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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

February 26, 1996

The Honorable Bill Emerson
United States House of Representatives
Washington, D.C. 20515

Dear Congressman Emerson:

Thank you for your letter of January 30, 1996 to Administrator Browner in which you expressed your concerns about application of the omnibus permit authority and site-specific risk assessments as part of the Environmental Protection Agency's (EPA's) Hazardous Waste Minimization and Combustion Strategy.

You expressed concern that the Agency has imposed permit conditions without the benefit of defined regulatory standards that have been subject to a formal review under the Administrative Procedure Act, and that the Combustion Strategy itself was not authorized by Congress. As you know, the omnibus provision was authorized by Congress under Section 3005(c)(3) of the Resource Conservation and Recovery Act. The codification of this provision at 270.32(b)(2) followed the Administrative Procedure Act. The use of the omnibus authority in implementing the Combustion Strategy is consistent with the original intent of the statute and regulations.

The Hazardous Waste Minimization and Combustion Strategy consists of a compilation of EPA's goals, policies, and activities in areas such as permitting, combustion standards, and waste minimization. Each activity conducted under this Strategy rests on its own proper legal authority under RCRA and, in one case, the Clean Air Act Amendments of 1990.

The Strategy itself does not impose regulatory requirements, but is a policy statement expressing how the Agency plans to exercise its discretionary functions under RCRA in the future. Specifically, the Strategy sets out EPA's permitting priorities and recommends procedures for ensuring that individual permits meet RCRA's mandate to protect human health and the environment. As such, the Strategy does not require its own separate legal authorization from Congress. As noted above, each independent activity undertaken as part of the overall Strategy (e.g., updated technical standards, individual permitting decisions, waste minimization plan) has been and will continue to be carefully

scrutinized to make sure that the legal basis for any action is clear, and that all appropriate procedures are followed (including public notice-and-comment for all rulemakings and for each individual permit action).

A number of people have expressed concerns about the time and resources to perform risk assessments, based on the cost of the assessment that is being done for the WTI incinerator in East Liverpool, Ohio. It is important to recognize that the risk assessment guidance developed pursuant to the Combustion Strategy does not involve the extensive evaluation being done for the WTI facility. The level of detail of that assessment is not the norm, but rather was due to site-specific factors, as well as to the fact that this assessment was an early effort which was expected to help refine future risk assessments. On the other hand, with appropriate emissions data the screening analysis outlined in EPA's risk assessment guidance can generally be completed in a fairly short time at a cost of less than $50,000, although more detailed analysis for a specific site may be considered by the permitting authority depending on site-specific conditions. The regulations already require hazardous waste combustors to perform trial burns to demonstrate compliance with the emissions standards; collection of the additional emissions data needed for a risk assessment generally amounts to a small percentage cost increase. EPA would like to minimize the burden associated with these risk assessments to the extent possible, and we are currently discussing ways to further standardize and focus the assessments.

We understand there may be some frustration with changes to the models used for risk assessments. However, the Agency believes it is important to continuously improve its air quality models and to make improved modeling tools available to the public. It is not the Agency's policy, however, to require that a particular model be used. Instead, that decision is generally made on a case-by-case basis by the permit applicant in consultation with the permitting authority. This approach allows flexibility to decide, for example, that once the risk-assessment protocol for a site is approved by the permitting authority, no further changes will be made unless agreed to by the applicant and the permitting authority.

You expressed concern that these risk assessments are unjustified. The Agency policy that the permitting process for hazardous waste combustion facilities should include a site specific risk assessment is based on new information which became available since the time that the current regulations for incinerators and BIFs (boilers and industrial furnaces) were issued. This information indicates there can be significant risks from indirect exposure pathways (i.e., pathways other than direct inhalation, such as through the food chain). This key portion, and in many cases the largest component, of the risk

from hazardous waste combustor emissions was not fully taken into account when the hazardous waste combustion emissions standards were developed.

For this reason, the "omnibus" requirement to protect human health and the environment comes into play. Permit writers must determine on a site-specific basis what, if any, additional permit conditions are necessary to assure that these additional risks are not above acceptable levels. Multipathway site specific risk assessments provide the information and logical decision-making process needed in making such determinations.

We agree that combustion, when well-designed and well operated, is one of the safest and most effective methods for treating hazardous wastes; however, we do not believe that performing risk assessments "threatens" this technology. Rather, by performing risk assessments, EPA and the authorized states are able to set appropriate emission limitations in permits to keep risks below maximum acceptable levels. We believe that assuring the public that hazardous waste combustors are operating in a protective fashion is good for the industry as well as for public health.

Thank you for your interest in this important area.

Sincerely yours,

Michael Shapiro, Director
Office of Solid Waste