

9498.1996(02)

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

March 15, 1996

The Honorable Harold L. Volkmer
United States House of Representatives
Washington, D.C. 20515

Dear Congressman Volkmer:

Thank you for your letter of February 27, 1996 to Administrator Browner in which you raise concerns about the Environmental Protection Agency's (EPA's) hazardous waste combustion program.

You expressed concerns about: (1) why the Agency is pursuing development of maximum achievable control technology (MACT) standards for cement kilns given the results of the Texas Natural Resources Conservation Commission (TNRCC) study showing that kilns in Texas pose minimal health risk and given that the National Academy of Sciences (NAS) has not yet completed a study of the health effects of hazardous waste combustion; (2) why the Agency has grouped cement kilns and incinerators together in developing MACT standards; (3) why the Agency did not distinguish between wet and dry kilns in developing MACT standards; (4) why the Agency established feedrate limits for cement kilns under the MACT standards; and (5) why the Agency is requiring cement kilns to conduct expensive site-specific risk assessments using scientifically unproven methods. I want to address each question you raise.

Risk Posed by Cement Kilns

Notwithstanding the results of the TNRCC study, our analyses show that emissions of dioxins and furans (D/F) from cement kilns (and other hazardous waste combustors) can pose significant health risk. The range of carcinogenic risk for subsistence farmers and subsistence fishers can exceed 1 in 100,000. The health risk posed by a particular kiln is a function of the emissions from that kiln and site-specific exposure factors. Although the health

risk from emissions from cement kilns in the Midlothian, Texas, area may not be significant, this may not be the case nationwide.

In addition, we believe that hazardous waste combustors (HWCs) may represent about 9% of total anthropogenic D/F emissions in the U.S., and about 4% of total Mercury (Hg) emissions. Both are highly toxic and bioaccumulative pollutants, and Congress singled out both for priority MACT control under Section 112(c)(6) of the Clean Air Act. The Agency's MACT rule that is under development would reduce dioxin and furan emissions from hazardous waste combustors by 98% and mercury emissions by 80%.

We believe that there is ample evidence of the potential health risk from HWCs and that it would be inappropriate to delay the rulemaking. Stakeholders should have the opportunity to review and comment on the proposed MACT rules. We also note that the Agency has entered into a settlement agreement to propose the MACT rule for HWCs by February 20, 1996. Although we have missed that deadline, we are committed to moving forward with the rule as quickly as possible.

Finally, the settlement agreement deadline does not allow the Agency to wait for the results of the NAS study on the health effects of hazardous waste combustion. The Agency will, of course, factor the results of the study into our final rulemaking to the extent legally and technically appropriate. In doing so, we will be mindful as well of the legal deadlines for promulgation of the final rule.

Grouping of Cement Kilns with Incinerators

The Agency is not proposing to group cement kilns with incinerators for purposes of developing MACT standards. This misconception may stem from a May 1994 report the Agency released (Combustion Emissions Technical Resource Document) in which the Agency pooled emissions data from all hazardous waste combustors. We are no longer pursuing that approach.

Subdividing Wet and Dry Cement Kilns

The Agency agrees that it is appropriate to consider subdividing cement kilns by process type: wet versus dry process kilns. We have investigated MACT standards for wet versus dry

kilns and plan to invite comment on subdivided standards. Based on public comment and further analysis, we could promulgate subdivided standards.

Feedrate Limits for Cement Kilns

The Agency is not proposing limits on the feedrate of metals and chlorine for cement kilns. In developing the MACT standards, the Agency has, however, considered control of the feedrate of metals and chlorine in hazardous waste along with emission control equipment as valid emission control techniques in identifying MACT standards. This is because both feedrate of metals and chlorine as well as collection efficiency of the control device affect emissions. A source would be able to comply with the emission standard using any approach it chose, however, including any combination of feedrate control and emission control equipment considered most cost-effective. Finally, we note that we have considered as MACT control the feedrate of metals and chlorine only in the hazardous waste, and not in fossil fuel and raw materials.

Site-Specific Risk Assessments

As you note, the Agency is using the omnibus permit authority to ensure that site-specific risk assessments are conducted because it is concerned that its existing emission standards for HWCs are not adequately protective given that they consider exposure via direct inhalation only. For highly toxic and bioaccumulative pollutants such as dioxins and mercury, exposure via indirect pathways (e.g., the food chain) can pose much greater health risk.

You recommend that the Agency abandon the use of omnibus permit authority and adopt an approach to address these additional health risk concerns based on administrative notice and rule-making. As you know, however, 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 40 CFR §270.32(b)(2) followed the Administrative Procedure Act. The use of the omnibus authority to address potential health risk concerns not contemplated by the current regulations is consistent with the original intent of the statute and regulations. In addition, whenever the Agency invokes the omnibus permit

authority, the permit official provides opportunity for comment by affected stakeholders and responds to those comments. Further, the permit official must justify in the administrative record supporting the permit any decisions based on use of omnibus permit authority. Finally, we anticipate that the need for site-specific risk assessments will be reduced once the MACT rules are promulgated. We believe this is another reason to proceed with the MACT rulemaking as quickly as possible.

