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CLARIFICATION OF REGULATION OF FUEL BLENDING AND RELATED TREATMENT AND STORAGE ACTIVITIES

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

December 5, 1994

Mr. Michel R. Benoit
Executive Director
Cement Kiln Recycling Coalition
Suite 500, 1212 New York Avenue, N.W.
Washington, D.C. 20005

Dear Mr. Benoit:

Thank you for your letter of November 2, 1994, requesting clarification to my October 17, 1994, memorandum entitled "Regulation of Fuel Blending and Related Treatment and Storage Activities".

First, you point out that the memorandum appears to condition the ability of a cement kiln burning listed hazardous waste to be eligible to retain the Bevill exemption for its cement kiln dust (CKD) on whether the kiln is burning hazardous waste for energy recovery. EPA agrees that this would be an inappropriate interpretation. As you note, the Agency made it clear in the preamble to the Boiler and Industrial Furnace (BIF) rule that eligibility for the Bevill exemption focuses on the composition of the residue generated (i.e., significantly affected test) rather than on the purpose for which the hazardous waste is burned (i.e., energy recovery versus destruction). Thus, CKD generated from burning hazardous waste in cement kilns for the purpose of destruction is eligible to retain the Bevill exclusion provided it meets all the provisions of 40 CFR 266.112. In addition to the significantly affected test mentioned above, other requirements of this provision include: (1) the cement kiln must process at least 50 percent by weight normal cement production raw materials; and (2) the cement kiln must retain sufficient records to document compliance with these provisions until closure of the unit is completed.

Second, regarding your reference to our statement "Transfer operations are limited to bulking and consolidation of wastes," we agree with your concern that this statement could be interpreted too narrowly by transporters. Activities such as bulking, containerizing, consolidating, and de-consolidating are within the scope of acceptable transfer operation activities, assuming of course that no blending is taking place. Our intent in this section of the memorandum was not to restrict legitimate transfer operation activities, but to emphasize, as you noted, that activities constituting either treatment or selective blending of hazardous waste fuels to meet a fuel specification are not allowable.

I hope this information is useful. We appreciate your comments on the memorandum and welcome any further comments that you would like to provide.

Sincerely yours,

Michael Shapiro, Director
Office of Solid Waste

Attachment

Cement Kiln Recycling Coalition
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November 2, 1994

Mr. Michael H. Shapiro
Director, Office of Solid Waste
United States Environmental Protection Agency
Mail Code 5301, 401 M Street, SW
Washington, D.C. 20460

Dear Mr. Shapiro:

I am writing on behalf of the Cement Kiln Recycling Coalition (CKRC). We have been reviewing a recent guidance memorandum you sent to the regions entitled "Regulation of Fuel Blending and Related Treatment and Storage Activities," dated October 17, 1994.

We have not yet analyzed all implications of the memorandum or obtained feedback from our members as to any significant concerns they may have. Nevertheless, we have already identified two passages in the memorandum that raise concerns. It appears that both of these concerns may simply result from imprecision in drafting, but as the consequences could be significant if we are incorrect, we would appreciate a clarification from you on both points.

First, on the bottom of page 4, your memorandum appears to condition the ability of a cement kiln to retain Bevill eligibility for its cement kiln dust (ckd) on whether the kiln is burning for energy recovery. See the last sentence on page 4: "If the wastes are burned for energy recovery . . . " etc.

We believe this is incorrect. EPA's two-part test in 40 CFR 266.112 is not conditioned on the purpose of burning. Moreover, EPA explicitly dealt with this issue in the final BIF preamble, and made clear that even if a kiln were burning for purposes of destruction it would still be eligible to use 266.112 and the

ckd could still retain Bevill status. 56 Fed. Reg. 7199, col. 3, February 21, 1991 (see footnote 1).

Second, near the bottom of page 3 of the memorandum, there is a discussion of "transfer facilities" as defined under 40 CFR 260.10 and regulated under 40 CFR 263.12. In one sentence you say: "Transfer operations are limited to bulking and consolidation of wastes."

While we agree with the conclusion this sentence leads to -- that blending to meet a fuel specification is not within the range of activities allowed at an unpermitted transfer facility -- we believe the limitation stated in the quoted sentence is too narrow. For instance,

EPA has long held that not only consolidation, but also de-consolidation of wastes is allowed at transfer facilities. See attached letter from Diane Regas, EPA's Office of General Counsel, July 20, 1989. Moreover, it is also clear under the regulations that containers may be moved from one transport unit to another, or even simply stored in the same unit without movement; "bulking and consolidation" are certainly not the only activities allowed, as the memo seems to assert.

In light of the confusion that may be caused by these two sections of your memo among our members, I would appreciate your confirming for me in writing that our understandings as set forth above are correct. Thank you for your consideration.

Sincerely,

Michel R. Benoit

1 I should make clear that CKRC supports the burning of hazardous waste for energy recovery purposes and not for purposes of destruction. Thus far, however, there is no well-established and accepted test for determining whether burning is for energy recovery or destruction. (We filed a petition for rulemaking on February 8, 1994 that urged EPA to adopt such a test; EPA has not yet responded to our petition, however.) Our concern is that various regional or state personnel could assert an unreasonable position regarding energy recovery, and then seek to disqualify a kiln from 40

CFR §266.112 based on that position.