

MEMORANDUM

SUBJECT: The Status of Carbon Regeneration Units Under RCRA and Proposed Subpart X Permit Conditions for Envirotrol

FROM: Elizabeth Cotsworth, Acting Director
Office of Solid Waste

TO: Paul Gotthold, Chief
PA Operations Branch
EPA Region III

The purpose of this memorandum is to respond to your office's request for guidance regarding the regulation of carbon regeneration units ("CRUs") under the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6901, *et seq.* Your office has requested this guidance in connection with Subpart X permit conditions that Region III has proposed for a CRU facility in Darlington, Pennsylvania owned by Envirotrol, Inc. After review of EPA's previous guidance on this matter, we agree that additional guidance is warranted, as described below.

The Status of Carbon Regeneration Units Under RCRA

EPA addressed the regulatory status of CRUs in the preamble to the boiler and industrial furnace ("BIF") rule published on February 21, 1991. 56 Fed. Reg. 7134. In the preamble, EPA clarified its interpretation of the regulatory status of nonflame CRUs (i.e., whether they are regulated units under RCRA). EPA explained that, since 1980, EPA had intended nonflame CRUs as well as direct flame CRUs to be regulated under RCRA. 56 Fed. Reg. at 7200.

To clarify how CRUs are regulated, EPA added a definition of "Carbon regeneration unit" and revised the definition of "Incinerator" at 40 CFR § 260.10, specifying that both direct flame and nonflame CRUs are thermal treatment devices, not incinerators. 56 Fed. Reg. at 7206. EPA sought to ensure that both direct flame and nonflame CRUs are regulated as thermal treatment units under the permit standards of 40 CFR Part 264, Subpart X, and the interim status standards of 40 CFR Part 265, Subpart P. 56 Fed. Reg. at 7200. Thus, the new regulatory

language itself did not alter the regulatory status of CRUs under RCRA (i.e., that they are regulated units in the first instance) but, rather, clarified how they should be regulated (i.e., as thermal treatment units rather than as incinerators). In addition, for the reasons stated in the preamble, EPA determined that there had been substantial confusion about the regulatory status of CRUs, and EPA therefore reopened the period for existing CRUs to obtain interim status under RCRA. 56 Fed. Reg. at 7200-7201.

The Status of Carbon Regeneration Units in Pennsylvania

Like the federal regulatory changes described above, Pennsylvania in January 1993 revised the definition of “incinerator” and adopted a new related definition for “carbon regeneration unit.” 23 Pa. Bulletin 370 (Jan. 16, 1993). You have indicated that at about the same time, Pennsylvania began applying its regulations to cover all CRUs as regulated units subject to hazardous waste permitting.

The State has indicated to you that it began considering all CRUs to be regulated units in light of EPA’s 1991 regulatory revision defining CRU and the State’s 1993 parallel regulatory change. However, as noted above, EPA’s definition of CRU simply clarified which type of regulated unit a CRU is. The Agency’s clarification in the 1991 preamble that CRUs are regulated units in the first instance under the existing RCRA regulations was independent of this regulatory change. It follows that even prior to EPA’s clarification, the State would have been able to apply its authorized program regulations to cover CRUs. (EPA approved the State’s regulations on the basis that they had at least the same scope of coverage as the federal regulations, which allowed such coverage.) In sum, Pennsylvania’s ability to issue permits to CRUs did not depend on the State’s 1993 regulatory revisions. Rather, Pennsylvania’s actions to permit CRUs merely represent a change in how the State has been applying its authorized State program regulations.

Implementation in Authorized States

You have asked us to review the August 2, 1991 guidance memorandum from the Director of EPA’s Office of Solid Waste recommending how to implement EPA’s February 21, 1991 notice addressing the regulatory status of CRUs. Specifically, you asked us to review the guidance in light of the Subpart X permit conditions that Region III has proposed for the Envirotrol facility.

Since the mid-1980s Pennsylvania has been authorized to implement the base RCRA program. A State program may be “authorized” under RCRA if its program is equivalent to and consistent with the federal program, and provides for adequate enforcement. RCRA § 3006(b), 42 U.S.C. § 6926(b).

The August 2, 1991 guidance memorandum explained that States may address the regulatory status of existing and new CRUs through interpretation of their existing rules, without a regulatory change, or through regulatory revisions. The memorandum recommended that in both instances, EPA not treat CRUs as regulated units under the authorized State program until EPA has approved the State interpretation or regulatory change.

We have reconsidered this general guidance and believe it warrants refinement. As noted, EPA's February 21, 1991 preamble affirming that all CRUs are regulated units under RCRA simply clarified the Agency's interpretation of its existing regulations on this issue. Pennsylvania subsequently began applying its own regulations in practice to conform to EPA's clarified interpretation. In these particular circumstances, no additional authorization by EPA is required for the State's current interpretation as to CRUs to be considered part of its authorized State program.

The RCRA State authorization regulations governing program revisions, 40 CFR § 271.21, focus on changes to federal or State statutory or regulatory authority as giving rise to the need for additional federal approval. They do not as a matter of course require a State to receive additional federal approval where the State revises how it implements its authorized program in order to be consistent with EPA's existing interpretations of the RCRA regulations. (EPA does have discretion, however, to require additional authorization in specific cases where warranted.) Thus, the August 2, 1991 guidance should have more carefully distinguished between a State that needs to make regulatory changes to achieve equivalency with the federal standards for CRUs and States such as Pennsylvania that simply implement their existing authorized regulations to ensure equivalency.

Consequently, to the extent Pennsylvania or other States authorized for the RCRA base program can reasonably implement their existing programs consistent with EPA's interpretation that all CRUs are regulated units, no further approval by EPA is required. This is consistent with EPA's policy to give States reasonable latitude in implementing their authorized programs.¹ It follows that where States such as Pennsylvania have RCRA-regulated treatment units subject to Subpart X -- whether through the State's implementation of its authorized regulations or EPA's approval of State program revisions -- EPA may issue Subpart X permit conditions if the Agency has not yet authorized the State for Subpart X.

¹At the same time, EPA is responsible for ensuring adequate oversight of State programs. This may be accomplished through a broad variety of tools such as those ensuring that States share adequate information regarding program developments, 40 CFR § 271.21(a) & (d), as well as other oversight mechanisms.

Finally, we request that you coordinate with our office in responding to public comments on the proposed permit conditions for the Envirotrol facility. If you have any further questions regarding this topic, please feel free to contact Vernon Myers at (703) 308-8660.

cc: Steve Heare, PSPD
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Key RCRA Contacts