Coalition for Responsible Waste Incineration

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U. S. Environmental Protection Agency Headquarters
Ariel Rios Building
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Washington, DC 20460

Attn: Docket F-2001-SPRP-FFFFF

The Coalition for Responsible Waste Incineration (CRWI) is pleased to submit comments on the Hazardous Waste Management System; Standardized Permit; Corrective Action; and Financial Responsibility for RCRA Hazardous Waste Management Facilities (66 FR 52192, October 12, 2001). CRWI represents eleven companies that operate hazardous waste combustion units and fourteen other companies with interests in hazardous waste combustion. These companies account for a significant portion of the U.S. capacity for hazardous waste combustion. In addition, CRWI is advised by a number of academic members with research interests in hazardous waste combustion. Since its inception, CRWI has encouraged its members to reduce the generation of hazardous waste. However, for certain hazardous waste streams, CRWI believes that combustion is a safe and effective method of treatment, reducing both the volume and toxicity of the waste treated. CRWI seeks to help its member companies both to improve their operations and to provide lawmakers and regulators helpful data and comments.

As noted in the preamble to the standardized permit rule, this proposal is preceded by more than fifteen years of experience in reconciling the goals of operational flexibility,

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public participation, and regulatory oversight.[1] CRWI believes these goals are complementary, not competing, and praises EPA for this important initiative.

CRWI's primary comment addresses the eligibility of its member facilities for the benefits of the standardized permit rule. Also, CRWI submits comments on other discrete issues such as the organization of the new rule, the permit modification process, and certification for new facilities.

1. **Eligibility of thermal treatment facilities.** The currently proposed revisions describe the scope of eligibility for a standardized permit in §§124.201 and 270.255 as follows:

> If you generate hazardous waste and then non-thermally treat or store the hazardous waste in tanks, containers, or containment buildings, you may be eligible for a standardized permit. We will inform you of your eligibility when we make a decision on your permit.

On its face, this language suggests that storage or treatment in tanks, containers, or containment buildings prior to thermal treatment is not eligible for standardized permitting, while post-thermal treatment storage or treatment in such units would be eligible. Nothing in the proposed rules or the regulatory preamble, however, explains an eligibility distinction based upon pre- as opposed to post-thermal treatment. In contrast, there are some discussions in the preamble that imply that any "facility" engaged in thermal treatment of hazardous waste would not be eligible for the proposed standardized permit.[2]

In its most direct and persuasive explanation of why thermal treatment is not eligible for coverage under a standardized permit, however, EPA focuses upon regulated "activities" and "units" rather than "facilities:"

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[1] *Proposed Rule: Hazardous Waste Management System; Standardized Permit; Corrective Action and Financial Responsibility for RCRA Hazardous Waste Management Facilities*, 66 Fed. Reg. 52192, 52196, col. 1 (Oct. 12, 2001)(this Federal Register Notice will be cited hereafter as "*Proposed Standardized Permit Rule.*")

[2] *See Standardized Permit Rule* at 66 Fed. Reg. at 52194, col. 3 (facilities potentially affected are those "which store and/or non-thermally treat RCRA hazardous wastes on-site"); and at 52196, col. 3 ("We are proposing to allow generators to apply for standardized permits for hazardous wastes that they non-thermally treat or store on-site ...").

> Experience gained by the Agency and states over the past 15 years has shown that the complexity of waste management varies by type of *activity*. Some *activities*, such as thermal treatment and land disposal of hazardous waste, are more complex than storage of hazardous waste. We believe that thermal treatment and land disposal *activities* continue to warrant "individual" permits, prescribing *unit-specific* conditions.... However, we also believe that some accommodation can be made for hazardous waste management practices in standardized *units* such as tanks, container storage areas, and containment buildings.[3]

This activity-specific approach is consistent with the original intent of the RCRA alternative permitting recommendations issued by the PIT Task Force in 1996. While recognizing that combustion facilities warranted individualized permitting, the Task Force also noted that efficiency could be obtained through general or hybrid permitting at combustion facilities for "any ancillary units (e.g., storage units)."[4] The "hybrid" permit proposed in the original PIT Concept Paper coincides with the standardized permit proposed in the current rulemaking.

Thus, EPA understood as early as 1996 that technical concerns sould not foreclose the use of standardized permits at thermal treatment facilities for ancillary units in which waste is stored or treated in containers, tanks, or containment buildings. The public may have concerns, but these will be adequately aired through the pre-application meeting conducted by the owner/operator and eventual public notice of the Agency's draft permit decision. These established procedures for incorporating public concerns into permitting decisions are a more appropriate regulatory mechanism than a blanket prohibition on thermal treatment facilities' benefiting from streamlined permitting reforms.

As for the eligibility of facilities receiving waste from off-site, this seems an issue more appropriately addressed in the facility waste analysis plan or supplemental site-specific permit conditions, rather than a categorical exclusion from eligibility.

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[3] *Standardized Permit Rule* at 52196, col. 1.

[4] *See Notice: Availability of Permits Improvement Team Concept Paper on Environmental Permitting and Task Force Recommendations*, 61 Fed. Reg. 41251, 41268, col. 2 (August 7, 1996)(cited hereafter as "*PIT Concept Paper*".)

CRWI believes that applying the standardized permit rule to diversified facilities that include, but are not limited to, thermal treatment can benefit the environment by promoting innovative treatment technologies, waste minimization, and efficient allocation of private and public resources. A proposed amendment to §§124.201 and 270.255 assuring that ancillary units at thermal treatment facilities and off-site treatment facilities are eligible for standardized permits follows:

> If you non-thermally treat or store hazardous waste in tanks, containers, or containment buildings at your facility, these activities may be eligible for a standardized permit. We will inform you of your eligibility when we make a decision on your permit application.

