



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

NOV 12 1998

OFFICE OF
PREVENTION, PESTICIDES
AND TOXIC SUBSTANCES

Mr. Dana S. Myers
President, SD Myers
180 South Avenue
Tallmadge, OH 44278

Dear Mr. Myers:

I am responding to your letter to Dr. John Smith dated November 2, 1998. You asked whether materials being loaded into a scrap metal recovery oven have to be at room temperature or the oven has to be at room temperature. The text at §761.72(a)(2) states: "The equipment with all free-flowing liquid removed shall first be placed in the primary chamber at room temperature." This text means that the chamber must be at room temperature.

The equipment also must be at room temperature, since there is no provision in the PCB disposal regulations authorizing the heating of this waste outside a combustion chamber. It might be possible to "pre-heat" this waste outside of a chamber under an approval under §§761.60(e), 761.62(c), 761.70, or 761.79(h), but to my knowledge, no approvals containing a procedure for pre-heating this waste outside a combustion chamber have been issued by EPA.

The PCB disposal amendments have generated many inquiries from the regulated community. We are giving each inquiry the careful consideration it deserves in as expedited a manner as possible.

Sincerely,

A handwritten signature in black ink, appearing to read "John W. Melone", written over a large, stylized flourish.

John W. Melone, Director
National Program Chemicals Division

ACT 612

SDMYERS

November 2, 1998

Dr. John Smith
USEPA

FAX: 202 260 1724

Dear Dr. Smith,

A couple weeks ago we talked with Heavy Duty about the furnace issue. They said that the Agency position was that for 50 to 499 ppm PCB transformers, the furnace temperature (as opposed to the material being loaded into the furnace) had to be at room temperature when material was being loaded into the furnace. I called you up and you said that that position was correct.

You said that perhaps a company could do wipe testing above the furnace opening and demonstrate no stray dioxins or furans ... and get an exemption from the Region.

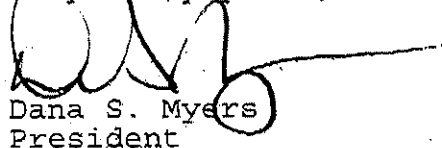
A week or so after talking to you, a sales manager was talking to another company (a competitor of ours) trying to get their 50 to 499 business. This company said that they had talked to you and that you had said that it was up to them to interpret the regulations ... and he interpreted the regulations to mean that the material being loaded had to be at room temperature (not the furnace).

When we applied to open the border, the EPA opened it with enforcement discretion for us and for everyone else because the EPA was interested in "equity." If the EPA means for the furnace to be at room temperature, then it should not be difficult or time-consuming for the EPA to send out a note stating that this is how the regulation will be interpreted and enforced. If the EPA does not mean it, then the EPA should not be telling SDMI and Heavy Duty one thing while it is telling another company in the same business the exact opposite.

I know that the EPA has big issues to decide because of the mega-rule. I submit that because the EPA has specifically rejected Heavy-Duty's request for a stay, that it has already looked at this very issue and has determined what the EPA policy will be. Since the issue has been decided, then it should be very easy to send out a two or three sentence letter stating the EPA's position. If the issue has not been decided, then the EPA should let everyone know that we can all do what we want to do until the EPA decides how it wants to interpret the regulations. Anything else would be unequitable.

I look forward to hearing from you yet this week on this issue.

Very truly yours,



Dana S. Myers
President

