

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

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

David J. Lennett, Attorney
Louisiana Environmental Action Network
P.O. Box 71
Dennis Hill Road
Litchfield, Maine 04350

Dear Mr. Lennett:

EPA has received your February 14, 1997, request to Administrator Carol Browner for an administrative stay of the treatability variance granted for the hazardous waste generated from the closure of the Surge Pond at CITGO Petroleum's Lake Charles, Louisiana refinery. 61 FR 55718 (Oct. 28, 1996). You indicate that A[t]he CITGO variance is bad law and worse environmental policy@, state that EPA is giving in to Aenvironmental blackmail@, and maintain that a stay is needed to avoid "irreparable harm".

EPA does not believe an administrative stay is justified. EPA continues to believe that the variance is warranted to avoid the possibility of a net environmental detriment at the facility: no closure by waste removal and no treatment at all of hazardous waste. A stay would similarly put off the optimal closure of the surface impoundment, creating a net environmental loss. In this regard, it is EPA's understanding (based on conversations with CITGO's counsel) that CITGO in fact is working expeditiously to develop an-improved treatment system to meet the treatment standards set out in the variance, and will submit a closure plan and resume the remediation when this task is completed. The suggestion in your petition that the company is not pursuing its ultimate remediation effort thus appears to be incorrect at this time.

In addition, EPA finds again that the extent of treatment of excavated waste required under the variance is substantial, requiring removal and destruction of benzene (the most hazardous constituent in the sludge) to the same level as required by the existing treatment standard, and requiring substantial treatment (greater than 90 % removal and destruction, or immobilization) of most of the remaining hazardous constituents in the waste, The treatment process and subsequent disposal is fully regulated under federal and state standards. This course of management will be fully protective of human health and the environment. There is no suggestion otherwise in your petition, and none in the administrative record. We do not agree that an action which results in optimal site remediation, includes substantial treatment of the excavated waste, is fully protective of human health and the environment, and delay of

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which would be environmentally detrimental should be stayed, or can in any way be said to be causing irreparable injury.

EPA also disagrees with your reading that the treatability variance language in 40 CFR 268. 44 (a) requires a finding that the waste's chemical or physical properties differ significantly from the waste tested to develop the treatment standard in order for a treatment standard to be "appropriate". See generally 61 FR at 55720-21. EPA's view is that the "inappropriate" clause is a separate test, not dependent on whether the waste is physically capable of being treated to the LDR level. Id. I also note that EPA's longstanding and consistent interpretation was most recently reiterated in national guidance issued by EPA's Director of the Office of Solid Waste and Director of Emergency and Remedial Response on January 8, 1997 (copy attached). I do not believe that a court will overturn EPA's reasonable reading of its own regulation and thus I do not agree that there is a substantial likelihood that the litigation will succeed on the merits.

In the course of interpreting the treatability variance language, you refer to the settlement agreement between EPA and the ETC in the treatability variance case involving the variances for the Craftsman and Northwestern electroplaters (no. 91-1296) (D.C. Cir.). That settlement agreement establishes no precedent for the decision in the Citgo variance, The Craftsman and Northwestern variances, and the settlement agreement and subsequent correspondence, dealt solely with a situation where the issue was whether a waste was physically different from the one used to develop a treatment standard, not with whether a treatment standard was inappropriate. That settlement agreement should not be cited in support of your arguments here regarding a different type of treatability variance.

In conclusion, I do not believe that you have presented grounds warranting the Agency staying the treatability variance. Therefore, we must deny your petition. It is unfortunate that you disagree with our policy in this matter. We have identified an approach that will provide a timely, protective solution to the problem of remediating the Citgo site. This approach has the backing of State and EPA Regional officials, and involves completion of work already commenced. We had hoped that you would recognize and endorse the environmental benefits of taking action to complete work at this location. In any event, we are not prepared to accept continuation of the status quo during an uncertain period of litigation, because the status quo involves leaving the remediation unaddressed.

Sincerely,

Elizabeth A. Cotsworth, Acting
Director
Office of Solid Waste