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# MG INDUSTRIES



Office of the  
General Counsel

VIA FEDERAL EXPRESS

Direct Fax No.  
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November 12, 1992

Mr. Allyn M. Davis  
Director, Hazardous Waste Management Division (6H)  
U.S. Environmental Protection Agency - Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202-2733

RECEIVED  
EPA REGION 6  
NOV 15 11 09 AM '92  
HAZARDOUS WASTE DIVISION

Re: Compressed Gas Cylinders

Dear Mr. Davis:

By way of a letter, dated October 28, 1992, (a copy of which is attached for your convenience), I asked you to confirm a position which you took approximately one and one half years ago regarding a program proposed by MG Industries involving compressed gas cylinders. Shortly after sending the letter, I spoke with Joe Schultzes of your staff to ascertain the status of my request. At that time, Mr. Schultzes indicated that there was no change in Region VI's position and that a letter to that extent would be forwarded to me shortly. On November 10, 1992, having not yet received the anticipated letter, I again spoke with Joe Schultzes regarding its status. At that time, Mr. Schultzes indicated that he had received a letter from Chemical Waste Management, Inc. ("Chem Waste") (copy attached) regarding the same subject and, further, that Region VI's position had now changed. Specifically, Joe told me that any cylinders purchased by MG as part of our program, that contained RCRA listed gases which needed to be processed through MG's scrubber, would be covered by RCRA regulations pertaining to the treatment and disposal of hazardous waste.

After reviewing the Chem Waste letter, I can find no additional facts pertinent to MG's program which should cause a change in Region VI's position. In fact, the letter states that Mr. Schultzes was contacted prior to the letter being sent and he indicated that Region VI's interpretation of MG's proposed program had not changed. The only difference between the proposal as submitted a year and a half ago and our current plan is that, pursuant to a contract for services between Los Alamos National Laboratories ("LANL") and Chem Waste, the Los Alamos cylinders would first be sold to Chem Waste, and then purchased by MG Industries from Chem Waste.



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MG Industries position is that our proposed program is not regulated under RCRA regulations for the following reasons:

1. Organizations, such as LANL, often purchase their own compressed gas cylinders for economic reasons in that, depending on the quantity of gas utilized, it can be less expensive to purchase a cylinder than to lease one from a gas supplier. Typically, customer owned cylinders are swapped between the gas customer and the gas supplier. The gas supplier delivers a full cylinder and takes an empty back to the plant. Therefore, at any time, a gas customer may "own" the cylinders sitting at his facility, however those cylinders may not be the exact cylinders which the gas customer originally purchased.

The daily processing of cylinders by the compressed gas industry, which, as indicated above, includes cylinders not owned by the gas supplier, is not regulated under RCRA as the EPA has indicated it does not construe the regulations as applying to that practice. This is so despite the fact that some of the gases processed are listed in the RCRA regulations.

2. Due to various reasons, gas customers that own their own cylinders often reach a point where continued ownership of the cylinders is not justified by good business practices. For example, compressed gas cylinders must be periodically pressure tested to ensure their integrity. Compressed gas manufacturers are typically equipped to perform such testing themselves, whereas the gas customer would need to ship the cylinder to a testing location and pay for such a test. As a further example, changing process requirements at the gas customer's facility may eliminate the need for a particular gas thereby eliminating the need for cylinders which are filled with that gas. In such instances, the gas customer has two options: 1. Either dispose of the cylinder, or 2. Redeploy (sell) an asset (the cylinder). MG's program seeks to take advantage of option number 2.

Under MG's program, there is no intent on the part of the cylinder owners to discard their cylinders and, therefore, the cylinders themselves do not fall under the definition of a solid waste. Subsequently, as they are not a solid waste, the cylinders don't fall within the definition of a hazardous waste. Those cylinders are valuable assets which MG Industries is prepared to purchase, just as MG and other gas manufacturers often purchase the assets (including cylinders) of each other. If cylinders acquired as a result of the acquisition of one gas supplier's assets by another are not covered by

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RCRA regulations, I fail to see why the purchase of assets from a non-gas manufacturer should trigger RCRA concerns.

The above represents no change from our proposal of a year and a half ago. I strongly believe that MG's program does not fall within the RCRA regulations. To the extent, however, that the facts in this matter fall into a grey area, thus excluding the possibility of a yes or no answer, I would ask that you consider the following. My impression is that the United States government is currently attempting to limit and ease the regulatory burden on this country's businesses in an attempt to raise their productivity and thereby bring the economy out of its current doldrums. Certainly, the imposition of RCRA regulations on MG's program is simply because the supplier of the cylinders is a gas customer as opposed to a gas manufacturer is representative of the type of unnecessary burden that the government is trying to eliminate. Further, the imposition of the burden of complying with RCRA regulations would make MG's program not economically viable. In addition, MG Industries has no desire to become a hazardous waste treater/disposer. Therefore, without the program as proposed, organizations such as LANL will most likely have no other alternative than to unnecessarily dispose of perfectly good cylinders via landfills, thereby contributing to the mounting waste problem faced by our country.

I hereby ask that you reconsider your position. Representatives of MG Industries are prepared to come to Dallas to discuss this matter and provide whatever additional information you made need. I will contact you after your receipt of this letter to arrange a meeting.

Thank you for your attention to this matter.

Sincerely,



Ralph R. DeFeo  
Corporate Counsel

Enclosures  
RDF/rdt

cc: Michael Rohde, Vice-President/General Manager  
MG Packaged Gases Division