PPC 9489.1991(04)

CARBON REGENERATION UNITS - REGULATORY STATUS

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

AUG 2 1991

MEMORANDUM

SUBJECT: Regulatory Status of Carbon Regeneration Units

FROM: Sylvia K. Lowrance, Director.
Office of Solid Waste

TO: Bruce P. Smith, Director
Office of Hazardous Waste Programs
Region III

This is in response to your June 7, 1991 memorandum requesting that we provide our interpretation of regulatory situations involving carbon regeneration units in light of the provisions on such units in the February 21, 1991 boiler and industrial furnace (BIF) rule. Below is a brief summary of the rule's provisions related to carbon regeneration units, followed by our responses to each of the scenarios and issues outlined in your memo.

The February 21 rule added a definition of "carbon regeneration unit" to 40 CFR 260.10. The preamble stated that both flame and non-flame carbon regeneration units should be permitted as hazardous waste thermal treatment units under Part 264 Subpart X and existing units should be regulated until then under Part 265 Subpart P. The rule also reopened until August 21, 1991, the period for existing carbon regeneration units to obtain interim status under RCRA, due to the substantial confusion among the regulated community, as well as permitting authorities, as to whether these devices were exempt recycling units or regulated treatment units. Since the carbon regeneration unit portion of the rule was promulgated under RCRA, not HSWA, authority, it does not take effect in authorized states until they adopt these provisions.

Regulatory Status of Existing Units

We agree with your interpretation that the regulatory status for an "existing" unit does not change in an authorized State

until the State determines its existing rules are sufficient or they are not, makes the necessary regulatory change to ensure equivalency with the Federal standards. We would like to clarify that, in either case, the change would not become effective until EPA approves the rules and interpretation as consistent with the §260.10 definitions. In the meantime, a State may continue to regulate the facility consistent with the policy and regulations in effect at the time of authorization.

If the State determines that the carbon regeneration unit provisions of the BIF rule can be implemented in the State under its authorized State program without a regulatory change, the State Attorney General would need to certify that the existing State authorities are equivalent to the Federal requirements set out in the February 21 rulemaking. EPA could then authorize the State for this portion of the rule. If the State, or EPA, determines that a regulatory change is required, these provisions would not become effective in the State until the State modifies its program and is authorized to implement the rule in lieu of EPA. (However, States may adopt and implement comparable rules under State authority prior to authorization by EPA.) In either case, in adopting the new regulatory approach for carbon regeneration units, the State could provide a "window" similar to that established by EPA in the February 21 preamble for existing units to qualify for interim status.

We also agree that the status of residues is not affected by the February 21 rule. Residues such as scrubber blowdown, continue to be regulated as hazardous wastes if they result from processing listed hazardous wastes, or if they exhibit a hazardous waste characteristic.

In cases where the authorized State is not yet authorized for the new provisions, you also proposed to impose conditions on the carbon regeneration unit, if determined necessary to protect human health and the environment, when issuing a permit to another TSD process at the facility. We would not recommend EPA imposing Subtitle C requirements while the carbon regeneration units remain unregulated by the State. The February 21 notice was explicit that the new carbon regeneration unit provisions would not take effect in authorized States until the states pick up the new provisions. We feel that regulating these units prior to the State becoming authorized for these provisions would work against our goal in the February notice to finally end the

confusion on the regulatory status of these units. In addition, if we took this approach, there would be substantial question as to whether we provided affected facilities with adequate notice.

Units not "in existence" as of August 21, 1991

We disagree with your interpretation that because the State is not authorized to issue Subpart X permits, units which are not "in existence" as of August 21, 1991, must obtain a Subpart X permit from EPA before constructing. Section 264.1(f)(2) gives the Agency authority to issue Subpart X permits in States that are not authorized for the Subpart X regulations. However, this section simply gives EPA authority to permit regulated miscellaneous units in authorized states; it does not authorize EPA to permit unregulated units. The definitions and interpretations related to carbon regeneration units in the February 21 rule do not go into effect in an authorized state until the state becomes authorized for those new provisions. Until that time, as you correctly observed in the first issue you raised, the regulatory status of carbon regeneration units in the state does not change, but rather is determined by the regulations and policies currently in effect in the state.

Thus, the effective date of the authorized state's approved redefinition of carbon regeneration unit, rather than the effective date of EPA's rule, determines when new carbon regeneration units become subject to regulation, including Subpart X permitting.

Effect of February 21 rule on past management of waste in carbon regeneration units

Although we did state in the BIF rule preamble that direct controlled flame carbon regeneration units have met the definition of incinerator and were subject to regulation as such, we also stated that we believe there has been legitimate doubt as to these units' regulatory status. Thus, we did not intend to provide basis for enforcing against past operation of such units without interim status or permits, but rather to address the prospective regulation of these devices. (See 56 FR 7200-7201.)

According to §270.10(e)(2), the Administrator may extend the date by which owners and operators of specific classes of existing hazardous waste management facilities must submit Part A

of their permit applications if he finds that there has been substantial confusion as to whether the owners and operators of such facilities were required to file applications and that the confusion is attributed to ambiguities in the regulations. The Agency made such a finding of "substantial confusion" as to the regulatory status of carbon regeneration units. Therefore, since the date for obtaining interim status was extended, the Agency should enforce only prospective compliance with the regulations for carbon regeneration units.

Authorized States, however, would determine compliance based upon their current regulations and policies. Therefore, we disagree with your proposal to rely upon the August 21, 1991 date to treat all carbon regeneration units as subject to RCRA. Carbon regeneration units should be treated consistent with state policies and regulations which have been in effect until the State program is revised to reflect the §260.10 definition of carbon regeneration unit and revised incinerator definition. Thus, in an authorized state which has considered carbon regeneration units to be unregulated, these devices should be treated as "newly regulated" as of the effective date of the §260.10 definition changes in that state, which will likely be later than August 21, 1991. In contrast, there may be authorized states that have always considered carbon regeneration units as incinerators or thermal treatment units, and therefore will not be treated as "newly regulated" in the future.

Carbon regeneration units managing TC wastes

We also disagree with your interpretation that all carbon regeneration units managing toxicity characteristic (TC) wastes are subject to regulation by EPA as of August 21, 1991. In an authorized state which has not yet picked up the TC listing, the waste is regulated by EPA, and EPA applies Federal regulations rather than issuing permits based on State laws. However, EPA does not have authority to issue permits to types of units which are exempt from regulation. The applicable RCRA program, which in this case would be the authorized State program, determines which classes of units are RCRA-regulated. Thus, EPA would not regulate the treatment of TC waste in a carbon regeneration unit until such units are regulated under the approved state program.

Thank you for raising these issues. They are nationally significant for effective program implementation. While we could

not agree with all the recommended solutions that Region III put forward, the careful thinking that was put into framing the issues was commendable. If your staff has further questions, they may call Sonya Sasseville at FTS 382-3132 or Frank McAlister at FTS 382-2223.

cc: Subpart X Permit Writers' Workgroup
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Permit Section Chiefs, Regions I X