



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

February 3, 2012

**URGENT LEGAL MATTER**  
**PROMPT REPLY NECESSARY**  
**OVERNIGHT MAIL**

Brown-Forman Cooperage  
c/o Matthew E. Hamel, General Counsel  
850 Dixie Highway  
Louisville, Kentucky 40210

Re: Request for Information for the Black Leaf Chemical Superfund Site located at 1391 Dixie Highway, Louisville, Kentucky (the Site)

Dear Mr. Hamel:

The purpose of this letter is to request that Brown-Forman Cooperage, (the company) respond to the enclosed Information Request. The United States Environmental Protection Agency is currently investigating the release or threatened release of hazardous substances, pollutants or contaminants, or hazardous wastes on or about the above-referenced Site. This investigation requires inquiry into the identification, nature, and quantity of materials generated, treated, stored, or disposed of at, or transported to, the Site and the nature or extent of a release or threatened release of a hazardous substance or pollutant or contaminant at or from the Site.

**Site Background**

On July 25, 2011, the Kentucky Department for Environmental Protection (KDEP) Superfund Branch requested that EPA evaluate this Site for purposes of conducting a time-critical removal action. The request was based on the results of an October 2010 Site Investigation (SI) that revealed high concentrations of organochlorine pesticides in surface soil at the Site. KDEP also expressed concern regarding the lack of controls on access to the Site. On August 8, 2011, the EPA On-Scene Coordinator, Art Smith, and KDEP performed a site inspection. At that time, a gate at the 17th Street entrance to the Site was missing and evidence of trespassing was noted in areas of the Site where hazardous substance releases are present. The OSC completed the removal site evaluation under 40 CFR Section 300.410, and concluded that the site meets the National Contingency Plan (NCP) criteria for a time-critical removal Action based on exceedances above removal action levels for organochlorine pesticides, lead, and arsenic.



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### Site Response Activities

To date, EPA and the State of Kentucky have taken several response actions at the Site under the authority of the Superfund Program. At present, the EPA is planning to conduct the following activities at the Site:

- Provide for Site security and control access to Site.
- Perform sampling and analyses to identify the nature and extent of hazardous substance releases from the Site. This will include sampling to be conducted in off-site residential areas to evaluate if contaminant migration has occurred.
- Mitigate the effects of releases of hazardous substances to the environment. This is expected to include, but not be limited to:
  - excavation and disposal of contaminated soils, debris, and other solid wastes;
  - demolition and/or decontamination of structures where contamination is identified and which requires abatement in order to prevent releases to the environment; and
  - restoration of disturbed areas to existing contours and conditions existing before the removal action.

### Information Request

Pursuant to the authority of Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9604, as amended, and Section 3007 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6927, you are hereby requested to respond to the Information Request set forth in Enclosure A. Instructions on how to respond to the questions are included in Enclosure A, as well as definitions that apply to the words appearing in the questions. Generally, the agency is requesting this information from your company as a result of the possible involvement of a predecessor company, Louisville Cooperage, at the Site.

Your response to this Information Request is due by **March 2, 2012**. Compliance with the Information Request is mandatory. Failure to respond to this Information Request by March 2, 2012 can result in enforcement action by the EPA pursuant to Section 104(e) of CERCLA, as amended, and/or Section 3008 of RCRA. Each of these statutes permits the EPA to seek the imposition of penalties of up to thirty-seven thousand five hundred (\$37,500) for each day of continued non-compliance. Please be further advised that provision of false, fictitious, or fraudulent statements or representations to the Information Request may subject you to criminal penalties under 18 U.S.C. § 1001 or Section 3008(d) of RCRA, 42 U.S.C. § 6928(d).

This Information Request is not subject to the approval requirement of the Paperwork Reduction Act of 1980, 44 U.S.C. § 3501, et seq.

