous substances such as
21 sodium bromate, are also like so. The sodium
22 bromate manufacturer would, upon my notice, inform
23 the bag manufacturer of the markings required by the
24 client, such as product, product code, gross weight,
25 tare weight, net weight, lot number and other

1 information, and then the bag manufacturer would
2 print on the bags such markings, (including
3 information about actual weight, et cetera) provided
4 by the client and some marks compulsorily required
5 by CIQ, including 5.1, 5H3/Y26/S/YY (last two
6 numbers of the year), hazardous substances marks,
7 the bag manufacturer's number granted by CIQ to
8 qualified hazardous substance package manufacturers,
9 production month of the packing bags (as shown in
10 Exhibits 1 and 2). The CIQ office in the place
11 where the bag manufacturer is located would,
12 according to International Maritime Dangerous Goods
13 Code, inspect and test performance of such bags
14 (including examination over marks and the number of
15 the manufacturer, conducting drop test and so on)
16 and record the results onto the Test Report on
17 Exporting Cargo Packing Performance issued by it.
18 After that, the sodium bromate manufacturer would
19 pack sodium bromate into the bags and take the
20 aforesaid Test Report on Exported Cargo Packing
21 Performance to the CIQ office in the place where the
22 sodium bromate manufacturer is located for checking
23 and apply to this CIQ office for authentication on
24 use of such package. After authentication, this CIQ
25 office would issue an Authentication Report on Use

1 of Package for Exported Hazardous Cargo
2 Transportation. And then, we must hold the original
3 Authentication Report on Use of Package to the
4 competent transportation authorities for handling
5 the export shipment procedures for hazardous cargo.
6 In fact, these reports are kept in archives and put
7 on records in the relevant CIQ offices. Of course,
8 these materials can only be looked into upon
9 relevant procedures with competent authorities.

10 Q. To your knowledge, was there ever a change
11 in the specifications of the markings, labeling and
12 information pre-printed on the bags of sodium
13 bromate your company sold to Matrix between August
14 2003 and June 2004?

15 A. I did not receive any notice from Matrix
16 requesting change of these contents. I did not
17 notify the factory to make any change. Nor did the
18 factory notify me of any change. I've never
19 received any notice from Matrix claiming that it
20 found any change in package after its receipt of
21 cargo, either. The lot number of each shipment is
22 certainly subject to what actually produced. As to
23 marks required by CIQ, it is impossible for me to
24 make any change.

25 Q. What is the name of the bag manufacturer?

1 A. The bags were manufactured by Shouguang
2 Welfare Paper & Plastic Package Factory, as I know,
3 which is qualified to manufacturer hazardous
4 substances package. In the Test Report on Exported
5 Cargo Packing Performance issued by the local CIQ
6 office upon its inspection over the woven bags
7 manufactured for the purpose of containing sodium
8 bromate, "CN/370707" is indicated in the column
9 under the item of Marks and Number of Packing
10 Vessel. As I know, "CN/370707" is a number granted
11 by national CIQ to a qualified manufacturer
12 according to U.N. requirements, which must be
13 indicated on the aforesaid report and each hazardous
14 substances bag. Such a number means that this bag
15 is manufactured just by this qualified hazardous
16 substances package manufacturer. Weifang Haihua
17 Yuanda Fine Chemical Company Limited has also
18 confirmed that it purchased the bags from Shouguang
19 Welfare Paper & Plastic Package Factory.

20 Q. Is the bag manufacturer identified in
21 response to Question 23 an exclusive producer of
22 packaging for hazardous materials?

23 A. Shouguang Welfare Paper & Plastic Factory
24 is not an exclusive producer in China. The sodium
25 bromate supplied by me to Matrix during the

1 aforesaid period was manufactured by Weifang Haihua
2 Yuanda Fine Chemical Company Limited. I have never
3 notified by this company that the bag manufacturer
4 had been changed. I hereby have to emphasize again
5 and indicate that both Test Report on Exported Cargo
6 Packing Performance issued by the CIQ office to the
7 bag manufacturer and the Authentication Report on
8 Use of Package for Exported Hazardous Cargo
9 Transportation issued to the hazardous substances
10 manufacturer can be looked into in the relevant CIQ
11 offices, because they are kept as archives and put
12 on records by CIQ.

13 Q. Does the Lot Number printed on the bags,
14 such as Lot Number "20030812" appearing on the bags
15 in the attached photographs, represent the date on
16 which the sodium bromate was manufactured?

17 A. Yes. This was confirmed by Weifang Haihua
18 Yuanda Fine Chemical Company Limited.

19 Q. Was the sodium bromate that your company
20 sold to Matrix between August 2003 and June 2004 put
21 into pre-printed bags like the ones shown in the
22 attached photographs?

23 A. Yes. This was confirmed by Weifang Haihua
24 Yuanda Fine Chemical Company Limited.

25 These answers are true to the best of my

1 knowledge and belief.

2 JUDGE NICHOLSON: Thank you very
3 much. Do you want to mark that as a court's
4 exhibit.

5 MR. JOHNSTON: We already have.

6 JUDGE NICHOLSON: You marked the
7 Chinese version or do you want to mark the Chinese
8 version.

9 MR. JOHNSTON: Marked them both.

10 JUDGE NICHOLSON: Thank you very
11 much. Can I see the attorneys up here just a
12 second.

13 (Off-the-record discussion.)

14 JUDGE NICHOLSON: Call your next
15 witness, please.

16 MR. OUTTEN: Your Honor, we call
17 Tommy Garrett.

18 (The Witness was sworn.)

19 EXAMINATION

20 BY MR. OUTTEN:

21 Q. Good morning, Mr. Garrett.

22 A. Good morning.

23 Q. I understand in addition to not really
24 wanting to testify today you're not feeling too well
25 either, are you?

1 A. No, sir.

2 Q. I'll try to be as brief as I can. Okay?

3 A. Thank you.

4 Q. And you and I haven't seen each other
5 since I think we took your deposition awhile ago; is
6 that right?

7 A. A couple years.

8 Q. Did we have a chance to speak briefly out
9 there today?

10 A. Yes, sir.

11 Q. And I think one of the things you told me
12 is that this is a tough thing to testify about
13 because of the families and the injury and all that?

14 A. Yes, sir.

15 Q. Are you employed by Fluor Daniel?

16 A. Yes, sir.

17 Q. Were you employed by Fluor Daniel on June
18 1, 2004, at the Engelhard facility?

19 A. Yes, sir.

20 Q. Tell the jury what your -- briefly what
21 your job duties and responsibilities were.

22 A. I'm the site manager on the facility there
23 in charge of all Fluor employees, basically hiring,
24 firing, following procedures.

25 Q. Were you Curtis Martin's supervisor as of

1 the date of this accident?

2 A. Yes, sir.

3 Q. Now, I'm going to skip around to try to be
4 brief. Is that okay?

5 A. Yes, sir.

6 Q. There's been some testimony about
7 unidentified material. What are the Fluor Daniel
8 employees trained to do if they come upon a material
9 that they don't know what it is?

