UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TEXAS 75202-2733

January 4, 2011

Mike Bates
Chief, Air Division
Arkansas Department of Environmental Quality (ADEQ)
5301 Northshore Drive
North Little Rock, AR 72118-5317

RE: Applicability Determination (AD) under the Clean Air Act (CAA) and Clarification of Permitting Requirements under the CAA and Resource Conservation and Recovery Act (RCRA) for thermal treatment units operated at Rineco Chemical Industries (Rineco), located in Benton, Arkansas; Civil Action No. 4-07-CV01189SWW, Consent Decree (CD) lodged on May 19, 2010.

Dear Mr. Bates:

This letter is our response to your request for clarification of permitting requirements for the Thermal Metals Wash Unit (TMWU) *operated in series with* the Thermal Oxidizer Unit (TOU) at the Rineco facility located in Benton, Arkansas. In our letter dated July 12, 2010, we determined that the TMWU and the TOU unit operations could be considered an incinerator under RCRA and would therefore be subject to National Emission Standards for Hazardous Air Pollutants (NESHAP) Part 63 Subpart EEE {Hazardous Waste Combustion (HWC) Maximum Achievable Control Technology (MACT)}. However, in a letter dated October 22, 2010, Rineco provided to the Arkansas Department of Environmental Quality (ADEQ) additional information that was not available during our review. Therefore, we are modifying our determination under the HWC MACT and are providing clarification of permitting requirements under RCRA and CAA rules.

First, regarding applicability, Rineco provided a process flow diagram regarding operations of the TMWU and the TOU. The vapors leaving the chamber of the TMWU pass through primary and secondary condensers that cool the vapors, making recovery of some vapors possible, prior to being routed to the TOU. Technically, the Environmental Protection Agency (EPA) agrees with Rineco that this one process difference (from that described in our July 12th letter) means that the two units are better classified as miscellaneous units under RCRA. Since the definition in RCRA for "miscellaneous units" specifically excludes "incinerators" from the definition, the two units are not "hazardous waste combustors" as defined at 40 CFR § 63.1201 (and explained in our July 12th letter). We have determined the TMWU and TOU are not affected sources subject to the HWC MACT for the purposes of permitting under the CAA. *This determination therefore supercedes our initial determination dated July 12, 2010.*

Second, regarding the appropriateness of Part 63 Subpart EEE requirements, Rineco mistakenly assumes that their RCRA permit will not incorporate any EEE requirements since the CD requires submission of a *RCRA permit application* under Subpart X for miscellaneous units.

However, RCRA Subpart X specifically allows for the permitting authority to incorporate those CAA EEE requirements that are deemed *appropriate* (see 40 CFR § 264.601 as well as CD Paragraph 10, page 12). Provisions in Subpart EEE appropriate to the operation of the TMWU and TOU include technical standards such as emissions limits, monitoring requirements, and performance testing for incinerators, which should be incorporated into the RCRA permit.

As you are aware, EPA determines applicability under the CAA based upon both technical and regulatory considerations. In addition, the permitting authority determines permit requirements based upon the technical and regulatory considerations of the particular rule(s) being implemented, whether under the CAA or RCRA or both. Rineco's CD merely provides the mechanism by which the TMWU and TOU are brought into compliance via RCRA permitting. The CD does not speak to the issue of applicability and/or permitting under the CAA, and in no way does the CD limit ADEQ's ability to issue a permit containing requirements that are deemed appropriate under RCRA.

This determination and permitting clarification is based upon that information provided to date and may become null and void if new information becomes available, or if Rineco implements changes to the process operations of the TMWU and TOU. If you have any questions or concerns, please feel free to contact Ms. Cynthia Kaleri of my staff at 214-665-6772.

Sincerely yours,

David F. Garcia
Associate Director
Air/Toxics & Inspection
Coordination Branch

cc: Clyde Rhodes (ADEQ)
Dr. Larry Williams (Rineco)
Terry Sykes (EPA, ORC)
Susan Spalding (EPA, 6PD)