United States
Environmental Protection
Agency

Solid Waste and
Emergency Response
(5305)

EPA530-F-94-017
May 1994

EPA

Memorandum on the Application of Enhanced Public Participation and Stronger Combustion Permitting Requirements

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

MAY 23 1994

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

MEMORANDUM

SUBJECT: Application of Enhanced Public Participation and Stronger Combustion Permitting Requirements

FROM: Elliott Laws, Assistant Administrator (for) Jim Fields

TO: Regional Administrators, I - X

The Agency is proposing the "RCRA Expanded Public Participation and Revisions to Combustion Permitting" rule. This proposal represents a major step in our efforts to enhance public involvement in the RCRA process, one of the key elements of the Draft Strategy on Hazardous Waste Minimization and Combustion, announced by Administrator Browner last May.

The principal goals of the proposed rule are:

- to provide more opportunities for public involvement in the RCRA permitting process, both early on and throughout the decision-making process; and

- to provide improved interim status combustion permitting procedures.

In the spirit of the Administrator's desire to increase public involvement, I strongly encourage all EPA Regions to start meeting the goals of the proposed rule as soon as possible. Where EPA is the permitting authority, the Regions should begin implementing those portions of the proposed rule that are to be implemented by the permitting authority. Among such provisions are proposals to: issue a notice upon receipt of a permit application (proposed Section 124.32); conduct permitting activities in such a manner as to assure the opportunity for meaningful participation by all segments of the public, including non-English speakers (proposed Section 124.30); and issue public notices announcing the scheduled commencement and completion dates of facility trial burns (proposed Section 270.62). I believe the Agency has discretionary authority to implement these provisions on a case-by-case basis before the Agency promulgates the final rule.

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Where the State is the permitting authority, I would like the Regions to encourage the States to implement these provisions as well. Many State programs have such provisions already.

Where requirements proposed in the rule would fall on RCRA permit applicants EPA cannot require applicants to comply. However, I urge the Regions to encourage these applicants to meet the enhanced proposed requirements where feasible. Among these are proposed requirements to require RCRA permit applicants to hold pre-application meetings (proposed Section 124.31); the provision providing for an information repository in certain instances (proposed Section 124.33); and the requirement that interim status facilities submit proposed trial burn plans for approval with Part B of their RCRA permit applications (proposed Sections 270.19 and 270.74 (c)).

I am issuing this guidance in light of the rulemaking procedures that we must follow. I anticipate a 60-day comment period following the proposal, and then several more months to respond to the comments. It, therefore, may be six to twelve months before the rule in promulgated as a final rule. In the interim, unless the Regions and States expeditiously begin to implement the goals of the proposal, the public will not have the expanded opportunities that the rule would afford.

As you know, the interim status universe of BIFs and incinerators is the Agency's top priority in RCRA permitting. We believe that providing meaningful public involvement in the RCRA permitting process and strengthening the combustion permitting process for interim status facilities is consistent with the Administrator's objectives and fortifies the RCRA permitting process.

The proposal should be published in the Federal Register in the coming weeks. Copies will be sent directly to all Regions and States to facilitate speedy implementation of the goals set forth.

I appreciate your cooperation in promoting early and effective public involvement for all RCRA facilities and a stronger permitting process for interim status combustion facilities. I urge you to consult with your respective Offices of Regional Counsel on the application of these goals in individual cases. If you need any additional information about this proposed rule, please contact Victoria van Roden of my staff at (703) 308-8623.

cc: Michael Shapiro
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