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ROBERT S. SANOFF

November 30, 1992

VIA FEDERAL EXPRESS



SDMS DocID 450485

Techlaw, Inc.  
c/o Lee Bishop  
14500 Avion Parkway  
Suite 300  
Chantilly, Virginia 22022

Attn: Marilyn Goldberg  
U.S. Environmental Protection Agency

Re: Solvents Recovery Services Superfund Matter  
Audit Request for Electrolux, Inc.

Dear Ms. Goldberg:

In its November 6, 1992 Memorandum to potentially responsible parties in the Solvents Recovery Services matter, EPA announced an auditing procedure whereby an individual PRP could obtain a review by EPA of the volumetric amounts attributed to that PRP in EPA's Volumetric Ranking. EPA also provided copies of the documents for PRP review upon which EPA had based its volumetric ranking. In accordance with the audit procedure, and with the limited extension granted by Gretchen Muench of EPA, Region I, I write on behalf of Electrolux, Inc. ("Electrolux") to challenge the 77,564 gallons of the hazardous substances attributed to Electrolux in EPA's interim ranking. Because Electrolux has had less than 15 working days in which to prepare this audit request, Electrolux reserves its right to supplement that request.

Electrolux understands that the audit is being conducted solely for settlement purposes and hence Electrolux's involvement in the audit process does not constitute an admission of liability or otherwise a waiver of any available defenses, whether factual or legal. The positions asserted by Electrolux in the course of this audit are not intended as and should not be construed as admissions or otherwise as evidence admissible in any subsequent proceeding with respect to this matter. Electrolux expressly reserves its right to dispute in any

subsequent proceeding both the amount and the nature of materials attributed to it by the EPA as well as any other issue with respect to this matter.

As the attached Transactional Review Form and other documents indicate, and as explained below, EPA's volumetric ranking for Electrolux is materially incorrect in the following respects:

1. Non-Hazardous Substances. Electrolux specifically challenges the inclusion of 8,419 gallons of naphtha and 13,100 gallons of liquids clearly identified as non-hazardous waste oils on EPA's volumetric ranking list. All of the documents provided by EPA for each of these transactions demonstrate that these petroleum substances were not hazardous substances within the meaning of CERCLA. Both petroleum naphtha, as a petroleum fraction, and used oil come squarely within the ambit of the express petroleum exclusion contained in Section 101(14) of CERCLA, 42 U.S.C. §9601(14), which defines "hazardous substance":

The term [hazardous substance] does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of this paragraph. . . . (Emphasis added).

None of the statutes referenced in subparagraphs (A) through (F) of Section 101(14) specifically lists or designates petroleum naphtha or waste oil as a hazardous substance. Moreover, application of the petroleum exclusion in CERCLA in this case is consistent with EPA's own interpretation of the exclusion and recent federal case law. See, Office of EPA General Counsel, "Scope of the CERCLA Petroleum Exclusion", (July 31, 1987) ("no petroleum substance, including used oil, can be a 'hazardous substance' except to the extent that it is listed as a hazardous waste") (emphasis added); Wilshire Westwood Assocs. v. Atlantic Richfield Corp., 881 F.2d 801 (9th Cir. 1989); Southern Pacific Trans. Co. v. California (Caltrans), 790 F. Supp. 983, 986 (E.D.Cal. 1991). To include petroleum naphtha and used oil in the interim ranking is contrary to CERCLA and EPA's own policy on the petroleum exclusion. Electrolux's volume total should be reduced, therefore, by 21,519 gallons.

2. SRSNE Logbooks. Of the total volume attributed to Electrolux, approximately two-thirds is derived from the SRSNE logbooks. Electrolux believes that these logbooks are inherently unreliable and should not be considered. Of greatest concern is

the fact that these logbooks contain no information about the contents of the drums that Electrolux allegedly sent to the SRSNE site. Unless such substances were hazardous substances, as defined in Section 101(14) of CERCLA, the supposed drum counts should not be counted against Electrolux, or any other PRP. Moreover, EPA has provided no other documentation to support its assumption that these drums contained hazardous substances, or the identity of the person(s) who made the logbook entries. Because EPA has indicated that it will not accept challenges at this stage to its use of the logbook entries, Electrolux has not itemized each such transaction on the Transactional Review Form. However, Electrolux requests that EPA reconsider its position on this issue.

