

PPC 9498.1996(05)

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY WASHINGTON, D.C.  
20460

May 10, 1996

The Honorable John Ashcroft  
United States Senate  
Washington, D.C. 20510-2504

Dear Senator Ashcroft:

Thank you for your letter of April 18, 1996 to Administrator Browner, in which you expressed your concerns about the Environmental Protection Agency's (EPA's) Hazardous Waste Minimization and Combustion Strategy and our application of the omnibus permit authority and site-specific risk assessments as part of this Combustion Strategy.

You expressed concern with the Agency's policy that the permitting process for hazardous waste combustion facilities should include a site-specific risk assessment. This policy is based on new information which became available since the time that the current regulations for incinerators and BIFs (boilers and industrial furnaces) were issued. This information indicates there can be significant risks from indirect exposure pathways (i.e., pathways other than direct inhalation, such as through the food chain). This key portion, and in many cases the largest component, of the risk from hazardous waste combustor emissions was not fully taken into account when the hazardous waste combustion emissions standards were developed.

For this reason, the "omnibus" requirement to protect human health and the environment comes into play. Under Section 3005 of Resource Conservation and Recovery Act (RCRA), Regional or State permit writers must determine on a site-specific basis what, if any, additional permit conditions are necessary to assure that these additional risks are not above acceptable levels. Multipathway site-specific risk assessments provide the information and logical decision-making process needed in making such determinations.

You also expressed concern that the Agency has imposed permit conditions without the benefit of defined regulatory standards that have been subject to a formal review under the Administrative Procedure Act, and that the Combustion Strategy itself was not authorized by Congress. As you know, the omnibus provision was authorized by Congress under Section 3005(c)(3) of the

RO 14057

RCRA. The codification of this provision at 40 CFR 270.32(b)(2) followed normal procedures under the Administrative Procedure Act. The use of the omnibus authority in implementing the Combustion Strategy is consistent with the original intent of the statute and regulations.

The Hazardous Waste Minimization and Combustion Strategy consists of a compilation of EPA's goals, policies, and activities in areas such as permitting, combustion standards, and waste minimization. Each activity conducted under this Strategy rests on its own proper legal authority under RCRA and, in one case, the Clean Air Act Amendments of 1990.

The Strategy itself does not impose regulatory requirements, but is a policy statement expressing how the Agency plans to exercise its discretionary functions under RCRA in the future. Specifically, the Strategy sets out EPA's permitting priorities and recommends procedures for ensuring that individual permits meet RCRA's mandate to protect human health and the environment. As such, the Strategy does not require its own separate legal authorization from Congress. As noted above, each independent activity undertaken as part of the overall Strategy (e.g., updated technical standards, individual permitting decisions, waste minimization plan) has been and will continue to be carefully scrutinized to make sure that the legal basis for any action is clear, and that all appropriate procedures are followed (including public notice and comment for all-rulemakings and for each individual permit action).

Your letter also conveyed your concern about the time and resources needed to perform the risk assessment that is being done for the WTI incinerator in East Liverpool, Ohio. However, it is important to recognize that the risk assessment guidance developed pursuant to the Combustion Strategy does not involve the extensive evaluation being done for the WTI facility. The level of detail of that assessment is not the norm, but rather was due to site-specific factors, as well as to the fact that this assessment was an early effort which was expected to help refine future risk assessments. On the other hand, with appropriate emissions data the screening analysis outlined in EPA's risk assessment guidance can generally be completed in a fairly short time at a cost of less than \$50,000, although more detailed analysis for a specific site may be considered by the permitting authority depending on site-specific conditions. The regulations already require hazardous waste combustors to perform trial burns to demonstrate compliance with the emissions standards; collection of the additional emissions data needed for a risk assessment generally amounts to a small percentage cost increase. EPA would like to minimize the burden associated with these risk assessments to the extent possible, and we are currently discussing ways to further standardize and focus the assessments.

We continue to believe that risk assessments are valuable in assuring that combustors are operating in a protective fashion. For example, WTI brought their risk down into its current range by significantly reducing their dioxin emissions in response to EPA's Combustion Strategy and preliminary risk assessment efforts as well as citizen concerns. EPA hopes to achieve similar environmental gains at other facilities as we continue to implement the Combustion Strategy. Further, it is important to point out that the encouraging draft risk assessment results for WTI do not mean that similar assessments are unnecessary at all other facilities. While WTI's total organic emissions (about 0.2 parts per million) are relatively low, in the past some combustors have emitted up to 400 parts per million and thus may pose a higher risk.

