



Water Division

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Pacific Southwest Region

75 Hawthorne Street

San Francisco, California 94105-3901

Mail Code: WTR-7

May 11, 1993

Mr. Vincent J. Varsh
Enforcement Division Manager
Bureau of Sanitation
Department of Public Works
City of Los Angeles
4590 Colorado Boulevard
Los Angeles, California 90039

Dear Mr. Varsh:

This is to confirm your April 1, 1993, telephone conversation with Keith Silva of my staff in which he explained our view that Ambitech Incorporated is subject to the new source metal finishing requirements under 40 CFR 433.17. Our position is based upon the information contained in the November 23, 1992, petition which Ambitech submitted to the City of Los Angeles.

On July 10, 1984 (49 FR 28059), the Environmental Protection Agency (EPA) promulgated the following definition of a new source under 40 CFR 403.3(k):

The term "New source" means any building, structure, facility, or installation from which there is or may be a Discharge of pollutants, the construction of which commenced after the publication of proposed Pretreatment Standards under section 307(c) of the Act which will be applicable to such source if such Standards are thereafter promulgated in accordance with that section.

On August 31, 1982 (47 FR 38478), EPA proposed pretreatment standards for new sources under 40 CFR Part 433 that cover metal finishing operations including printed circuit board manufacturing. EPA subsequently promulgated these standards on July 15, 1983 (48 FR 32487). The construction of Ambitech's new plating lines and the discharge of pollutants from those operations occurred after the proposal date. Consequently, these production operations are regulated as a new source under the categorical pretreatment standards at 40 CFR Part 433.

The Clean Water Act imposes more stringent requirements on new sources based on the concept that new facilities have the opportunity to install the best and most efficient production processes and wastewater treatment technologies. Ambitech constructed the new plating lines using a mixture of new components and old components that had been parts of plating lines in the old wet processing area. In its appeal, Ambitech explains that in 1988 it:

...retained JRJ Environmental to begin generating the engineering drawings, permit applications and other engineering services related to facilities preparation.

The design and construction of the new plating lines provided Ambitech with an opportunity to also design and install enhanced production equipment that would minimize the generation of pollutants.

Ambitech asserts that it was unable to evaluate whether its actions created a new source under 40 CFR 403.3(k) until EPA promulgated the criteria published in the Federal Register on October 17, 1988 (53 FR 40610). We disagree. The regulations promulgated on July 10, 1984, provided an adequate basis for Ambitech to determine that construction of the new plating lines would constitute a new source under the Act.

Although we need not apply the criteria published on October 17, 1988, to determine that Ambitech's new plating lines are a new source, the criteria support that conclusion. Under the October 17, 1988, regulations, EPA provided criteria for determining whether a new source is created when there is new construction at the source, but less than total replacement of the facility. In these cases, the new source classification decision should be based on the degree to which the constructed facility functions independently of the existing source. EPA has established two factors that should be considered in making the determination of whether construction at an existing facility results in processes that are substantially independent and therefore qualify as a new source.

The first factor is the degree of integration of a new process with existing processes. Under this factor, if the new facility is fully integrated into the overall existing plan, the facility will not be a new source. Ambitech's new plating lines are not integrated with the existing plating lines because those lines were removed. Further, Ambitech's ability to construct new plating operations without making major changes to other process operations at the source demonstrates that the plating lines are not fully integrated with the other operations at the Company. In the preamble to the October 17, 1988, regulations (53 FR 40601), EPA provides an example of how this first factor should be applied:

For example, a plant may decide to improve the quality of a product by installing a new purification step into its process, such as a new filter or distillation column. Such a minor change would be integral to existing operations and would not require the facility to be a new source. However, on the other extreme, if the only connection between the new and old facility is that they are supplied utilities such as steam, electricity, or cooling water from the same source or that their wastewater effluents are treated in the same [onsite] treatment plant, then the new facility will be a new source.

Ambitech's situation is closer to the latter example because Ambitech designed and constructed new plating lines. The new lines are not integrated with other operations in any relevant manner.

It is not necessary to apply the second factor because we have found Ambitech to be a new source under the first factor. EPA intended the second factor to address whether a new source is created when a discharger makes changes in its products or production rates. This factor is not applicable because Ambitech asserts that its production from the old and new plating lines are nearly the same.

The preamble to the October 17, 1988, regulations contains an example that is helpful in addressing Ambitech's case. On page 40602 EPA explains:

Finally, one local Control Authority requested a clarification of the status (new source or existing source) of a facility that moves existing equipment into a new building or into an existing building that did not previously have an industrial discharge to the sewer. Under today's rule, discharges from such facilities would be new sources if the other requirements regarding construction of the source after proposal of new source standards were met.

The movement of existing equipment in this example creates a new source because the construction and reassembly of the existing production equipment into the new or existing building provides an opportunity to design and install the best and most efficient production processes and wastewater treatment technologies. Ambitech's design and construction of the new plating lines at a new location in Ambitech's facility provided it with the same opportunity to install enhanced production equipment that would minimize the generation of pollutants. Ambitech's use of new tanks and other components adds further weight to its classification as a new source.

Ambitech has had substantial guidance available to it to determine whether its process changes would create a new source. When EPA promulgated the definition of new source at 40 CFR 403.3(k) on July 10, 1984 (49 FR 28059), the Agency explained in the preamble that:

EPA plans to conduct a rulemaking in the future to provide criteria for determining when modification of an existing source would be considered construction of a new source for purposes of the General Pretreatment Regulations. EPA is finalizing such criteria in the NPDES permit regulations as applied to direct dischargers (40 CFR 122.29). It is, however, a separate issue from the issue resolved today and will be addressed in a separate rulemaking.

EPA proposed the criteria for determining when modification of an existing source would be considered construction of a new source under the NPDES permit regulations on September 9, 1980 (45 FR 59344). These requirements were promulgated on September 26, 1984 (49 FR 37998). In addition, EPA proposed the requirements for new sources under the pretreatment program on June 12, 1986 (51 FR 21477). EPA subsequently promulgated these requirements on

October 17, 1988 (53 FR 40610). Taken together, we believe that these publications provided Ambitech with substantial notice of the Agency's direction regarding the new source definition, and ample opportunity to recognize that its construction would create a new source.

Thank you for the opportunity to comment on this matter. If you have any questions, please call me at (415) 744-1910 or Keith Silva at (415) 744-1907.

Sincerely,

Original Signed By:

Robert G. Wills, Chief
Pretreatment Program and
Compliance Section