

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

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

The Honorable Gillespie Montgomery
House of Representatives
Washington, D.C. 20515-2403

Dear Congressman Montgomery:

Thank you for your letter of August 27, 1996. In that letter you express concerns over the Environmental Protection Agency's (EPA's) recently proposed maximum achievable control technology (MACT) rule for hazardous waste combustors. As a result of these concerns, you request that the Agency revisit and revise the analyses supporting the proposal, and repropose the rule. Additionally, in the interim period you specifically ask that the Agency provide written guidance to its Regional Offices clarifying that the emissions limits identified in the proposal not be used with respect to any pending cement kiln permit application.

With respect to the Agency reproposing the rule, the Agency expects that it will be called upon by the many public commenters, including all affected industries, to revisit many technical and policy decisions inherent in the MACT standard-setting approach. In this setting, the Agency expects that specific technical bases and analyses underlying the eventual, final MACT standards may well differ from those in the proposed rule. However, at this early stage in our analysis of everyone's comments, we are neither able to distinguish which pollutant standards will be significantly impacted nor to quantify the change, if any, that may result from our analysis of the information received in comments. To do so would be to prematurely prejudge comments and data that we have not yet properly examined. The Agency is therefore not currently in a position to characterize the proposed standards as either being entirely or partially flawed, or to predict whether they will be the same as, or different than, what will eventually emerge as final MACT standards. In that sense, it is premature for the Agency to decide whether a full or partial reproposal is

warranted. Of course, we will continue to monitor this issue closely over the coming months as our analysis of all comments progresses.

Please note that the Agency anticipates to publish and request comment on new information and analyses as they become available. Such an action is planned for the hazardous waste combustion emissions database. Once the Agency addresses all comments on the existing database and reviews all newly submitted data, we plan to issue a Notice of Data Availability making public a revised database. Currently, we anticipate this action would be taken in the late fall or early winter of 1996.

With regard to your concern on the proposed permitting process, the approach taken in the proposed rule is to promulgate the MACT air emission standards under joint Resource Conservation and Recovery Act (RCRA) and Clean Air Act (CM) authority. The standards would be part of both the RCRA and CM regulations and both permitting programs would be required to address the standards in some manner. However, the proposed rule goes on to explain that it is EPA's goal to have as much coordination as possible between the two permitting programs to avoid duplication of effort, inconsistent requirements, and redundant procedures. The proposal gives two examples of coordinated permitting efforts that would have the air emission standards written out in only one permit.

The proposal was written in this way, in part, to address EPA's goal to give as much flexibility as possible to the implementing agencies (states in most cases) to coordinate the issuance of permits and enforcement activities in the way which most effectively addresses their particular situation, while still meeting the statutory requirements of both RCRA and CM. However, in stakeholder meetings after the rule was proposed, as well as in written comments, EPA has received many valid suggestions for alternative approaches which we feel may allow such flexibility while minimizing duplication. EPA is reviewing all comments received and will give careful consideration to the issues and concerns raised, and remains committed to developing a streamlined and understandable regulatory regime for these facilities.

Regarding your concerns about EPA's regional offices, you should know that regional permit writers continue to participate on various internal Agency workgroups related to this rulemaking effort and are aware of issues and concerns about the proposal raised by stakeholders. There is sufficient information, particularly in light of the detailed engineering and risk

evaluation performed as part of preparing the proposed rule, to allow regional offices to put the proposed standards in the proper context during this interim period prior to adoption of the final MACT standards and related regulations.

We have no indication that the EPA regions intend as a general matter to impose the proposed MACT standards in permits. They, and we, are certainly aware of the sensitivities surrounding this issue as well as their obligations during the permit process to ensure protection of human health and the environment, including that under the omnibus clause of RCRA Section 3005(c) (3). As the Agency has made clear on a number of occasions, any use of the omnibus authority to incorporate the proposed standards as permit conditions at this time would require independent, site-specific justification following the process previously detailed by the Agency (56 FR 7145) and may not rest solely on the proposal of these limits as national standards. Please be assured that review and decisions on cement kiln permit applications over the next two to three years will be followed very closely by all concerned.

Your final concern addresses the schedule to finalize the rulemaking and the appearance that the Agency is unnecessarily rushing forward to promulgate final standards. Despite whatever outside reports are suggesting, the Agency management has not made any final decisions on the schedule of the final rule. It should be noted that a number of issues will be considered in making these schedule decisions, including the most appropriate time needed for properly addressing technical and policy issues. As the Agency reviews all comments, the extent and complexity of these issues will become more apparent. Please be assured that the Agency views appropriate and timely completion of this rulemaking as a very important step toward ensuring safe waste management and implementing the Hazardous Waste Minimization and Combustion Strategy. As a result, we wish to move forward with this rulemaking as quickly as possible while thoroughly considering and addressing all comments.

Thank you again for your interest in this important rulemaking effort. EPA continues to be mindful of the continuing need to be aware of and to address the concerns of states, tribes, affected industries, community and environmental groups.

Sincerely yours,

Michael Shapiro, Director
Office of Solid Waste