



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
JOHN F. KENNEDY FEDERAL BUILDING
BOSTON, MASSACHUSETTS 02203-0001

October 6, 1997

Anthony Reed, EH&S Manager
Pioneer Plastics
1 Pionite Road
P.O. Box 1014
Auburn, ME 04211-1011

Dear Mr. Reed:

Recently, Ken Rota of my staff, received a telephone call from Frank Conti, a representative for American International Group (AIG), the insurer for Pioneer Plastics Corporation (Pioneer). Mr. Conti inquired about Pioneer's current regulatory status as it pertains to the distillate treatment tank and fume incinerator in operation at the facility. According to Mr. Conti, representatives from Pioneer informed him that this unit was a totally enclosed treatment system. I am writing to tell you that, based upon our inspection of your facility last year, we informed Mr. Conti that EPA does not consider this process to be a totally enclosed treatment process. Both Ken Rota and Kate Anderson, a senior environmental scientist and national expert, at EPA Headquarters in Washington D.C. reviewed the process information last year and determined that the system is not totally enclosed as designed and operated. Our office discussed this determination with Richard Hall, the former Environmental Health and Safety Manager for Pioneer and Bruce Nicholson, the attorney representing Pioneer in this matter.

As the new corporate environmental manager, I believe it is important that you have accurate information to assist you in your regulatory endeavors at Pioneer. To briefly provide you with some background concerning this matter, EPA conducted a partial inspection at Pioneer on April 29, 1996, to review the design and operation of the distillate treatment system and Thermo-Oxidizer used on-site. This inspection was based, in part, on schematic drawings of the distillate treatment system provided by Pioneer that indicated that this unit was operating as and subject to the Boiler and Industrial Furnace (BIF) regulations. At the time of the April inspection, EPA determined that the schematics were incorrect and observed that Pioneer had modified the resin production operation in a manner that removed the volatile organic constituents during the production phase of the manufacturing process and not as part of a waste treatment process as indicated on the schematics. This modification occurred several months prior to EPA's April inspection. During the time period prior to this process modification, Pioneer would have been subject to the BIF regulations since the volatile organic emissions burned at that time were derived from the treatment of hazardous wastes collected in the distillate tank and not as a result of gaseous emissions removed directly from the production process. However, as a result of the process change, Pioneer eliminated this obligation. Gaseous emissions removed directly from the production process and not as a result of waste treatment processes are not regulated under RCRA.

As a separate point, note that the totally enclosed treatment advisory opinion rendered by the Maine Department of Environmental Protection's Air and Hazardous Materials and Solid Waste Control



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Bureau is not correct. This determination is based on our physical inspection of the treatment system. The Maine DEP informed EPA that their decision had been based upon written representations made by Pioneer and was not a result of any physical walk-through of the facility by their office that could have confirmed the accuracy of the information contained in Pioneer's regulatory interpretation request letter.

During Mr. Hall's tenure as the Corporate Environmental Health and Safety Manager, a followup letter was written to EPA dated July 12, 1996 by Mr. Nicholson. This letter contained information that my office was requesting about the processes conducted at Pioneer. Included with this letter were Mr. Nicholson's interpretations of regulations as he felt they applied to Pioneer's operations. The letter raised issues regarding whether the distillate treatment system was totally enclosed treatment and the applicability of the Land Disposal Restriction (LDR) regulations to the waste distillate. Neither this letter nor the information submitted by Mr. Nicholson has changed EPA's position in this matter.

The Agency feels that the language of the regulations and existing regulatory interpretations are clear with respect to Pioneer's regulatory obligations. However, to provide closure in this matter I will address the applicability of the LDRs regulations to your distillate wastes after neutralization. It is our position is that the waste distillate is subject to the LDR regulations. Although the treatment of this corrosive waste occurs in a tank from which no land disposal occurs, this material is further treated on-site in the Thermo-Oxidizer and produces an ash that is collected and land disposed at a Subtitle D facility. The LDR regulations are applicable to solid waste by statute. Therefore, an LDR determination for the waste distillate is necessary to determine whether this ash might contain hazardous constituents requiring further treatment prior to disposal. This situation is no different than when hazardous wastes manifested off-site for treatment, both characteristic and listed, are required to have LDR determinations accompanying LDR notifications to ensure that both the wastes and any resulting residues receive adequate treatment prior to land disposal.

The July letter also referenced the September 25, 1992 decision of the U.S. Court of Appeals in Chemical Waste Management v. EPA, 976 F.2d 2 (D.C. Cir. 1992). Specifically, your attorney referenced a situation in which LDR wastes were treated in tanks and discharged directly to surface waters or to Publicly Owned Treatment Works (POTWs) and stated that the court determined that such treatment was not subject to LDRs since no land disposal occurred. Mr. Nicholson suggested that EPA should view the neutralization of Pioneer's corrosive waste in its distillate tank in the same manner. We do not consider this situation to be analagous to Pioneer's activity since there is an important distinction that should be recognized by the court's decision. Specifically, the surface water discharges and discharges to POTWs referenced by the court in the case are regulated by EPA under the authority of the Clean Water Act. In Pioneer's particular situation, although no "disposal" occurs during the neutralization process, the further treatment of this waste by the Thermo-Oxidizer results in an ash that is a solid waste still regulated under RCRA. This ash, unlike the water discharges referenced in the court case above, is land disposed. Despite this distinction, no evidence of underlying hazardous constituents was found in the waste analysis information provided to EPA for the neutralized distillate that might require further treatment.

Good luck in your new duties as corporate environmental manager. If you have any further questions in this matter, please call Ken Rota of my staff at (617) 565-3349.

Sincerely,

A handwritten signature in black ink, appearing to read "SMP", written in a cursive style.

Suzanne M. Parent, Chief
RCRA Compliance Unit

cc: Bruce Nicholson, Erler and Powers
Michael Hudson, ME DEP