2. **Permit modification procedure.** CRWI supports the proposed modification procedures for standardized permits. CRWI also generally supports the definitions of the two types of modifications available for standardized permits; "routine changes" are those that would qualify as Class 1 and 2 modifications, and "significant changes" are those that would be Class 3 modifications, under 40 C.F.R. §270.42. However, the reliance on Appendix I -- particularly as proposed in 40 C.F.R. §124.211(b)(2) and (3) -- resurrects an unnecessary procedural hurdle that EPA sought to remedy in 1988 with the promulgation of 40 C.F.R. §270.42(d).

Upon promulgating §270.42 in 1988, EPA recognized that "there will undoubtedly be permit modification requests that are not included in Appendix I."[5] The procedures set out at 40 C.F.R. §270.42(d) allow the permittee to seek a Class 1 or 2 classification based upon (1) the similarity between the proposed facility modification and the changes classified in Appendix I, and (2) the general definitions of Class 1, 2, and 3 modifications set out in 40 C.F.R. §270.42(d)(2). Substantially paraphrased, those definitions are:

- Class 1: Minor changes that keep the permit current with routine changes to the facility.
- Class 2: Common variations in the types or quantity of wastes managed at the facility; technological advancements; and changes necessary to meet new regulatory requirements.

[5] *Permit Modification Preamble* at 37919, col. 2.

- Class 3: Changes that so substantially alter the facility or its operations that the procedural equivalent of a new Part B application is in order.

In this 1988 rulemaking, EPA stated that it would monitor decisions by state and federal permitting officials and update Appendix I to include unanticipated classifications. *Id.* Since that time, however, what few additions have been made to Appendix I have generally been in response to new regulatory requirements rather than accumulated experience. Nevertheless, on a broader scale EPA has noted that §270.42(d) has not been used as intended:

> After several years' experience, EPA has found that very few unclassified modifications [i.e., modifications based on §270.42(d)] have been processed using this procedure. EPA believes that both facilities and permit writers may be restricting themselves to only the classification examples that are in Appendix I. EPA is also concerned that in those cases where §270.42 (d) is used, the Class 3 modification procedure may be automatically selected, without consideration of whether the permit activity is less significant and should be reclassified to a lower category.[6]

The above discussion illustrates that Appendix I is not a definitive list of the myriad changes to a facility that might prompt a permit modification, an understandable shortcoming that §270.42(d) procedures sought to remedy. Under their individualized permits, CRWI members have used these procedures to implement significant technological advances (including pollution prevention measures) that otherwise would have been delayed or abandoned if faced with the Class 3 modification process. In the proposed standardized permitting rule, however, §270.42(d) is "dead letter;" i.e., there is no avenue for downgrading an unlisted facility change that otherwise would qualify as a Class 1 or 2 modification under a §270.42(d) analysis. While the 120-day time frame for an agency decision on a "significant change" is certainly preferable to the open-ended timeline associated with a Class 3 modification, this does not alleviate the loss of flexibility that results in substituting an admittedly

[6] *See Proposed Rule: Expanded Public Participation and Revisions to Combustion Permitting Procedures,"* 59 Fed. Reg. 28680 at III(B)(4)(June 2, 1994).

incomplete Appendix I for latitude by the regulators, the public, and permittees to exercise professional judgment and common sense. The current version of §124.211 will inevitably lead to relatively innocuous facility changes being processed through the most arduous modification procedure simply because Appendix I to §270.42 is not, and probably never will be, a definitive list of potential permit modifications. CRWI respectfully submits that the flexibility allowed by §270.42(d) be preserved in the standardized permitting rule.

3. **The §270.280 certification requirement and its relation to the §270.10(f) pre-permit construction ban for new facilities.** The §270.280 certification requirement highlights crucial timing issues that must be resolved in this rule. In this proposed provision, the permittee must certify either that the facility already complies with Part 267 requirements, or that the permittee has entered into an enforceable compliance schedule that will assure that the facility will eventually meet Part 267 requirements.[7] Since existing §270.10(f) prohibits construction of new hazardous waste management units without an issued permit, the latter option – set out in proposed §270.280(a)(1)(ii) – essentially places the applicant for a standardized permit for a new waste management unit under an enforcement order at the outset of permit process. Many potential applicants will balk at signing onto an enforceable "compliance schedule" for building a new waste management unit under constantly changing market conditions. If the proposed new waste management unit is otherwise protective of human health and the environment and eligible for a standardized permit, the timing of its construction and eventual operation should be driven more by the permittee's actual business needs rather than a "compliance schedule" that may have to be revised in light of supervening circumstances.

   To deal with this contingency, CRWI respectfully proposes adding a new paragraph, §270.280(a)(1)(iii), as follows:

   > (iii) Has been designed, and will be constructed and operated to comply with all applicable requirements of 40 CFR Part 267, and will continue to comply until expiration of the permit.

4. **Organization of the standardized permit rule.** As proposed, the standardized permit rule places many of its substantive provisions in a new Subpart G to Part 124. This placement is several volumes removed

[7] *See Proposed Standardized Permit Rule* at 52230, col. 2; 52231, col. 1.

in 40 CFR from the RCRA Subtitle C series of regulations beginning at Part 260. CRWI respectfully suggests that the provisions currently proposed as Subpart G to Part 124 would be better compiled in the newly promulgated Subpart I of Part 270. This would place these new RCRA regulations, both in regulatory context and hard-copy proximity, closer to the cross-references that users must consult in order to understand all of the implications of this rule.

CRWI thanks you for the opportunity to comment on this proposed rule. If you have questions, please contact me (202-452-1241 or crwi@erols.com).

Sincerely yours,

Mel Keener

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