



SUSANA MARTINEZ
Governor
JOHN A. SANCHEZ
Lieutenant Governor

NEW MEXICO ENVIRONMENT DEPARTMENT

Harold Runnels Building
1190 South St. Francis Drive (87505)
P.O. Box 5469, Santa Fe, NM 87502-5469
Phone (505) 827-0187 Fax (505) 827-0160
www.nmenv.state.nm.us



RYAN FLYNN
Cabinet Secretary
BUTCH TONGATE
Deputy Secretary

Certified Mail – Return Receipt Requested

March 13, 2015

Mr. Steven Brady, Manager
Horizon Ag-Products, Inc.
23 Cubita Road
Cuba, NM 87013

Re: Horizon Ag-Products, Inc., Cuba Facility; Unpermitted MSGP; SIC 1499, 1479 and/or 2879;
NPDES Compliance Evaluation Inspection; NMU001888; March 4, 2015

Dear Mr. Brady:

Enclosed please find a copy of the report and check list for the referenced inspection that the New Mexico Environment Department (NMED) conducted at your facility on behalf of the U.S. Environmental Protection Agency (USEPA). This inspection report will be sent to the USEPA in Dallas for their review. These inspections are used by USEPA to determine compliance with the National Pollutant Discharge Elimination System (NPDES) permitting program in accordance with requirements of the federal Clean Water Act.

Introduction, treatment scheme, and problems noted during this inspection are discussed in the “Further Explanations” section of the inspection report.

You are encouraged to review the inspection report, required to correct any problems noted during the inspection, and advised to modify your operational and/or administrative procedures, as appropriate. If you have comments on or concerns with the basis for the findings in the NMED inspection report, please contact us (see the address below) in writing within 30 days from the date of this letter. Further, you are encouraged to notify in writing both the USEPA and NMED regarding modifications and compliance schedules at the addresses below:

Racquel Douglas
US Environmental Protection Agency, Region VI
Enforcement Branch (6EN-WM)
Fountain Place
1445 Ross Avenue
Dallas, Texas 75202-2733

Bruce Yurdin
New Mexico Environment Department
Surface Water Quality Bureau
Point Source Regulation Section
P.O. Box 5469
Santa Fe, New Mexico 87502

If you have any questions about this inspection report, please contact Erin Trujillo at 505-827-0418 or at erin.trujillo@state.nm.us.

Horizon Ag-Products, Inc. / Cuba Facility

March 13, 2015

Page 2 of 2

Sincerely,

/s/Bruce J. Yurdin

Bruce J. Yurdin
Program Manager
Point Source Regulation Section
Surface Water Quality Bureau

cc: Rashida Bowlin, USEPA (6EN-AS) by e-mail
Carol Peters-Wagnon, USEPA (6EN-WM) by e-mail
Racquel Douglas, USEPA (6EN-WM) by e-mail
Gladys Gooden-Jackson, USEPA (6EN-WC) e-mail
Darlene Whittten-Hill (USEPA (6EN) e-mail
Bill Chavez, NMED District I by e-mail
David (DJ) Ennis, MMD by e-mail

Horizon Ag-Products, Inc. – Cuba Facility
Compliance Evaluation Inspection
NPDES Permit No. NMU001888
March 4, 2015

Further Explanations

Introduction

On March 4, 2015, a Compliance Evaluation Inspection (CEI) was conducted by Erin S. Trujillo, accompanied by Daniel Valenta, both of the State of New Mexico Environment Department (NMED), Surface Water Quality Bureau (SWQB) at the Horizon Ag-Products, Inc., Cuba Facility, a humate mill & processing plant, located at 23 Cubita Road, Cuba, New Mexico in Sandoval County (See Figure 1 General Location Map and Figure 2 Facility Map). The purpose of this inspection was to document the operator's status regarding the National Pollutant Discharge Elimination System (NPDES) permit requirements for stormwater discharges associated with industrial activity under 40 Code of Federal Regulations (CFR) 122.26 and U.S. Environmental Protection Agency (USEPA) industrial stormwater Multi-Sector General Permit (MSGP).

Stormwater discharges are to Rio Puerco, from the confluence of Arroyo Chijuilla upstream to the northern boundary of Cuba, in Segment 20.6.4.131 Standards for Interstate and Intrastate Surface Waters, New Mexico Administrative Code (NMAC) in the Rio Grande Basin. The facility is located in a relatively flat area between Rio Puerco and Rito Leche, a tributary of Rio Puerco. Rio Puerco, approximately 600 feet north of the fenced facility, has designated uses of warmwater aquatic life, irrigation, livestock watering, wildlife habitat and primary contact. Rio Puerco assessment unit NM-2107.A_40 is listed as not supporting aquatic life use with listed causes of sedimentation/siltation, nutrient/eutrophication, aluminum, and un-ionized ammonia. The listed probable sources are channelization, wildlife other than waterfowl, drought-related impacts, loss of riparian habitat, road/bridge runoff, natural sources, rangeland grazing, and streambank modifications/destabilization. A Total Maximum Daily Load (TMDL) for Rio Puerco was prepared for sedimentation, chronic aluminum, and nutrients in 2007 and is available at NMED SWQB web sites:

<http://www.nmenv.state.nm.us/swqb/RioPuerco/index.html>
<http://www.nmenv.state.nm.us/swqb/RioPuerco2/index.html>

NMED performs a certain number of CEIs for the USEPA each year. The purpose of this inspection is to provide USEPA with information to evaluate the operator's compliance with NPDES and the MSGP permit. This report is based on review of USEPA's on-line notice of intent (eNOI) database, files maintained by the operator and NMED, on-site observation by NMED personnel, and verbal information provided by the operator's representatives.

Upon arrival at approximately 1415 hours on the day of the inspection, Ms. Trujillo made introductions, presented credentials, and explained the purpose of the inspection to Mr. Steven Brady and Mr. Tom Mathews, Plant Managers, Horizon Ag-Products, Inc. The inspectors, Mr. Brady and Mr. Mathews toured the facility. Following the tour, an exit interview was conducted on site with Mr. Brady and Mr. Mathews. The inspectors left the facility at approximately 1540 hours on the day of this inspection.