Your response should be mailed to:

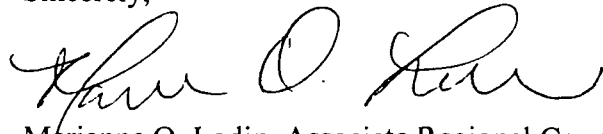
Marianne Ortiz Lodin  
U.S. Environmental Protection Agency, Region 4  
Office of Environmental Accountability, 13<sup>th</sup> floor  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

### Conclusion

Due to the seriousness of the problem at the Site and the legal ramifications of failure to respond properly, the EPA strongly encourages you to give this matter your immediate attention. If you have any legal questions regarding this letter, please contact Marianne O. Lodin, Associate Regional Counsel, at 404-562-9547. If you have any general questions or specific questions related to the information requests, please contact Karen Coleman, Enforcement Project Manager at 404-562-8853. For technical questions, please contact Art Smith, On Scene Coordinator, at 502-905-7559.

The factual and legal discussions contained in this letter are intended solely for notification and information purposes. They are not intended to be and cannot be relied upon as final EPA positions on any matter set forth herein. Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Marianne O. Lodin". The signature is fluid and cursive, with a large initial "M" and "L".

Marianne O. Lodin, Associate Regional Counsel  
Office of Environmental Accountability  
Region 4, U.S. Environmental Protection Agency

Enclosure

## Black Leaf Chemical Superfund Site

### ENCLOSURE A INFORMATION REQUEST

#### Instructions

1. Please provide a separate narrative response to each and every question and subpart of a Question set forth in this Information Request.
2. Precede each answer with the number of the Question to which it corresponds.
3. Provide responses to the best of your ability, even if the information sought was never put down in writing or if the written documents are no longer available. You should seek out responsive information from current and former employees/agents. Submission of cursory responses when other responsive information is available to you will be considered non-compliance with this Information Request.
4. If information or documents not known or not available to you as of the date of submission of a response to this Information Request should later become known or available to you, you must supplement your response to EPA. Moreover, should you find, at any time after the submission of your response that any portion of the submitted information is false or misrepresents the truth, you must notify EPA of this fact as soon as possible and provide EPA with a corrected response.
5. For each document produced in response to this Information Request indicate on the document, or in some other reasonable manner, the number of the Question to which it responds and provide true and accurate copies of all such documents.
6. For each and every Question contained herein, identify (see Definitions) all persons consulted in the preparation of the answer.
7. The information requested herein must be provided even though you may contend that it includes possibly confidential information or trade secrets. You may, if you desire, assert a confidentiality claim covering part or all of the information requested, pursuant to Sections 104(e)(7)(E) and (F) of CERCLA, 42 U.S.C. §§9604(e)(7)(E) and (F), Section 3007(b) of RCRA, 42 U.S.C. §6927(b), and 40 C.F.R. §2.203(b).

If you make a claim of confidentiality for any of the information you submit to EPA, you must prove that claim. For each document or response you claim confidential, you must separately address the following points:

- A. The portions of the information alleged to be entitled to confidential treatment;
- B. The period of time for which confidential treatment is desired (e.g., until a certain date, until the occurrence of a specific event, or permanently);
- C. Measures taken by you to guard against the undesired disclosure of the information to others;
- D. The extent to which the information has been disclosed to others, and the precautions taken in connection therewith;
- E. Pertinent confidentiality determinations, if any, by EPA or other federal agencies, and a copy of any such determinations or reference to them, if available; and

- F. Whether you assert that disclosure of the information would likely result in substantial harmful effects on your business' competitive position, and if so, what those harmful effects would be, why they should be viewed as substantial, and an explanation of the causal relationship between disclosure and such harmful effects.

To make a confidentiality claim, please stamp, or type, "confidential" on all confidential responses and any related confidential documents. Confidential portions of otherwise non-confidential documents should be clearly identified. You should indicate a date, if any, after which the information need no longer be treated as confidential. Please submit your response so that all non-confidential information, including any redacted versions of documents are in one envelope and all materials for which you desire confidential treatment are in another envelope.

