

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

January 22, 1992

MEMORANDUM

SUBJECT: Evaluating Precompliance Certifications for Boilers  
and Industrial Furnaces

FROM: Bruce M. Diamond, Director  
Office of Waste Programs Enforcement

TO: Hazardous Waste Management Division Directors  
Regions I - X  
Frank Covington, NEIC

As you know, regulations for the operation and maintenance of boilers and industrial furnaces (BIFs) burning hazardous waste were promulgated on February 21, 1991. The interim status requirements state that owners and operators of BIFs must submit precompliance certifications demonstrating that they will be able to meet specified emissions standards based on their best engineering judgment. In addition, 40 CFR sections 266.103(b) and (e) require facilities to stop burning hazardous waste and close if they do not submit complete and accurate certifications. Operations may only resume if the facility obtains a RCRA permit. A preliminary review of these submittals by several Regions indicates that a significant number of facilities have failed to submit all of the correct information and/or accurate emissions calculations. To ensure that appropriate enforcement actions are taken<sup>1</sup> this memo provides a regulatory interpretation on what is considered "complete and accurate".

The first step in evaluating precompliance certifications requires the Region to determine if the facility has provided complete and accurate information. Once this evaluation is done, there are two possible violation scenarios that result: (1) the facility submitted most of the information required by the regulations, omitting only minor, nonsubstantive information and/or there are only minor problems with the certification's accuracy, and, (2) the facility failed to submit major pieces of information (i.e., any information needed to determine if the facility is in compliance with the emissions standards), and/or based on the Region's judgment, inaccuracies could result in significant deviations from the emissions standards.

In response to the first scenario, the Region should consider sending a Section 3007 information request to obtain the necessary information. This letter should also emphasize that failure to provide the information within the specified time frame may result in an enforcement action ordering the facility to stop burning hazardous waste. A short turn-around time (i.e., no more than thirty days) should be specified in this request

to ensure the prompt evaluation of the facility's operations.

For the second scenario, the Region should take stronger action, for example, by sending a notice of violation to the facility requiring the facility to provide the missing information as well as an accurate determination of the facility's ability to meet the emissions standards within thirty days. Failure to respond to EPA within the specified time frame would result in an enforcement order requiring the facility to stop burning hazardous waste and begin closure. Hazardous waste burning could not resume until the facility obtains a RCRA permit. For extremely serious violations of the certification requirement, even stronger measures should be considered.

If through subsequent inspections at any of these facilities, the Region finds evidence that the facility violated or continues to violate the emissions standards for any reason, an order should be issued with an appropriate penalty.

It is important that owners and operators of boilers and industrial furnaces burning hazardous waste are aware of an aggressive regulatory presence in monitoring their operations; therefore, taking appropriate enforcement actions to send this message is vital. However, given the complexity of these regulations, it is also important that any actions we take are reasonable and fair, and that the requirement that a certification be "complete and accurate" is interpreted in a reasonable manner. This is analogous to the Part B permit application process, which allows reasoned discretion to determine when an application is "complete" (Section 270.10(c)). Should you have any questions on this issue, please feel free to contact Kate Anderson (FTS-260-9312) of my staff.

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