UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
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June 30, 2011

Ms. Karen Bassett
Chief Deputy Director
Arkansas Department of Environmental Quality
5301 Northshore Drive
North Little Rock, AR 72118-5317

RE: Regulatory Clarification Request, New Source Performance Standards (NSPS) for Other Solid Waste Incinerators (OSWI), Subpart EEEE

Dear Ms. Bassett:

This letter is in response to your e-mail dated May 6, 2011, where you requested that the Environmental Protection Agency (EPA) provide guidance for determining the applicability of the OSWI rule to certain incinerators used during county prescription drug take back programs. For the reasons listed in this letter, incinerators that would otherwise meet the applicability of 40 C.F.R. Part 60, Subpart EEEE for Other Solid Waste Incinerators are not excluded from these regulations while burning voluntarily collected prescription drugs.

Your e-mail and our subsequent conversations revealed that the incinerators in question are owned by local police departments and are considered institutional waste incineration units, according to 40 Code of Federal Regulations (C.F.R.) Section 60.2977. You stated that the incinerators meet the initial applicability of the rule at 40 C.F.R. Section 60.2885(a) and (b). When the units are used to incinerate marijuana and other confiscated contraband, the local police departments claim the exclusion from OSWI for "units that combust contraband or prohibited goods." *See* Section 60.2887(p). In this case, the applicability of this exclusion is not in question by Arkansas Department of Environmental Quality (ADEQ).

At other times, the same institutional waste incineration units are used to burn prescription drugs collected by the police department in a voluntary prescription drug take back program. Your question is, "would materials collected during a government sponsored prescription drug take back program be considered 'contraband or prohibited goods' as those terms are defined in 40 C.F.R. Section 60.2887(p)?" This section states:

> (p) Units that combust contraband or prohibited goods. Your incineration unit is excluded if the unit is owned or operated by a government agency such as police, customs, agricultural inspection, or a similar agency to destroy only illegal or prohibited goods such as illegal drugs, or agricultural food products that cannot be transported into the country or across State lines…

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EPA proposed the OSWI rule on December 9, 2004. In the preamble to that proposal, we discussed the exclusion for units that combust contraband or prohibited goods. We state:

> The EPA realizes that government agencies sometimes must resort to incineration to destroy illegal drugs and items that are prohibited in all or portions of the U.S. due to biosecurity reasons. For example, few options other than incineration exist for the destruction or disposal of marijuana and *other drugs seized by the police*...Therefore, EPA has chosen to exclude units operated by government agencies that combust only contraband or prohibited goods from the proposed rules. Note that if contraband or prohibited goods are combusted with other waste in a VSMWC unit or IWI unit, the unit would be covered by the proposed rules. [Emphasis added]. *See* 69 FR 71483.

We further clarified the exclusion in the preamble to the final rule, published on December 16, 2005:

> *Prohibited goods exclusion.* Limited the exclusion to incinerators ''owned and/or operated by,'' not merely ''used by'' government agencies. Clarified that the exclusion applies only to goods confiscated by a government agency. *See* 70 FR 74874.

Although the incinerators in question meet the first part of the exemption at 40 C.F.R. Section 60.2887(p) (i.e. they are owned by a government agency, the local police department), EPA does not consider prescription drugs, collected from households during a community take back program, to be illegal or prohibited drugs; and thus, they are not "contraband." In fact, as described in the preamble to the final rule, they clearly are not "confiscated", since they are voluntarily collected. These incinerators burning this material, which meet the applicability of the provisions of 40 C.F.R. Part 60 Subpart EEEE at 40 C.F.R. Sections 60.2885(a) and (b), would also meet Section 60.2885(c): "Your incineration unit is not excluded under §60.2887" and would be subject to 40 C.F.R. Part 60 Subpart EEEE.

Please note that this determination is for interpretive and guidance purposes only, based on a set of given facts, as described by ADEQ. It is not a determination of applicability for any site specific source. This response has been coordinated with EPA's Office of Air Quality

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Planning and Standards (OAQPS) and EPA's Office of Enforcement and Compliance Assistance (OECA). If you have any questions or concerns about this determination, please contact Kathleen Aisling, of my staff, at 214-665-6406.

Sincerely,

David F. Garcia
Associate Director
Air/Toxics & Inspection
Coordination Branch

cc: Charlene Spells (OAQPS)
Marcia Mia (OECA)

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