Coalition for Responsible Waste Incineration

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June 27, 2005

Mr. Michael M. Stahl
Director, Office of Compliance
Environmental Protection Agency
Mail Code 2221A
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Mr. Stahl;

The Coalition for Responsible Waste Incineration (CRWI) appreciates the opportunity to submit comments on *Clean Air Act National Stack Testing Guidance* (February 2, 2004). CRWI is a trade association comprised of 26 members with interests in hazardous waste combustion. CRWI's members operate incinerators, boilers, process heaters, hydrochloric acid production furnaces, and cement kilns and are regulated under MACT standards. We appreciate the effort EPA has put into this guidance and look forward to working with the Agency to develop a more effective document that is consistent with the requirements of the Clean Air Act and good engineering practices.

CRWI has concerns about the way the document is written. It makes broad sweeping statements purporting universal applicability without researching EPA's own regulations to make sure they are accurate. CRWI believes that the document needs extensive revision to correct a number of errors and misunderstandings of the Agency's own regulations. We also suggest that in the first paragraph of the document, EPA reiterate that this guidance applies only to Clean Air Act stack testing and not to testing under other EPA programs (such as RCRA, TSCA, etc.).

For the most part, CRWI agrees with the comments submitted by National Environmental Development Association's Clean Air Project submitted on December 16, 2004. Any exceptions will be noted in our specific comments below.

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Coalition for Responsible Waste Incineration

There are two general themes for our comments on this guidance document. First, as we will show below, there are a number of places where this guidance document is misleading or simply wrong when applied to hazardous waste combustors as regulated under Subpart EEE (40 CFR 63.1200). The easiest way we can see to correct this is to simply include as a part of the disclaimer that this guidance is not applicable to any source regulated under Subpart EEE.

Second, there seems to be a fundamental misunderstanding within the document of how stack tests are actually performed. A successful test is made up of at least three successful runs. There are numerous reasons why a facility (or the permitting agency observer) may want or need to abort a particular run (probe breaks, lose a seal, etc.). In these types of situations, the testing team stops the run, documents the reasons, and proceeds to the next run.

Detailed comments are as follows. Page numbers refer to the pdf version dated 2/18/04.

1. Page 5 – Second bullet. The guidance states that there are no regulatory provisions to extend the testing deadlines. The Skinner memo repeats this. This is not correct. The Subpart EEE regulations for hazardous waste combustors (40 CFR 63.1207(e)(3)) clearly give the facility the ability to petition for an extension of any initial or periodic performance test should the Administrator fail to approve the test plan. The EEE regulations require agency approval of the comprehensive performance test plan (although testing without an approved plan is still required if the agency fails to act on the test plan within the time frame allotted). In addition, 40 CFR 63.1207(i) allows for an extension of subsequent tests so that performance testing required under other EPA or State programs may be coordinated. CRWI suggests that the Agency modify the guidance to acknowledge these exceptions in the regulations.

   This assertion is repeated in the last bullet on page 5 where it states that the only method the Agency has to grant an extension is an enforcement action. Again, CRWI encourages the Agency to modify the language in this bullet to reflect the regulatory language in Subpart EEE. CRWI would like to point out that the major reason for paragraph 63.1207(e)(3) was concerns about the permitting agency's ability to approve these test plans on a timely basis.

2. Page 6 – First bullet under Stack Test Waivers. The first sentence in this bullet suggests that the initial test may be the only test for an extended period of time. For hazardous waste combustors, this is not correct. Subpart EEE requires some sort of a test every 2.5 years. CRWI does not

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believe that 2.5 years is an extended period of time. We suggest that the Agency note this exception in the guidance document.

