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

OFFICE OF ENFORCEMENT

DATE: December 19, 1979

Mr. Miro Dvirka
William F. Cosulich Associates, P.C.
1 Crossways Park West
Woodbury, New York 11797

Dear Mr. Dvirka:

I am writing in response to your letter of November 9, 1979, in which you requested clarification of the Federal air pollution regulation for the prevention of significant deterioration (PSD) as it applies to municipal incinerators.

Your letter seemed to confuse the PSD regulations, which specify a size cutoff of 250 tons/day charging capacity with the Standard of Performance for new incinerators (40 CFR 60.50 (1978)) which specifies a size cutoff of 50 tons/day charging capacity. For that reason, this memo will address both sets of regulations, NSPS and PSD.

I should point out that new incinerators locating in areas designated as nonattainment under Section 107 of the Act may also be subject to the Interpretative Ruling, published at 44 Federal Register 3274, January 16, 1979, or the ruling on growth sanctions published at Federal Register 38471, July 2, 1979.

The NSPS applies to new incinerators of more than 50 tons/day charging rate. It applies only to each individual incinerator which by itself has a charging rate of 50 tons/day. It does not apply, for example, to a group of 3 incinerators which each charge at a rate of 20 tons/day.

The PSD regulations apply to any new incinerator, or any group of new incinerators, with a charging rate of more than 250 tons/day if it has the potential to emit 100 tons or more/year of a regulated pollutant. The PSD regulations also apply to any smaller incinerator or group of incinerators (250 tons/day charging rate) if it has the potential to emit 250 tons or more per year.

The distinction between NSPS and PSD with regard to the treatment of groups of incinerators arises because the two regulations contain different rules for determining applicability. The NSPS applies to each "affected facility" which, in the case of a group[SEE FOOTNOTE *] of incinerators, is each individual incinerator unit with a charging rate of 50 tons/day. See 40 CFR 60.50, (1978). PSD, on the other hand, applies to each source, as the term "source" is defined at 40 CFR 52.21(b) (4). In the case of a group of incinerators, the entire group is the PSD "source". Thus, the charging rates and potential emission rates of all incinerators within the same source are grouped for the purpose of determining PSD applicability. See 40 CFR 52.21, (1978).

It is possible that both NSPS and PSD may apply to the same new source. I have developed some examples of different groupings of incinerator units and evaluated them with respect to NSPS and PSD applicability. I have presented these examples below:

1) Six new units within the same plant and under common ownership, each having a charging rate of 50 tons/day. These units are all exempt from NSPS because NSPS applies only to each unit with a charging rate of more than 50 tons/day. PSD applies to the group of units if it has the potential to emit 100 tons/year because together the units are capable of charging more than 250 tons/day.

2) Two new units within the same plant and under common ownership, each having a charging capacity of 130 tons/day. These units are both subject to NSPS because each is capable of charging more than 50 tons/day. The units are subject to PSD if they emit 100 tons/year of a regulated pollutant because together they have a charging capacity of more than 250 tons/day.

3) One new unit charging 100 tons/day. The unit is subject to NSPS. It is subject to PSD only if it has the potential to emit 250 tons of a regulated pollutant per year.

In your letter, you mentioned BACT requirements. BACT refers to Best Available Control Technology and is one of the PSD requirements. Unless a PSD permit is required for a source, BACT does not apply.

[FOOTNOTE *] In using the word "group", we mean to convey that the incinerators are at one site and under common ownership.

I should point out that EPA proposed rather extensive changes to the PSD regulations in the Federal Register on September 5, 1979. These changes will go into effect after final promulgation. While they would not affect the interpretation in this letter, they would affect several key definitions such as "potential to emit".

I appreciate this opportunity to clarify our regulations. Should you have any further questions, please contact Libby Scopino at (202) 755-2564.

Sincerely yours,

Edward E. Reich, Director
Division of Stationary Source
Enforcement

cc: Dick Rhoads, OAQPS
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