10 A. If they are working around or involved
11 with that material, to ask questions.

12 Q. To find out what it is?

13 A. Yes, sir.

14 Q. And was that Engelhard's policy in June of
15 2004?

16 A. Yes, sir.

17 Q. And did you train the workers not to
18 assume something was not hazardous?

19 A. Yes, sir.

20 Q. And with regard to this accident if
21 Mr. Martin didn't know what a material was, for
22 example, would it have been his responsibility to
23 find out?

24 MR. WALKER: Your Honor, he's leading
25 the witness. I would ask him what his

1 responsibility is as opposed to leading the witness.

2 JUDGE NICHOLSON: Overruled. Go
3 ahead.

4 BY MR. OUTTEN:

5 Q. If in June of 2004 Mr. Martin came across
6 material and he didn't know what it was, what would
7 be his responsibility based upon his training?

8 A. To ask questions.

9 Q. Do you know what a hot work permit is?

10 A. Yes, sir.

11 Q. Do you know whether there was a hot work
12 permit issued in connection with the June 1, 2004,
13 project?

14 A. Yes, sir.

15 Q. Was there?

16 A. Yes, sir.

17 Q. And do all members of the work crew have
18 responsibilities under the hot work permit?

19 A. They are supposed to review it with the
20 area of operations where it's issued.

21 Q. And would all members of the work crew
22 have a responsibility to make sure the hot work
23 permit was accurate?

24 A. Yes, sir. As it pertains to what they are
25 doing.

1 Q. Did Mr. Martin have a background -- have
2 training as a welder?

3 A. Yes, sir.

4 Q. And would you expect that he would have an
5 understanding of the dangers of using a cutting
6 torch, welding arc, things like that?

7 A. Yes, sir.

8 Q. And based on your understanding of
9 Engelhard's hot work procedure, should the pallets
10 of materials of sodium bromate have been removed
11 from the hot work area that morning?

12 A. If they were in the area of hot work, it
13 should have been removed.

14 Q. And even if the labels were not visible or
15 obscured or were not clearly visible, should the
16 pallets of material still have been removed that
17 morning?

18 A. There should have been some questions
19 asked about whether it needed to be are removed,
20 covered, or something.

21 Q. And as I understand the policy, you move
22 it if you can; is that correct?

23 A. Yes, sir.

24 Q. And you cover it if it cannot be moved?

25 A. Yes, sir. Welding blankets or something.

1 Q. Are pallets of materials easily moved?

2 A. If it's a pallet forklift -- designed for
3 forklifts, yes.

4 Q. So if these were pallets of materials,
5 would it be easy to have moved them that morning?

6 A. Yes, sir.

7 Q. And are pallets and plastic bags
8 combustible?

9 A. Yes, sir, I would think so.

10 Q. Does that mean the hot work permit
11 procedure requires their removal before hot work
12 begins?

13 A. Yes, sir.

14 Q. Did Univar, Trinity, and Matrix have any
15 role in the safe operation of this project that
16 morning, to your knowledge?

17 A. I've never heard of those three companies
18 before this accident happened.

19 Q. Do you have knowledge regarding the
20 receipt of goods policy at Engelhard?

21 A. Yes. Materials coming into the plant are
22 supposed to be adequately labeled as to hazards
23 involved.

24 Q. And do you believe if the material is
25 checked into the -- well, if a material is checked

1 into the Engelhard facility, what does that mean
2 with regard to the labeling?

3 A. The shipping receiving department is
4 supposed to verify that it either has a label or
5 they are supposed to label it by their procedure.

6 Q. Mr. Garrett, did you -- did Fluor Daniel
7 conduct an investigation of this incident?

8 A. Yes. After the accident happened.

9 Q. And we all know it was -- was it a serious
10 accident?

11 A. Yes, sir.

12 Q. And it involved one of your employees?

13 A. Yes, sir.

14 Q. And so you investigated to see what
15 happened? Is that the purpose?

16 A. Yes, sir.

17 Q. This is Defendants' Exhibit 15,
18 Mr. Garrett. If you would just look through that
19 quickly. Is Defendants' Exhibit 15 a true and
20 accurate copy of Fluor Daniel's investigation into
21 the June 1, 2004, incident?

22 A. Yes, sir.

23 Q. And I want to call your attention to just
24 a few things in it. First look on the first page of
25 it, Paragraph 5. And does it say there that we

1 down at the end of the hall, were they wet?

2 A. To be honest, I really didn't notice.

3 Q. But you went by the pallets, did you not?

4 A. Yes, sir, I went by them.

5 Q. You never saw -- the pallets that were
6 there on the date of this explosion, correct? Did
7 you have any idea of the explosive nature of what
8 was on those pallets when you walked by?

9 A. No, sir.

10 Q. Sir?

11 A. No, sir.

12 Q. Do you know of anybody in the plant that
13 did? I'll withdraw that.

14 A. I don't know how to answer the question.

15 Q. It was a bad question. Do you know
16 whether Univar, Trinity, and Matrix were responsible
17 for packaging and labeling this sodium bromate?

18 A. As the manufacturers I would say, yeah,
19 they had a responsibility.

20 Q. And if they were not labeled and packaged
21 properly, that would be their responsibility. Is
22 that accurate?

23 A. Yes, sir.

24 Q. All right. And do you know that since
25 this explosion sodium bromate is not packaged in

1 plastic bags anymore, it's packed in fiber drums
2 with metal tops?

3 A. I didn't know that.

4 Q. You didn't know that. Have you ever been
5 at the dock when sodium bromate was coming to the
6 plant?

7 A. No, sir.

8 Q. Do you know whether they are required to
9 cut open a shrink-wrap and turn every bag over to
10 find a label?

11 A. No, sir, I don't.

12 Q. Do you know what the pattern and practice
13 is out there on the loading dock about checking for
14 labels?

15 A. No, sir, I don't.

16 Q. All right. And what Mr. Bailey said, he
17 said if he sees a yellow diamond on the shipment of
18 one of the pallets, he takes them in as sodium
19 bromate and puts them where they are supposed to go.
20 Does that sound like the way it works in real life?

21 A. Sir?

22 Q. Mr. Bailey, the guy who unloads these
23 trucks when they come in, these containers, he says
24 when he receives a pallet full of sodium bromate,
25 sees the oxidizer label on one of the bags, he

1 accepts it into the plant, right? Do you --

2 A. I would -- (inaudible.)

3 Q. -- understand that? But it's not his
4 responsibility to check every bag of 120,000 tons of
5 sodium bromate that comes into the plant from
6 Univar, Trinity, or Matrix to make sure they are
7 properly labeled, is it?

8 A. As I stated, Engelhard had -- the only
9 responsibility they have is to make sure that it
10 does have labels on it.

