

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

DECEMBER 20, 1991

Dear Citizen,

I am writing in response to your letter, dated November 11, 1991, requesting a public hearing pursuant to 40 CFR Section 260.20(d) on our proposal to exclude ("delist") from the lists of hazardous wastes the residues generated from the incineration of canceled pesticides by Aptus, Inc., in Coffeyville, Kansas. As allowed under that regulation, EPA is exercising its discretion not to hold a public hearing on the proposed decision.

I do not believe a public hearing is warranted for two reasons. First, most of the issues you have raised concern the entirely separate proceedings that addressed the decision made by EPA and the State of Kansas to issue a permit to the Aptus facility for incineration of hazardous wastes. Second, the Agency does not heed oral presentations in a hearing to respond fully and fairly to the issues that you have raised which do relate to the proposal to delist the residues of the incinerated canceled pesticides. We received only one other comment on the proposed delisting, and no one else requested a public hearing.

The key concern you raised in your letter is that "EPA is proposing to transfer a permit to incinerate hazardous waste and the related delisting without a Public hearing." You suggested that EPA was somehow taking a "shortcut" in the proper procedures, and argued that EPA should not "transfer" the permit and delisting to an incinerator at a different location without a hearing for the residents of Kansas.

In response to your key concern over the "transfer" of the permit without a hearing, I would like to point out that permits and delistings address separate issues and are subject to separate procedural requirements. The permit will authorize Aptus to incinerate hazardous wastes under RCRA once the facility completes a successful trial burn. EPA and the State of Kansas issued a permit to Aptus in June of this year only after two public hearings; one prior to the first trial burn in 1989, and a more recent one in June of this year. These hearings were the proper forum for public comments on the decision to allow Aptus to incinerate hazardous wastes, including dioxin wastes, and EPA Region VII and the State of Kansas considered all comments received before issuing the permit.

In a delisting determination, EPA decides whether a particular hazardous waste presents so little risk to human health and the environment that it can be "reclassified" as a non-hazardous waste. Delistings are accomplished through a petition process that requires publication of proposed decisions in the Federal Register. While public hearings are an option, delistings rarely present issues that cannot be addressed adequately through written comments and responses. In fact, although EPA has taken final

action on over 200 delisting petitions, it has not found it necessary to hold a hearing for any of them. As noted in the proposed rule, EPA believes that the Aptus incinerator will be at least as effective as the MIS in rendering the waste non-hazardous. Therefore, the proposal to transfer the delisting was justified and was consistent with the facility-specific nature of delisting.

Although the issues you have raised concerning the trial burn and the Missouri incineration permit are outside the scope of the delisting decision, I will provide brief responses to your concerns. First, the performance standards that an incinerator must meet in order to treat dioxin wastes are very stringent. Specifically, Aptus must demonstrate 99.9999% destruction and removal efficiency for hazardous constituents that are more difficult to incinerate than the key dioxin compound (TCDD). Aptus must complete a trial burn and meet these standards before it can incinerate the canceled pesticide materials.

Missouri did not extend the permit for the MIS in 1988, allowing the canceled pesticides to be incinerated, due to a prior understanding between Missouri and EPA concerning the limitations placed on the time period the MIS could operate, and the wastes it could treat. The MIS had successfully treated a fairly large volume of dioxin-contaminated materials, and Missouri did not raise any technical reason in denying the permit modification. In any case, Kansas, in conjunction with EPA, has fully evaluated the Aptus incinerator and approved the permit for the incineration of dioxin wastes (upon completion of a fully successful trial burn).

Turning to the comments relevant to the delisting petition, EPA has never specifically designated a disposal site for a delisted waste. In evaluating the ultimate disposal of the delisted waste, EPA assumed a reasonable worst-case disposal in a Subtitle D landfill without any modern engineering barriers. Therefore, EPA believes that the waste, if delisted, may be safely disposed at any typical solid waste landfill. Note also that the delisting is conditional, and would require Aptus to test the residues to ensure that the delisting levels are achieved. EPA has no knowledge that Missouri has refused to allow disposal of delisted residues; however, landfills typically have the option to restrict the wastes they choose to accept. If the residues are delisted, Aptus still must dispose of the residues according the state regulations for non-hazardous solid waste. In the past, Aptus has chosen to dispose of non-hazardous waste from the incineration of PCBs in a commercial hazardous waste landfill, and Aptus may decide to dispose of the delisted residues in a similar fashion.

Finally, EPA proposed to make the delisting effective immediately upon final promulgation under Section 3010(b) (1) of RCRA, because the regulated community (i.e., Aptus) does not need the usual six months to come into compliance. Delaying the effective date of a decision to delist these wastes would continue to impose hazardous waste management requirements on residues that EPA has determined were not hazardous. Setting the effective date on the date of publication is standard practice for delistings granted in the past, and does not represent any special exception for the Aptus delisting. Your letter did not present any specific issues or information regarding the Aptus delisting that warrant investigation in a public hearing.

Thank you for submitting comments. Nevertheless, I have determined that the Agency need not provide a hearing to give them full consideration. We will respond to your comments in the Federal Register notice finalizing the decision on the Aptus petition. However, EPA Region VII has agreed to meet with you, if you wish, to listen to your specific concerns about the permitting of the Aptus incinerator. A Region VII representative will be contacting you shortly to schedule such a meeting.

Sincerely,

Sylvia K. Lowrance, Director
Office of Solid Waste