UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, Ca. 94105-3901

April 26, 1994

Barry C. Groveman, Esq.
Daniel E. Wax, Esq.
McKenna & Cuneo
444 South Flower Street
Los Angeles, California 90071

Re: Ambitech, Inc.

Dear Mr. Groveman and Mr. Wax:

On January 31, 1994, you met with EPA staff who requested some additional information to determine whether Ambitech should be covered by the new source requirements for metal finishing operations. In particular, EPA staff requested that you submit a chronology of the re-design and construction of Ambitech's plating operations and information on the costs of treatment necessary to comply with the metal finishing standards. We appreciate all of the material you submitted and have thoroughly reviewed this information. Based on our review, EPA has determined that Ambitech is subject to the requirements for new source metal finishing operations, 40 CFR 433.17. This decision confirms our written position of May 11, 1993, and confirms the City of Los Angeles Department of Public Works' determination on this matter. EPA's May 1993 letter is attached hereto, so it is unnecessary to repeat the contents of that letter here. However, this letter will provide you with additional analysis of the criteria applicable to a new source determination and will respond to your correspondence to Allyn Stern, dated July 22, 1993, August 21, 1993, and March 15, 1994.

Ambitech is a printed circuit board manufacturer located in Chatsworth, California. In January 1983, when Ambitech began operations at this site, Ambitech discovered that the facility's wet process area was contaminated and required an environmental cleanup. To conduct the cleanup, Ambitech removed all of its process lines and other equipment from the wet process area. The company hired an engineering firm to design the installation of plating lines and installed plating lines in a new location. The plating lines contained some old components and some new components. In addition, the lines were automated. Ambitech made these changes over a period of time, beginning in June 1986.

As stated in EPA's May 1993 letter, we need not apply the criteria to determine that Ambitech is a new source. The new source standards for metal finishing operations were proposed on

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August 31, 1982. According to Ambitech's own chronology, construction began in June 1986. Thus, Ambitech began construction after the date of the proposed new source standards for metal finishing operations.

However, applying the criteria from the new source definition confirms that Ambitech constructed a new source. 40 CFR Section 403.3(k)(1) defines new source to include sources in which:

> ...
>
> (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 applying the "substantially independent" test to determine whether the construction at the source was a modification to the existing facility, 40 CFR Section 403.3(k)(1)(iii) states that "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."

Ambitech argues that it is inappropriate to apply the "substantially independent" test because the "new" operation is the same as the existing source. However, EPA believes that Ambitech constructed different wastewater generating processes than originally existed at the facility. Thus, it is appropriate to analyze the source by applying the "substanitally independent" test. As to the first factor identified above, "if the new facility is fully integrated into the overall existing plan, the facility will not be a new source." 49 Fed. Reg. 38043 (September 26, 1984). In applying this factor, EPA has addressed the issue of combining new and old process equipment, as Ambitech has done. In the preamble to the September 26, 1984 regulations, EPA considered four comments arguing that use of existing wastewater treatment equipment in a new process or plan should exempt a facility from new source status. In responding to these comments, EPA explicitly disagreed and stated that "the new source requirements were intended to apply where new construction allows flexibility to incorporate new pollution control technology." 49 Fed. Reg. 38043-38044. Further, EPA concluded that "[t]o allow the use of an existing wastewater treatment system, by itself, to preclude the application of new source requirements would frustrate clear statutory intent." 49 Fed. Reg. 38044.

Ambitech's new facility is not fully integrated. EPA disagrees with Ambitech's assertions that its activities were

merely routine maintenance and upgrading of equipment and its assertion that parts were only replaced, but not added. Ambitech completely deconstructed and removed all existing plating lines. The company then hired an engineering firm to design a new series of plating lines which were installed in place of the old ones. New equipment was combined with old equipment to create new process lines. Because the existing equipment was removed, nothing remains to be fully integrated with the second series of plating lines. Although Ambitech's second series of plating lines consisted of both old and new equipment, in light of the preamble discussion above, Ambitech's use of old components with the new components does not exempt the facility from the new source requirements. Moreover, Ambitech had ample opportunity, during the design phase for the second series of plating lines, to incorporate new production technology that would minimize the generation of pollutants. The changes Ambitech made clearly constitute the construction of a new source rather than the mere routine maintenance and upgrade of an existing source.

The second factor considers the extent to which the new facility is engaged in the same general type of activity as the existing source. This factor does not readily apply to Ambitech as Ambitech replaced one source for another.

EPA has considered these factors in applying the "substantialy independent" test and has made this determination in light of the purpose and intent of the new source regulations. As stated in the preamble to the October 1988 new source regulations for pretreatment, "[i]n determining whether a facility is a new source, the totality of the situation needs to be addressed". See 53 Fed. Reg. 40602 (October 17, 1988). The preamble to the September 26, 1984 regulations emphasizes that the more stringent requirements for new sources are based "on the concept that new facilities have the opportunity to install the best and most efficient production processes and wastewater treatment technologies." The preamble reiterates this in a slightly different manner by stating "[t]he substantial independence test was aimed at ascertaining whether an existing source which undertakes major construction that legitimately provides it with the opportunity to install the best and most efficient production processes and wastewater treatment technologies should be required to meet new source performance standards at that facility. 49 Fed. Reg., 38043. Likewise, the preamble to the October 1988 regulations reiterates this view. 53 Fed. Reg. 40601. As discussed above, Ambitech clearly had a legitimate opportunity to install the best and most efficient production processes by fully redesigning and constructing its plating lines.

In your correspondence, Ambitech makes two additional arguments which have not yet been addressed. First, Ambitech asserts that EPA's application of the new source regulations violates the Regulatory Flexibility Act and Executive Order No. 12291. However, these requirements are not relevant to this

decision. Ambitech's arguments are laid out in a letter from Daniel Wax to Allyn Stern, dated August 21, 1993 and focus primarily on an objection that Region IX has created a new standard, quoted by Ambitech as "reasonable opportunity" on which to base new source determinations. Mr. Wax appears to have taken this phrase out of context from EPA's May 1993 letter and has overemphasized its importance to EPA's decision. Moreover, as discussed above, the preamble to the October 17, 1988 regulations clearly states that the substantial independence test focuses on whether a source has an opportunity, and later phrased as a legitimate opportunity, to install new equipment. If it was not clear from EPA's May 1993 letter, EPA herein clarifies that based on our review of the circumstances in this matter, Ambitech had a legitimate opportunity to install new equipment. Region IX has not created a new standard, but is merely applying the guidance found within the preamble and regulations.

Second, Ambitech has argued that, based on equitable factors, it should be granted relief from the pretreatment standards for new sources. Primarily, Ambitech asserts that the company has been conducting routine monitoring for compliance, has a good environmental compliance record, and conducted the activities relevant to this determination under the permitting and oversight of the Bureau of Sanitation. EPA has considered these factors in making this determination. Yet, despite these factors, Ambitech was covered by the new source requirements when it began construction in June 1986; Ambitech had sufficient notice as to the scope of these regulations; and as discussed above, Ambitech's new plating lines are substantially independent of its previous lines. Moreover, facilities subject to pretreatment requirements cannot merely rely on the local sanitation district to inform them of the applicable federal requirements, but must seek out that information itself. Ambitech was, at all times relevant to this matter, subject to the pretreatment regulations and is responsible for identifying which regulations are applicable to its facility.

EPA has carefully considered Ambitech's arguments prior to making this determination. Based on the information submitted, EPA believes that Ambitech is appropriately categorized as subject to the pretreatment standards for new source metal finishing operations.

Sincerely,

for Alexis Strauss
Harry Seraydarian, Director
Water Management Division