11 Q. All right. In reality they don't check
12 every bag?

13 A. I'm not down there when it comes in.

14 Q. Would you take Mr. Bailey's word for it?

15 A. I'm not sure who Mr. Bailey is.

16 MR. OUTTEN: Your Honor, that's an
17 improper question. You can't pit one witness
18 against --

19 MR. WALKER: I'm not pitting one
20 witness.

21 JUDGE NICHOLSON: I'll sustain that
22 objection.

23 BY MR. WALKER:

24 Q. Do you know Mr. Bailey?

25 A. I guess he was working in receiving at

1 that time, but I don't know him personally.

2 Q. You don't know what his pattern and
3 practice was?

4 A. No, sir.

5 Q. Will you agree with me that
6 Mr. Herrington, who is the safety manager at Fluor,
7 do you recall that he made the comment during the
8 investigation that he did not agree that these bags
9 were clearly labeled?

10 A. I'll be honest, sir. I don't remember it
11 if he made the comment.

12 Q. If he said that, would you agree with it?

13 A. I saw a label on the bags, but I wouldn't
14 say it was something that would make me stand up
15 and --

16 Q. Now, the bags you're talking about are the
17 bags in the warehouse?

18 A. Yes, sir.

19 Q. All right. Do you --

20 A. During the investigation.

21 Q. The bags that were burnt up, of course,
22 obviously that's a stupid question, but you couldn't
23 see anything?

24 A. No, sir.

25 Q. And you don't know what was on them?

1 A. No, sir.

2 Q. And I believe that you told me earlier
3 when I actually talked to you before your testimony
4 it was a fairly long hall from where you were to the
5 end of where these pallets were?

6 A. Yes, sir.

7 Q. And you said there was some
8 misunderstanding about how close they were going to
9 get to these pallets; is that correct?

10 A. At the original start of the work, yes,
11 sir.

12 Q. And at the outset you didn't think it
13 would get that close to the pallets, did you?

14 A. It never occurred to me, no, sir.

15 Q. All right. When you were looking down
16 towards the end of the hall you did not see anything
17 on those pallets that jumped out at you to put you
18 on guard, did you?

19 A. No, sir.

20 Q. And had you seen something that would have
21 put you on guard like this, and I'm going to walk
22 all the way to the back of the courtroom to kind of
23 demonstrate how far away you were. If this would
24 have been on the pallets, you could have seen it
25 from this far away, could you not?

1 A. The pallets were laying flat. If it was
2 on the pallets, it would have been laying down flat.

3 Q. I know that, but if this would have been
4 on the side of the pallets, you could have seen it?

5 A. Then I guess the other thing I would have
6 to comment to that was at the time where I was
7 standing here it never occurred to me that that
8 pallet back there had anything to do with what they
9 were doing.

10 Q. Fair enough. Curtis Martin, your
11 employee, was a good, safe worker?

12 A. Yes, sir.

13 Q. Never had any problems with him, always
14 showed up for work and conducted himself in a
15 proper, safe fashion; is that right?

16 A. Yes, sir.

17 Q. And when this explosion occurred would you
18 agree that these three guys were up in the pipe rack
19 20 some feet off the ground?

20 A. Yes, sir.

21 Q. And did you see any of them after the
22 incident?

23 A. Yes, sir.

24 Q. And do you want to share with us what you
25 saw?

1 A. I didn't recognize him.

2 Q. What do you mean you didn't recognize him?

3 A. I just didn't recognize him as who he was.

4 He was blackened and bloated.

5 MR. WALKER: All right. That's all I
6 have.

7 JUDGE NICHOLSON: Cross-examination.

8 EXAMINATION

9 BY MR. BRANDT:

10 Q. Mr. Garrett, how many times did you go
11 through that area that morning?

12 A. Probably just twice. Once on the way and
13 once on the way back.

14 Q. We have Plaintiffs' Exhibit 110.

15 A. That was better the drawing I saw.

16 Q. Sir? You didn't have anything to do with
17 this drawing, did you?

18 A. Not me.

19 Q. Okay. Can you tell us your routes as you
20 went through that area that morning?

21 A. Yes, sir. At point A back there I started
22 before point A from the front of the plant coming
23 back through that direction to where the SK is and
24 then I took a right and then went back through the B
25 area back out to the outside of the plant.

1 Q. So you would have started at A, gone down
2 to where that basically looks like it T's?

3 A. Yes, sir.

4 Q. And then come down towards C?

5 A. And then went on out to the outside of the
6 plant.

7 Q. And did you do that two times, that same
8 route?

9 A. The other route was going back the other
10 direction back in the front of the plant.

11 Q. So you just reversed the direction?

12 A. That's more or less a thoroughfare to get
13 from the front of the plant to the back of the
14 plant.

15 Q. And what would you say the distance -- I
16 guess this is supposedly the corner of that reactor
17 platform?

18 A. Yes, sir.

19 Q. Over to this wall would be about 15 feet?

20 A. 15 to 18 feet, yes, sir.

21 Q. So you would have walked right by those
22 pallets and within close distance of them; is that
23 correct?

24 A. Yes, sir.

25 Q. And nothing jumped out at you to tell you

1 that it was dangerous or hazardous, did it?

2 A. No, sir.

3 Q. And you didn't notice any kind of yellow
4 label, oxidizer label of that size or the bigger
5 size on any of those pallets, did you?

6 A. I didn't notice it, no, sir.

7 Q. Do you recall how high they were?

8 A. Seemed like they were low to the ground,
9 but I really don't recall.

10 Q. And the pallets -- I believe that this
11 hallway after you had come down and it turns to the
12 right, how far down -- we get out here and come this
13 direction. How far is that about?

14 A. I'm sorry. From the point of the T?

15 Q. Yeah. How far would that be? 20 feet?

16 A. Probably closer to 30.

17 Q. 30. So we would -- can you give me an
18 estimate of how far this would be right here?

19 A. That's probably 10 to 12 feet wide.

20 Q. So you're 10 to 12 feet and then you're 30
21 feet you think up there where the condensate line
22 would have split?

23 A. Well, I'm from the fence line up to where
24 the line is I would say was 30 feet.

25 Q. Fence line being here or over here?

1 A. Down below you, sir.

2 Q. Down here?

3 A. Yes, sir. From there to up where the T is
4 probably about 30 feet.

5 Q. Okay.

6 A. So it was 20 feet from there to the wall
7 and then ten on down to the fence.

8 Q. And after it -- you said, I think, in your
9 deposition that the pallets were ten feet after the
10 turn. Is that where the pipe split or after you --
11 you said turn. I'm not sure exactly what you meant
12 by where it turned.