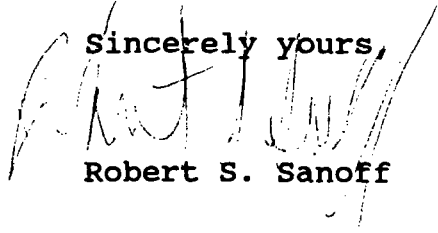
3. Liquids. Although EPA has compiled its volumetric ranking list on a waste-in basis, Electrolux emphasizes that the SRSNE documents provided by EPA clearly indicate that the liquids identified by hazardous waste manifests, the vast majority of which were petroleum substances were used as fuel. Based on the limited information about site operations made available to date, Electrolux understands that such fuel was transported and utilized off-site, or with respect to certain of the transactions involving Electrolux, was shipped to "Linden" for use as boiler fuel. In other words, these liquids were not disposed of at the site and therefore could not have contributed to the contamination found at the SRSNE site. Electrolux believes, therefore, that EPA should not include these liquids in Electrolux's volume total. Because EPA has stated that it will not accept challenges at this stage to its waste-in assumption, Electrolux has not itemized each such transaction on the Transactional Review Form. However, Electrolux requests that EPA reconsider its position on this issue and permit Electrolux to submit evidence concerning the volumes of its wastes which became fuels. Furthermore, Electrolux reserves its right to challenge EPA's volumetric ranking list on these grounds.

Even using EPA's logbook and waste-in assumptions, Electrolux's volumetric share cannot properly exceed 56,064 gallons. At a minimum, Electrolux's volumetric share in the interim ranking should be reduced to 56,064 gallons and the waste-in and logbook assumptions should be re-examined. If the EPA is unwilling to make this revision, Electrolux expressly requests the opportunity to meet with representatives from the agency to discuss the basis for EPA's determination of Electrolux's volumetric share.

Marilyn Goldberg  
November 30, 1992  
Page 4

I look forward to your prompt reply.

Sincerely yours,



Robert S. Sanoff

RSS:ajc  
Enclosure

**ATTACHMENT II.B.**

**Transactional Review Form**

**Name of Respondent:** Electrolux Corporation

<u>Column 1</u>	<u>Column 2</u>	<u>Column 3</u>	<u>Column 4</u>	<u>Column 5</u>	<u>Column 6</u>
<u>Date of Transaction</u>	<u>EPA Document #</u>	<u>EPA Volume</u>	<u>Your Volume</u>	<u>Description of Your Documentation</u>	<u>Issues/ Comments</u>
03/3/82	500700 500701 500702	2700	0		Petroleum Naptha. CERCL Petroleum Exclusion.
08/20/84	701465 701466 701467 701468	1619	0		Petroleum Naptha. CERCL Petroleum Exclusion.
09/18/84	701469 701470 701471	2500	0		Used oil. CERCLA Petroleum Exclusion.
10/9/84	701472 701473 3300120	1200	0		Petroleum Naptha. CERCL Petroleum Exclusion.

**ATTACHMENT II.B. (continued)**

**Transactional Review Form**

**Name of Respondent:** Electrolux Corporation

<u>Column 1</u>	<u>Column 2</u>	<u>Column 3</u>	<u>Column 4</u>	<u>Column 5</u>	<u>Column 6</u>
<u>Date of Transaction</u>	<u>EPA Document #</u>	<u>EPA Volume</u>	<u>Your Volume</u>	<u>Description of Your Documentation</u>	<u>Issues/ Comments</u>
11/06/84	701474	3400	0		Used Oil. CERCLA Petroleum Exclusion.
	701475				
	701476				
12/13/84	701477	1500	0		Petroleum Naptha. CERCLA Petroleum Exclusion.
	701478				
02/19/85	901704	3500	0		Used Oil. CERCLA Petroleum Exclusion.
	901705				
	901706				
03/7/85	901701	1400	0		Petroleum Naptha. CERCLA Petroleum Exclusion.
	901702				
	901703				

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ATTACHMENT II.B. (continued)

Transactional Review Form

Name of Respondent: Electrolux Corporation

<u>Column 1</u>	<u>Column 2</u>	<u>Column 3</u>	<u>Column 4</u>	<u>Column 5</u>	<u>Column 6</u>
<u>Date of Transaction</u>	<u>EPA Document #</u>	<u>EPA Volume</u>	<u>Your Volume</u>	<u>Description of Your Documentation</u>	<u>Issues/Comments</u>
03/22/85	901698	3700	0		Used oil. CERCLA
	901699				Petroleum Exclusion.
	901700				

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