The following responses are provided for your detailed questions:

1) The Agency's May, 1994, Draft Trial Burn Guidance has not been reviewed by the Science Advisory Board. However, the EPA has received formal comments from two sources with respect to the trial burn guidance. The first set were from the Environmental Technology Council (ETC) and second were from the Industrial Working Group (IWG). The IWG consists of representatives of a number of industry trade groups who took part in the Industry Technical Workshop on EPA Trial Burn Guidance on November 14 and 15, 1994. The IWG consists of the following organizations: ETC, Chemical Manufacturers Association, Cement Kiln Recycling Coalition, Waste Minimization & Combustion Coalition, and the Coalition for Responsible Waste Incineration. The Agency has been working to incorporate these comments into the guidance document as well as to address concerns identified by the Agency itself, and we hope to publish an update to the guidance in the next 3-4 months.

2) EPA has been working to improve the models it uses to evaluate dispersion and deposition from combustion sources. The Agency recognized in 1993 that the available models were in need of improvement and thus in 1994 released to the user community for comment a draft version of a revised model. Allowing the user community to test important software components as part of the development process has become standard practice in the field, and therefore, is also practiced by EPA. The revised model was finalized in 1995. We understand there may be some frustration with changes to the models used for risk assessments. However, the Agency believes it is important to continuously improve its air quality models and to make improved modeling tools available to the public. It is not the Agency's policy, however, to require that a particular model be used. Instead, that decision is generally made on a case-by-case basis by the permit applicant in consultation with the permitting authority. This approach allows flexibility to decide, for example, that once the risk assessment

protocol for a site is approved by the permitting authority, no further changes will be made unless agreed to by the applicant and the permitting authority.

3) In performing a site-specific risk assessment using the Office of Solid Waste methodology, the permitting authority or the facility generally first performs a screening analysis which, as mentioned earlier, costs \$50,000 or less. Only facilities which do not pass the conservative screen need to go on to perform a more detailed assessment. Due to the variety of circumstances under which detailed assessments were performed over the past few years by facilities, EPA Regions, and authorized states, it is very difficult to accurately estimate an average cost in workdays. In general, the regulated facilities do not share their cost information associated with performing risk assessments. Therefore, we do not have sufficient data to provide you with an average cost for a regulated facility. With respect to EPA Regions and authorized states, we estimate that the effort required for the permitting authority to review a direct and indirect risk assessment performed by a regulated facility ranges from 3 to 25 workdays. The effort required by an EPA Region or authorized state to perform a direct and indirect risk assessment ranges from 100-700 workdays. We expect that cost to a facility performing a risk assessment would likely be similar to that for a Region or state. The wide range in workdays in these estimates is due to factors such as whether the work was performed by agency staff or by contractors (contractor workday levels tend to be higher than in-house workday levels); the level of detail of the assessment; and the complexity of the facility.

4) The enclosed chart is provided in response to your request for a list of facilities where site-specific risk assessments are being conducted and the types of findings that have been made in those cases where omnibus authority has been invoked.

Thank you for your interest in this important area.

Sincerely yours,

Michael Shapiro, Director  
Office of Solid Waste

Enclosure

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Attachment  
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UNITED STATES SENATE  
WASHINGTON, DC 20510-2504

April 18,1996

Carol Browner, Administrator Environmental  
Protection Agency  
401 M Street, S.W.  
Washington, D.C.20460

Dear Administrator Browner:

I am writing to ask the Agency to conduct a thorough review of the Combustion Strategy Program. The Agency has defended the Combustion Strategy by suggesting that it is merely a policy statement which does not impose regulatory requirements. Notwithstanding this claim, the agency continues to implement the Combustion Strategy by relying almost exclusively on the omnibus permit authority under the Resource Conservation and Recovery Act (RCRA) to require interim status combustion facilities to 1) conduct expensive and scientifically-unproven, open-ended direct and indirect risk assessments and 2) impose permit conditions without the benefit of defined regulatory standards that have been subject to a formal review process under the Administrative Procedures Act (APA).

Given the need to get more out of existing Agency resources, it appears that the Agency would be well served to thoroughly review the Combustion Strategy in light of recent reports that the Agency's own risk assessment at the controversial WTI incinerator site in Liverpool, Ohio, after years of work and the expenditure of millions of private and public sector dollars, found that the average total cancer risk for the entire facility was one-million-to-one. Please review the following questions and respond in writing at your earliest convenience:

- 1) Since its release in May 1994, has the Agency's Draft  
    Trial Burn Guidance been subject to review by the  
    Science Advisory Board?
- 2) Is it true that the Agency has issued three different

RO 14057

risk assessment/disposition models for the Combustion Strategy in the last 24 months?

3) How much does the average direct and indirect risk assessment cost a) the regulated facility, and b) the Agency, in terms of man/hours?

4) Please supply me with a list of facilities that the Agency is requiring to comply with the draft protocols, and describe the types of site-specific findings the Agency has made in those cases where omnibus authority has been invoked.

Sincerely,

John Ashcroft  
JDA:pxk