13 A. I guess where -- my assumption of where
14 the pipe turned in the rack.

15 Q. So it would have been at least ten feet
16 from that split of pipe?

17 A. Ten to 15.

18 Q. Ten to 15 feet from there?

19 A. Yes, sir.

20 Q. How long was it prior to the fire that you
21 had been through there the last time?

22 A. Maybe two and a half hours.

23 Q. And where were they working at that time,
24 do you remember?

25 A. When I went through the area?

1 Q. The last time when you went back?

2 A. They were still located pretty much close
3 to around where the A mark is, maybe a little
4 further down from that.

5 Q. Do you know the approximate distance
6 between A to where the pipe split?

7 A. I'm guessing 35 feet maybe.

8 Q. Do you know the length of that entire
9 project that morning?

10 A. No, sir.

11 Q. Are you aware that it was to be somewhere
12 around 80 feet, 80 to 100 feet of pipe --
13 (inaudible)?

14 A. I never really asked that question, but
15 that seemed reasonable.

16 Q. As you passed those pallets that morning
17 you saw nothing that stood out to tell you that
18 there was any kind of hazard in that area?

19 A. No, sir.

20 Q. Was it already taped off?

21 A. The area around the pallets had no tape or
22 anything around it.

23 Q. Did it have tape there where point B is on
24 that drawing?

25 A. No, sir, I don't remember one being there

1 at that point.

2 Q. When you went through before?

3 A. If it was a red tape, I wouldn't have
4 crossed it. I would have went around.

5 Q. And there wasn't one up around A either
6 you don't think when you went through there?

7 A. No, sir.

8 Q. But the area had been washed down?

9 A. Yeah, they had washed down the rack for
10 dust and things like that.

11 Q. David Herrington you stated was a safety
12 manager for Fluor?

13 A. Yes, sir.

14 Q. And he was the one that's responsible for
15 the safety management within the company?

16 A. Yes, sir.

17 Q. And how long has he been in that position?

18 A. I would say 15 years.

19 Q. And is he the one that you would direct me
20 to if I had questions in regards to labels and
21 labeling requirements under OSHA?

22 A. Typically I would say if it was on the job
23 site it would be my first responsibility. And then
24 if I had questions or couldn't answer the question,
25 yes, that's where we would go.

1 Q. But he is involved with labeling issues
2 within Fluor's operation of what's required in the
3 work place?

4 A. Yes, sir.

5 Q. And when you went in, I believe, you
6 didn't notice the pallets that day and you went in
7 the warehouse with Mr. Herrington while he conducted
8 his investigation?

9 A. Yes, sir.

10 Q. So he would have seen the same thing you
11 saw?

12 A. Yes, sir.

13 Q. And you saw a partial pallet, did you not?

14 A. Yes, sir.

15 Q. And that partial pallet, the shrink-wrap
16 had been taken off?

17 A. I don't remember if it was laying around
18 the pallet, but it had been busted open.

19 Q. It wasn't a full pallet?

20 A. No, sir.

21 Q. And it wasn't double stacked or do you
22 recall?

23 A. The pallet itself was sitting on the
24 floor.

25 Q. And it was pretty low, the one you saw?

1 A. Yes, sir.

2 Q. And you went up to it and could look down.
3 And did you see on those a label of any kind?

4 A. I saw the oxidizer symbol, the black
5 circle with the flames, on the bag.

6 Q. And that partial pallet that was in the
7 warehouse the day after the fire?

8 A. Yes, sir.

9 Q. Do you recall seeing any other pallets of
10 sodium bromate in the warehouse other than that one
11 pallet?

12 A. No, sir, I don't recall.

13 Q. Can I have, I believe it's 4. Did you see
14 any stacks of sodium bromate in the warehouse like
15 that, that much of it?

16 A. No, sir.

17 Q. Were you in the warehouse with all the
18 chemicals or were you off in a separate room?

19 A. No. We were in the warehouse area where
20 they staged their chemicals at.

21 Q. So the only -- you only recall seeing that
22 one pallet?

23 A. That's really all I was looking at was
24 just to see what the pallet of material looked like.

25 Q. And do you know what the bags were made

1 out of?

2 A. That material that you've got laying there
3 in front of you.

4 Q. Looked like that what you saw?

5 A. Yes, sir.

6 MR. BRANDT: I don't have anything
7 further.

8 JUDGE NICHOLSON: Redirect.

9 RE-EXAMINATION

10 BY MR. OUTTEN:

11 Q. Very briefly, Mr. Garrett. Does that
12 sound good?

13 A. Yes, sir.

14 Q. All right. You were asked questions about
15 responsibility for packaging and labeling. Do you
16 remember those questions?

17 A. Yes, sir.

18 Q. Okay. And do you remember we talked
19 before about the responsibilities of distributors,
20 et cetera. Do you remember that?

21 A. Yes, sir.

22 Q. Okay. And did you tell me that the
23 distributor's responsibility was to get a product of
24 material to the dock at Engelhard with the proper
25 labeling on it? Did you tell me that?

1 A. I don't think I said it in that words, but
2 what I said was that there was a responsibility for
3 the products to be marked within the plant either by
4 the manufacturer or by Engelhard.

5 Q. All right. And that when they get to
6 Engelhard then the labeling is verified, checked by
7 Engelhard; is that right?

8 A. Once again it's supposed to be nothing in
9 the plant that doesn't have a label on it. That's
10 the procedure.

11 Q. And do you expect that procedure to be
12 followed?

13 A. Yes, sir.

14 Q. And is that an important safety procedure?

15 A. I would say so.

16 Q. And do you know of any violations of that
17 procedure related to this accident?

18 A. No, sir.

19 Q. So do you expect once the material is in
20 the facility that procedure has been followed, that
21 it's been checked?

22 A. Yes, sir, I would expect it to be.

23 Q. You were asked if anything jumped out at
24 you when you walked by the materials that morning.
25 Do you remember that?

1 A. Yes, sir.

2 Q. And I think Mr. Walker showed you this
3 symbol right here?

4 A. Yes, sir.

5 Q. If Engelhard wanted to do you know of
6 anything that would prevent Engelhard from putting
7 this yellow symbol that Mr. Walker showed you on
8 those pallets if they wanted to?

9 A. I don't think of anything that could have
10 presented them from doing that if they wanted to,
11 no.

12 Q. If they thought that would promote the
13 safety within the facility, could they do that?

14 A. Yeah. If they wanted to, sure.

15 Q. And again do you remember being asked
16 questions about walking by there that morning?

17 A. Yes, sir.

18 Q. And then I think I asked you some
19 questions about miscommunication about the scope of
20 the project. Do you remember that?

21 A. Yes, sir.

22 Q. Had you known that there were pallets of
23 materials within the hot work area that morning,
24 what would you have done?

25 A. I think I would have asked the question of

1 the people involved with the job what they were
2 planning on doing about it if it was still there.

3 Q. What would be the purpose of asking those
4 questions?

5 A. That if it was within the area of the
6 scope to make sure that it got moved out of the way
7 or covered if necessary.

8 Q. Let's look at that schematic quickly. Do
9 you see where it has the sodium bromate pallets in
10 this schematic?

11 A. Yes, sir.

12 Q. Do you see that? In other words, the red
13 danger tape and all that, this defines the work
14 area. Do you know that?