The second sentence in the bullet states that all identical emissions units should be tested for initial compliance. CRWI would like to point out that this is not consistent with the General Provisions section 63.7(h) that allows waivers if the source can show that they are meeting the relevant standards on a continuous basis. These provisions and similar ones have been used in a number of locations to waive testing for identical units operated in a similar manner at the same location. One member company has two identical liquid-fired boilers located at the same plant and burning the same material. Under RCRA, the facility has used the data-in-lieu provision for the initial and subsequent BIF Certification of Compliance (COC) required under 40 CFR Part 266, as well as for the RCRA trial burn. Other members have similar situations and similar approaches to testing identical units at the same location. This process minimizes emissions to the environment (because testing is often done at extreme conditions) as well as allowing facilities to set operating parameter limits with a minimum of cost. As a matter of policy, the Office of Solid Waste has reaffirmed (See attached memo from Robert Holloway) that 63.7(h) can be used to waive testing of identical units operating in a similar manner at the same location for facilities regulated under Subpart EEE. CRWI sees no reason to discourage either activity and suggests that the guidance should acknowledge that these situations exists and encourage it rather than discourage it.

CWRI agrees with the NEDA comments on the three criteria listed in the guidance for waiving a stack test. We believe that the Agency would have to go through a rulemaking to require any of these three criteria. We also believe that if two units are identical, are operated simultaneously, and are permitted that way, the company should have the opportunity to approach 100% of the standard, the same as any other unit.

3. Page 8 – Third bullet. NEDA correctly points out that most stack test plans do not need approval and suggests removing the "and approved" language from the guidance document. However, the submittal for approval of comprehensive test plans for hazardous waste combustors is required under Subpart EEE (see 40 CFR 63.1207(e)). CRWI would like to point out that this is one more place where regulations governing hazardous waste combustors differ from other Clean Air Act regulations.

4. Page 9 – Last bullet. Normally, the permitting agency will observe stack tests to a certain degree. However, observation is not required under the

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regulations. As such, the failure of the permitting authority to observe a test should not create a basis for rejecting the results of a test. Thus, in the last sentence of this bullet, we suggest the following changes: "However, if the facility provided timely notice and the delegated agency declined to observe the test, the test results ~~should not~~ cannot be rejected solely because the test was not observed by agency personnel." In addition, we suggest adding the following sentence. "In cases in which agency approval of a test plan is required and the agency does not give a timely response such that the facility can give a timely notice for conducting a test, the test results cannot be rejected solely because the test was not observed by agency personnel or because the notice to test was not timely."

5. Page 10 – Representative Testing Conditions. CRWI agrees with the NEDA comment that the test should be conducted according to the regulatory requirement and/or a submitted test protocol. Any suggestion that some test be run under different conditions would not be appropriate for inclusion in guidance. There is a troubling sentence in the second bullet that requires using the highest emitting fuel. The way the sentence is structured, one could argue that this suggests burning coal (because it would give higher emissions than would burning of a liquid fuel or natural gas) for all tests, no matter how the equipment is designed. From an engineering perspective, this makes no sense. From a legal perspective, it appears to be adding requirements to the testing conditions through guidance instead of a rulemaking. We suggest the Agency drop this sentence in the next draft of the guidance.

6. Page 11 – First bullet under Soot Blowing. The guidance states that soot blowing should be included as an element in a comprehensive stack test. CRWI would like to point out that including soot blowing during a test would only be appropriate under certain conditions. If soot blowing was included in the data used to develop the currently applicable emission standards, then it may be appropriate to include this activity as a part of the testing conditions. If soot blowing is appropriate, then the facility needs to determine if it is appropriate to include soot blowing for one, two or all the test runs. This again will depend on how the data were generated to develop the applicable standards. If soot blowing was not included in the data used to develop the currently applicable emission standards, then it is not appropriate for that condition to be included in the testing. CRWI suggests either adding information to this section making it clear when soot blowing should or should not be included as a part of the testing protocol or dropping the whole section on soot blowing.