All confidentiality claims are subject to EPA verification. It is important that you satisfactorily show that you have taken reasonable measures to protect the confidentiality of the information and that you intend to continue to do so, and that it is not and has not been obtainable by legitimate means without your consent. Information covered by such claim will be disclosed by EPA only to the extent permitted by CERCLA Section 104(e). If no such claim accompanies the information when it is received by EPA, then it may be made available to the public by EPA without further notice to you.

8. Personnel and medical files, and similar files the disclosure of which to the general public may constitute an invasion of privacy should be segregated from your responses, included on separate sheet(s), and marked as "Personal Privacy Information."

If you have objections to some or all the Questions within the Information Request letter, you are still required to respond to each of the Questions.

## Definitions

The following definitions shall apply to the following words as they appear in the Questions:

1. The term "you" or "Respondent" shall mean the addressee of this Request, the addressee's officers, managers, employees, representatives, contractors, trustees, partners, successors, assigns and agents.
2. The terms "the company" or "your company" refer not only to the addressee of this request as it is currently named and constituted, but also to all predecessors and successors in interest of the addressee, and all subsidiaries, divisions, affiliates, and branches of the addressee and its predecessors and successors.
3. The term "person" shall have the same definition as in Section 101(21) of CERCLA: an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, State, municipality, commission, political subdivision of a State, or any interstate body.
4. The terms the "Site" or the "facility" shall mean the Black Leaf Chemical Superfund Site located at 1391 Dixie Highway, Louisville, KY 40210
5. The term "Site Property" shall mean any of the parcels of real estate that make up the Site, including, but not limited to, the parcels located at 1391 Dixie Highway, Louisville, KY 40210.
6. The term "hazardous substance" shall have the same definition as that contained in Section 101(14) of CERCLA and includes any mixtures of such pollutants and contaminants with any other substances. Petroleum products mixed with pollutants and contaminants are also included in this definition.
7. The term "hazardous waste" shall have the same definition as that contained in Section 1004(5) of RCRA.
8. The term "solid waste" shall have the same definition as that contained in Section 1004(27) of RCRA.
9. The term "materials" shall mean any and all objects, goods, substances, or matter of any kind that have been generated, treated, stored, or disposed of or otherwise handled at or transported to the Site, including but not limited to, all hazardous substances, pollutants and contaminants, hazardous wastes and solid wastes, as defined above.
10. The term "hazardous material" shall mean all hazardous substances, pollutants or contaminants, and hazardous wastes, as defined above.
11. The term "non-hazardous material" shall mean all material as defined above, excluding hazardous substances, pollutants and contaminants, and hazardous waste.