Federal Clean Water Act (CWA) and Industrial Stormwater Permit Requirements

Section 301 (a) of the Federal Water Pollution Control Act states that *“Except as in compliance with this section and sections 302, 306, 307, 318, 402 and 404 of this Act, the discharge of any pollutant by any person shall be unlawful.”* Federal regulations in 40 CFR Part 122.21(a) Duty to apply (1) states: *“Any*

person who discharges or proposes to discharge pollutants...must submit a complete application to the Director in accordance with this section and part 124 of this chapter.”

Eleven (11) categories of “Storm Water Discharges Associated with Industrial Activity” are defined in 40 CFR 122.26(b)(14)(i)-(xi) that require coverage under an NPDES permit. Industrial stormwater has been regulated since the promulgation of USEPA’s 1990 stormwater regulations. The definition uses either Standard Industrial Classification (SIC) codes or narrative descriptions to characterize the activities. SIC codes have been replaced by the North American Industry Classification System (NAICS). Until EPA modifies regulations referring to the newer NAICS system, the older SIC codes will continue to be utilized. Links to more information on SIC and NAICS system include:

<https://www.osha.gov/pls/imis/sicsearch.html>

<http://www.census.gov/eos/www/naics/index.html>

SIC code and/or activity that best describes the primary industrial activities for which the facility is primarily engaged and co-located activities is to be determined by the owner/operator. Industrial stormwater category (iii) in 40 CFR 122.26(b)(14) includes active or inactive mining operations with Standard Industrial Classification (SIC) Group 14 Mineral Industry (non-metallic minerals except fuels). SIC 1499 (miscellaneous nonmetallic minerals, except fuels) includes establishments primarily engaged in mining, quarrying, milling, or otherwise preparing nonmetallic minerals, except fuels. SIC 1479 (chemical and fertilizer mineral mining, not elsewhere classified) includes establishments primarily engaged in mining, milling, or otherwise preparing chemical or fertilizer mineral raw materials, not elsewhere classified. Category (ii) includes manufacturing establishments with SIC Group 28 Chemicals & Allied Products. SIC 2879 (Pesticides and Agricultural Chemicals, Not Elsewhere Classified) includes establishments engaged in manufacturing or formulating agricultural chemicals, not elsewhere classified, such as minor or trace elements and soil conditioners.

USEPA’s first MSGP for stormwater discharges associated with industrial activity was published on September 29, 1995 (Federal Register Volume 60, No. 189 on Friday 29, 1995, page 50953), and has since been reissued in 2000 and 2008. USEPA 2008 MSGP was re-issued effective September 29, 2008 (Federal Register/Vol. 73, No. 189/Monday, September 29, 2008 pg. 56572) and replaced the 2000 MSGP which expired on October 30, 2005. Appendix D (Facilities and Activities Covered) of the 2008 MSGP lists:

<u>Sector</u>	<u>SIC</u>	<u>Activity Represented</u>
J2	1499	Miscellaneous Nonmetallic Minerals, Except Fuels
J3	1479	Chemical and Fertilizer Mineral Mining
C1	2879	Agricultural Chemicals

To obtain permit coverage under the MSGP, an operator must complete, or update, a Stormwater Pollution Prevention Plan (SWPPP) that documents eligibility for permit coverage, and submit a notice of intent (NOI) to the USEPA. Among other things, requirements in the MSGP include site-specific best management practices (BMPs), maintenance plans, inspections, employee training and annual reporting. BMPs include good housekeeping practices, minimizing exposure, erosion and sediment control, and management of runoff. The MSGP also requires visual, and, for some sectors, analytical monitoring to determine the effectiveness of implemented BMPs.

The Federal Register notice announcing the proposed reissuance of the MSGP was published on September 27, 2013. Facilities that obtained coverage under the 2008 MSGP prior to its expiration were automatically granted an administrative continuance of permit coverage, and the administrative continuance will remain in effect until a new permit is issued. Facilities already covered under the 2008

MSGP are not required to submit a new NOI for permit coverage until the new MSGP is issued, and these facilities must continue to comply with all of the requirements in the 2008 permit, including requirements for monitoring and reporting.

Until the new MSGP is issued, "new" facilities (i.e., those facilities not covered under the 2008 MSGP) that begin discharging industrial stormwater after September 29, 2013 are unable to file a NOI for general permit coverage. USEPA's No Action Assurance (NAAs) Memorandum dated March 27, 2014 covered newly-discharging facilities, provided that these facilities: (1) meet the 2008 MSGP eligibility criteria; (2) notify the appropriate USEPA permitting authority of their operator status and their intention to operate in accordance with the 2008 MSGP; and (3) comply with all requirements of the 2008 MSGP including, but not limited to, SWPPP development and implementation and proper installation and maintenance of best management practices.

More information on USEPA MSGP and status of the proposed permit is available at:

http://water.epa.gov/polwaste/npdes/stormwater/upload/msgp2008_finalpermit.pdf

It is anticipated that the next MSGP permit will also have NOI submittal deadlines. A sign up to receive the Federal Register Table of Content Notices announcing the availability of the Final MSGP Permit is available at:

<http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR>

Associated Pollutants

USEPA's 1995 MSGP lists pollutants associated with the various regulated sectors. For Sectors J and C, the following USEPA Industrial Stormwater Fact Sheets provide a brief summary of the NPDES industrial stormwater permitting program, the types of facilities included in that sector, a summary of typical pollutants associated with each sector, and types of stormwater control measures (or Best Management Practices) used to minimize the discharge of those pollutants:

http://water.epa.gov/polwaste/npdes/stormwater/upload/sector_j_mineralmining.pdf
http://water.epa.gov/polwaste/npdes/stormwater/upload/sector_c_chemical.pdf

Examples of pollutant listed in the USEPA Industrial Stormwater Fact Sheet J associated with mineral processing activities (e.g., rock sorting, rock crushing, raw material storage, waste rock storage, raw material loading, processing materials unloading, raw or waste material transportation) include dust and fines, total suspended solids (TSS), total dissolved solids (TDS), turbidity, pH, diesel/gas fuel, and oil. Pollutants listed in the USEPA Industrial Stormwater Fact Sheet C associated with material handling and storage, and equipment storage are dependant upon the materials at a particular facility. Pollutants associated with vehicle fueling and maintenance include TSS, TDS, oil and grease, gasoline, diesel, acid, and coolant. Requirements that apply to the specific subsectors are in Part 8 of the 2008 MSGP include the following benchmark monitoring and concentrations:

Subsector J2
Nonmetallic Minerals Mining (SIC 1499)

Total Suspended Solids (TSS) 100 mg/L

Subsector C1
Agricultural Chemicals (SIC 2879)

Nitrate plus Nitrite Nitrogen 0.68 mg/L
Total Lead (Hardness Dependent)
Total Iron 1.0 mg/L
Total Zinc (Hardness Dependent)
Phosphorus (2.0 mg/L)

On-Site Industrial Activities

Horizon Ag-Products, Inc., has a date of incorporation in the State of New Mexico of September 14, 2004 according to State of New Mexico Office, Secretary of State on-line corporation query at [https://portal.sos.state.nm.us/corps/\(S\(jblmoq0cq31wvfjnrwktlwd\)\)/Corplookup/Lookdn.aspx](https://portal.sos.state.nm.us/corps/(S(jblmoq0cq31wvfjnrwktlwd))/Corplookup/Lookdn.aspx).

