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EXTENSION OF DEADLINE FOR PART A SUBMITTAL AND INTERIM STATUS
APPLICABILITY FOR CEMENT KILNS

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

SEP 18 1987

Honorable Martin Frost
House of Representatives
Washington, D.C. 20515

Dear Mr. Frost:

The Environmental Protection Agency (EPA) has made a final decision regarding St. Mary's Peerless Cement Company. The Company requested an opinion on its qualification for interim status to burn hazardous wastes as a secondary fuel source in its cement kiln located in Detroit, Michigan. In your April 20, 1987, letter you express interest in the Agency's decision and offered important background information regarding the "Frost amendment to the Resource Conservation and Recovery Act (RCRA).

The Agency has decided to extend the date for submission of RCRA Part A permit applications for cement kilns subject to Section 3004(q)(2)(c) of RCRA (i.e., those kilns burning hazardous waste fuels in municipalities of greater than 500,000 population). As a result, of this extension, cement kilns subject to Section 3004(q)(2)(c) will be able to file Part A permit applications and, if they comply with the other requirements of Section 3005(e), will qualify for interim status. Based on the information we have received, we believe that St. Mary's will qualify for interim status if the company files a Part A permit application before the new submission date.

The Agency is taking this action pursuant to its authority under 40 CFR 270.10(e)(2) because of confusion under EPA regulations concerning whether and when the affected cement kilns were required to file Part A applications. In about one week, EPA will announce its decision in a Federal Register notice (copy enclosed). The new Part A submission deadline will be six months from the date of publication of the notice.

RO 13046

In your letter, you raise the issue of whether, based on legislative history, Section 3004(q)(2)(c) should be interpreted to prohibit cement kiln operations in large cities until they receive a final permit as hazardous waste incinerators. However, in its face, Section 3004(q)(2)(C) only requires that large city cement kilns burning hazardous waste fuels "fully compl[y] with regulations...which are applicable to incinerators." The EPA regulations provide that incinerators may operate under interim status standards. Nothing in the statutory language suggests any limitation on the ability of these cement kilns to operate pursuant to interim status, as is provided for any other existing hazardous waste incinerator.

Because the statutory language is unambiguous with respect to this issue, we believe that it is inappropriate in this context to imply limitations solely on the basis of legislative history. Therefore, we do not interpret Section 3004(q)(2)(c) as preventing St. Mary's from operating pursuant to Section 3005(e).

As a matter of separate from the ability of St. Mary's to qualify for interim status, the Agency believes that recycling, reuse, recovery, and treatment of hazardous wastes are the preferred management alternatives. This preference was embodied in the 1984 amendments to RCRA. Cement kilns have demonstrated that they can effectively recover energy from certain hazardous wastes and fuels containing hazardous waste while, at the same time, greatly reducing the quantity of waste materials.

I appreciate the background information that you provided regarding the "Frost" amendment. I assure you that the Agency carefully considered your information when it reviewed St. Mary's request. If I can be of further assistance, please let me know.

Sincerely,

J. Winston Porter
Assistant Administrator
Enclosure