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RETURN RECEIPT REQUESTED

Mr. Sidney A. Lewis, President
International Solvent Recovery FLD 980 729 610
6740 Crosswinds Drive North
Suite D
St. Petersburg, Florida 33710

Dear Mr. Lewis:

We have received your letter dated July 1, 1982, requesting a determination that your proposed solvent recovery plant in Bartow, Florida, has interia status or, in the alternative, requesting the exercise of enforcement discretion to allow construction of such facility without a RCRA permit. For the following reasons, it is our opinion that your proposed Bartow facility does not have interia status and, in addition, we decline to allow construction of this facility without a RCRA permit as a matter of enforcement discretion.

Section 3005(a) of the Solid Waste Disposal Act (commonly referred to as the Resource Conservation and Recovery Act or "RCRA"), 42 U.S.C. 36901, et seq., as clarified by 40 C.F.R. 35122.23 and 122.22(a) and (c), provides that any person who owns or operates a hazardous waste management facility in existence on November 19, 1980, has interia status if that person: (1) has complied with the requirements of Section 3010(a) of RCRA pertaining to notification of hazardous waste activity; and (2) has submitted Part A of the permit application to the Regional Administrator no later than (a) six months after the date of publication of regulations which first requires that facility to comply with the standards of 40 C.F.R. Part 265 or 266, or (b) thirty days after the date the facility first becomes subject to the standards of 40 C.F.R. Parts 265 or 266, whichever first occurs. In the case of International Solvent Recovery's proposed Bartow facility, the date by which Part A of the permit application was to have been submitted was November 19, 1980 and the date by which the notification was to have been submitted was August 18, 1980. Our records indicate that both the notification of hazardous waste activity and Part A of the permit application were delivered to this office on June 29, 1982, over nineteen months after the November 19, 1980 deadline and twenty-two months after the August 18, 1980 deadline.

In addition, we have determined that your proposed Bartow facility was not "in existence" on November 19, 1980. An "existing hazardous waste management facility", for purposes of achieving interia status, is defined at 40 C.F.R. 35260.10 and 122.3 as follows:

... a facility which was in operation or for which construction commenced on or before November 19, 1980. A facility has commenced construction if:

(a) The owner or operator has obtained the Federal, State and Local approvals or permits necessary to begin physical construction, and either:

(b)(1) A continuous on-site, physical construction program has begun; or

(2) The owner or operator has entered into contractual obligations--which cannot be cancelled or modified without substantial loss--for physical construction of the facility to be completed within a reasonable time. (emphasis supplied)

In this case, there is no question that your proposed facility was neither in operation nor under a program of continuous, on-site, physical construction on or before November 19, 1980. In addition, it is also clear that, as of that date, International Solvent Recovery had not entered into contractual obligations for physical construction, purchase or operation of the proposed Bartow facility on or before November 19, 1980. The expenditures made with respect to the formerly proposed St. Petersburg facility cannot be considered for purposes of determining interim status since interim status is by definition specific to a particular site as of the regulatory date, November 19, 1980.

We also decline to allow construction of this proposed facility without a RCRA permit as a matter of enforcement discretion. To do so would circumvent the public participation and preconstruction review requirements now in effect under the hazardous waste management regulations.

We can certainly appreciate the potentially valuable contribution your enterprise could make to the management of hazardous waste in Florida. Therefore, we will do everything we can to expedite the process of permitting your storage facility under RCRA. To initiate this process, of course, you will need to submit Part B of your permit application as soon as possible.

If you have any questions regarding this process, please contact Doug McCurry or Heather Ford of our Waste Engineering Section at 404/881-3433.

Sincerely yours,

Charles R. Jeter

Charles R. Jeter
Regional Administrator

cc: Robert McVety

bc: Jim Scarbrough
Doug McCurry
Heather Ford

K. Casto J. Boilen M. Newton H. Ford D. McCurry J. Scarbrough

T. Devine C. Jeter

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