An engineering site drawing showing buildings dated August 2007 was provided for review by Mr. Brady during the CEI. Mr. Brady, did not provide the exact date, but described that the humate operations at the Cuba Facility started around the time of the site drawing. Off-site mined humate is prepared as a soil conditioner for agricultural purposes. Humate is crushed, sized, dried and bagged on site. Dustrol, a dark oily dust suppressant, is blended with some of the final humate products. On-site representatives described that smaller equipment maintenance activities occur on site, but that larger fleet vehicle fueling and maintenance is conducted off site.

Photograph image dated June 25, 2014 shows buildings, outside storage and dark areas on-site and west of the fenced facility boundary (Figure 3). On the day of this inspection, the site had processing and raw materials storage industrial activities, including outside storage and stockpiling of materials (e.g., overburden, raw material, intermediate products, finished products, byproducts and/or waste products) and material handling that would come into contact with stormwater (see photos*). Standing water in low areas appears to be from recent snow melt.

Excavated humate material along west facility fence is to be transported to a Horizon Ag-Products, Inc. off-site mine per State of New Mexico Mining and Mineral Division (MMD) permit according to on-site representatives. On-site representatives described that a SWPPP required by the State of New Mexico MMD was to be developed by a contracted consultant. On-site representatives indicated that they were not aware of the USEPA NPDES industrial stormwater permit or requirements, including conditions that that would also require a SWPPP.

Findings

- Horizon Ag-Products, Inc., with a date of incorporation in the State of New Mexico of September 14, 2004 according to State of New Mexico Office of the Secretary of State on-line corporation query, did not submit a NOI to obtain coverage for stormwater discharges associated with industrial activity under the USEPA NPDES Industrial Stormwater MSGP by the deadline or by the expiration date of September 29, 2013. The 2008 MSGP deadline for submitting a NOI for new dischargers or new sources that had commenced discharging between October 30, 2005 and January 5, 2009, was no later than January 5, 2009 (See Table 1-2 in 2008 MSGP).
- On the day of the CEI, a SWPPP was not prepared in written form. Evaluation and implementation of control measures (e.g., best management practices, good housekeeping practices to maintain a clean and orderly facility, minimizing exposure, erosion and sediment controls, management of runoff, etc.) appeared needed to minimize contact between stormwater and potential pollutants from observed exposed oil and humate materials on site.

* Note: For printed report, photo brightness was increased 30% and contrast was increased by 20%.