7. Page 11 – Stoppages. CRWI finds this entire section troublesome. First, the General Provisions (in section 63.7(e)(3)) discuss when test runs can be replaced based on losing samples, forced shutdowns, extreme meteorological conditions, or other conditions beyond the control of the owner/operator. This is opposite of what is suggested in the first sentence of the initial bullet in this section. Second, there seems to be a fundamental misunderstanding of how a stack test is performed. Normally, a facility's requirement under the regulations is to collect valid data and have at least three test runs as specified in the testing method or, for hazardous waste combustors, as specified in an approved plan (see section 63.7(e)(3) of the General Provisions). If a problem occurs, a particular run may be stopped but the test continues until three or more valid runs are completed. This may take several days or weeks to complete. The Agency may have a point related to the entire "test" but to apply this guidance to an individual run is not appropriate. Runs are routinely interrupted for both operational and sampling concerns. A stopped run does not fit the definition of a stopped test and therefore cannot be considered a violation. The test goes on unless there is something prohibitive occurring (e.g., run out of spiking materials, sample media, fan breaks, etc.). Also, CRWI is concerned that this guidance would remove the ability of the agency observer to use his/her judgment on how to respond to a certain set of circumstances. We do not believe that the guidance should get into this kind of minutiae. The Agency needs to make allowances for on-the-spot decision making. If an observer agrees that a certain condition is reason to stop sampling, a facility should not have to worry about receiving a violation for simply following the judgment of the observer. In addition, the agency should not be able to contradict a field decision to stop a run when their on-site observer thought it was an appropriate decision to meet the objectives of the testing program. This type of second guessing is not appropriate. In some cases, worker safety will take precedence (e.g., facilities may not wish to have personnel on the stack conducting testing during a thunderstorm). Finally, under "Representative Testing Conditions" section, the Agency has already stated that testing during a startup, shutdown, or malfunction (SSM) event is not valid testing. If an SSM event occurs during testing, how or why is a facility supposed to continue testing during such an event when the Agency has already said is invalid?

The guidance states that "partial stack test data" can be used to determine if a violation has occurred. Since a facility cannot use partial results to show compliance, it is not appropriate for the agency to be able to use partial data to show non-compliance. CRWI suggests removing this statement from the guidance document.

CRWI suggests that this section be extensively re-written to show a clear understanding of how stack tests are conducted and to give the on-site observers the appropriate amount of discretion to use their judgment during the tests.

8. Page 13 – fourth bullet. The text states that if the test is being conducted based on Part 63, those results should be reported within 60 days. This is not universally correct. CRWI would like to point out that 40 CFR 63.1207(j) allows 90 days to report test results for hazardous waste combustors.

Thank you for considering these comments. If you have additional questions, please contact us at 202-452-1241 or crwi@erols.com.

Sincerely yours,

Melvin Keener, Ph.D.
Executive Director

cc: CRWI Board
Mamie Miller, EPA
Rob Lischinsky, EPA

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

OCT 20 2000

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

David P. Novello, Esq.
Freedman, Levy, Kroll & Simonds
1050 Connecticut Ave., N.W.
Washington, D.C. 20036-5366

Dear. Mr. Novello:

Dave Hockey asked me to respond to your September 6, 2000 letter requesting an interpretation of a provision of the Hazardous Waste Combustor (HWC) MACT rule. You request confirmation that §63.7(h) (Waiver of performance test) can be used to request a waiver of a comprehensive performance test for a source that would demonstrate compliance with the standards using data from a similar source.

We agree that it is appropriate to use §63.7(h) to request a waiver of a performance test for a source when you document that data from a similar source demonstrates compliance with the standards. In considering whether to grant the waiver, the Administrator must determine that the source is meeting the relevant standards on a continuous basis. See §63.7(h)(2). In addition, you must justify the request for the waiver. See §63.7(h)(3)(iii). The benefits of a waiver that you outline in your letter should suffice, including: (1) the expensive of conducting virtually duplicate testing would be avoided; (2) the increased emissions of hazardous air pollutants that occurs during worst-case operations during comprehensive performance testing (e.g., resulting from spiking feedstreams with toxic metals) would be avoided; and (3) regulatory officials would avoid using scarce resources to review and approve test plans and test results when data from a similar source already document compliance.

If you have further questions on this issue, please feel free to contact me.

Sincerely yours,

Bob Holloway

Bob Holloway
Environmental Engineer

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