

May 9, 1994

MEMORANDUM

SUBJECT: EPA's Draft Waste Minimization and Combustion Strategy and Its Implications For Superfund

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TO: Director, Waste Management Division
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Director, Emergency and Remedial Response Division
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Regions III, VI, VIII, IX
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PURPOSE

On May 18, 1993, Administrator Carol M. Browner released a Draft Waste Minimization and Combustion Strategy (also referred to as the Draft Strategy) which outlined a series of steps the Agency can undertake to reduce the amount of hazardous waste generated in this country and to ensure the safety and reliability of hazardous waste combustion facilities. This memorandum addresses the relationship between the activities being implemented under the Draft Strategy and ongoing Superfund projects.

BACKGROUND

The Administrator's announcement contained a series of short- and long-term actions to address the issues associated with the combustion of hazardous waste. The short-term actions discussed in the Draft Strategy include:

- Aggressive use of waste minimization measures as part of permitting, enforcement and other efforts at facilities that generate and treat combustible waste;
- Establishment of management priorities for the Agency's combustion permitting workload over an 18-month period;
- Having a risk assessment conducted at each combustion facility for which a new permit would be issued. This risk assessment would evaluate both direct and indirect exposure pathways;
- Use of omnibus permit authority, as necessary to protect human health and the environment, in permits that are to be issued. Pollutants that might require

controls more stringent than those in existing regulations include particulate matter (possibly individual toxic metals), and dioxins and furans (assuming individual facts justify more stringent limits);

- Enhancement of public participation in permitting of combustion facilities; and
- Enhancement of inspection and enforcement efforts regarding compliance with EPA's regulations and with individual facility permit conditions,

OBJECTIVE

Our objective is to continue to implement Superfund remedies involving incineration in a manner consistent with both the Agency's goal of acting expeditiously to protect human health and the environment, and with the intent of the Draft Strategy.

IMPLEMENTATION

The Administrator's announcement clearly indicates that the Draft Strategy is focused towards pollution prevention at its source. With regard to Superfund incineration projects, the Administrator expressly noted that, "...remediation wastes present a different circumstance than newly generated wastes and, given the finite set of options for dealing with historic cleanup sites, combustion may be the most appropriate remedy. In addition, waste minimization opportunities at cleanup sites are usually severely limited." Given this distinction between remediation sites under Superfund and ongoing waste generation at RCRA facilities, the Agency's 18-month shift of permit priorities under RCRA away from new combustion capacity does not mean that incineration should not be considered in assessing Superfund remedies.

In keeping with the spirit of the Administrator's announcement, however, we believe certain provisions of the Draft Strategy may be applicable to Superfund on-site incineration projects. We are providing EPA Regions with the following guidance for determining applicable provisions of the Draft Strategy.

Risk Assessment for Projects Currently Pre-ROD

In order to obtain input from all relevant parties on health issues relating to hazardous waste incineration, we recommend that EPA Regions consult with the Agency for Toxic Substances and Disease Registry (ATSDR) when incineration is a strong candidate for selection as a remedy. ATSDR performed a review of hazardous waste incineration and has had experience with health issues involving incineration at a number of hazardous waste sites. The consultation with ATSDR should occur early on, preferably before developing the proposed remedial action plan.

CERCLA contains a provision that remedial actions must at least attain (or waive) substantive standards set in applicable or relevant and appropriate requirements (ARARs) of other environmental laws. By definition, the Draft Strategy is not an ARAR since it is not itself a legally enforceable Federal or State requirement. See 40 CFR 300.5. However, EPA regards material, such as non-promulgated criteria, advisories, guidance and proposed standards issued by Federal

or State governments, as guidance “to be considered” (TBC). See 40 CFR 300.400 (g) (3). The Draft Strategy is to be regarded as TBC guidance at sites where a ROD or Action Memorandum has not been signed.

Although compliance with TBCs is not mandatory (as it is for ARARs, absent a waiver), TBCs may be very useful in determining what is protective in selecting Superfund remedies. Therefore, provisions of the Draft Strategy should be treated as TBCs and taken into account when making response action decisions that select incineration subsequent to the date of this memorandum.

