

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

OFFICE OF  
SOLID WASTE AND EMERGENCY  
RESPONSE

Robert R. Kuehn, Director  
Tulane Environmental Law Clinic  
6329 Freret Street  
New Orleans, La. 70118-5670

Dear Mr. Kuehn:

This is in response to your May 29, 1997 and subsequent letter of June 16, 1997 to Laurie King, Chief, Arkansas/Louisiana Section, RCRA Permits Section in EPA Region 6 and myself regarding concerns you had over independent third parties conducting audits of BIF trial burns in Region 6. In your letter, you also requested copies of all documents reflecting actions taken by EPA to review and confirm the independence of those persons conducting the audit at each facility's trial burn.

Our office contacted the RCRA Permits Section in Region 6 regarding your concerns. We understand that Region 6 has sent you two letters (see enclosures) addressing your concerns. In your first incoming letter of May 29, 1997, you listed two scenarios where you felt the role of the QA manager could become biased. To restate what was mentioned in Region 6's July 3, 1997 letter to you, the national guidance does allow for the QA manager to be a part of the corporation; however, it states that the QA manager not be directly responsible nor accountable to those who are directly responsible for the data collection. In neither scenario stated in your letter was the QA manager directly responsible or accountable to the person responsible for the data collection. Therefore we would allow audits to be conducted under both scenarios.

Your June 16th letter referred to an item in EPA's Generic Trial Burn Plan. To clarify the intent of this document, it was developed by the Regions to serve only as an example to guide applicants and permit writers in structuring and reviewing trial burns. It is not a regulation and thus is not considered a "requirement". Our primary guidance document on QA/QC for hazardous waste combustor trial burns is the Handbook on QA/QC Procedures for Hazardous Waste Incineration. Although it is also not a regulation, we do strongly encourage facilities to follow the procedures stated in the guidance document. Please be aware that EPA Region 6 and the Louisiana Department of Environmental Quality are present at and oversee most of the BIF trial burns to ensure that accurate and representative trial burns are conducted. In addition, Region 6 conducts a thorough review of all trial burn reports as well as audit reports submitted

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by the facilities to assure that the appropriate tests and procedures are followed.

If you have any further questions or concerns, please contact Ms. Laurie King or Reuben Casso in the Region 6 RCRA Permits Section and they will take the appropriate action to address them. Ms. King or Mr. Casso can also be contacted for any assistance you may need regarding issue's or facilities in Region 6.

Thank you for raising your concerns to us.

Sincerely,

Stephen Heare, Acting Director  
Permits & State Programs Division  
Office of Solid Waste

Enclosures

**Tulane Environmental Law Clinic**

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June 16, 1997

Laurie F. King, Chief  
Arkansas/ Louisiana RCRA Permits Section (6PD-A)  
U.S. Environmental Protection Agency  
1445 Ross Avenue  
Dallas, TX 75202-2733

Mathew Hale, Jr., Director  
RCRA Permits and State Programs Division (5303W)  
Office of Solid Waste and Emergency Response  
U.S. Environmental Protection Agency  
1235 Jefferson Davis Highway  
Arlington, VA 22202

Re: Second Inquiry Regarding Oversight of BIF Trial Burns

Dear Ms. King and Mr. Hale:

On behalf of the Louisiana Environmental Action Network ("LEAN"), we wrote on May 29, 1997, to express our concern over a possible lack of independent third party preparation of boiler and industrial furnace ("BIF") trial burns in Louisiana. In the letter, we questioned whether Region 6 was taking sufficient steps to ensure that companies in Louisiana who have submitted BIF permit applications have indeed hired independent third parties to conduct an audit of the trial burns required to obtain a Part B RCRA permit.

On June 10th, we received a letter from Ms. King responding to our FOIA request for documents reflecting the actions taken by EPA to confirm the independence of the persons conducting the audits. Included were documents relating to Union Carbide Corp. and DuPont Dow Elastomers Pontchartrain facilities. We also received in the mail on June 12th a copy of an EPA public notice announcing that EPA Region 6 had approved trial burn plans for Georgia Gulf Corp. and Dow Chemical Co. The June 10th letter and EPA public notice raise a number of concerns that have still not been addressed by Region 6:

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1. We have not received any correspondence from EPA indicating that the agency made any efforts to ensure that an independent third party would be performing an audit of the following BIF trial burns: Exxon Chemical Company (Baton Rouge); Georgia Gulf Corp. (Plaquemine); Westvaco Corp. (DeRidder), and Dow Chemical Co. (Plaquemine). We continue to be very concerned about the Region's failure to enforce the requirement for a qualified independent third party audit of the trial burns.

2. The documents provided in response to our FOIA request do not show any attempt by Region 6 to identify the independent third party performing the audits of the Georgia Gulf and Dow Chemical Co. trial burns and no attempt by the Region to ensure that any person performing the audit is truly independent of the two companies. It is troubling that the Region would allow such an important test without ensuring an independent audit.

3. Regarding the DuPont Dow Elastomers trial burn documents provided to us, we are shocked that in the April 9, 1997 "Record of Communication" EPA suggested that DuPont use one of its own employees to audit the trial burn. We fail to see how such a person could be considered independent. Also, we do not believe that it is merely a "recommendation" of EPA that an independent third party audit the trial burn. EPA's Generic Trial Plan (Sept. 30, 1996) requires-that the facility "shall" contract with an independent third party to prepare a QAPP and audit the trial burn. EPA should have required that DuPont hire an independent third party to audit the trial burn, and that person should not be employed by METCO or DuPont. We are troubled that on April 11, 1997, Region 6 approved DuPont's trial burn plan even though it did not contain such an independent audit and we seek assurances that no further plans will be approved in Louisiana without proof that the company has contracted for the independent audit.

4. Similarly with the documents provided that relate to Union Carbide, rather than "recommending", EPA should require that Union Carbide hire a qualified independent third party to audit the trial burn.

5. In its June 10, 1997 letter, Region 6 states that the specific non-FOIA inquiries in our May 29, 1997, letter would be addressed in a separate response. To date, we have still not received such a response. Once again, we hope that EPA will not approve any further test burn plans until you have responded to the May 29th letter. and until you have required independent audits for all of the BIF trial burns in Louisiana.

Please contact us if you have any questions about this letter.

Sincerely,

Robert R. Kuehn, Director

cc: Marylee Orr, Executive Director

Nigel Maynard, Inside EPA, PO Box 7167, Ben Franklin Station, Washington,  
DC 20044

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