



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

18 January 2001

Mr. Monty McCue
Westates Carbon - Arizona, Inc.
PO Box 3308
Parker, AZ 85344

RE: Applicability of 40 CFR Part 63 Subpart EEE for RCRA Permitting Requirements at Westates

Dear Mr. McCue:

I am writing in response to your letter dated November 1, 2000, in which you question whether it is appropriate for EPA to consider the provisions of 40 CFR Part 63 Subpart EEE when determining Resource Conservation and Recovery Act (RCRA) permitting requirements for the carbon reactivation unit at Westates. As reflected in a letter to you dated December 22, 2000, EPA has already determined that Westates is not directly subject to the permitting requirements of Title V of the Clean Air Act under Subpart EEE. However, as explained in this letter, EPA will consider the provisions of Subpart EEE during our review of Westates' RCRA permit application.

As you state in your letter, the carbon reactivation unit currently operating at Westates is a "miscellaneous unit" as defined under RCRA (40 CFR § 260.10). According to 40 CFR § 264.601, miscellaneous units must be located, designed, constructed, operated, maintained, and closed in a manner that will ensure protection of human health and the environment. Also according to 40 CFR § 264.601, RCRA permit terms and provisions for miscellaneous units must include those requirements of 40 CFR Part 63 Subpart EEE that are appropriate for the unit. As stated in the preamble to the Subpart EEE regulations, EPA previously looked to the incinerator standards in 40 CFR 264 Subpart O in developing appropriate RCRA permit conditions for carbon regeneration units. (64 FR 52994, Sept. 30, 1999.) However, the preamble states that EPA should now also consider the new Subpart EEE standards when determining the appropriate RCRA requirements for miscellaneous units engaged in any type of thermal treatment. The carbon reactivation unit at Westates is engaged in thermal treatment. Therefore, EPA will consider the provisions in Subpart EEE in reviewing Westates' RCRA permit application. All documents Westates develops pertaining to its RCRA permit application must reflect appropriate provisions of 40 CFR Part 63 Subpart EEE, in addition to the RCRA permitting requirements of 40 CFR Part 264 and 40 CFR Part 270.

Provisions in Subpart EEE appropriate to the operation of the carbon reactivation unit at Westates may include technical standards such as emissions limits, monitoring requirements, and performance testing, as well as other Subpart EEE requirements. To ensure that we consider all relevant concerns when determining which provisions of Subpart EEE are appropriate for Westates, we will work with the Colorado River Indian Tribes according to our formal Tribal consultation process. In addition, we will encourage the involvement of other parties who have shown interest, such as local community groups and environmental advocacy groups. We are also interested in Westates' recommendations regarding which provisions are appropriate. In addition to informal involvement in these matters, all parties will have an opportunity for formal comment during at least two public comment periods which EPA will hold during our review of Westates' permit application.

In the spirit of beginning a dialogue on this subject, we provide as an enclosure to this letter some thoughts regarding the potentially appropriate provisions of Subpart EEE. Karen Scheuermann of my staff will be in contact with you by phone regarding this matter, and will also contact the parties mentioned above.

If you or your staff have any questions, please feel free to call Karen Scheuermann of my staff at (415) 744-2068.

Sincerely,



Jeff Scott
Acting Director
Waste Management Division

Enclosure

cc: Daniel Eddy, Jr., Chairman, Colorado River Indian Tribes
Dave Harper, Mojave Elders
Allen Anspach, Superintendent, Colorado River Agency
John Krause, Bureau of Indian Affairs
Bradley Angel, Greenaction
Jane Williams, California Communities Against Toxics

Enclosure to Letter from EPA to Westates
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**Provisions of 40 CFR Subpart EEE potentially appropriate to
the carbon reactivation unit at Westates for purposes of RCRA permitting.**

The list on the reverse of this page indicates which sections of Subpart EEE may be appropriate for the carbon reactivation unit at Westates. This list is intended as a starting point for discussions with interested parties. EPA is interested in hearing opinions on the appropriateness of each of the sections.

Subpart EEE provides standards for three types of thermal treatment units: hazardous waste incinerators, hazardous waste burning cement kilns, and hazardous waste burning lightweight aggregate kilns. Although not strictly an incinerator by EPA definition (40 CFR § 260.10), the carbon reactivation unit at Westates is most similar to a hazardous waste incinerator, as compared to the other types of thermal treatment units addressed in Subpart EEE. Therefore, EPA believes that the Subpart EEE standards pertaining to existing hazardous waste incinerators are appropriate for the carbon reactivation unit at Westates, and has reflected this in the list on the reverse of this page.

It is likely that, after additional consideration in determining appropriate provisions of Subpart EEE, we will further subdivide each of the sections in this list. This is because appropriate and inappropriate provisions may be mixed throughout the sections. For example, while many of the provisions found in 40 CFR § 63.1209 may apply to Westates, the provisions in that section relating to baghouses would not apply to Westates, since they do not have a baghouse. In addition, certain procedural requirements that were developed for the Title V program may not make sense in the context of the RCRA program, such as the requirement to submit an initial notification under 40 CFR § 63.1210(a).

The text of the regulations can be viewed on the internet at
www.access.gpo.gov/nara/cfr/cfr-table-search.html.

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Section of Subpart EEE	Contents	Potentially Appropriate
40 CFR 63.1200	applicability of the regulations	✓
40 CFR 63.1201	definitions and acronyms	✓
40 CFR 63.1202	<i>this section reserved</i>	
40 CFR 63.1203	standards for hazardous waste incinerators	✓ <i>paragraphs (a), (c), (d), and (e)</i>
40 CFR 63.1204	standards for hazardous waste burning cement kilns	
40 CFR 63.1205	standards for hazardous waste burning lightweight aggregate kilns	
40 CFR 63.1206	when and how to comply with the standards and operating requirements	✓
40 CFR 63.1207	performance testing requirements	✓
40 CFR 63.1208	test methods	✓
40 CFR 63.1209	monitoring requirements	✓
40 CFR 63.1210	notification requirements	✓
40 CFR 63.1211	record keeping and reporting requirements	✓ <i>paragraphs (a), (c), (d), and (e)</i>
40 CFR 63.1212	other requirements pertaining to the NIC and associated progress reports	
40 CFR 63.1213	extension of compliance date for installation of pollution prevention or waste minimization controls	