



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
1 CONGRESS STREET, SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

December 1, 2005

Mr. Gary Lallo, P.E.
Voigt & Schweitzer, Inc.
1000 Buckeye Park Road
Columbus, OH 43207

Re: September 8, 2005 EPA Region I Regulatory Interpretation

Dear Mr. Lallo:

This letter is in response to your letter dated October 12, 2005, in which you state that you disagree with a Regulatory Interpretation issued by our office on September 8, 2005. Our interpretation, conveyed in a letter to your consultant Mr. Hank Stonerook of Stone Environmental, concluded that the contaminated zinc chloride solution from your Voigt & Schwietzer (V&S) facility in Taunton, Massachusetts, which is sent to the Zaclon LLC facility in Cleveland, Ohio (Zaclon), is a hazardous spent material being reclaimed, and thus is subject to RCRA regulation. You assert in your letter that the recycled zinc chloride solution is instead an intended by-product of your pre-treatment process which is used as a raw material at the Zaclon facility, and that nothing is reclaimed from that solution.

The basis for our determination in the September 8, 2005 letter begins with the EPA definition for spent material in 40 C.F.R. § 261.1. As we noted, a spent material is a material that has been used, and as a result of such use becomes contaminated to such a point that the material can no longer serve the purpose for which it was produced without further processing. The material in question is the contents of the stripper tank, the stripper solution. In our letter we concluded that the stripper solution was a spent material based on the fact that the virgin material that you use becomes contaminated during your manufacturing process. V&S ships the stripper solution off-site when the stripping tanks need to be recharged due to a build up of zinc chloride and other contaminants in the tank. We further based our conclusion on the fact that your facility is no longer able to use the stripper solution in its process when the decision is made to remove the solution from service and ship it off-site.

The argument that the material is a by-product of your pre-treatment process was not mentioned in the initial letter from your consultant. However, we will address this assertion now. The EPA defines by-product in 40 C.F.R. § 261.1 as including materials such as slags or distillation

bottoms that are process residues. This is not the kind of material that you have. As the EPA has further explained, the way to distinguish between a spent material and a by-product is that a spent material starts as a virgin material but becomes contaminated, whereas "by-products ... are residues that result from manufacturing." See the attached letter from EPA's Office of Solid Waste to Texas Instruments dated August 13, 1985 (RCRA On-line No. 11101). Your material starts as a virgin material and becomes contaminated and thus is in the spent material rather than the by-product category. As the EPA further explained when promulgating the spent material and by-product definitions, "by-product" was intended to be a catch-all term for secondary materials that are not spent materials or sludges. See 50 Fed. Reg. 618 (January 4, 1985). Since the stripper solution meets the definition of spent material, it cannot also be classified as a by-product.

You also claim that nothing is reclaimed from the zinc chloride solution. Reclamation, as defined by EPA in 40 C.F.R. § 261.1, includes the regeneration of waste materials or processing waste materials to recover useable products. As was indicated in the documentation submitted with your consultant's original request, the stripper solution is processed at the Zaclon facility to remove heavy metals and iron, then concentrated to remove water. The resultant material, zinc chloride, thus is reclaimed from the stripper solution. That material is then used by Zaclon to produce zinc ammonium chloride. The steps needed to make the material ready for use as a manufacturing ingredient are reclamation. While the material ultimately is used as a manufacturing ingredient after reclamation, this does not turn it into a product when it is still contaminated and in need of reclamation.

We further note that according to the Ohio Environmental Protection Agency (see Notice of Violation cited below), Zaclon representatives acknowledged during an August 2005 inspection that if virgin materials were used in Zaclon's process, reclamation would not be necessary. This confirms that the material you are shipping is not initially an effective substitute for a commercial product, but rather is a hazardous waste which needs reclamation in order to be used in place of a virgin product.

Thus we reaffirm our conclusion that the material you are shipping is a spent material being reclaimed. We note that our conclusion is consistent with the conclusions reached on this same issue by EPA Region V (see enclosed Second Amended Complaint and Compliance Order - count 2 - filed by that Region against Zaclon) and by the Ohio EPA (see enclosed Notice of Violation dated November 14, 2005 - part 1.c.). We also have consulted with the Massachusetts Department of Environmental Protection which concurs with the positions taken by the two EPA Regions and by the State of Ohio.

As noted in your letter, Zaclon is contesting Region V's enforcement action, and thus an administrative law judge may review and rule on the Region V interpretation. However, we wish to emphasize that the RCRA requirements are not stayed simply because Zaclon is contesting an enforcement action. Rather, unless and until Zaclon prevails in any litigation, our interpretation will stand. We strongly urge you to follow RCRA requirements as interpreted by the relevant

States and the EPA. You may wish to consult with your own legal counsel about this matter.

RCRA requires that your hazardous spent material being reclaimed be handled as a hazardous waste while on site at your generating facility. It further requires that the material be shipped under manifest and only to a facility able to receive manifested hazardous wastes. We urge you to take steps to begin complying with these RCRA requirements as promptly as possible. If Zaclon persists in not taking the steps sought by Region V and Ohio, so as to not be able to legally receive this hazardous waste, you will need to redirect your material to another facility in order to comply with RCRA requirements.

Finally, we wish to clear up some possible confusion about the Massachusetts requirements. In your consultant's initial letter to us, he erroneously stated that if your material is indeed used as a raw material by Zaclon (without reclamation), then no Massachusetts recycling permit is required. Actually, Massachusetts follows the federal requirements by specifying that spent materials being reclaimed must be handled as fully regulated hazardous wastes. However, Massachusetts is more stringent than the federal requirements in specifying that companies that are shipping hazardous secondary materials for reuse without reclamation must file a notification and obtain a Class A recycling permit. Thus, even if Zaclon were to prevail in its litigation, and even if EPA and Ohio then agreed that your material was a material being reused without reclamation and/or a by-product, you would still need to follow the more stringent Massachusetts requirements. For now, however, you should instead follow the full federal and state requirements applicable to fully regulated hazardous spent materials being reclaimed.

Sincerely,



Marv Rosenstein,
Chief, Chemical Management Branch

enclosures

cc: William Sirull, MADEP
James Miller, MADEP
Michael Cunningham, EPA Region V
Thomas Nash, EPA Region V
Karen Nesbit, Ohio EPA
Ernie Waterman, EPA Region 1
Jeff Fowley, EPA Region 1
Sharon Leitch, EPA Region 1