

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

March 16 1994

MEMORANDUM

SUBJECT: Expedited Administrative Review of Appeals of RCRA Permit Denials Filed by Interim Status Hazardous Waste Combustion Facilities
TO: Environmental Appeals Board

On May 18, 1993, I announced EPA's Draft Hazardous Waste Minimization and Combustion strategy. The draft strategy sets as top priorities the reduction of hazardous waste at the source and the implementation of fully protective controls at hazardous waste combustion facilities.

As part of the draft strategy, I directed the Regions to give priority to permit decisions for existing hazardous waste combustion facilities operating under interim status requirements while awaiting final action on their RCRA permit applications. This priority is important because interim status requirements are generally less stringent than permit requirements. In addition, the draft strategy calls for improved permitting processes and public involvement. One area targeted for improvement was the process governing the denial of final permits because of a facility's inability to demonstrate compliance with the permit requirements of RCRA.

Under the regulations governing appeals of RCRA permit decisions, a facility can petition the Environmental Appeals Board to review the Region's decision within thirty days of that decision. The filing of a petition for review with the Board automatically stays the effective date of the Region's decision denying a final permit until the Board takes final action on the petition and the Region issues a final permit decision based on the Board's disposition. Thus, where a facility appeals a decision denying its permit application or challenges permit conditions that are more stringent than the applicable interim standards, the facility can continue to operate under the interim status standards during the pendency of the appeal. There is presently no fixed timeframe within which the Board must act upon petitions for review of RCRA permit denials.

In order to ensure the prompt cessation of hazardous waste combustion at facilities that have been denied a final permit by the Region, while still preserving the important role of administrative review, I am today directing the Board to give its highest priority to appeals of Regional RCRA permit denial decisions for interim status combustion facilities. Absent truly extraordinary circumstances, I am directing the Board to take final action on any such appeal no later than 90 days following the Board's receipt of the petition for review. This directive shall take effect immediately. In addition, in cases where a permit establishing more stringent permit conditions is granted but appealed, if the facility's continued operation during the appeal subject to the less restrictive interim status standards has particularly serious environmental consequences, the Regions will be asked to so notify the Board and I expect the Board to adjust its priorities accordingly.

I believe that this approach, which has been endorsed by the Assistant Administrator for Solid Waste and Emergency Response and EPA's Waste Minimization and Combustion strategy Steering Committee, will help us achieve the goal of aggressively controlling hazardous waste combustion facilities. Furthermore, this approach addresses in direct fashion one of the important parts of our May 18 draft strategy – enhancing the permitting process such that timely decisions are made in a manner consistent with strong protection of human health and the environment.

Carol M. Browner