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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

OCT 16 1987

Phillip G. Retallick, Director  
Division of Air and Waste Management  
Department of Natural Resources and  
Environmental Control  
State of Delaware  
89 Kings Highway  
P.O. Box 1401  
Dover, Delaware 19903

Dear Mr. Retallick:

This is in response to your October 1, 1987 letter requesting EPA's interpretation of the RCRA Definition of Solid Waste as it applies to Standard Chlorine's proposed thermal oxidizer and hydrodechlorination processes. As you know, a panel of the District of Columbia U.S. Court of Appeals held (in a 2-1 decision) in *American Mining Congress vs EPA*, No. 85-1206 (D.C. Cir.), that EPA had exceeded its statutory authority in certain respects by including within its definition of solid waste certain types of materials not intended by Congress to be "discarded materials" under RCRA Section 1004(27). We are still studying the court's opinion and we plan to issue an interpretation as to how the EPA regulations are affected by the ruling by about mid or late November. We cannot comment on how EPA regulations affecting Standard Chlorine's processes are affected by the court's ruling at this time.

Since Delaware has adopted under State law rules equivalent to EPA's, you have asked for an interpretation as to how Standard Chlorine would be regulated under EPA's January 4, 1985, rules, if the court's opinion did not exist. Based on the materials that you sent to Mike Petruska in August and September, we have reached the following conclusions:

- (1) Standard Chlorine's "polychlor material" is the distillation bottoms from the production of chlorinated benzenes, and therefore, is a by-product that meets the listing description of hazardous waste No. K085. (We do not agree that these bottoms are a co-product, as Standard Chlorine claims.)

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- (2) The Agency considers both the thermal oxidizer and hydrodechlorination processes to be forms of reclamation. These processes are designed to recover materials/products (Muriatic Acid, chlorobenzenes, or benzenes) from a listed by-product; and under Section 261.2(c)(4), this constitutes reclamation.
- (3) Pursuant to Section 261.2(c)(3), listed by-products that are reclaimed are solid wastes.

In summary, our interpretation under the January 4, 1985 rules would be that polychlor material is a solid waste when reclaimed using either the thermal oxidizer or the hydrodechlorination process, and thus is a hazardous waste subject to regulation under Subtitle C of RCRA.

If you have further questions in this area, please feel free to continue to deal with Mike Petruska of my staff, at (202) 382-7729.

Sincerely,

Original Document signed

Marcia E. Williams  
Director  
Office of Solid Waste