**Figure 1: General Location Map
Horizon Ag-Products, Inc. – Cuba Facility**

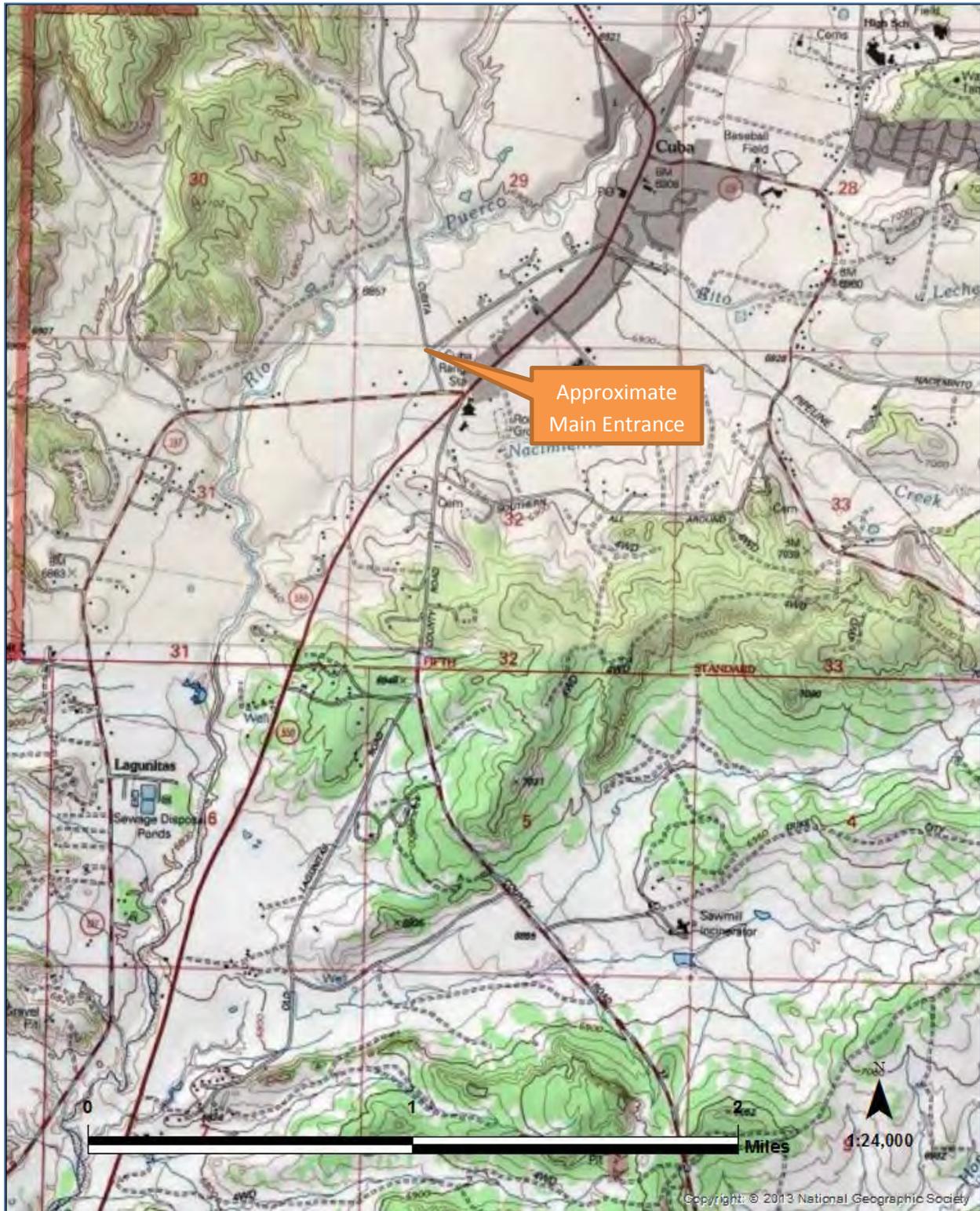


Figure 2: Site Location
Horizon Ag-Products, Inc. – Cuba Facility



**Figure 3: Google Earth Image dated 06/25/2014
Horizon Ag-Products, Inc. – Cuba Facility**



Notes: Arrows point to examples of dark area near fenced facility boundary visible in image.

NMED/SWQB Official Photograph Log Photo # 1		
Photographer: Daniel Valenta	Date: 03/04/2015	Time: ~1512 hours
City/County: Cuba / Sandoval County		State: New Mexico
Location: Horizon Ag-Products, Inc., Cuba Facility		
Subject: Looking north along Cubita Road from main entrance.		



NMED/SWQB Official Photograph Log Photo # 2		
Photographer: Daniel Valenta	Date: 03/04/2015	Time: ~1514 hours
City/County: Cuba / Sandoval County		State: New Mexico
Location: Horizon Ag-Products, Inc.,		
Subject: Looking north from southwest corner of fenced facility at excavated humate area.		



NMED/SWQB Official Photograph Log Photo # 3		
Photographer: Daniel Valenta	Date: 03/04/2015	Time: ~1517 hours
City/County: Cuba / Sandoval County		State: New Mexico
Location: Horizon Ag-Products, Inc.,		
Subject: Example of excavated humate material stockpiled along west facility fence.		



NMED/SWQB Official Photograph Log Photo # 4		
Photographer: Daniel Valenta	Date: 03/04/2015	Time: ~1521 hours
City/County: Cuba / Sandoval County		State: New Mexico
Location: Horizon Ag-Products, Inc.,		
Subject: Humate material along west facility fence next to containers labeled Dustrol.		



NMED/SWQB Official Photograph Log Photo # 5		
Photographer: Daniel Valenta	Date: 03/04/2015	Time: ~1521 hours
City/County: Cuba / Sandoval County		State: New Mexico
Location: Horizon Ag-Products, Inc.,		
Subject: Example of labeled Dustrol container.		



NMED/SWQB Official Photograph Log Photo # 6		
Photographer: Daniel Valenta	Date: 03/04/2015	Time: ~1523 hours
City/County: Cuba / Sandoval County		State: New Mexico
Location: Horizon Ag-Products, Inc.,		
Subject: Looking northeast along eastern boundary at storage area, piled snow and trash roll offs near fence along Cubita Road.		



NMED/SWQB Official Photograph Log Photo # 7		
Photographer: Daniel Valenta	Date: 03/04/2015	Time: ~1532 hours
City/County: Cuba / Sandoval County		State: New Mexico
Location: Horizon Ag-Products, Inc.,		
Subject: A container labeled "waste oil" existed at the north facility fence. Oily residue was on container which was exposed to precipitation.		



NMED/SWQB Official Photograph Log Photo # 8		
Photographer: Daniel Valenta	Date: 03/04/2015	Time: ~1536 hours
City/County: Cuba / Sandoval County		State: New Mexico
Location: Horizon Ag-Products, Inc.,		
Subject: Looking north along east facility fence at equipment, container and material storage area along Cubita Road. Arrow points to dark area ground surface that was accessible and visible in this area.		



NMED/SWQB Official Photograph Log Photo # 9		
Photographer: Daniel Valenta	Date: 03/04/2015	Time: ~1538 hours
City/County: Cuba / Sandoval County		State: New Mexico
Location: Horizon Ag-Products, Inc.,		
Subject: Looking southeast (next to area shown in Photo # 6) at humate material stockpile and bagged materials near fence along Cubita Road.		

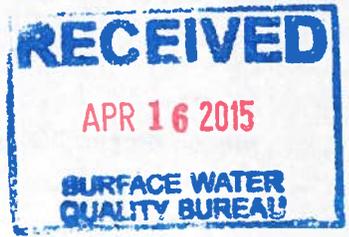


NMED/SWQB Official Photograph Log Photo # 10		
Photographer: Daniel Valenta	Date: 03/04/2015	Time: ~1543 hours
City/County: Cuba / Sandoval County		State: New Mexico
Location: Horizon Ag-Products, Inc.,		
Subject: Unlabeled tank contains liquid Dustrol according to on-site representatives. Tank, concrete containment and soils below tank and containment were stained with dark oily material spills or splashes. Arrow points to dark material on ground surface at tank.		



Attachment
Operator Response

Erin



4/14/15

Bruce Yurdin
New Mexico Environment Department
Surface Water Quality Bureau
Point Source Regulation Section
P.O. Box 5469
Santa Fe, New Mexico 87502

Racquel Douglas
US Environmental Protection Agency, Region VI
Enforcement Branch (6EN-WM)
Fountain Place
1445 Ross Avenue
Dallas, Texas 75202-2733

Dear Mr. Yurdin and Ms. Douglas,

This letter is in response to the correspondence dated March 13, 2015 which details the inspection and subsequent report produced by the New Mexico Environment Department ("NMED") on behalf of the U.S. Environmental Protection Agency ("USEPA") of the Horizon Ag-Products ("Horizon") Cuba Facility in Cuba, New Mexico. Horizon hereby acknowledges the intent of the aforementioned correspondence in reference to compliance with the National Pollution Discharge Elimination System ("NPDES") and offers this letter as evidence that the compliance issues determined to be pertinent are being pursued to the best of Horizon's abilities.

The inspection report has been reviewed by Horizon representatives and the comments concerning the review of the document are stated below. An account of the permitting timeline prior to/and following the inspection conducted by NMED is also detailed below.