You indicate that site-specific risk assessments are costly. Although risk assessments can be costly, we believe it is important to minimize the burden associated with these assessments to the extent possible. To that end, we have issued draft guidance which includes a screening methodology that can generally allow a risk assessment to be completed in a fairly short time at a cost of less than \$50,000 once appropriate emissions data are collected. Although more detailed analysis of a specific site may be considered by the permitting authority depending on site-specific conditions, extensive analysis is expected to be the exception rather than the rule. In addition, we are currently discussing ways to further standardize and focus the assessments.

Finally, you expressed concern that the risk assessments use scientifically unproven methods. Although the Agency's draft methodology for assessing risk associated with indirect exposure to combustor emissions is currently undergoing review by our Science Advisory Board (SAB), we believe it is appropriate to continue using the methodology in the interim. We have the responsibility to make the best decisions possible using the best tools available at the time. Moreover, as discussed above, permit officials will respond to all comments on a case-specific basis when using the risk assessment methodology under the omnibus permit authority. After comments from the SAB and others have been received and evaluated, the Agency will prepare the document in final form.

Thank you for your interest in minimizing the burden associated with managing the risks from HWCs. I assure you that EPA's goal is to achieve health and environmental protection at the least burden possible to the regulated community and to implementing agencies.

The Agency has been working on this complicated rulemaking

for three years. The issues are complicated, and as noted above, there are a number of misconceptions about the Agency's approach to developing the standards. Stakeholders such as the American Lung Association are urging the Agency to propose the standards as quickly as possible. I believe that it will benefit everyone concerned (and help us meet our-legal obligation) to get the proposed rule on the street as soon as possible and to engage in informed communication on what is appropriate and what needs to be revised.

Sincerely yours,

Michael Shapiro, Director
Office of Solid Waste

Attachment

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
WASHINGTON, D.C. 20515-2509

February 27, 1996

The Honorable Carol M. Browner
Administrator
U.S. Environmental Protection Agency
40 M Street, S.W.
Washington, DC 20460

Dear Administrator Browner:

I am writing out of concern over the schedule and content of EPA's proposed maximum achievable control technology (MACT) standard for incinerators and cement kilns burning hazardous waste. As I understand it, EPA is planning to release a proposed MACT rule for these devices within one or two months. Given what is known about the draft language in this proposed rule, as well as the availability of new data which adds important new information on the risk from these devices, EPA appears to be rushing ahead unnecessarily with potentially serious cost impacts on our nation's waste management system.

As you probably know, the Texas Natural Resources Conservation Committee issued an important new study last October on the health risks from hazardous waste combustion. The study found that existing cement kilns burning hazardous waste in Texas pose minimal health risks. In its haste to propose a rule, EPA apparently has not taken these findings into consideration. In addition, the National Academy of Sciences have embarked on a comprehensive study of the health effects of hazardous waste combustion. Considering that EPA is helping fund this study, I cannot understand how EPA can issue an important regulatory proposal in this area without waiting for its own study's results. EPA has more than adequate authority under its current RARA and CAA regulations to control any perceived additional risk from these facilities right now. Hence, there is no immediate public

health concern that compels EPA to issue a proposal.

It is important to understand that cement kilns are technically identical devices. Oddly, EPA has grouped together cement kilns and incinerators, despite the obvious technical differences between the two. EPA has failed to distinguish between wet and dry kilns, which have important design and operating differences. In addition, the draft proposal includes mercury and dioxin controls which are not warranted by the available risk data as well as controls on the feederate for cement kilns which are also unwarranted.

Given these flaws and the availability of important new information, I urge EPA not to go forth with its current proposal. Even a proposed rule with flaws can have serious negative regulatory impacts and will be difficult to correct. I would appreciate a response as to why the proposal cannot be delayed and how the flaws identified in the draft proposal are to be remedied.

On a final note, I want to voice my great concern regarding the Agency's continued use of omnibus permit authority to require interim status facilities to conduct costly and scientifically unproven indirect risk assessments.

While current regulations cover direct exposures, it is the Agency's view that permit writers have unlimited and open-ended discretion to determine when and by whom these scientifically unproven risk assessments must be performed, all without the benefits of peer-reviewed regulatory guidance. As a result, companies in my district may be required to spend millions of dollars conducting indirect risk assessments based on arbitrary and unknown standards, which may result in plant closures and job loss.

I strongly urge the Agency to abandon the systematic use of omnibus permit authority in this manner and adopt a reasoned approach, based on administrative notice and rule-making, with regard to the criteria for and proper use of indirect risk assessments.

Thank you in advance for help on this matter.

Sincerely,

Harold L. Volkmer
Member of Congress