15 A. Yes, sir.

16 Q. And if you had seen pallets of material in
17 the work area, you would have asked questions
18 about --

19 A. I would like to think I would have.

20 Q. And would you have asked that it be -- the
21 pallets of material be moved or had them removed
22 from the work area?

23 MR. WALKER: Your Honor, I think it's
24 been asked and answered.

25 MR. OUTTEN: I don't think I've asked

1 that question, Judge.

2 JUDGE NICHOLSON: Overruled. Go
3 ahead. Hurry up.

4 THE WITNESS: I would basically once
5 again ask the questions, you know, are those things
6 if your way, what is that, is that a danger to it,
7 should we get it moved.

8 BY MR. OUTTEN:

9 Q. And ultimately do plastic bags and pallets
10 need to be removed from a hot work area?

11 A. If there's going to be fire, yeah.

12 MR. OUTTEN: That's all I have.
13 Thank you.

14 MR. HOWARD: I have no questions.

15 JUDGE NICHOLSON: Mr. Garrett, you
16 may be excused. Mr. Foreman and ladies and
17 gentlemen of the jury, I've got a take up a matter
18 with the lawyers. I'm going to ask you to go to the
19 jury room and leave your note pads.

20 For the record, yesterday -- I assume
21 Mr. Hogan is not here?

22 MR. OUTTEN: No, sir.

23 JUDGE NICHOLSON: It is now 11:15.
24 For the record, yesterday morning I started having
25 discussions with Mr. Outten and the remaining

1 defense counsel or plaintiffs' counsel and
2 Mr. Brandt -- excuse me. Mr. Brandt had his
3 investigator try to locate Mr. Hogan. And from that
4 investigation yesterday afternoon the court and the
5 attorneys found out Mr. Hogan was in a training
6 session in Chapel Hill.

7 And then I instructed Mr. Outten to
8 contact the wife and inform him that the court is
9 expecting him to be here at 11:00 this morning.
10 Mr. Outten has already previously put that on the
11 record along with the subpoenas.

12 Now, the issue now is he's not here. And
13 the only thing this court can do, I can issue a
14 bench warrant. I've talked to the deputies. They
15 will take the bench warrant to Pickens and try to
16 find a Pickens deputy and the two of them will try
17 to locate Mr. Hogan and bring him to court.
18 However, he's in North Carolina.. They aren't going
19 to find him. So I'm not going to put them to that
20 wasteful effort today. I understand he will be back
21 from North Carolina sometime tomorrow.

22 Now, I have no problem issuing a bench
23 warrant. I have no problem getting the sheriff to
24 pick him up this weekend and have him in court
25 Monday morning. The only thing I can do, if the

1 defense counsel wants to call the witness and the
2 defense counsel wants him as a witness, the only
3 thing I can do because of his location out of South
4 Carolina is to postpone this trial until the deputy
5 sheriff can find him and bring him to court and put
6 him on the witness stand. And if that's Friday, we
7 can do it Friday, we can do it Saturday, or we can
8 do it Monday. And that's the only thing I can do at
9 this time as far as obtaining the witness. If he
10 was in South Carolina, I would dispatch the deputies
11 to go bring him, but since he's not in South
12 Carolina, I don't have any jurisdiction in North
13 Carolina. That's the best I can do for you,
14 Mr. Outten. Does that summarize what has transpired
15 concerning Mr. Hogan?

16 MR. OUTTEN: It does, yes, sir.

17 JUDGE NICHOLSON: Is that correct,
18 Mr. Brandt?

19 MR. BRANDT: Yes, sir. And just for
20 the record to make it complete I just tried to call
21 him also and did not get a response on the cell
22 phone. I called my investigator again and he said
23 he talked to his wife, that he found her at home
24 about 4:30 yesterday and she works. And although
25 his employment -- place of employment has changed to

1 a plastics company over in Anderson rather than
2 Greenville where he was working before, he didn't
3 get the name of the employer, but he's trying to run
4 that down now to see if there's any way we can get
5 him here tomorrow.

6 So we can contact maybe the employer, but
7 the message that my investigator told me was that
8 she said he did not leave until Sunday, this past
9 Sunday, and that he had this training session, which
10 his employer was insisting on him going to and he
11 couldn't get out of it, that he's not heard from
12 anyone and therefore he left.

13 JUDGE NICHOLSON: Okay. Well, all
14 I'm saying is the court is prepared to postpone the
15 trial until the deputies can find him to bring him
16 to court or he comes voluntarily. That's the best I
17 can do for you. I wish he was in the state and I
18 would have him here, but he's not in the state.

19 And I also understand that there's been a
20 deposition, a video deposition, a discovery
21 deposition has been taken; is that correct?

22 MR. OUTTEN: Yes, sir. Actually the
23 discovery deposition was taken two different times
24 because there was so much ground to cover with the
25 witness. It was taken by videotape.

1 JUDGE NICHOLSON: Was it a video
2 deposition?

3 MR. OUTTEN: Yes, sir, a video
4 deposition.

5 JUDGE NICHOLSON: In our discussion
6 at the bench Mr. Outten wanted to use the video
7 deposition and Mr. Brandt opposed that. We have not
8 heard that motion. I need to know from the
9 defendant how do you want to proceed? Do you want
10 me to hear your motion on the use of the deposition
11 before you make the decision? And I told you my
12 inclination was not to use it, but I've also said I
13 haven't heard your arguments. I'll be happy to hear
14 it and I will try to listen to them with an open
15 mind.

16 MR. OUTTEN: Well, Your Honor, it's a
17 straightforward argument. And that is I believe
18 that the rules, particularly Rule 32, contemplate
19 that when a witness is unavailable -- when a witness
20 is unavailable that a deposition can be used.

21 And I would respectfully suggest to the
22 court that this is one of those situations
23 contemplated by the rules. Here we have a witness
24 who left the state to fulfill his employment
25 responsibilities. He's not here. He is a material

1 witness in this case because he was the safety
2 manager at Engelhard when this accident occurred.

3 We do have the video deposition.

4 Obviously plaintiffs' counsel was there when the
5 video deposition was taken and they questioned him
6 extensively at that deposition. I don't think I
7 told Your Honor this, but when we called Mr. Hogan
8 on Saturday he did not call back. We called Sunday
9 and Monday and he did not call back. And Tuesday
10 evening we sent plaintiffs' counsel an E-mail
11 forwarding our designations for the video deposition
12 and it was a short E-mail. I'll show it to Your
13 Honor if you want to see it. And it says we're
14 becoming concerned that Mr. Hogan is not going to
15 respond to our subpoena because he's stopped
16 returning our telephone calls. So we knew something
17 was up.

18 JUDGE NICHOLSON: Who did you send
19 the E-mail to?

20 MR. OUTTEN: We sent the E-mail to
21 plaintiffs' counsel.

22 JUDGE NICHOLSON: You don't have to
23 show it to me. I'll take your word for it. Let's
24 talk about Rule 32. Okay. I don't think under the
25 Rule 32 3-A, B, C, D, E -- A, B, C, D -- (inaudible)

1 -- doesn't apply. The only way he could possibly
2 testify would be under E. He has been subpoenaed,
3 but he is temporarily outside the jurisdiction, but
4 I can find him this weekend and I can have him here
5 when he gets back to the state of South Carolina.

