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United States Environmental Protection Agency
Washington, D.C. 20460
Office of Solid Waste and Emergency Response

April 30, 1993

Lew H. Dodgion, P.E., Administrator
Department of Conservation and Natural
Division of Environmental Protection
Capitol Complex
333 W. Nye Lane
Carson City, Nevada 89710

Dear Mr. Dodgion:

This is in response to your letter dated February 10, 1993 and subsequent conversations between my staff and Nancy Alvarez of your staff to clarify issues requested pertaining to State and Federal applicability of the Boiler and Industrial Furnace (BIF) rule to lime kilns burning hazardous waste. This clarification involves making distinctions on whether to classify the activity of the facility as destruction, treatment or recycling.

First, we would like to point out that under the RCRA regulations recycling and treatment are not mutually exclusive as they may be under your state regulations. That is, under the RCRA regulations, recycling is normally a type of treatment (see definition of treatment in 40 CFR 260.10 which includes energy recovery and material recovery as types of treatment); see also RCRA Section 3004(q) (requiring the regulation of BIFs burning hazardous waste for energy recovery). Further, under these regulations, whether a BIF is considered to be recycling a hazardous waste has no impact on whether its operation is regulated. Irrespective of the purpose, all hazardous waste that is burned or processed in a boiler or industrial furnace as defined in 40 CFR 260.10, except as provided by paragraphs (b) (c) and (d) of 40 CFR 266.100, is subject to the BIF rule.

Second, because we are not familiar with your State laws which require a distinction between destruction, treatment and recycling, we cannot advise you on how these definitions should be applied to

determine what State approvals would be applicable for this facility. Thus, it is up to your State to make the determination of whether or how your regulations should be interpreted and applied. In any case, as discussed above, in determining the regulatory status of the lime kiln, if the material being burned is a hazardous waste, then the BIF rule 1 applicable as a Federal requirement.

If you have any additional questions or would like to discuss this in any further detail, please contact Karen Randolph of my staff on (703) 308-8651.

Sincerely,
Sylvia K. Lowrance, Director
Office of Solid Waste

cc: Dev Barnes, PSPD; Matt Hale, PSPD; Jim Michael, PSPD;
Sonya Sasseville, PSPD; Nancy Alvarez, NDEP; Waste
Combustion Permit Writers' Workgroup