Prior to the March 4th inspection conducted by NMED, permitting of the Cuba Facility under the direction of the New Mexico Energy, Minerals and Natural Resources Department ("EMNRD") had been initiated. During the aforementioned permitting process, it was requested that Horizon produce a MSGP/NPDES permit for the Cuba Facility. While Horizon understands and agrees with the need to protect the nation's water resources, consideration of the facility SIC code and the nature of the processing material is critical to establishment of appropriate stormwater management practices.

In a 2004 proposed and final rule, EPA eliminated the need to establish a maximum permissible level for residues of humic acid; humic acid, sodium salt; and humic acid, potassium salt; finding that humates/humic acid materials are "naturally occurring materials, and ubiquitous in the environment, and essentially, a component of soil" (40 CFR Part 180, OPP-2004-0166; FRL-7361-6). As this finding eliminates a maximum tolerance for humic acid and identifies humates as both ubiquitous in the environment and benign to human health, Horizon has been actively evaluating the implications of this

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rule on proper SIC code classification and appropriate stormwater management practices at the Cuba Facility.

During the aforementioned assessment of requirements for the Cuba Facility, preparation for the application of an NPDES permit was also initiated, including development of a stormwater pollution prevention plan (SWPPP). Multiple third-party contractor estimates were collected and evaluated so as to determine the most appropriate individual/group to produce a SWPPP and advise on associated BMP/engineering implementations for the Cuba Facility. Daniel A. Kwiecinski, PE, was selected to act as the primary advisor and design engineer for development of the permit application and SWPPP. Mr. Kwiecinski conducted a site-inspection on March 21st, 2014 in order to begin producing recommendations for site-improvements and assessing the site-specific management implementations which are necessary to fulfill the requirements of appropriate stormwater management. During the aforementioned site-inspection, Mr. Kwiecinski noted a number of BMP implementation recommendations and design concepts that would be suitable in maintaining a sustainable stormwater management plan for the facility. A design drawing of the planned improvements will be prepared. As the project will require earthwork, an application for a Construction General Permit ("CGP") will be prepared and submitted to the EPA once the design is complete. Once the advised earthwork implementations are completed, an application for coverage under the MSGP will be filed.

Horizon acknowledges that the Cuba Facility is eligible for coverage under the expired MSGP as noted by NMED and will comply with stormwater management procedures and practices until such time as the new MSGP is issued. As the appropriate SWPPP is developed for the site, Horizon will actively inform NMED and EPA of stormwater management implementations. In the meantime, Horizon requests the opportunity to dialogue with EPA and NMED regarding the following issues:

1. Based on EPA's findings in 2004 EPA Final Rule, which likened humate to soil and determined humate to have no set maximum level of residue tolerance, Horizon has tentatively concluded that the appropriate SIC code for its operations is SIC code 3295-minerals and earth, ground and otherwise treated.
2. Based on EPA's previous determination that humate is NOT a nonmetallic mineral subject to 40 CFR 60.670, Subpart OOO *Standards of Performance for Nonmetallic Mineral Processing Plants*, SIC codes 1499, 1479 and 2879, referenced in the inspection report are not appropriate classifications of the Horizon facility.

Please find the referenced proposed and final rule regarding the characterization of humate attached. If you have any questions or comments please feel free to contact me at [insert phone number and email].

Regards,

Steve Brady

Operations and Engineering Manager – Horizon Ag Products.

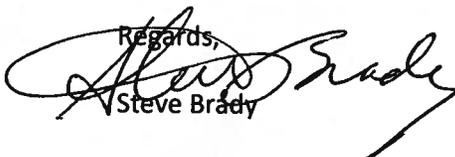
rule on proper SIC code classification and appropriate stormwater management practices at the Cuba Facility.

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Please find the referenced proposed and final rule regarding the characterization of humate attached. If you have any questions or comments please feel free to contact me at [insert phone number and email].

Regards,

Steve Brady

Operations and Engineering Manager – Horizon Ag Products.

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 180**

[OPP-2004-0166; FRL-7361-6]

Humates; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes three exemptions from the requirement of a tolerance for residues of humic acid (CAS No. 1415-93-6); humic acid, sodium salt (CAS No. 68131-04-4); and humic acid, potassium salt (CAS No. 68514-28-3) when used as inert ingredients in a formulated pesticide product. The Agency is acting on its own initiative, under section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a establishing these tolerance exemptions. This regulation eliminates the need to establish a maximum permissible level for residues of humic acid; humic acid, sodium salt; and humic acid, potassium salt.

DATES: This regulation is effective June 16, 2004. Objections and requests for hearings must be received on or before August 16, 2004.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit III. of the **SUPPLEMENTARY INFORMATION**. EPA has established a docket for this action under Docket ID number OPP-2004-0166. All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Bipin Gandhi, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200

Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-8380; e-mail address: gandhi.bipin@epa.gov.

SUPPLEMENTARY INFORMATION:**I. General Information***A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET (<http://www.epa.gov/edocket/>), you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>. A frequently updated electronic version of 40 CFR part 180 is available on E-CFR Beta Site Two at <http://www.gpoaccess.gov/ecfr/>.

II. Background and Statutory Findings

In the **Federal Register** of June 13, 2003 (68 FR 35349) (FRL-7309-7), EPA issued a proposed rule under section 408(e) of the FFDCA, 21 U.S.C. 346a, as amended by the Food Quality Protection Act (FQPA) (Public Law 104-170). The Agency proposed to establish exemptions from the requirement of a tolerance for residues of humic acid (CAS No. 1415-93-6); humic acid, sodium salt (CAS No. 68131-04-4); and humic acid, potassium salt (CAS No. 68514-28-3) in 40 CFR 180.1001(d).

No comments were received via EPA's electronic public docket. However, a staff member of the Washington State Department of Agriculture sent a comment directly to the Agency's

contact via email. The staff member asked why the exemptions for the humate materials were being created under 40 CFR 180.1001(d) instead of 40 CFR 180.950. The commenter indicated his belief that an exemption under 40 CFR 180.950 would be a more logical choice for humate materials.

In response to this comment, the Agency's Lower Risk Pesticide Chemical Focus Group evaluated humic acid, and its sodium and potassium salts to determine the appropriateness of a List 4A classification for these materials. Given that humate materials are naturally occurring materials, and essentially a component of dirt, classification as List 4A is consistent with previous List classifications on other "weathered" materials. Tolerance exemptions for List 4A materials such as humic acid (CAS No. 1415-93-6); humic acid, sodium salt (CAS No. 68131-04-4); and humic acid, potassium salt (CAS No. 68514-28-3) are established in 40 CFR 180.950.

