

*Attachment G*

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United States Environmental Protection Agency  
Washington, D.C. 20460  
Office of Solid Waste and Emergency Response

February 27, 1989

MEMORANDUM

SUBJECT: Use of Omnibus Authority to Control Emissions  
of Metals, HCl, and PICs from Hazardous Waste  
Incinerators

FROM: Sylvia K. Lowrance, Director Office of Solid  
Waste

TO: Hazardous Waste Division Directors, Regions  
I-X

Questions have recurred regarding the implementation under omnibus authority of the forthcoming proposed amendments to the hazardous waste incinerator standards, and the relationship between implementing the controls and meeting the November 8, 1989, permitting deadline. This memorandum provides OSW's policy on these issues.

We are concerned that the existing standards for hazardous waste incinerators under 40 CFR 264.340 may not be fully protective for all facilities with respect to emissions of toxic metals, hydrogen chloride (HCl) and products of incomplete combustion (PICs). We have developed proposed amendments to the standards to better address the hazards posed by these emissions. The proposed rules have completed the internal Agency review process and are under review by the Office of Management and Budget. We anticipate that the proposed rules will be published for public comment in the spring of 1989.

In the interim, until the rules are promulgated, EPA permit writers should use the authority provided under Section 3005(c)(3) If the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), to apply additional permit conditions as necessary to adequately control

these emissions. This provision, often called the "omnibus" authority, gives permit writers the authority to apply additional permit conditions as necessary to adequately protect human health and the environment. Thus, EPA permit writers have the authority and the responsibility to consider, on a case-by-case basis during the permit process, whether controls based on the current regulations are fully protective, and, if not, to establish additional permit conditions as necessary to protect human health and the environment.

The use of the omnibus authority is clearly within the initial intent of Congress in including the omnibus provision in the statute, as evidenced by the legislative history at S. Rep No. 284, 98th Cong., 1st Sess. 31 (1983), which states:

"[the omnibus authority] can also be used to incorporate new or better technologies or other new requirements in permits, where EPA intends to add such technologies or requirements to the regulations but has not yet issued a final regulatory amendment."

### Guidance Documents

To assist permit writers, we have developed two guidance documents: Guidance on Metals and Hydrogen Chloride Controls for Hazardous Waste Incinerators, December 29, 1988 (Draft final report); and Guidance on PIC Controls for Hazardous Waste Incinerators, December 30, 1988 (Draft final report). These guidance documents recommend a step-by-step approach to develop permit conditions consistent with the regulatory requirements the Agency plans to propose. We recommend that permit writers use the guidance documents to develop appropriate permit conditions. However, in using the guidance documents or other information to establish permit conditions under the omnibus authority; the permit writer must provide the applicant and other interested parties due process. The permit writer must explain and document what the concern is, and thoroughly discuss why the additional permit conditions are needed to ensure protection of the public health and the environment. Through the permit process, he must provide the time and opportunity for comment, he must fully respond to those comments, and he must include the responses in the administrative report of the permit. In short, the permit writer must provide a sound technical basis for inclusion of the permit conditions under

the omnibus authority.

Permit writers need not wait to use OSW's guidance documents and the documents have been issued in final form. Like the proposed rules, the guidance documents have completed the internal Agency review process. We anticipate that the documents will be published in the spring of 1989, and made available through the National Technical Information Service. Permit writers should use the guidance notwithstanding its draft status because, as indicated above, the permit writer must justify thoroughly and, in writing, any requirements applied under the omnibus authority.

The permit writer cannot simply refer to the guidance document to support the conditions included in the permit. Moreover, we anticipate that the guidance may change over time as permit writers and applicants gain experience dealing with the issues and as additional information becomes available (e.g., health effects data; improvements in dispersion models). We plan to revise the documents as needed after publication and to provide notice in the Federal Register of the availability of subsequent editions.

By considering the need for additional controls under the omnibus authority on a case-by-case basis, permit writers can avoid petitions from interested parties asserting that the permit is not adequately protective. The Administrator has already ruled in favor of a petition for review of a RCRA incineration permit that argued, in part, that adequate controls on metals and PIC emissions were not provided in the permit. The Administrator subsequently directed the Region to consider adding permit conditions addressing PICs and metals.

#### State Permit Writers

We encourage State permit writers to implement the guidance if the State has an omnibus authority in its statute. EPA permit writers should review the draft State permit to determine if it adequately protects human health and the environment, particularly with respect to emissions of metals, hydrogen chloride, and PICs. If the State permit does not provide adequate controls, the EPA permit writer should provide these controls in the HSWA portion of the permit, given that the omnibus authority is a HSWA provision. HSWA provisions must be implemented by EPA in authorized States until the State obtains authorization for HSWA provisions as well.

To date, only one State, Georgia, has been authorized under HSWA.

#### Impact on Permitting Deadline

We do not believe that considering the need for additional controls for metals, HCl, and PIC emissions during the permit process will cause the Regions or States to miss the November 8, 1989, permitting deadline established by HSWA. We developed the guidance documents to enable the permit writer to apply appropriate controls on a site-specific basis and to explain to interested parties the need for those controls. In addition, we have conducted four training workshops for Regional and State permit writers on how to use the guidance documents. Finally, Headquarters staff in the Combustion Section, WMD, and the Alternate Technology and Support Section, PSPD, are available to assist permit writers as necessary. Limited contractor funds are also available to handle special problems that may arise.

Some permits, however, may have already progressed to a stage where issuance of the permit would be substantially delayed if a trial burn was required to demonstrate conformance with the metals and PIC controls recommended by the guidance documents. Examples are when the trial burn has already been conducted or where the trial burn plan has been approved. In these cases, the guidance documents recommend that permit writers establish conservative, but reasonable, interim controls until the owner or operator conducts a trial burn to demonstrate that the interim requirements (or less stringent requirements) will not result in an exceedance of the limits recommended by the guidance documents. Methods for determining these interim limits are presented in the guidance documents. In applying these interim controls, however, the permit writer must still thoroughly explain in writing the basis for imposing such conditions and provide interested parties due process through the RCRA permit procedures.

Nonetheless, if a State believes that it may not be able to meet the November 8, 1989, permitting deadline because of the policy on implementing controls on metals, HCl, and PIC emissions, the State should discuss the situation with the Regional Office. If site specific guidance is needed, the Regional Office may discuss the situation further with Joseph Carra, Director, Permits and State Programs Division.

cc: State Hazardous Waste Division Directors; Incinerator  
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