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CLARIFICATION REGARDING SINGLE EMISSION POINT, MULTI-DEVICE COMBUSTION FACILITIES

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

July 29, 1994

MEMORANDUM

SUBJECT: Clarification Regarding Single Emission Point, Multi-Device Combustion Facilities

FROM: Michael H. Shapiro, Director
Office of Solid Waste

TO: Allyn M. Davis, Director Hazardous Waste Management Division, Region VI

Walter L. Sutton, Jr., Acting Regional Counsel
Office of Regional Counsel, Region VI

This memorandum is in response to your July 8, 1994, memorandum requesting clarification of a prior headquarters opinion regarding the Giant Cement Company in Harleyville, South Carolina. I understand that the recent court ruling on Marine Shale Processors has raised some questions about EPA's interpretation of the regulatory status of multi-device combustion facilities. In particular, we think that our August 11, 1992 memorandum regarding Giant Cement and Region IV's subsequent letter of November 24, 1993 was misapplied. I thus agree with Region VI that it is important to clarify this issue so that consistent determinations can be made nationwide.

This memorandum will clarify how the RCRA regulations apply to combustion devices (incinerators, industrial furnaces, and boilers) at facilities in which more than one of these devices are connected and in which the emissions from the connected devices emanate from a single emissions point. I believe the confusion arose because there are two basic issues that are encountered when applying the regulations to units in series: 1) what emission controls and

operating conditions are technically appropriate and will be fully protective of human health and the environment; and 2) what legal categories do the units fall into, for the purpose of determining regulatory coverage, eligibility for interim status, need for permit modifications, etc. The Giant memo addressed only the first issue, but appears to have been misinterpreted to apply to the second issue also. Following interpretation of the two issues.

Emission Controls

Giant Cement operated a hazardous waste-fired cement kiln and a number of "resource recovery kilns" burning contaminated soil. Both the off-gas and the treated-solids from the resource recovery kilns were fed into the cement kiln. The resource recovery kilns were interim status incinerators.

The Giant memo referenced above addressed only the question of what types of operational and emissions controls are appropriate to impose on connected devices with a single emissions point, by stating: "For systems of two or more hazardous waste treatment units in series, our general guideline is that a case-by-case determination of how the overall system is classified and what standards and permit conditions are applied should be based on the dominant design, operating, feed, and emissions characteristics of the system, and the most specific standards applicable to that type of system." We still believe this type of flexible approach is important because of the difficulty, from an engineering standpoint, of applying two sets of potentially conflicting emission standards (e.g., the Part 264 Subpart O incinerator standards and the Part 266 Subpart H boiler and industrial furnace (BIF) standards) to a single emissions point on a series of devices which are connected.

In performing a technical evaluation of what standards should be applied to a group of units in series, it will usually be necessary to look at the reasoning behind the regulatory requirements, as expressed in preambles and guidance documents, and not simply at the regulatory requirements. Based on this type of evaluation, if two sets of emissions standards fit equally well from a technical standpoint, preference should be given to the more stringent standards. If not, the standards which are most-appropriate technically, considering their regulatory rationale, should be applied. In addition, the permit writer should consider whether additional conditions beyond the regulations are

necessary to tailor the permit to the specific system and site in order to protect human health and the environment (through use of the RCRA 3005(c)(3) omnibus authority).

It should also be noted that there may be cases, such as where two or more combustion devices operate in parallel and share only a common stack, in which the determination of what standards to apply is straightforward (i.e., unit by unit). The principal remaining issue in this situation is how to do the testing to determine whether each unit is meeting the standards.

Permitting/Interim status Determination

The above determination of the most technically appropriate and protective emissions controls to apply in the permit for interconnected devices must be distinguished from the classification of the devices for purposes of determining interim status eligibility and other issues. Because Giant had already attained interim status separately for its "resource recovery kilns" as incinerators and for its cement kiln as an industrial furnace, the August 1992 memorandum did not address nor need to address the classification of these devices for such purposes.

For the same reason, Region IV's November 24, 1993 letter to Giant Cement indicating that the resource recovery kilns would now be subject to hazardous waste incinerator emission standards because the combusted contaminated soil from those units was being disposed and not put into the cement kiln, dealt only with the issue of what emission standards would apply to these kilns. These earlier documents addressed the only question asked, which is what emission standards should apply.

In recognition of the practical difficulties of applying more than one set of standards to a single emission point, these documents discussed the criteria to be used in determining what emission standards should apply to that point. Under the principles discussed in these documents, EPA may determine, for example, that the emissions from a process train involving an incinerator and a cement kiln are most appropriately regulated under the emissions standards applicable to cement kilns. This does not mean that the incinerator "becomes" a cement kiln; it simply means that the common emission point should be regulated under the cement kiln standards.

These documents did not intend to suggest that the individual units in a process train lose their unit identities. The separate identities of the individual units in a process train is relevant in the context of facilities seeking to obtain interim status, among other situations. Under EPA regulations, a facility that is "in existence" on the effective date of a statutory or regulatory change that subjects it to the requirement to obtain a RCRA permit may obtain interim status by submitting Part A of its permit application and complying with statutory notification requirements. 40 CFR §270.70(a). A unit that is already subject to the permit requirement cannot obtain interim status upon the promulgation of regulations bringing a different type of unit into the RCRA system. See 56 FR at 7142 (February 21, 1991) (aggregate kiln burning hazardous waste for destruction and thereby subject to the rules for incinerators is not newly eligible for interim status when BIF rules are promulgated).