6 Okay. Now, I can't tell you when that's
7 going to be. And the court is willing to continue
8 the matter and this trial until we can locate him if
9 that's the defendants' desire. Now, I don't know
10 why the plaintiff has an objection to using the
11 video. I'm sure I'll hear from them very shortly.

12 MR. OUTTEN: Well, I think 32 A3D
13 applies if the party offering the deposition has
14 been unable to procure the attendance of the witness
15 by subpoena.

16 JUDGE NICHOLSON: But I just told you
17 I will procure his attendance. That's what I just
18 said. I know it means postponing the trial. I know
19 we've been in a four-week trial, but I will get his
20 attendance. That can be done. That's why I don't
21 think D is appropriate. Can't do it today, but I
22 can do it sometime between now and Monday.

23 MR. OUTTEN: And I certainly
24 appreciate that, Your Honor, and I hope you
25 appreciate that from my perspective we believe that

1 this trial has gone on a long time. We believe that
2 the jury would certainly appreciate getting the case
3 as soon as they could. And under those
4 circumstances I think we're being put to a
5 disadvantage by not being able to play the videotape
6 of this witness and then close our case.

7 Leaving the case open over the weekend
8 would just drag this matter out further. And that's
9 not a suggestion that anybody has been dilatory.
10 I'm not accusing anybody of anything, but for a lot
11 of practical reasons we think that our choices are
12 the videotape and if it's been ruled inadmissible,
13 that it can be played, that our choices are really
14 to close our -- our best choice is to close our case
15 today because I don't think the jury wants to wait
16 four more days to hear the testimony of one more
17 witness. I think we can all understand that the
18 jury thinks we've heard enough, but he is a material
19 witness. We do have a video.

20 JUDGE NICHOLSON: Let me ask this.
21 What's he going to say that hasn't already been said
22 two and three times? What new material is he going
23 to say? I know he's the safety director, but what
24 else would he say that hasn't been said probably at
25 least twice? And I understand they are different

1 people. I understand he's the safety, but what's so
2 unique about his testimony that hasn't already been
3 offered in this courtroom?

4 MR. OUTTEN: The only unique thing I
5 know about his testimony is that he was the safety
6 manager who wrote some of these procedures, who is
7 in charge of safety at the plant, and he headed up
8 the investigation. Those are the things that make
9 his testimony unique.

10 I think he's been referred to so many
11 times during the trial that the jury may want to --
12 I can't read their mind, but may want to hear from
13 him. And other than that, the information itself
14 may not be unique, but his position in heading up
15 the investigative team are two things that separate
16 him from any other witness who has testified. So
17 that's why we think he's important. And that's our
18 position.

19 I think -- I appreciate Your Honor's offer
20 to get him to come in here on Monday and to postpone
21 the trial. I do appreciate that, but I think what
22 we're left with is if we can't get him in here
23 through nobody's fault, I'm certainly not suggesting
24 it's the plaintiffs' counsel's fault, we would need
25 to go ahead and close our case. And in that event

1 we would ask the court if you would explain to the
2 jury that we tried to get Mr. Hogan here and that he
3 was out of state. I would just ask that they be
4 told that so they would understand.

5 JUDGE NICHOLSON: I don't have any
6 problem telling them whatever is appropriate under
7 the circumstances. It depends on how we procede.
8 Ms. Roberts, you want to add something?

9 MS. ROBERTS: Yes. That there are --

10 JUDGE NICHOLSON: My real concern is
11 that his testimony is going to be absolutely
12 duplication to everything we've heard. I know your
13 defense is you're putting everything on Engelhard.
14 Well, the expert yesterday said it 12 times. It
15 didn't matter if he was asked what's Mickey Mouse's
16 name, he looked at the jury and said they should
17 have moved the pallets. And after I heard it 12
18 times I said I wouldn't let him say it anymore. So
19 it's been said over and over and over. The jury has
20 the point. So what else is he going to add other
21 than blaming Engelhard again?

22 MS. ROBERTS: Mr. Hogan is a
23 supervisor who walked through the area three times
24 and did see the pallets. The other gentlemen that
25 have come admitted that they went by the area or

1 through the area and didn't see those pallets.

2 Mr. Hogan actually --

3 JUDGE NICHOLSON: Mr. Garrett said he
4 saw them.

5 MS. ROBERTS: He didn't see them.

6 JUDGE NICHOLSON: I thought he told
7 the plaintiff he did see them. He told the
8 plaintiff he did see them and then he told you if he
9 would have seen them, he would have moved them.

10 MS. ROBERTS: Mr. Hogan saw them and
11 knew the scope of the work. He saw them within 20
12 feet of the work. That's one thing. And he did
13 investigate the accident, remained in the building
14 as the gentleman testified yesterday, Mr. Acree,
15 identified some of those photographs. Mr. Hogan
16 took the rest of the photographs and did participate
17 in the investigation, remained in the plant. Those
18 were some unique differences. And you had just
19 asked what was unique about him.

20 JUDGE NICHOLSON: Well, let me ask
21 you this. I haven't seen the video and I don't have
22 any idea what's on the video. Can we edit that
23 video to the extent to just bring out the new
24 material and not have any duplication? Can that be
25 done?

1 MR. OUTTEN: I don't see why not,
2 Judge. Yes, sir.

3 MR. JOHNSTON: May I add one more?

4 JUDGE NICHOLSON: Yes, sir. And I'm
5 not interested in sitting here listening to the same
6 thing over and over again. And I'm not criticizing
7 anybody. Don't get me wrong. Okay. But if the
8 jury hadn't got that point yet, they've had cotton
9 in their ear for four weeks. Yes, sir?

10 MR. JOHNSTON: Your Honor, I also
11 understood from our conversations yesterday that
12 there was a concern that this was a discovery
13 deposition and things are done differently in
14 discovery.

15 JUDGE NICHOLSON: I understand that.
16 You take a discovery deposition to discover, not to
17 ask proper questions on cross. And you know that,
18 Mr. Johnston. You played -- you've been playing
19 this -- you've been doing this for too long not to
20 understand that and so does Mr. Outten.

21 MR. JOHNSTON: (Inaudible.) What I
22 want to explain to the court as a short point is
23 this. There were 115 pages of cross-examination or
24 examination by the plaintiffs of Mr. Hogan in the
25 two depositions. One was taken in September and

1 another was taken, I think, in December. I mean,
2 both sides examined him the first time in September
3 and both sides examined him the second time in
4 December. So it's not -- it's not one of those,
5 well, we aren't going to ask any questions. We'll
6 save that for trial type thing. I mean, it's all
7 out there. And I think we can put a fair
8 presentation together of new matter for the jury to
9 hear and that won't unduly delay this trial.

