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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

March 12, 1996

Mr. Steven T. Warshaw
President
Olin Microelectronic Materials Division
Olin Corporation
501 Merritt 7, P.O. Box 4500
Norwalk, Connecticut 06856-4500

Dear Mr. Warshaw:

Thank you for your letter of February 21, 1996 regarding states that Olin is proposing to enter into contractual arrangements with certain of its customers who use Olin's specialty chemicals to fabricate computer chips, integrated circuits, and other electrical devices. These contractual relationships would be entered into as a part of Olin's Product Stewardship Program.

Your letter explains that under the contracts, Olin would retain legal ownership of the specialty chemicals supplied to customers; would maintain a physical presence at the customer's site; and would remove, accumulate, and manage any chemicals that exit the customer's process units. Specifically, your letter asserts that Olin would retain ownership of any hazardous wastes that result from the use of its chemicals, and that Olin would assume responsibility for the proper management of these wastes under Subtitle C of the Resource Conservation and Recovery Act (RCRA).

According to your letter, Olin's purpose in writing to EPA is to obtain confirmation that Olin would be considered a generator of the hazardous wastes which result from the joint activities of Olin and its customers, such that Olin's compliance with the hazardous waste generator requirements (codified in Part 262 of 40 CFR) would also fulfill its customers' obligations under these regulations. Olin also seeks confirmation that EPA would, in the event a joint liability results from these relationships,

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look first to Olin for performance of the generator obligations.

I am pleased to provide you with the requested confirmation. First, it is correct that under the facts related in your letter, Olin would clearly be a generator of any hazardous wastes which exit from the process units of your customers. Also under these facts, EPA would look first to Olin for compliance with the generator requirements set forth in Part 262 of 40 CFR. This would be the case regardless of whether Olin or Olin's customer actually operates the process unit. This follows from EPA's "co-generator policy," which was first announced in the October 30, 1980, Federal Register notice which you cite in your letter, and discussed in numerous regulations and interpretive letters since that date.

In the case where Olin operates the process unit, the status of Olin as generator of the waste is straightforward. In this instance, Olin would be the owner of the materials being processed, the operator of the process unit, and the person removing the waste from the process unit. All of these roles are acts which contribute to the production of a hazardous waste, within the meaning of the generator definition at 40 CFR 260.10. Under this scenario, Olin would appear to be the more significant contributor to the generation of the hazardous waste. The customer would still be a jointly liable co-generator, though, because it owns the process unit and the product being fabricated with Olin's chemicals. As explained in the co-generator notice of October 30, 1980, EPA would typically look first to the operator of the process unit (Olin) to fulfill the generator duties. Thus, Olin's compliance with the generator requirements would discharge Olin's' and its customers' obligations under the regulations.

In the second scenario, the facts are altered to the extent that your customer, rather than Olin personnel, would operate the process unit generating the waste. Olin and the customer would again be co-generators, since each is performing acts which produces a hazardous waste. The customer is a generator because it owns the product being fabricated, and because it owns and is operating the process unit. Olin remains a co-generator because of its ownership of the chemical raw materials, and because it would be the person removing the waste from the process unit and subjecting it to RCRA regulation. See 45 FR 72024 at 72026.

Under this second scenario, Olin's contribution to the generation of the waste is not as predominant as in the above first scenario. Further, under the policy discussed above whereby EPA generally looks first to the operator of the process unit for compliance, the customer might appear to be the generator with primary responsibility.

However, as stated in the co-generation notice, this presumption would not apply in the case where there is a mutual agreement among the parties for one of the co-generators to perform the generator duties on behalf of all. EPA encourages such an arrangement, and the contracts between Olin and its customers would clearly fall within this policy. As EPA explained in the October 1980, notice, EPA will look first to the generator designated by a mutual agreement among co-generators. The agreement overrides the policy that looks first to the operator of the process unit, except in those cases where a responsible party is not clearly designated, or where EPA does not know about the agreement. See 45 FR 72024 to 72027. I trust that Olin will retain copies of its contracts to display to RCRA inspectors, and that the contracts will be sufficiently specific in designating Olin as the responsible generator.

I should emphasize, however, that the co-generator policy is a Federal policy, and that since its announcement by EPA in 1980, the RCRA program has been delegated (with few exceptions) to our authorized state programs. So, you should contact the state hazardous waste agency in each state where you propose to implement this arrangement to verify that the state also follows the same or a similar policy with respect to co-generators. Under RCRA, states may generally choose to operate hazardous waste programs that are more stringent than EPA's requirements.

Thank you for bringing Olin's Product Stewardship Program to our attention. I laud you for promoting this excellent example of corporate responsibility, and I wish your company every success in carrying it out.

Sincerely yours,

Michael Shapiro, Director
Office of Solid Waste