



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION I

J.F. KENNEDY FEDERAL BUILDING, BOSTON, MASSACHUSETTS 02203-2211

December 22, 1993

Mr. Stephen Finch
Laboratory Director
Dexsil Corporation
One Hamden Park Drive
Hamden, CT 06517

Dear Mr. Finch:

This letter is in response to your October 21, 1993 inquiry about the permitting requirements under the Resource Conservation and Recovery Act (RCRA) as they apply to the line of portable test kits manufactured by your company.

Based on the facts presented in your letter and as clarified in our telephone conversations, the use of the precipitation agent to render the aqueous based solution non-hazardous is treatment of a hazardous waste. At the completion of a test, prior to adding this agent, the solution fails the Toxicity Characteristic Leaching Procedure (TCLP) test due to the presence of heavy metals. TCLP failure is due to the titrating agent mercuric nitrate which is added to produce a visual indication for the presents of chlorides. The precipitation agent (Aquafloc 2404) is added to render insoluble the heavy metals resulting from this titration process, and is not intended to treat any other constituents (e.g., chlorinated solvents, benzene) that may be present in the solution.

RCRA does not require the issuance of a permit for on-site treatment of hazardous waste provided the treatment takes place in an accumulation container or tank in conformance with the requirements of 40 CFR Part 262.34 and Subparts I and J of 40 CFR Part 265 (standards for containers and tank systems). It should be noted that if the treatment takes place in a device that does not meet the definition of a container or tank the treatment would be subject to RCRA permitting.

In addition, 40 CFR Part 268.9 requires generators who treat characteristic wastes in accumulation containers or tanks to meet applicable land disposal restrictions (LDR) must prepare a waste analysis plan. This plan must formally documents the waste analysis procedures necessary to demonstrate compliance with the LDR regulations. Please note that treatment of hazardous waste must not violate the dilution prohibition standards of 40 CFR Part 268.3. The use of a precipitation agent does not appear to violate this prohibition.



The United States Environmental Protection Agency, Region 1 interpretation in this letter reflects the Federal regulations governing hazardous waste. States with authorized programs may impose more stringent requirements. If you have any questions, please contact James Gaffey of my staff at (617) 223-5542.

Sincerely,



John Podgurski, Chief
Connecticut Waste Regulation Section
Waste Management Division

DEXSIL®

October 21, 1993

Mr. James Gaffey
RCRA Permitting
USEPA
Mailcode HEE-CAN6
JFK Federal Building
Boston, MA 02203

Dear Mr. Gaffey;

I am writing to you following our telephone discussion of yesterday concerning disposal of used test kits.

We manufacture a line of portable test kits to analyze soil, oil, and water samples for the presence of chlorinated solvents, PCBs, and other environmental contaminants. These test kits use small amounts of a variety of chemicals, including heavy metals, to perform the testing procedure. At the completion of a test, a kit contains trace amounts of mercury, ranging from 0.5 to 2.5 milligrams per kit. The kits use a precipitation agent to render the heavy metals insoluble which allows the used kits to easily pass the TCLP test for disposal.

Several of our customers are concerned that by performing this test procedure they are actually treating a hazardous waste and therefore need an EPA permit to do so. It is our understanding from reading the regulations and from the ACS "Waste Management Manual" that this is not necessary for this type of analytical test. We have tried to explain this to our customers, but they have requested that we provide them with a written opinion direct from the EPA. Would you please provide us with a letter stating your interpretation of the permitting requirement as it concerns these test kits? We will then forward copies of your letter to the concerned parties. Please let me know if you require any further information.

I appreciate your attention to this matter.

Sincerely,



Stephen Fisch
Laboratory Director

December 21, 1993

Chester W. Matthews
Director, Safety, Health
and Environmental Protection
Bath Iron Works
700 Washington Street
Bath, ME 04530

Dear Mr. Matthews:

In response to your November 16, 1993 letter concerning my telephone conversation with Bath Iron Works personnel, I'd like to provide clarification on the issues you raised and on the BIW paint use/reuse issue in general.

Chapter 40 CFR, Section 261.2 provides the definition of solid waste and states,

"A solid waste is any discarded material that is not excluded by Section 261.4(a) or that is not excluded by variance..."

However, Section 261.2(e) explains that materials that are not solid waste when recycled include those that can be shown to be recycled by being used or reused as "effective substitutes for commercial products." Thus you need only document that there is a known market or disposition for the material (see Section 261.2(f)) to avoid its classification as solid waste and therefore a subject of RCRA Subtitle C regulation. This applies to materials that are not accumulated speculatively for recycling at some point in the future (see Section 261.1(c)).

In your letter you indicate correctly that the owner of a material must determine whether it is a solid waste as defined in 40 CFR, Section 261.2. You should base your determination on documentation from the paint's manufacturer indicating its effective life. You should also refer to the paint as a material, versus a "hazardous" material which is unnecessarily cautious.

Federal regulations offer no definition of the terms "intended use" or "original intended use". I offered my interpretation of these terms based on their intuitive meaning when I spoke with Mr. Arndt and Mr. Lewis. I understand through speaking with Denise Lord of the Maine Waste Management Agency that the state

initially offered a definition of use and reuse that are more strict than federal regulations. Since it is within the state's authority to do this, you should defer to the state's definition of these terms. If the State of Maine determines that the Military Specification date is the date at which the paint becomes a hazardous waste, then BIW will need to petition the state for a variance from its regulations.

I apologize for the delay in getting back to you on this issue; I got supporting information from other staff here which took some time. If you require additional clarification or assistance, please contact me at (617) 223-5529.

Sincerely,

Sally B. Mansur
Waste Management Division
Pollution Prevention Coordinator

cc: Matthew Hoagland, Chief, ME, NH & VT Waste Regulation
Section
Ken Rota, RCRA Support Section
Denise Lord, Maine Waste Management Agency