10 MR. BRANDT: Well, first of all, it
11 was taken -- the first deposition was taken
12 September of '07 and then they couldn't finish it.
13 We went to December of '07. There's a lot about
14 this case, we've had a lot of depositions in between
15 those times. That was early in the process. We've
16 learned a lot of things about this case we didn't
17 know then and would have some additional questions
18 to pose to him based on what he says in that
19 deposition.

20 It was early in the proceedings. As I
21 said, it was a discovery deposition. And then, of
22 course, the way he testifies in a courtroom can very
23 well be a lot different than what he testifies in
24 the deposition, in the informal setting of a
25 deposition. And I think his demeanor, the way he

1 answers the question, the jury is entitled to see
2 that firsthand and not some kind of an isolated
3 situation.

4 Howenever, we do play video depositions of
5 witnesses all the time when they are permanently
6 outside or there's going to be a question of having
7 to delay the trial an unreasonable amount of time.
8 We're talking about getting back in the
9 jurisdiction. We're only talking about a day and a
10 half from where we sit today and he'll be back in
11 the jurisdiction within the reach of the court.

12 I hate to leave this -- I mean, I hate to
13 push on and extend the trial. And I understand I'd
14 love to get it closed too with the jury. I know
15 they are getting tired. And we want to bring it to
16 a close, but we feel, as he said, there are new
17 matters that hadn't been testified to is what they
18 want to bring out. They say there are new matters.
19 And I think based on that --

20 JUDGE NICHOLSON: I'm not talking
21 about new matters. I'm talking about what hasn't
22 already been said in the courtroom is what I'm
23 saying.

24 MR. BRANDT: Yes. But the whole
25 thing is there were some questions -- we've been

1 educated certainly in this discovery process, and
2 everybody has been working hard to get this thing to
3 fruition, but based on things that we've learned
4 since then we have some questions that if he's going
5 to offer testimony he would have the answers to.
6 And so based upon that I just think it would be
7 highly prejudicial to us to allow them to play the
8 deposition and we're sitting here with our hands
9 tied.

10 JUDGE NICHOLSON: Just out of
11 curiosity, why did you all do a discovery deposition
12 by video? I'm just curious why you went to that
13 extent.

14 MR. OUTTEN: For exactly this
15 situation. He was not working at Engelhard anymore.
16 I didn't know whether he was going to move to a
17 different part of the country.

18 JUDGE NICHOLSON: Why didn't you move
19 the court to take it for trial purposes instead of
20 discovery? I'm just curious. I'm just curious why
21 you did a discovery deposition by video because it's
22 probably three or four times as expensive.

23 MR. OUTTEN: It is expensive, Judge.
24 And that's a good question. And the honest answer
25 is for this situation that we're faced with right

1 now that if he did not appear, if he moved to
2 Florida to work, to take a new job, then we would
3 have his testimony preserved. And, of course, it's
4 not lost on experienced and fine plaintiffs' counsel
5 that they know the reason that videographer is there
6 too. They know that, but that's the reason why we
7 did it.

8 JUDGE NICHOLSON: Okay. Thank you
9 very much. Mr. Foster, anything?

10 MR. FOSTER: I don't have anything to
11 add.

12 JUDGE NICHOLSON: Mr. Walker,
13 anything you would like to add?

14 MR. WALKER: No.

15 JUDGE NICHOLSON: Nothing?

16 MR. WALKER: I can say something if
17 you want me to.

18 JUDGE NICHOLSON: I would love to
19 hear from you.

20 MR. WALKER: Judge, your sarcasm is
21 overwhelming, but I will sit down and shut up.

22 JUDGE NICHOLSON: Thank you very
23 much. Let me ask -- I assume from what you said,
24 Mr. Brandt, you don't think you all can go through
25 the video and edit it properly?

1 MR. BRANDT: Certainly we can go
2 through the video and edit it, but as far as what
3 they want to do and what may have been objections at
4 the time, the problem is we have additional
5 questions we want to pose him on those very issues
6 they are going to put in.

7 Now, again those questions have come about
8 through the education of the plaintiffs' lawyers and
9 through other witnesses' information. And I don't
10 think that I should be expected to -- (inaudible) --
11 my cross-examination of him in a discovery
12 deposition. A lot of times you don't ask a question
13 because you're saving it for later for strategic
14 reasons. And so there were a few questions we
15 didn't ask him then because we expected he would be
16 either at trial or if they were going to notice him
17 for a de bene esse deposition for use at trial we
18 would have another opportunity to do that now.
19 There was probably a few questions that we failed to
20 ask at that time.

21 All I'm saying is since that time and the
22 facts that we've learned based on what their expert,
23 and they had other experts they didn't call here,
24 said, our experts have said, then we would have
25 additional questions to pose to him on the very

1 things that they want to put up. And I just would
2 object that it's unfair and prejudicial to us to
3 play that video.

4 JUDGE NICHOLSON: Let me ask you
5 this. From your information that you received from
6 the private investigator when is he supposed to be
7 back?

8 MR. BRANDT: Tomorrow afternoon late.

9 JUDGE NICHOLSON: Mr. Walker, I don't
10 mean my sarcasm personally. I'm just trying to
11 inject a little humor into the situation to ease
12 some of the tension. Okay. I offered it in humor,
13 not personally.

14 MR. WALKER: I know that. I'm a big
15 boy. Plastic -- he worked -- I've got his place of
16 employment and his phone number. Vivian just went
17 and called his office, talked to his secretary, her
18 name is Veronica, and she said she was unauthorized
19 to give out any information. I would suggest that
20 we give this to the deputy and let him be the bad
21 guy and call and suggest to her that she give him
22 some information so we can find out where the guy
23 is. Maybe he's on his way back.

24 JUDGE NICHOLSON: Why don't you give
25 me the number and we'll go call.

1 MR. BRANDT: They would probably be
2 more responsive to you, sir.

3 JUDGE NICHOLSON: Why don't we
4 adjourn and we'll go in the office and I'll see if
5 we can't get this lady on the telephone and see what
6 kind of actual information we can obtain to when we
7 can literally get him here before I make a decision.
8 We'll adjourn.

9 (A recess transpired.)

10 JUDGE NICHOLSON: Concerning your
11 motion under Rule 32 to use the deposition and put
12 it on the record for the record purposes, I have
13 talked to -- I have found Mr. Hogan. He is in North
14 Carolina. And he says it would take him six hours
15 to get back to Oconee County to testify. And the
16 parties have agreed rather than wait until tomorrow
17 morning and call him the parties have agreed not to
18 call him. I'm going to give a curative instruction
19 to the jury; is that correct?

20 MR. FOSTER: Yes, sir.

21 MR. OUTTEN: Yes, sir.

22 MR. BRANDT: Yes, sir.

23 JUDGE NICHOLSON: As far as your
24 motion to use the deposition under Rule 32, I'm
25 going to deny that motion primarily because the

1 court can make him available within 36 hours or so
2 from this time. And for that reason I'm going to
3 deny your motion to use the deposition at this time.