12. The term "pollutant or contaminant" shall include, but not be limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations; except that the term "pollutant or contaminant" shall not include petroleum.
13. The term "identify" means, with respect to a natural person, to set forth: (a) the person's full name; (b) present or last known business and home addresses and telephone numbers; (c) present or last known employer (include full name and address) with title, position or business.
14. The term "identify" means, with respect to a corporation, partnership, business trust or other association or business entity (including a sole proprietorship), to set forth its full name, address, legal form (e.g., corporation, partnership, etc.), organization, if any, registered agent, and a brief description of its business.
15. The term "company" shall mean any business entity, however formally or informally organized, which has ever existed, regardless of its current status.
16. The term "identify" means, with respect to a document, to provide its customary business description, its date, its number, if any (invoice or purchase order number), the identity of the author, addressor, addressee and/or recipient, and the substance or the subject matter.
17. The terms "document" and "documents" shall mean electronically created and stored documents, including, but not limited to, client files, customer file, invoices, bills of lading, receipts, manifests, shipping papers, customer lists, contracts, cancelled checks or other payment records, reports, newsletters, notes, records of telephone conversations and meeting notes and minutes, or any other correspondence information, any object that records, stores, or presents information, and includes writings of any kind, formal or informal, whether or not wholly or partially in handwriting, including by way of illustration and not by way of limitation, any invoice, manifest, bill of lading, receipt, endorsement, check, bank draft, canceled check, deposit slip, withdrawal slip, order, correspondence, record book, minutes, memorandum of telephone and other conversations including meetings, agreement and the like, diary, calendar, desk pad, scrapbook, notebook, bulletin, circular, form, pamphlet, statement, journal, postcard, letter, telegram, telex, report, notice, message, analysis, comparison, graph, chart, interoffice or intra office communications, photostat or other copy of any documents, microfilm or other film record, any photograph, sound recording on any type of device, any punch card, disc or disc pack; any tape or other type of memory generally associated with computers and data processing (together with the programming instructions and other written material necessary to use such punch card, disc, or disc pack, tape or other type of memory and together with printouts of such punch card, disc, or disc pack, tape or other type of memory); and (a) every copy of each document which is not an exact duplicate of a document which it produces, (b) every copy which has any writing, figure or notation, annotation or the like on it, (c) drafts, (d) attachments to or enclosures with any document, and (e) every document referred to in any other document.
18. The term "release" has the same definition as that contained in Section 101(22) of CERCLA, 42 U.S.C. §9601(22), and includes any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including

the abandonment or discharging of barrels, containers, and other closed receptacles containing any hazardous substance.

19. The terms "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of this Information Request any information which might otherwise be construed to be outside its scope.
20. The term "arrangement" means every separate contract or other agreement between two or more persons.
21. The terms "transaction" or "transact" mean any sale, transfer, giving, delivery, change in ownership, or change in possession.
22. Words in the masculine shall be construed in the feminine, and vice versa, and words in the singular shall be construed in the plural, and vice versa, where appropriate in the context of a particular question or questions.
23. All terms not defined herein shall have their ordinary meaning, unless such terms are defined in CERCLA, RCRA, 40 C.F.R. Part 300, or 40 C.F.R. Parts 260-280, in which case, the statutory or regulatory definitions shall apply.



## Questions

1. Identify the primary contact person(s) to whom EPA may send future correspondence by:
  - a. Full name and title;
  - b. Mailing address and physical address; and
  - c. Daytime telephone number.
2. For each and every Question contained herein identify the person(s) answering these Questions and all persons consulted in the preparation of the answer. Identify all documents consulted, examined, or referred to in the preparation of the answer or that contain information responsive to the Question, and provide true and accurate copies of all such documents.

### Corporate Successor

3. Is the Company the successor to all liabilities, including those under CERCLA, of Louisville Cooperage?
4. If your answer to number 3 above is "no," respond fully to the following questions:
  - a. Describe in detail the Company's past and current relationship with Louisville Cooperage, and any parcel of the Site property in Louisville, KY.
  - b. State the date on which the Company acquired ownership or an interest in Louisville Cooperage, and the Site. State the prior owners, if any, of Louisville Cooperage, and the Site. Submit a copy of all documents relating to the Company's purchase of Louisville Cooperage.
  - c. Did the company sell or otherwise divest itself of any stock, assets, or other interest in Louisville Cooperage, or any other company which operated a facility any parcel of the Site property?
  - d. If the answer to 4(c) is "yes," fully describe the nature of the sale and/or transaction. State if the transaction consisted of a merger, consolidation, sale or transfer of assets and submit all documents relating to such transaction, including all documents pertaining to any agreements, express or implied, for the purchasing corporation to assume the liabilities of the selling corporation.
  - e. Did the Company retain the liabilities of Louisville Cooperage for events prior to the sale?

