PPC 9488.1986(04)

PERMITTING REQUIREMENTS FOR A PCB INCINERATOR

APR 11 1986

MEMORANDUM

SUBJECT: RCRA Permitting Requirements for a PCB Incinerator

FROM: Marcia Williams, Director
Office of Solid Waste (WH-562)

TO: David Wagoner, Director
Waste Management Division
Region VII

This is in response to your March 25, 1986, memorandum in which you request guidance on several issues regarding the RCRA requirements as they apply to a PCB incinerator. The presence of trichlorobenzene or other Appendix VIII constituents in PCB liquids does not, in and of itself, make a waste a RCRA hazardous waste and therefore does not require a facility to obtain a RCRA permit. Only if a solid waste exhibits one of the characteristics of 40 CFR, Part 261, Subpart C or is listed as a hazardous waste in 40 CFR, Part 261, Subpart D, is it a RCRA hazardous waste, the incineration of which requires a RCRA permit. Furthermore, pursuant to the provisions of 40 CFR, Section 264.340, 264.342, 264.343 and 270.19(c)(l)(iii), if a hazardous waste is to be incinerated, Appendix VIII constituents reasonably expected to be found in the hazardous waste must be identified and addressed. If there are no RCRA hazardous wastes to be managed, I concur with your first proposed action not to require a RCRA permit for the storage or incineration of PCB liquids.

As to your second proposed action, I cannot concur with your presumption that PCB liquid sludges or soils containing listed halogenated solvents in excess of 100 ppm are spent solvents and therefore a RCRA hazardous waste. However, they may be a hazardous waste by a different line of reasoning. Using 100 ppm as a rule of thumb method for solving the PCB storage for reuse vs. the PCB storage for disposal problem does not follow the regulatory scheme for determining the expendability of a solvent. The expendability of a solvent is a function of its quality and use, not its concentration. On February 25, 1986, the Agency amended 40 CFR, Part 261 and more clearly defined a solvent as a substance

"used as a cleaning or degreasing agent, a medium for chemical reactions, an extraction agent, a dilutent and similar uses . . . ." Such solvents are considered "spent" and are regulated under Subtitle C of RCRA "when they no longer can be used because they have become contaminated with physical or chemical impurities and are no longer fit for use without being regenerated, reclaimed, or otherwise re-processed." If the wastes concerned are listed solvents and considered spent, according to the above cited guidance, then the company would need a RCRA permit, as well as a TSCA permit for the incineration of these wastes.

We agree with your interpretation of 40 CFR, 270.10(f)(3). The facility you refer to was designed to incinerate PCBs pursuant to an approval issued by the Administrator under Section 6(e) of TSCA. On July 15, 1985, in order to implement provision of the Hazardous and Solid Waste Amendment of 1984, the Agency amended 40 CFR 270.10(f) to exempt facilities constructed pursuant to an approval issued by the Administrator under Section 6(e) of TSCA, for the incineration of PCBs, from the requirements to have a RCRA permit prior to construction. Any person owning or operating such a facility may file an application for a RCRA permit to incinerate hazardous wastes at any time after commencing construction or operation. However, the facility must first receive a RCRA permit before managing any RCRA hazardous wastes.

As to the presence of dioxins and furans in the PCB liquids incinerated by this facility, the presence of these substances would not make this waste a listed RCRA acute hazardous waste unless the waste stream is one of the specific nature of those listed pursuant to the provisions of 40 CFR, Part 261. Since the majority of the dioxin and furan wastes listed on January 14, 1985, are associated with the chemical manufacturing industry, the wastes you refer to most likely are not regulated under RCRA.

Your proposed action with respect to a trial burn seems prudent and expedient, should it be determined that a RCRA permit is required. However, instead of monitoring for dioxins and furans, we suggest that a surrogate parameter be utilized. TSCA burn data may be utilized in establishing any RCRA permit conditions.

Finally, you should be aware that in order to resolve many of the consistencies between the waste management regulations of TSCA and RCRA and to eleviate many of the regulatory problems associated with mixed PCB-RCRA hazardous wastes, the Administrator has decided to list PCB wastes as a RCRA hazardous waste, pursuant to the provisions of 40 CFR Part 261. As I am certain you are

aware, a listing action of this magnitude requires the resolution of a number of complex issues. Therefore, the TSCA/RCRA issues which you have referred to in your memorandum, as well as many others, must be dealt with and resolved over the next several months. With this in mind, I would like to emphasize that the Agency has always taken the position that for mixed RCRA-PCB hazardous wastes, compliance with both the TSCA and RCRA regulations is required.

I hope this guidance addresses your concerns and will assist you in your dealings with this facility. Should you wish to have someone from your office participate as a member of the PCB listing Workgroup, please contact Al Feldt at FTS-382-2791. Your experience in this area could greatly benefit this listing effort.