Based on the reasons set forth in the preamble to the proposed rule, and considering the comment received by the Agency in response to the proposed rule, EPA is establishing three new tolerance exemptions for humic acid (CAS No. 1415-93-6); humic acid, sodium salt (CAS No. 68131-04-4); and humic acid, potassium salt (CAS No. 68514-28-3).

III. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of the FFDCA, as was provided in the old FFDCA sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions

provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP-2004-0166 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before August 16, 2004.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 2046-0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564-6255.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305-5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania

Ave., NW., Washington, DC 20460-0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in ADDRESSES. Mail your copies, identified by docket ID number OPP-2004-0166, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001. In person or by courier, bring a copy to the location of the PIRIB described in ADDRESSES. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

IV. Statutory and Executive Order Reviews

This final rule establishes an exemption from the tolerance requirement under section 408(d) of the FFDCFA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735,

October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note). Because this action will not have an adverse impact on small business, I certify, under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), that this action will not have a significant economic impact on a substantial number of small entities. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food

processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDC. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

V. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the *Federal Register*. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 2, 2004
 Lois Rossi,
 Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

§ 180.910 [Amended]

■ 2. In § 180.910, the table is amended by removing the entry for humic acid, sodium salt.

■ 3. In § 180.950, the table in paragraph (e) is amended by adding alphabetically the following inert ingredients:

§ 180.950 Tolerance exemptions for minimal risk active and inert ingredients.

* * * * *
 (e) * * *

Chemical	CAS No.
Humic acid	1413-93-6
Humic acid, potassium salt	68514-28-3
Humic acid, sodium salt	68131-04-4

[FR Doc. 04-12913 Filed 6-15-04; 8:45 am]
 BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-2003-0373; FRL-7346-1]

Sulfuryl Fluoride; Pesticide Tolerance; Technical Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical correction.

SUMMARY: EPA issued a final rule in the *Federal Register* of January 23, 2004, establishing tolerances for residues of sulfurly fluoride and inorganic fluoride from postharvest fumigation uses of sulfurly fluoride in or on stored commodities. In the regulatory text of the document, the tolerance level for "wheat, grain, postharvest" was incorrectly listed. This document corrects the typographical error.

DATES: This document is effective on June 16, 2004.

FOR FURTHER INFORMATION CONTACT: Dennis McNeilly, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington,

DC 20460-0001; telephone number: (703) 308-6742; e-mail address: mcneilly.dennis@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

The Agency included in the final rule a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP-2003-0373. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

2. *Electronic access.* You may access this *Federal Register* document electronically through the EPA Internet under the "*Federal Register*" listings at <http://www.epa.gov/fedrgstr/>. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at <http://www.gpoaccess.gov/ecfr>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

II. What Does this Correction Do?

In the *Federal Register* of January 23, 2004 (69 FR 3240) (FRL-7342-1), EPA published a final rule that established

ADDRESSES: Written comments should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD-L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action are available for public inspection during normal business hours at the following location. Anyone wanting to examine these documents should make an appointment with the EPA Region 6 Office.

Environmental Protection Agency,
1445 Ross Avenue, Suite 700, Dallas,
Texas 75202-2733.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth W. Boyce, Air Planning Section (6PD-L), Multimedia Planning and Permitting Division, U.S. EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, (214) 665-7259.

SUPPLEMENTARY INFORMATION: In the "Rules and Regulations" section of this *Federal Register*, EPA is approving the submittals as a direct final rule without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comment. The EPA has explained its reasons for this approval in the preamble to the direct final rule. If EPA receives no relevant adverse comment, EPA will not take further action on this proposed rule. If EPA receives relevant adverse comment, EPA will withdraw the direct final rule and it will not take effect. The EPA will address all public comments in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule located in the "Rules and Regulations" section of this *Federal Register*.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 16, 2003.

Lawrence E. Starfield,

Deputy Regional Administrator, Region 6.

[FR Doc. 03-15008 Filed 6-12-03; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-2003-0182; FRL-7309-7]

Humates; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Agency is proposing, on its own initiative, to amend the existing tolerance exemption for humic acid, sodium salt to include humic acid, potassium salt and humic acid. Such humate materials would be used as inert ingredients in pesticide formulations applied to growing crops under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: Comments, identified by docket ID number OPP-2003-0182, must be received on or before July 14, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Kerry Leifer, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-8811; fax number: (703) 305-0599; e-mail address: leifer.kerry@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System

(NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP-2003-0182. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

2. *Electronic access.* You may access this *Federal Register* document electronically through the EPA Internet under the "Federal Register" listings at <http://www.epa.gov/fedrgstr/>. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in

printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do

not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at <http://www.epa.gov/edocket>, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP-2003-0182. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP-2003-0182. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid

the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001, Attention: Docket ID Number OPP-2003-0182.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA., Attention: Docket ID Number OPP-2003-0182. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.A.1.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and *Federal Register* citation related to your comments.

II. Background

In the *Federal Register* of April 12, 2000 (65 FR 19759) (FRL-6498-8), EPA issued a notice pursuant to section 408 for the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act (FQPA) (Public Law 104-170) announcing the filing of a pesticide petition (PP 6E4705) by LignoTech USA, Inc., 100 Highway 51 South, Rothschild, WI 54474-1198. This notice included a summary of the petition prepared by the petitioner LignoTech USA, Inc. This petition requested that 40 CFR 180.1001(c) and (e) be amended by establishing an exemption from the requirement of a tolerance for residues of humic acid, sodium salt.

Subsequently, the petitioner revised the petition to request the establishment of an exemption from the requirement of a tolerance for residues of humic acid, sodium salt under 40 CFR 180.1001(c) only. There were no comments received in response to the Notice of Filing. In the *Federal Register* of July 18, 2000 (65 FR 44469) (FRL-6595-9), the Agency established an exemption from the requirement of a tolerance for residues of humic acid, sodium salt when used as an inert ingredient (adjuvant, UV protectant) in pesticide formulations applied to growing crops and raw agricultural commodities after harvest.