In reviewing a Part A application form filed by a facility seeking interim status following the regulation of a new type of unit, EPA evaluates whether the unit (or units) identified on the form were of the newly regulated type. In performing this evaluation, EPA-would compare the unit with the unit-definitions set forth in its regulations, irrespective of whether the unit was self-contained or part of a process train. In particular, if the unit and other units shared a common emission point, the regulatory emission standards determined to be most technically appropriate for that point would be irrelevant to the identity of the unit in question.

The pertinent definitions for combustion devices are the definitions of "boiler", "industrial furnace", and "incinerator" in §260.10. The definition of boiler is based on unit design. Industrial furnaces are an enumerated list of devices that are parts of manufacturing processes and incinerators are devices which are not boilers or industrial furnaces. The list of industrial furnaces is not written in terms of device systems; it describes particular devices: "cement kilns", "aggregate kilns", "halogen acid furnaces", etc. Consequently, a device would normally need to fit one of these descriptions to be an industrial furnace.

The Agency's interpretation is that the list of industrial furnaces applies on a device-by-device basis whenever the devices are combusting separate (i.e., not from another device in the series) hazardous wastes. The only exception would be where the

Agency has indicated unequivocally (normally in the context of a notice-and-comment rulemaking) that the definition of that industrial furnace type applies to multiple devices. The only device for which the Agency has done so are cement kiln precalciners, which EPA agrees are invariably operated as part of one cement-manufacturing operation, even if the precalciner is separately fired with hazardous waste (see footnote 1). See, e.g., 54 FR at 43761 (Oct. 26, 1989). The Agency did not consider the effect of emissions from other connected hazardous waste units when it promulgated the BIF rule.

The interpretation that the industrial furnace definition is to be read to apply to each combustion device burning separate hazardous waste is consistent with the literal language of the industrial furnace definition. It is also consistent with statutory provisions requiring that hazardous waste combustion can only be performed pursuant to stringent regulatory control, RCRA sections 3004(o)(1)(B) and 3004(q), and that hazardous waste be properly managed in the first instance. RCRA section 1003(a)(5). These goals would be circumvented if hazardous waste-fired units were simply considered to be part of the industrial furnace. Before the BIF rules became effective, for example, this would mean that the additional unit -- an incinerator -- could burn hazardous waste without any regulatory control.

This interpretation covers the case of two hazardous waste fired devices. If the additional device is not hazardous waste fired, then it could be considered to be part of the industrial furnace. The Agency has in fact indicated in explanatory preambles and other interpretive documents that industrial furnaces can include certain integrated components that pretreat materials or assist in air pollution control. See, e.g., 56 FR at 42598 (August 27, 1991). So long as these devices are not burning separate hazardous wastes, they do not raise the core RCRA concerns discussed above, and can accordingly be regulated as part of the industrial furnace (see footnote 2).

Example

To illustrate the application of the above principles to combustion units in series, consider the following example. The owner/operator of an interim status cement kiln chooses to add an afterburner to help achieve control of PIC emissions (see 57 FR at

38561 (Aug. 27, 1991) where EPA suggested this course as a means of reducing organic emissions) and further chooses to fire the afterburner with hazardous waste. The hazardous-waste fired afterburner is not a cement kiln, but rather is a separate device: an incinerator (see footnote 3). It is not on the list of industrial furnaces, and it is engaged in the type of activity -- hazardous waste combustion -- for which regulatory controls are mandated. Thus, the afterburner is ineligible for interim status as part of the cement kiln. The facility would have to apply for a change during interim status under §270.72(a)(3) for addition of a process and receive Director approval based on meeting the criteria in that section.

However, in the same example, if the cement kiln were to add an afterburner which is not hazardous waste-fired, the Agency would not view this action as adding an incinerator. By not separately combusting hazardous waste, the hypothetical afterburner is not separately engaged in hazardous waste treatment. Rather, it is simply treating emissions from a hazardous waste treatment device, and so is considered part of that device. In such a case no regulatory approval under the change during interim status provisions is needed to add the device, and the afterburner becomes part of the interim status cement kiln.

I hope this has clarified the issue of how to address interconnected combustion devices. If you have further questions, feel free to call me, or have your staff contact Sonya Sasseville at (703) 308-8648.

cc: Matt Straus, Fred Chanania, Dev Barnes, Matt Hale, Frank McAlister, Larry Starfield, Steve Silverman, Terry Sykes, Laurie King, Waste Combustion Permit Writers' Workgroup, Subpart X Permit Writers' Workgroup

1 While the Agency may have identified other devices which do not separately fire hazardous waste as part of an industrial furnace, precalciners are the only hazardous waste-fired devices for which such an interpretation has been made.
2 This is not intended to imply that the presence of an afterburner not separately fired with hazardous waste on a non-controlled flame device never affects the regulatory classification of that device. In the case of plasma arc and infrared units, the Agency has classified

those devices as incinerators when they have afterburners (considering the plasma arc or infrared device plus the afterburner to be one unit) and as Subpart X devices when they do not. (See 56 FR 7204, 57 FR 38562, and incinerator definition at 40 CFR 260.10.) It is expected that there will be other situations in the future where the Agency will be developing separate definitions for units in series. This will be done through rulemaking, as appropriate.

3 EPA officials have in fact given this advice to cement kilns contemplating adding afterburners to assist in meeting emission controls for products of incomplete combustion.