UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
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CHICAGO, IL 60604-3590

DEC 16 2009

REPLY TO THE ATTENTION OF:

AE-17J

Michael F. Baker
The Minnesota Chemical Company
2285 Hampden Avenue
St. Paul, Minnesota 55114-1294

RE: Applicability Determination for 40 C.F.R. Part 63 Subpart M, National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities – applicability of secondary carbon adsorption requirements for resold equipment

Dear Mr. Baker,

The U.S. Environmental Protection Agency (EPA) has reviewed your letter dated April 28, 2009. In your letter, you ask for guidance from EPA concerning the applicability of control requirements for dry cleaning equipment under 40 C.F.R. Part 63 Subpart M – National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities (Dry Cleaner NESHAP). Specifically, you ask whether dry cleaning equipment that was initially installed prior to December 21, 2005, but was removed from its original location, sold to a new owner, and relocated to a new location subsequent to December 21, 2005, would be subject to the area source, non-residential carbon adsorption requirements at 40 C.F.R. § 63.322(o)(2). In summary, we would consider reselling *and* relocating dry cleaning equipment to constitute installation of a dry cleaning system. Therefore dry cleaning equipment that is resold *and* relocated would be subject to the secondary carbon adsorption requirements at 40 C.F.R. § 63.322(o)(2).

However, we maintain our existing position that mere relocation of dry cleaning equipment *by its owner* would not constitute "construction" as that term is defined 40 C.F.R. § 63.321 of the Dry Cleaner NESHAP. This view was discussed in a March 5, 1994, memorandum by John B. Rasnic, Director, Stationary Source Compliance Division, OAQPS to William A. Spratlin, Director, Air and Toxics Division, Region 8 (Rasnic Memo) and reiterated in a December 14, 2006, letter from David B. Conroy, Chief, Air Program Branch, EPA Region 1 to Steven Burke, Senior Environmental Engineer, United States Surgical (Conroy Memo). The Conroy Memo also addressed whether mere relocation, without altering the machine or replacing its washer or dryer or reclaimer or any other components that exceed 50% of the fixed capital cost of a new machine, would constitute "reconstruction.".

The Dry Cleaner NESHAP was originally promulgated on September 22, 1993. The original rule required that all dry cleaning equipment installed after September 22, 1993, be equipped with a with a refrigerated condenser. Since the time of original

promulgation, there have been numerous revisions to the rule. The most relevant revisions were promulgated on July 27, 2006, and included a requirement that all dry cleaning equipment "installed" after December 21, 2005, be equipped with a refrigerated condenser *and* a non-vented carbon adsorption system. This requirement is located at 40 C.F.R. § 63.322(o)(2). The 2006 rule left unchanged the definitions of "construction" and "reconstruction" in 40 C.F.R. § 63.321.

In your April 28, 2009, letter, you state that you are in the business of selling and repairing dry cleaning equipment. You ask, as a general matter, whether equipment originally installed prior to December 21, 2005, that has been removed from its place of original installation must comply with the carbon adsorption requirements of 40 C.F.R. § 63.322(o)(2) if it is resold and reinstalled in a new location after December 21, 2005. (You do not mention whether such machines would have been altered or modified before being re-installed, or whether their washer or dryer or other components would have been replaced.) After reviewing your request, we would consider that dry cleaning equipment that has been removed from its place of original installation would need to comply with the carbon adsorption requirements of 40 C.F.R. § 63.322(o)(2) upon reinstallation in a new location if it is sold to a new owner/operator. This is supported by the following points:

1. The term "construction" is defined under the Dry Cleaner NESHAP as "fabrication (onsite), erection, or installation of a dry cleaning system subject to [the Dry Cleaner NESHAP]." At the outset, this language suggests that *any* installation of dry cleaning equipment constitutes construction regardless of whether that equipment was previously installed elsewhere, unless there is some reason that a particular situation justifies an alternative reading.

2. The term "reconstruction" is defined as "replacement of a washer, dryer, or reclaimer; or replacement of any components of a dry cleaning system to such an extent that the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable new source." Similarly, this language suggests that *any* situation in which a major component of a machine is being replaced, reconstruction is occurring, unless otherwise justified.

3. The 1994 Rasnic Memo based its finding that dry cleaning equipment may maintain "existing" status when that equipment is *relocated by its owner* on the following rationale:

   > "The economic decisions made in connection with the promulgation of the [Dry Cleaner NESHAP] did not provide for costs as high as those that would result from including relocated facilities within the definition of 'new' facilities subject to the regulation."

   This rationale applied to the situation addressed in the Conroy Memo, where the owner was re-installing an existing operating machine in its original location

without having altered it or replaced any of its components. But it would not apply in the contexts of potential *purchasers* of previously installed dry cleaning machines that are not currently in operation and would be either: a) installed in a location that would contain dry cleaning equipment for the first time, or b) replacing dry cleaning equipment in a location with existing equipment. Both of those scenarios are essentially identical to situations in which a would-be operator is opening a new dry cleaning facility or a current operator is obtaining equipment he or she is not currently operating to replace equipment that has met the end of its useful life. A review of preamble information regarding the Dry Cleaner NESHAP shows that substantial economic analyses regarding the impacts of the added costs associated with pollution control technology to purchased equipment were conducted prior to the proposal and the promulgation of the Dry Cleaner NESHAP and its revisions (See 56 FR 64832, December 8, 1991; 58 FR 49354, September 22, 1993; 70 FR 75884, December 21, 2005; and 71 FR 42724, July 27, 2006). Allowing resold and relocated equipment to be installed by new purchasers could create an incentive to avoid the very compliance costs and emissions reductions that EPA considered in its rulemakings and upon which the promulgated standards relied.

In summary, we would consider that dry cleaning equipment that is resold and relocated to be subject to the control requirements of 40 C.F.R. 63.322(o)(2). Regarding relocated equipment that does not change ownership, we refer you to the findings of the 1994 Rasnic Memo and the 2006 Conroy Memo. Because this letter discusses new guidance, we have coordinated this response with EPA's Office of Air Quality Planning and Standards, EPA's Office of General Counsel, and EPA's Office of Enforcement and Compliance Assurance. If you have any questions on this, please contact Nathan A. Frank, P.E. of my staff at (312) 886-3850.

Sincerely,

William MacDowell

for George T. Czerniak Jr., Chief
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division

cc: Nathan Frank, Region 5
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