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

OFFICE OF
SOLID WASTE AND
EMERGENCY RESPONSE

Mr. Scott L. Macdonald
JL.M Chemicals, Inc.
3350 West 131st Street
Blue Island, Illinois 60406-3354

JUL 13 2005

Dear Mr. Macdonald:

Your letter of May 4, 2005, addressed to President George W. Bush, requests that you be allowed to burn phenol bottoms (K022) from JLM Chemicals, Inc., in federally permitted boilers or kilns.

On June 20, 2005, Mr. Wen C. Huang of our office contacted Mr. Tom Ponder of your organization to clarify your request. Mr. Ponder stated that the "federally permitted boilers or kilns" referred to in your letter are combustion units, such as coal-fired boilers permitted under the air program, but not regulated under the Resource Conservation and Recovery Act (RCRA) permit program.

The U.S. EPA lists the distillation bottom tars from production of phenol/acetone from cumene as hazardous waste K022, because it contains hazardous constituents such as polycyclic aromatic hydrocarbons and chromium. Therefore, you must manage the K022 waste as hazardous waste and ship the waste off-site only to a RCRA-permitted hazardous waste treatment, storage, or disposal facility. Boilers and kilns without an effective RCRA permit would generally be prohibited from accepting your K022 waste. Although K022 waste has a high heating value, due to its hazardous nature, RCRA regulations require that K022 only be burned in a combustion device which is permitted to burn hazardous waste under RCRA (except for certain situations where the waste meets the criteria of a "comparable fuel" under 40 CFR 261.38).

Your letter stated that: "All the existing plants in the United States except JLM Chemicals, Inc. are allowed to burn this waste stream in the plant boilers as fuel." On-site burning of K022 waste is allowed, if a plant uses a RCRA qualified unit (i.e., one that has attained interim status or has a RCRA permit to burn hazardous waste). JLM Chemicals, Inc. is not prohibited from burning the K022 waste in their on-site boiler(s), if JLM Chemicals, Inc. applies for and obtains a RCRA permit.

You indicated that, in 1994, the U.S. EPA forbade JLM Chemicals, Inc. from selling the product as fuel. This statement is not accurate. The U.S. EPA determined, on July 13, 1989, that the waste generated by BTL Specialty Resins Corporation (JLM Chemicals, Inc.) is K022, a RCRA listed hazardous waste. The Illinois Environmental Protection Agency concurred with U.S. EPA's determination in its letters of March 31 and April 26, 1994, to your counsel, Ross & Hardies. The U.S. EPA never forbade JLM Chemicals, Inc. from selling the K022 waste as fuel provided JLM Chemicals, Inc., meets the requirements of 40 CFR Part 262 - Standards Applicable to Generators of Hazardous Waste, including labeling the material as a hazardous waste.

Your January 2, 2003 letter addressed to the Illinois Environmental Protection Agency claims the comparable fuels exemption for an acetone waste stream generated at your facility. In that letter you stated that all the comparable fuel generated at your facility will "be burned in units covered by federally approved state operating permits." You further stated in your letter that "JLM plans to modify [its] Title V permit with the Illinois Environmental Protection Agency so that this fuel can be burned in [the primary heater for the cumene unit] at JLM Chemicals in Blue Island." We understand this situation to be different from that of the K022 waste, because JLM's K022 waste has not to our knowledge met the criteria for an exempted comparable fuel.

For your information, on April 20, 2004, the U.S. EPA proposed national emission standards for hazardous air pollutants (NESHAP) for hazardous waste combustors (Phase I Final Replacement Standards and Phase II Standards) under the Clean Air Act. Hazardous waste burned in boilers and other combustion systems must comply with these standards if the proposed rule becomes final. The new standards, currently scheduled to be finalized before the end of the year, would replace a large portion of the current RCRA combustion technical standards applicable to a boiler that burns hazardous waste.

If you have any questions regarding this letter, please contact Hugh Davis of my staff, at (703) 306-0206.

Sincerely,

RW Dellinger

for Matt Hale, Director
Office of Solid Waste

cc: Harriet Croke (Region 5)
Hugh Davis (OSW)
Wen Huang (Region 5)