### Acquisition of Site Property

5. Describe what you know about Louisville Cooperage's operations at the Site, including, but not limited to, the type of operations maintained at the Site and dates of operation.
6. During Louisville Cooperage's operation of the Site, do you know or have reason to know that any hazardous substances, including but not limited to lead or arsenic were disposed of on or at the Site?
7. During Louisville Cooperage's operation of the Site, do you know or have reason to know that any coal-fired power plant was operated on or at the Site?
8. Identify all persons, including the Company's employees, who may have knowledge, information or documents about Louisville Cooperage's operations or the manufacturing,

mixing, storage, disposal, or other handling of hazardous materials or coal at or transportation of materials to the Site.

### Louisville Cooperage Operations

9. Describe the nature of Louisville Cooperage's activities or business at the Site, with respect to purchasing, receiving, manufacturing, mixing, processing, storing, treating, disposing, or otherwise handling hazardous substances or materials, including but not limited to lead and arsenic, at the Site.
10. Describe the current and/or past nature of your business activities and operations conducted at the Site including but not limited to Louisville Cooperage, state incorporations, subsidiaries, and parent companies, and provide the number of employees. Provide:
  - a. A general description of any major production process at each facility;
  - b. Identify any hazardous substances, pollutants, contaminants, or material waste streams generated by each facility;
  - c. A list of the raw materials used in each process identified;
  - d. Specify the nature, volume, and content of each stream, and describe the disposal process for each identified waste stream; and
  - e. Identify whether Louisville Cooperage ever used either chromated copper arsenate, pentachlorophenol, or creosote as preservatives in the process for treatment of wood products stored at the Site (i.e whiskey barrels). If so, please identify the process used (e.g., if it involved dipping lumber using these preservatives, or if pressure treating was conducted).
11. Is Respondent the current owner or previous owner of any interest in any parcel of the Site Property? If so, please describe the interest or previous interest Respondent holds and provide a legible copy of the documents of transfer, including any deed, tax certificate, receipt, mortgage, or financing statement relating to the acquisition or previous acquisition of the Site Property.
12. If any of the documents requested or needed to answer any of the questions in this request are not in your possession, custody, or control, or easily attainable, identify the persons from whom such information or documents may be obtained, and/or identify where such records would be physically located? Please include a narrative description, along with a physical address. If the records were destroyed, provide the following:
  - a. Your company's document retention policy;
  - b. A description of how the records were destroyed (burned, trashed, etc.) and the approximate date of destruction;
  - c. A description of the type of information that would have been contained in the documents;
  - d. The name, job title and most current address known by you of the person(s) who would have produced these documents, the person(s) who would have been responsible for the retention of these documents; the person(s) who would have been responsible for the destruction of these documents; and the person(s) who had and/or still may have the originals or copies of these documents.

13. If Respondent of any other persons other than those you have already identified, who may be able to provide a more detailed or complete response to any Question contained herein or who may be able to provide additional responsive documents, identify such persons by providing those persons' names, current mailing addresses, current telephone numbers, and the additional information or documents that they may have.



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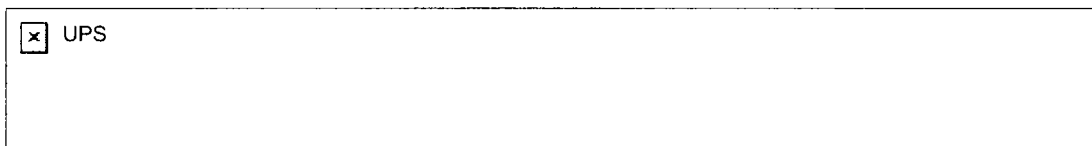
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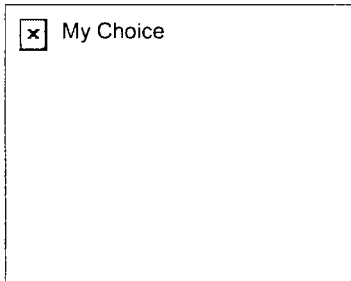
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BROWN-FORMAN COOPERAGE  
GENERAL COUNSEL  
850 DIXIE HIGHWAY  
LOUISVILLE  
KY  
402101038  
US

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