

Ms. Marianne Lamont Horinko
President
MACT Implementation Project
1701 Pennsylvania Avenue, NW
Suite 1000
Washington, DC 20006

Dear Ms. Horinko:

Thank you for your letter of February 3, 1999, regarding implementation of the Hazardous Waste Combustion MACT rule. I appreciate your continued interest in helping to ensure that implementation will proceed smoothly once the final standards are promulgated. Your letter touches on three areas: state adoption of the streamlined RCRA permit modification procedures promulgated in the AFast Track@ rule; public review of the final MACT rule after signature but prior to publication; and involvement of all interested stakeholders in developing implementation guidance to support the final MACT rule. I will address each of these areas in turn.

State adoption of the streamlined RCRA permit modification procedures

When developing the proposed hazardous waste combustion MACT standards, we recognized that many facilities might need to modify their equipment or operations to achieve the anticipated standards. The types of modifications we envisioned (e.g., change in air pollution control devices, waste feeds, etc.) would normally fall into the class 2 or 3 permit modification categories. The procedures involved with these can, in some instances, take a significant amount of time to complete. We needed to revisit those procedures given the maximum three year compliance period under the CAA for MACT standards. Consequently, we provided a procedural framework through the Fast Track rule to ensure that facilities could comply with their obligations under both

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RCRA and the CAA B we promulgated streamlined RCRA permit modification procedures for changes necessary to comply with MACT, and we put them into effect in advance of the final standards so states would have an opportunity to adopt the streamlined procedures before they start receiving the modification requests.

We feel very strongly that RCRA administrative procedures should not be a barrier to compliance with more stringent emissions standards. The combination of streamlined modification procedures promulgated a year in advance of the final standards is a sound approach for addressing this issue. In the Fast Track preamble, we strongly encouraged our state partners to adopt this approach, pointing out the obvious advantages to them by doing so (for example, having a mechanism available to process a potentially large volume of requests in a relatively short period of time, thus alleviating the workload burden on their permit writers).

We have periodically checked on the status of states picking up these procedures since the Fast Track rule was published. As part of our routine monthly conference calls with our regional authorization contacts, we have twice asked about the status of states adopting the Fast Track rule, once in August, 1998, and more recently in early February. Last August there was not much activity, given that the Fast Track rule was only published two months prior to the call. However, the feedback in February was very heartening. We learned that 32 of the states have either already adopted the provisions or are in the process of adopting them. Only nine states have decided not to adopt the rule or are still undecided. Of these nine, only a few have permitted sources subject to the HWC MACT standards.

The three states you specifically mention in your letter, Indiana, Michigan, and Missouri, are all in the process of adopting the Fast Track rule and plan to have completed adoption sometime this year. All of the states that plan to adopt the rule anticipate doing so by summer of next year. This coincides with when we would expect sources to start submitting the modification requests. As you know, sources must comply with the Notice of Intent to Comply (NIC) requirements before taking advantage of the streamlined procedures. Since NICs must be submitted no later than one year following promulgation of the final standards, next summer would be about the time sources would begin submitting their modification requests.

In light of this information, state failure to adopt the streamlined modification regulations may not be as widespread as you and others initially thought. Although there may still be a concern in a few situations, we will continue to work with our state partners to encourage them to take advantage of the streamlined provisions. For those that continue to use the Aregular@ modification procedures, we will ask our regional contacts to work with those states to develop a strategy for assuring that the RCRA

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permit modification process will not be a barrier to MACT compliance.

As discussed in the Fast Track preamble, one possibility is to use the temporary authorization provisions in 40 CFR 270.42(e). This would allow a source to start implementing the upgrades, although they would have to later follow up with a class 2 or 3 modification. The second possibility is for a source to request a one-year extension to the MACT compliance deadline. This extension is allowed under the 40 CFR part 63 general provisions (see 40 CFR § 63.6(i)(4)) and is separate from the one-year extension to pursue waste minimization activities. We expect that the regulatory agency would readily grant this request in cases where the need for the extension stems from the agency's own administrative procedures.

It is also important to note EPA's position that states may implement the streamlined procedures of the Fast Track rule once they adopt them into their state regulations. States will not need to wait until they have final authorization from EPA beforehand. Therefore, for all the reasons outlined above, we expect that RCRA procedures will not hinder sources from meeting the compliance date.

In your letter, you ask us to revisit our decision to not pursue any of the three implementation options described in the initial proposal (at 61 FR 17456, May 2, 1997) to address the situation where a state may not become authorized for the provisions in time to handle modifications. We reviewed those options again, and continue to believe they are not necessary. The procedural framework we established in the Fast Track rule, combined with our intent to allow States to start using the streamlined procedures upon adoption, addresses the concern about RCRA permit modifications adequately. In the few potential situations where your members might have facilities in states that do not adopt the provisions, we recommend that they contact their permit writer(s) to start discussing what the procedures and schedule for the modifications will be, and what they can do to expedite the process.

Public review of the final standards rule after signature but before publication

You suggest that we make the rule available to the regulated community, the public, and the states for review to ensure that any technical problems, inconsistencies, or errors are addressed before the rule is published in the Federal Register. Although we will take this suggestion under advisement, current Agency policy is not to release rules informally in this manner, which can have the appearance of providing preferential treatment to some parties. Furthermore, we have conducted an extensive internal review of the final rule and its associated preamble at both the staff and management levels, which helps ensure that errors or inconsistencies are minimized.

Although you did not specifically suggest using the Internet as the vehicle for releasing the signed rule for public review, we suggest you refer to a recent Agency memorandum and guidance document regarding posting of documents on the Internet for additional information on EPA's position. The memorandum, signed March 3, 1999, was from Thomas E. Kelly, Director of the Office of Regulatory Management and Information to the Regulatory Development Steering Committee. The guidance document is titled *Posting Federal Register Documents on the Internet* (Regulatory Management Guidance, Regulatory Management Division, Office of Policy, March, 1999, Reference: RMD-8). In essence, the memo and guidance discourage posting of signed documents on the Internet before publication in the Federal Register.

Involvement of all interested stakeholders in developing implementation guidance

We agree that it is important to reach out to the regulated community and the regulators after a final rule is published. Throughout the development of the rule, implementation was of paramount concern to the Agency. We hope that the preamble discussion in the final rule will answer many implementation questions. In addition, we are developing an implementation strategy, and as part of this effort we may hold focus meetings and/or workshops. These activities will be planned in such a way as to include input from and participation of interested stakeholders, to the extent feasible given available resources. We would be glad to consider your offer of assistance as we go further in our planning.

Let me again express my appreciation for your continued interest in this project and for your suggestions to aid implementation. If you have any additional questions, please contact Steve Heare at (703) 308-8404 or Jim Berlow at (703) 308-8414.

Sincerely,

Michael H. Shapiro
Acting Deputy Assistant Administrator

cc: Matt Hale
Jim Berlow
Steve Heare
Frank McAlister
Fred Chanania

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Sonya Sasseville
David Hockey
Tricia Buzzell
RCRA Senior Policy Advisors, Regions I - X