EPA Regions should conduct a site-specific risk assessment, including consideration of indirect pathways, to ensure that an incinerator can be operated in a manner protective of human health and the environment. As a first step in the risk assessment process, a screening level risk analysis using highly conservative default values for key exposure parameters and other conservative assumptions may be conducted to determine whether the risk from the given site is below a level of concern. In cases where the risk from such an analysis is above a negligible or de minimis level, an in-depth site-specific risk assessment should be performed. This approach is consistent with the draft implementation guidance of the Office of Solid Waste for performing risk assessments of emissions from facilities burning hazardous wastes.

In a memorandum dated August 11, 1993, the Acting Assistant Administrator provided EPA Regions with clarification of the relationship between the risk assessment and setting appropriate emission levels for particulate matter, dioxin and furans. Among other things, the memorandum emphasized that emission limits for a particular site must be determined on a site-specific basis, based on the result of the site-specific risk assessment and all other relevant factors. The August 11 memorandum, although primarily intended as guidance for regional permit writers, is also applicable to Superfund and should be used by EPA Regions in making decisions on remedial projects.

Further guidance regarding screening level risk analyses and risk assessments is currently being developed and will be available as soon as possible. For an update on these efforts, please have you staff contact Jo Ann Griffith in the Design and Construction Management Branch, Hazardous Site Control Division, at (703) 603-8774.

Risk Assessment for Projects Currently Post-ROD

It is important to note that the Draft Strategy does not question the protectiveness of previous incineration RODs. Nonetheless, in order to retain the highest level of public confidence, EPA Regions should take into account appropriate elements of the Draft Strategy on a site-specific basis for post-ROD projects.

We are currently organizing a technical support group to help EPA Regions make site-specific risk determinations concerning the application of the Draft Strategy to post-ROD Regions on issues, such as conducting screening level risk analyses and risk assessments that include indirect exposure pathways. I strongly encourage regional representation on the technical support group. EPA Regions should identify interested regional staff with appropriate expertise and have them contact John J. Smith, Chief, Design and Construction Management Branch, Hazardous Site Control Division, at (703) 603-8830.

Public Participation and Other Provisions of Draft Strategy

With respect to the enhanced public participation provisions of the Draft Strategy, the Superfund program already advocates early, direct, and meaningful public participation in the cleanup process with much of the emphasis on pre-ROD projects. Superfund Community Involvement staff use a variety of techniques to promote effective public participation throughout the cleanup process, and, especially pre-ROD, these techniques are consistent with the Draft Strategy. EPA Regions should, where appropriate, seek additional opportunities to involve the public in post-ROD projects. For example, EPA Regions may seek public involvement during the planning and operation of trail burns or by holding public meetings to discuss results of risk assessment studies. The goal of these efforts should be to enhance public confidence that Superfund on-site incinerators are capable of burning hazardous waste in a manner that is protective of human health and the environment.

Once a facility begins full-scale operation, EPA Regions should follow Agency policy for conducting RCRA-type inspections of all Superfund on-site incinerators. This policy was distributed to EPA Regions via a memorandum dated December 11, 1991, from the Assistant Administrator to regional Division Directors. Guidance for conducting RCRA-type inspections may be obtained from the Office of Waste Programs Enforcement, which recently distributed an interim guidance for "Performing RCRA Inspections at On-site Superfund Incinerators." See OSWER Directive 9938.06-2a. For a copy of this guidance, contact Denise Ergener, Office of Waste Programs Enforcement, CERCLA Enforcement Division, at (703) 603-8830.

ACTION

Decisions regarding application of the Draft Strategy, particularly those regarding risk assessments, should be made in consultation with Headquarters. As details of the Agency's implementation of the Draft Strategy are developed, we will provide more detailed guidance accordingly. In the interim, questions regarding incineration policy may be directed to John J. Smith, Chief, Design and Construction Management Branch, Hazardous Site Control Division, At (703) 603-8830.

The policies set out in this memorandum are not final Agency action and do not constitute rulemaking, but are intended solely as guidance. They are not intended, nor can they be relied upon, to create any rights enforceable by any party in litigation with the United States. EPA officials may decide to follow the guidance provided in this memorandum, or to act at variance with the guidance, based on analysis of specific site circumstances. The Agency also reserves the right to change this guidance at any time without public notice.