4 All right. Also I understand the defense
5 does not have any further witnesses and will rest in
6 front of the jury and the plaintiff will rest in
7 front of the jury as far as reply. And I'm going to
8 excuse the jury until 9:30 in the morning at which
9 time we'll have closing arguments and the charge.
10 And this afternoon we will go through a charge
11 conference and the verdict forms. And before we go
12 to lunch we'll go through the post-trial motions.
13 Yes, sir?

14 MR. JOHNSTON: Your Honor, I think
15 both sides are in agreement we've -- even though
16 we're going to formally rest it doesn't apply to the
17 exhibits.

18 JUDGE NICHOLSON: Yeah. You all can
19 go over the exhibits and have not been -- just make
20 sure you've got all your exhibits in. Even if you
21 formally rest on the record, I'll still let them in
22 if all have agreed there's something you wanted in
23 that you haven't put in.

24 MR. BRANDT: We're in agreement with
25 that, with doing that, when we are doing the

1 sampling --

2 JUDGE NICHOLSON: We'll deal with
3 that this afternoon. Anything else before we bring
4 the jury?

5 MR. BRANDT: No, sir.

6 JUDGE NICHOLSON: Bring us the jury,
7 please. Mr. Foreman and members of the jury, I'm
8 sure you have heard throughout this trial the name
9 mentioned of Dan Hogan. Mr. Hogan was under
10 subpoena to be -- to testify and I have made an
11 effort this morning to find him. He did not show
12 this morning. And he is in North Carolina in a
13 training program for his employer. And it would
14 take him six hours to get back from North Carolina.

15 Therefore the parties have decided that
16 he's not going to be called as a witness. I just
17 wanted to explain that to you. It's nobody's fault,
18 but Mr. Hogan's. And therefore it's not the
19 parties' fault that he's not going testify and I
20 wanted to explain that to you. Does the defense
21 have any further witnesses?

22 MR. OUTTEN: No, Your Honor. Univar
23 rests.

24 MR. JOHNSTON: No, Your Honor.
25 Trinity and Matrix rests.

1 JUDGE NICHOLSON: Does the plaintiff
2 have any reply testimony?

3 MR. BRANDT: Plaintiff Lawing has no
4 rely.

5 MR. FOSTER: No, sir.

6 JUDGE NICHOLSON: Ladies and
7 gentlemen of the jury, I'm going to have to go
8 through some motions with the attorneys and go
9 through what I call a charge conference where I tell
10 the lawyers what I'm going to charge as to the law
11 in the case and see what recommendations they have.
12 And that may take a little while. And I've got to
13 hear post-trial motions before we go to closing
14 arguments and charge in the case. That's going to
15 probably take awhile.

16 So I'm not going to leave you in that jury
17 room for a couple, three hours. What I'm going to
18 do is bring you back in the morning at 9:30 and
19 we'll have closing arguments and charge at that
20 time. So please leave your note pads in the chairs
21 and please don't discuss the case with anyone and
22 I'll see you at 9:30 in the morning.

23 (Off-the-record discussion.)

24 JUDGE NICHOLSON: Any motions?

25 MR. OUTTEN: One moment, please, Your

1 Honor.

2 MR. JOHNSTON: I think the plaintiffs
3 get the first opportunity. Have you all got any
4 over there?

5 JUDGE NICHOLSON: I guess I should
6 say any motions from the plaintiff? Or do you want
7 to do this after lunch? This thing has been sort of
8 moving in a hurry. We've been covering a lot of
9 ground in the last 30 minutes. It's 12:15. Do you
10 all want to take a lunch break now and come back and
11 make any motions you all may want to make on both
12 sides?

13 MR. BRANDT: That would be good.

14 JUDGE NICHOLSON: And then we'll have
15 a charge conference and after that you all can go
16 get yourself prepared for your closing arguments.

17 MR. BRANDT: That would be fine.

18 JUDGE NICHOLSON: Did anybody show a
19 video deposition in the trial?

20 MR. BRANDT: Yeah, we did.

21 MR. OUTTEN: Jimmy Norris.

22 MR. BRANDT: Jimmy Norris.

23 JUDGE NICHOLSON: I thought there was
24 one. I couldn't remember who it was.

25 MR. WALKER: There is an issue about

1 this video deposition. Sam has played a portion of
2 Hogan's video deposition in the opening statements.
3 We're going to have to ask for a curative
4 instruction and ask that to be ignored.

5 JUDGE NICHOLSON: I'm not going to do
6 that. I doubt if they remember it. Just because
7 you make a statement in opening -- Mr. Walker, let
8 me qualify. I've got in my charge a statement of
9 what's evidence and what's not evidence and it
10 specifically says opening statements and closing
11 statements by attorneys are not evidence. And I
12 think it will cover your concern, but I'm not going
13 to specifically tell them to ignore that because
14 it's not evidence. Okay?

15 MR. WALKER: All right, sir.

16 JUDGE NICHOLSON: Let me ask you
17 this. I've got a tentative charge. I'm not sure
18 about the grammar. I haven't proof read it. If you
19 all want to take this charge and look at it over
20 lunch, you're welcome to do that.

21 MR. BRANDT: I think that would be
22 helpful..

23 JUDGE NICHOLSON: And here are the
24 verdict forms.

25 MR. BRANDT: Can we get a copy of



Sophisticated USER Defense

1) What Rulings
Does IT Apply To?

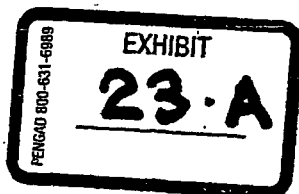
(ALL) EXCEPT
EXPRESS WARRANTY &
UNIFORM

2) Who ~~are~~ ARE we to
consider
(user) sophisticated?

Engelhard ? YES

1/ant. Chadeil

South. user defense applies only
to the failure to adequately
warn claims in the negligence
and implied warranty claims.
It does not apply to negl.
and implied warranty claims
vs. all defs on Plaintiffs' claims
of inadequate packaging, nor does
it apply to the express
warranty claims against Univer



STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

2006-CP-37-00030

Scott F. Lawing and Tammy R. Lawing, ... Appellants,

v.

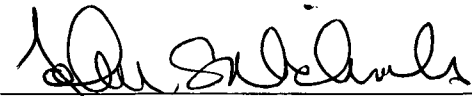
Univar, USA, Inc., Trinity Manufacturing Inc.,
and Matrix Outsourcing, LLC, Defendants,

Of Whom Trinity Manufacturing, Inc. and
Matrix Outsourcing, LLC are Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material
proposed to be included by any of the parties and not any other material.

November 20, 2012



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SC Court of Appeals

PROOF OF SERVICE

The undersigned hereby certifies on the date indicated below, she served counsel for the
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November 30, 2012
Columbia, South Carolina

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& DELGADO, LLC

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