

PPC 9528.1986(07)

CONSTRUCTION OF A NEW INCINERATOR WITH  
THE CHANGES DURING INTERIM STATUS

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

SEP 19 1986

MEMORANDUM

SUBJECT: Interim Status of the Freeman Chemical Incinerator

FROM: Arthur Glazer, Chief  
Incinerator/Storage PAT Section

TO: Wladimir Gulevich, Director  
Virginia Bureau of Hazardous Waste Management

This memorandum is in response to your request for assistance in determining whether the incinerator constructed by Freeman Chemical Corporation in Chatham, Virginia has interim status. As our staffs have discussed, this determination was complicated by two facts. First was Freeman Chemical's reference to the regulatory amendment to changes during interim status which EPA was considering as a result of the settlement of NRDC v. EPA, but which has not been proposed. Secondly, Freeman Chemical would like to resume incineration of reaction water which was previously mistakenly classified (initially by Freeman Chemical and subsequently by EPA) as nonhazardous.

The NRDC vs. EPA case cited by Freeman Chemical was concluded by a settlement agreement under which EPA would propose certain amendments to the regulations covering changes during interim status. The proposal was to contain specific provisions on replacement units. However, since no such changes to the regulations have been made to date, the NRDC v. EPA case has no bearing on this issue.

Under federal regulations at 40 CFR 270.73, interim status terminates when final administrative disposition of a permit application is made, when action is taken to terminate interim status due to late or incomplete submittal of Part B information, or when a facility loses interim status under the new Loss of Interim Status (LOIS) provisions. Because none of these situations has occurred, the facility has interim status. Thus, because replacement is a change during interim status, the construction of a new unit must comply with the State's analogy to §270.72.

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The question of whether construction of the new waste/fume incineration unit is allowable as a change during interim status depends on whether or not the reconstruction cost limit of §270.72 is exceeded. This subsection prohibits changes amounting to reconstruction of a hazardous waste management facility during interim status. "Reconstruction" occurs when the capital investment in the changes to the facility exceeds fifty percent of the capital cost of a comparable entirely new facility. As no financial information has been supplied to us, we have made no attempt to make such an evaluation. Your office should apply the "50% rule" to determine whether the construction of the new incinerator is allowable as a change during interim status.

If you have any questions on our response or on application of the 50% rule, feel free to contact Sonya Stelmack of my staff at (202) 382-4500.

cc: Ken Shuster  
Gary Gross  
Sonya Stelmack