In the *Federal Register* of March 6, 2002 (67 FR 10203) (FRL-6825-9), the Agency published a Notice of Filing to amend the above pesticide petition 6E4705 from Arctech, Inc. located at 14100 Park Meadow Drive, Chantilly, VA 20151, to amend the existing exemption from the requirement of a tolerance to include residues of humic acid, potassium salt when used as an inert ingredient in pesticide formulations applied to growing crops, raw agricultural commodities (RAC) after harvest, or to animals. The notice included a summary of the petition prepared by the petitioner, Arctech, Inc.

There were no comments received in response to this Notice of Filing.

III. What Action is the Agency Taking?

EPA on its own initiative, under section 408(e) of the FFDCA, 21 U.S.C. 346a, is proposing to establish an unlimited exemption from the requirement of a tolerance for residues of humic acid, sodium salt (CAS Reg. No. 68131-04-04); humic acid, potassium salt (CAS Reg. No. 68514-28-3); and humic acid (CAS Reg. No. 1415-93-6) when used as an inert ingredient in pesticide formulations that are applied to growing crops under 40 CFR 180.1001(d).

The Agency has not issued a final rule on the petition seeking the establishment of a tolerance exemption for humic acid, potassium salt, but rather is issuing this proposed rule to amend the existing tolerance exemption for humic acid, sodium salt to also include humic acid, potassium salt; and humic acid. Based on a review and evaluation of the available data, which includes a 90-day toxicity study using humic acid, the Agency believes that the tolerance exemption should also include humic acid, not just the two salts, as requested by the petitioners. The existing tolerance exemption for humic acid, sodium salt will also be shifted from 40 CFR 180.1001(c) to 40 CFR 180.1001(d). Given that the nature of the substances considered are naturally occurring materials, and ubiquitous in the environment, but essentially, a component of soil, the Agency believes that 40 CFR 180.1001(d), i.e., application to growing crops to be more appropriate. The Agency has determined that there are no existing products containing humic acid, sodium salt having post-harvest uses. Therefore, this action will not have an effect on any currently registered pesticide product.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement of a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of the FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the

pesticide chemical residue in establishing an exemption from the requirement of a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for the establishment of an exemption from the requirement of a tolerance for humate materials. EPA's assessment of exposures and risks associated with establishing the exemption from the requirement of a tolerance follows.

IV. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by humate materials are discussed in this unit.

Humate materials or humic substances occur naturally in the environment. They are part of the environment in which we grow our food. The use of the term humus is said to have occurred when Rome was an empire. The term has also been found in 18th century writings. Humic substances are used as soil conditioners to increase the amount of organic matter in the soil; thus, increasing the workability of the soil. They are widely regarded as being beneficial to plants.

The formation of humic substances is not completely understood. It is known that humic substances arise during the decay of organic materials, which is the reason that humic substances are often associated with coal, lignite, and mudstones. There are several theories as to possible formation pathways (lignin theory, polyphenol theory, and sugar-amine condensation). Generally, humic substances can be further subdivided into three categories: humic acids, fulvic acids, and humins. Humic acid is the major extractable component. With humates being natural substances, there is some variation in composition of the various materials.

There is some confusion as to an exact definition of humic acid. According to

various information, humic acids are colloids, that behave somewhat like clays. Humic acids are macromolecules that are soluble in dilute alkali. They vary from dark brown to black in color. They are amorphous, polymeric substances with molecular weights ranging from 5,000 to 50,000. The cation exchange capacity (the total amount of exchangeable cations a soil can retain) ranges from 200 to 500 milliequivalents per 100 grams of soil at pH 7. When the cation exchange sites are mostly hydrogen, then the material is referred to as humic acid. When the predominant cation is sodium, then the material is referred to as humic acid, sodium salt. Similarly, material would be referred to as humic acid, potassium salt if the predominant cation were potassium.

A. Subchronic Toxicity

The following subchronic toxicity data (National Technical Information Service (NTIS) PB92-164946) was located through an internet search using humic as search term. An abstract is located on the National Library of Medicine Specialized Information Services (NLM/SIS). According to the abstract:

Male and female Sprague-Dawley rats were administered drinking water containing humic acids either non-disinfected or following ozonation (O3) ozonation/chlorination (O32) for 90 consecutive days. Test animals drank either of two concentration of humic acids, 0.25 and 1.0 g/L total organic carbon (TOC), while controls received phosphate-buffered, distilled water. No consistent significant treatment-related effects were observed in body weight gain, organ weights, food or water consumption, or hematological and clinical chemistry parameters. No target organs were identified from the histopathological examination of the tissues. The most significant observation, an increase in liver to body weight ratio for the male animals in the 1.0 g/LO3/CL2 humic acid group, was not observed in any other group, nor was it corroborated via any biochemical measurements or histopathological analysis.

B. Mutagenicity

An abstract discussing the mutagenicity of two coal-derived humic substances (Sulcis and South Africa, Eniricerche, Italy) was located through the NLM/SIS. Their mutagenic activity on TA98 and TA100 *Salmonella typhimurium* strains, both in the presence or the absence of metabolic activation (S9) was discussed. Both compounds showed no effect on the two strains, as observed with natural humic acid.

V. Aggregate Exposures

In examining aggregate exposure, FFDC section 408 directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

EPA establishes exemptions from the requirement of tolerances only in those cases where it can be demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonable foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of tolerance may be established.

A. Dietary Exposure

1. *Food.* Not only are humic substances abundant in nature, but they have been used in commercial agriculture for years to condition soils. Therefore, there is likely a substantial ongoing human dietary exposure to humate materials from these sources and increased dietary exposures from the use of humate materials as an inert ingredient in pesticide formulations is expected to be minimal.

2. *Drinking water exposure.* Humic substances occur in abundance in nature, including soils, fresh water, and oceans. Increased drinking water exposure from the use of humate materials in pesticide formulations would not be expected.

B. Other Non-Occupational Exposure

Humic substances occur in abundance in nature, including soils that are in and around the home. The potential for an increase in the existing non-dietary exposure to the general population, including infants and children, is unlikely as these pesticide formulations containing humate materials would be used in agricultural and horticultural settings.

VI. Cumulative Effects

Section 408(b)(2)(v) of FFDC requires that, when considering whether to establish, modify or revoke a tolerance or tolerance exemption, the Agency consider "available information" concerning the cumulative effects of particular chemical's residues and "other substances that have a common mechanism of toxicity." The Agency has not made any conclusions as to whether or not humic acid, potassium salt shares a common mechanism of toxicity with other chemicals. However, humic acid, potassium salt is expected to be practically non-toxic to mammals. Due to the expected lack of toxicity, a cumulative risk assessment is not necessary.

