



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Pacific Southwest Region
75 Hawthorne Street
San Francisco, California 94105-3901

Office of the
Regional Administrator

May 25, 2001

Mr. Lawrence J. Straw, Jr.
Straw & Gough
12304 Santa Monica Boulevard, Suite 300
Los Angeles, California 90025

Dear Mr. Straw:

This is in response to your March 22, 2001, letter to Administrator Whitman in which you asked whether circumstances at Stabile Plating Company, Inc. in Covina, California cause this discharger to be subject to the new source metal finishing requirements under 40 CFR 433.17. Administrator Whitman asked me to respond to your inquiry.

In your letter, you explain the relevant circumstances at Stabile with the following description:

Stabile Plating has been operating at its current location since 1950. In 1993, an arson fire occurred, damaging one wall and a portion of the roof at its facility. The process equipment within the facility was undamaged by the fire. Because the site could not be adequately secured with perimeter fencing while the damage to the wall and roof was repaired, *some* (emphasis added) process equipment was moved and stored off-site until the repairs were complete and the building was secure. At that time, (with the concurrence of the L.A. County Sanitation Districts) the same equipment which had been moved was reinstalled at the identical locations from which it had been moved. This same process equipment was then returned to service; the facility had the same capacity it had prior to the fire. Stabile operated under the same conditions of the same discharge permit as it had operated under prior to the fire.

We note that this description contains an important difference from the description in your November 1, 1999, letter to the County Sanitation Districts of Los Angeles County which served as the basis for our October 18, 2000, letter. Your November 1, 1999, letter indicated that all of Stabile's process equipment was removed from the damaged facility and later installed. Based on this information, our October 18, 2000, letter found that Stabile constructed new plating lines under 40 CFR 403.3(k)(1)(ii). This section of the regulations addresses the total replacement of process equipment. Your current description, however, indicates that *some*, or a portion, of the process equipment was removed and later installed. The distinction is important because it affects the application of the new source regulations. The following discussion is based on your most recent description of Stabile's circumstances.

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. On October 17, 1988 (53 FR 40610), the U.S. Environmental Protection Agency (EPA) promulgated the definition of a new source under 40 CFR 403.3(k). The relevant provisions of this rule state:

(k)(1) 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, *provided that*:

(i) The building, structure, facility or installation is constructed at a site at which no other source is located; or

(ii) The building, structure, facility or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

(iii) The production or wastewater generating processes of the building, structure, facility or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source should be considered.

(2) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility or installation meeting the criteria of paragraphs (k)(1)(ii), or (k)(1)(iii) of this section but otherwise alters, replaces, or adds to existing process or production equipment.

In your March 22, 2001 letter, you explain that "... some process equipment was moved and stored off-site ..." Under this description, it is unclear how much of Stabile's process equipment was removed from the facility and later installed. The following discussion addresses the removal and installation of one plating line to demonstrate the application of the new source requirements under 40 CFR 403.3(k).

Under 40 CFR 403.3(k)(1)(iii), EPA provides 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 preamble to the October 17, 1988, regulations (53 FR 40601) explains the basis of the substantial independence test as follows:

(T)he substantial independence test was aimed as ascertaining whether an existing source which undertakes major construction that legitimately provides it with the opportunity to install the best and most efficient production process and wastewater treatment technologies should be required to meet new source performance standards at that facility.

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. A plating line that has been removed from the facility and later installed is not integrated with any existing plating lines. 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.

Installing a plating line using process equipment that was previously removed from the facility is closer to the latter example and results in a new source.

It is not necessary to apply the second factor because the installation of a plating line using process equipment that was previously removed from the facility is 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 to Stabile because you have explained that the Company has not changed its production from the old and new process lines.

The preamble to the October 17, 1988, regulations contains another example that is helpful in addressing Stabile'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. Designing and constructing a post-fire plating line using pre-fire production equipment provides a company with the same opportunity to install enhanced production equipment that would minimize the generation of pollutants.

On August 31, 1982 (47 FR 38478), EPA proposed pretreatment standards for new sources under 40 CFR Part 433 that cover metal finishing operations. EPA subsequently promulgated these standards on July 15, 1983 (48 FR 32487). The construction of a new plating line and the discharge of pollutants from that operation that occurs after the proposal date is regulated as a new source under the categorical pretreatment standards at 40 CFR Part 433.17.

In its October 4, 1999 letter to Stabile, the County Sanitation Districts of Los Angeles County requested information regarding the removal and installation of process equipment at Stabile's facility. The Districts requested the following information:

The EPA has indicated to the Districts in other situations where fires have occurred at metal finishing facilities that the rebuilt operations are to be considered new sources. In situations where some of the existing operations were not affected by the fire and did not need to be rebuilt, the Combined Wastestream Formula is used to calculate effluent standards combining the existing source and new source limitations. If Stabile Plating believes this approach may be appropriate for its situation, please submit documentation to the Districts within 45 days which indicates which tanks were removed from their original location in the building following the fire, which tanks were never moved from or relocated in the building, which removed or relocated tanks were moved back into the building and their present location. A detailed facility layout drawing correlated with this information must be submitted to the Districts.

If indeed all of the tanks were removed from the facility following the fire, then it is likely the entire facility will be subject to New Source Metal Finishing limitations. ...

In your November 1, 1999, letter to the Districts, you replied to the Districts' request for information by stating:

Neither the facility nor any portion of the facility constitutes a new source. Accordingly, we ask that you reconsider the need for the information requested in your letter. It will be costly and time-consuming to prepare and is of no demonstrable relevance to the repermitting of the Stabile Plating facility.

It is unclear how much of Stabile's process equipment was removed from the facility and later installed and, as discussed in this letter, that information is important in implementing the new source regulations. Consequently, we concur with the Districts' request for such information from Stabile and the Company should provide that information to the Districts within 30 days of receipt of this letter.

Finally, we note that your November 1, 1999, letter briefly discusses changes that occurred at Stabile Plating in 1989 which may have created a new source. The letter, however, does not provide sufficient information to evaluate those changes.

Thank you for your inquiry. If you have any questions regarding this matter, please call Mr. Keith Silva at 415.744.1907. His e-mail address is silva.keith@epa.gov.

Sincerely,

Original Signed By:

Laura Yoshii
Acting Regional Administrator

Cc: Ms. Laura Biedebach
Congressman David Dreier

Ms. Suzanne S. Wienke, P.E.
Supervising Civil Engineer – Permits
County Sanitation Districts of Los Angeles County