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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

NOV. 18 1980

Julie R. Cooper
Attorney
Mobay Chemical Corporation
Penn Lincoln Parkway West
Pittsburg, Pennsylvania 15205

Dear Ms. Cooper

This is in response to your letter of November 5, 1980, to Ms. Filomena Chau requesting an interpretation of our hazardous waste management regulation.

You indicated that your company hires many independent contractors and they, in turn, often hire subcontractors to perform various services including painting, janitorial services, boiler cleaning and construction. You indicate that these contractors and subcontractors generate wastes and that some of these wastes may be hazardous wastes. You state that you normally require your contractors to remove their wastes from your premises and you indicate that they may or may not require waste removal by their subcontractors. Finally, you say that you would like to continue the practice of having contractors remove their waste but would like to have the option of assuming this responsibility.

By implication, you are asking who is the generator of hazardous waste, your company or your contractors (or his subcontractor) EPA contends that both parties or, as the case may be, all three parties are generators and are jointly and severally liable for complying with the generator standards in Part 262 of our regulations (see 45 Fed. Reg. 331410-33148). We do not object to and, in fact, prefer that only one of these parties, by mutual agreement (e.g., a contract) perform these responsibilities in fact. We will reserve the right, however, to hold both or all three parties liable for these responsibilities in any enforcement actions we might take as a result of a violation of the regulations. This interpretation parallels the interpretation we have taken and discussed in the preamble to a recent amendment to our regulations (see 45 Fed. Reg. 72026-72027, October 30, 1980).

Consequently, either your company, your contractor or his subcontractor can assume responsibility for removing hazardous wastes generated on your premises and further assume the responsibility for complying with Part 262 of our regulation, as your company prefers. But your company, in any case, will have liability for proper performance of these responsibilities.

We will plan to issue this interpretation in a Regulatory Interpretation Memorandum in the near future. Pending such issuance, you can consider this letter to be an official interpretation on this matter.

Sincerely yours

Gary N. Dietrich
Associate Deputy Assistant Administrator
for Solid Waste

bcc: Filomena Chau w/incoming
Mike Barclay w/incoming
Regional A&HM Division Directors w/incoming

Mobay Chemical Corporation

November 5, 1980

Ms. Filomena Chau
Office of Solid Waste (WH 562)
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

Re: Independent Contractor Generators

Dear Ms. Chau:

I have had several conversations with regional and headquarters' staff regarding the regulatory status of independent contractors who generate hazardous waste on sites owned or leased by us. None of these persons has been able to point to specific affirmative regulations that clearly set forth the responsibilities of the owner and the independent contractor under these circumstances.

In the manufacture of chemicals and maintenance and construction of plants, many independent contractors are used. These contractors and their subcontractors may generate hazardous waste in the course of performance of their contracts. Examples of contractors who might generate hazardous waste include consulting engineers, painting contractors, janitorial services, boiler cleaning services, industrial cleaners, construction contractors and common carriers. In many of our contracts we would oblige the contractor to remove waste from our premises. These contractors may or may not contract in the same manner with their subcontractors. We would like to be able to continue

November 5, 1980

Ms. Filomena Chau

the practice of having the contractors remove waste from our premises, but we would also like to have the option of being able to take the waste from them for disposal.

Please advise us of the proper procedures to follow in each instance. If appropriate, we would appreciate issuance of a Regulatory Interpretation Memorandum.

Very truly yours,

Original Document signed

Julie R. Cooper
Attorney

JRC:my