VII. Determination of Safety for U.S. Population, Infants, and Children

Humic substances are present in abundance in the soil and the environment. Humic substances have been used in commercial agriculture for years to condition soils. Based on available information on these chemically related substances, the Agency believes that humic acid; humic acid, potassium salt; and humic acid, sodium salt are practically non toxic to mammals. Due to the ubiquitous nature of these naturally occurring materials, and the high molecular weights of the humic materials, no chronic or acute effects are expected to occur. There is no available information to indicate that these naturally occurring substances are carcinogenic, mutagenic, or expected to have any effect on the immune or endocrine systems. Because of its abundance in nature and lack of toxicity, the Agency did not use the safety factor analysis in evaluating the risk posed by humate substances and did not apply an additional tenfold safety factor to protect infants and children.

Based on the information in the preamble, EPA concludes that there is a reasonable certainty of no harm from aggregate exposure to residues of humic acid; humic acid, potassium salt; and humic acid, sodium salt. Accordingly, EPA finds that exempting these humate materials from the requirement of a tolerance will be safe.

IX. Other Considerations

A. Endocrine Disruptors

FQPA requires EPA to develop a screening program to determine whether certain substances, including all pesticide chemicals (both inert and active ingredients), "may have an effect in humans that is similar to an effect

produced by a naturally occurring estrogen, or such other endocrine effect...." EPA has been working with interested stakeholders to develop a screening and testing program as well as a priority setting scheme. As the Agency proceeds with implementation of this program, further testing of products containing humic acid, potassium salt for endocrine effects may be required.

B. Analytical Method(s)

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

C. Existing Exemptions

An exemption from the requirement of a tolerance does exist for humic acid, sodium salt (40 CFR 180.1001(c)) for use as an adjuvant, UV protectant.

D. International Tolerances

The Agency is not aware of any country requiring a tolerance for humic substances nor have any CODEX Maximum Residue Levels (MRLs) been established for any food crops at this time.

X. Conclusions

Based on the information in this preamble, EPA concludes that there is a reasonable certainty of no harm from aggregate exposure to residues of humic acid; humic acid, potassium salt; and humic acid, sodium salt. Accordingly, EPA finds that exempting humate materials from the requirement of a tolerance will be safe.

XI. Statutory and Executive Order Reviews

This proposed rule establishes a consolidated and expanded exemption from the requirement for a tolerance under section 408(d) of the FFDCFA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply,*

Distribution, or Use (66 FR 28355, May 22, 2001). This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note). The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental organizations. After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. Establishing an exemption from the requirement of a pesticide tolerance (or, expanding and consolidating a tolerance exemption, as is proposed today), is in effect, the removal of a regulatory restriction on pesticide residues in food and thus such an action will not have any negative economic impact on any entities, including small entities. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States,

or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This proposed rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCFA. For these same reasons, the Agency has determined that this proposed rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This proposed rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 4, 2003.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.1001 is amended as follows:

i. The table to paragraph (c) is amended by removing the entry for "humic acid, sodium salt."

ii. The table in paragraph (d) is amended by adding alphabetically three inert ingredients to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *
(d) * * *

Inert ingredients	Limits	Uses
Humic Acid, CAS Reg. No. 1415-93	* * *	*
Humic Acid, Potassium salt CAS Reg. No. 68514-28-3	Adjuvant, UV Protectant
Humic Acid, Sodium Salt CAS Reg. No. 68131-04-4	Adjuvant, UV Protectant
* * * * *	* * *	Adjuvant, UV Protectant

[FR Doc. 03-14881 Filed 6-12-03; 8:45 am]
BILLING CODE 6560-50-S

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 03-14483, Notice No. 2]

RIN 2127-AH79

Federal Motor Vehicle Safety Standards; Brake Hoses; Correction

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document corrects a Notice of Proposed Rulemaking (NPRM) published in the *Federal Register* on May 15, 2003. The NPRM proposed to update the Federal motor vehicle safety standard on brake hoses to incorporate the substantive specifications of several Society of Automotive Engineers (SAE) Recommended Practices relating to hydraulic brake hoses, vacuum brake hoses, air brake hoses, and plastic air brake tubing. This correction adds a proposed effective date to the preamble.

FOR FURTHER INFORMATION CONTACT: George Feygin at (202) 366-3992.

Correction

In the notice of proposed rulemaking FR Doc. 03-11292 (68 FR 26384) make the following correction. On page 26406 in the first column, add, before the beginning of the first paragraph the following:

"Effective Date

The agency believes that most, if not all, hoses, tubing, and fittings affected by Standard No. 106 are already designed to meet the SAE specifications we are proposing to add to the standard. The agency is proposing that compliance with the updated version of the standard become mandatory two years after publication of the final rule. NHTSA believes that this date will provide manufacturers with sufficient leadtime to redesign the small proportion of brake hose products that may need modification."

Issued: June 6, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03-14865 Filed 6-12-03; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 030602142-3142-01; I.D. 051403C]

RIN 0648-AQ68

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Amendment 17

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement Amendment 17 to the

Pacific Coast Groundfish Fishery Management Plan (FMP). Amendment 17 would revise the Pacific Fishery Management Council's (Council's) annual groundfish management process so that it would become a biennial process. Amendment 17 is intended to ensure that the specifications and management measures process comports with a Court ruling, to make the Council's development process for specifications and management measures more efficient so that more time is available for other management activities, and to streamline the NMFS regulatory process for implementing the specifications and management measures.

DATES: Comments must be submitted in writing by July 28, 2003.

ADDRESSES: Comments on Amendment 17 or supporting documents should be sent to D. Robert Lohn, Administrator, Northwest Region, NMFS, Sand Point Way NE., BIN C15700, Seattle, WA 98115-0070.

Copies of Amendment 17 and the environmental assessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA) are available from Donald McIsaac, Executive Director, Pacific Fishery Management Council, 2130 SW Fifth Ave., Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Yvonne deReynier (Northwest Region, NMFS), phone: 206-526-6140; fax: 206-526-6736 and; e-mail: yvonne.dereynier@noaa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Access

This *Federal Register* document is also accessible via the Internet at the website of the Office of the Federal