



June 30, 2005

**FOLEY & LARDNER LLP
ATTORNEYS AT LAW**

WASHINGTON HARBOUR
3000 K STREET, N.W., SUITE 500
WASHINGTON, D.C. 20007-5143
202.672.5300 TEL
202.672.5399 FAX
www.foley.com

VIA ELECTRONIC MAIL AND U.S. MAIL

WRITER'S DIRECT LINE
202.295.4021
rstoll@foley.com EMAIL

Information Quality Guidelines Staff
Mail Code 2811R
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Re: External Review Draft, The Inventory of Sources and
Environmental Releases of Dioxin-Like Compounds in the
U.S.

Dear Madam or Sir:

I am writing on behalf of the Cement Kiln Recycling Coalition¹ ("CKRC") to request immediate correction of information contained in U.S. EPA's Inventory of Sources and Environmental Releases of Dioxin-Like Compounds in the U.S.: Year 2000 Update (External Review Draft, March 2005)² (the "External Review Draft") regarding dioxin and furan emissions from hazardous waste burning cement kilns. The External Review Draft grossly overestimates dioxin/furan emissions from hazardous waste burning cement kilns by using an emission factor methodology to estimate emissions of dioxin/furan compounds rather than the actual emissions data that is in U.S. EPA's possession for each hazardous waste burning kiln in the United States. This quality assured/quality controlled data has been consistently relied on by U.S. EPA for rulemaking purposes; and, therefore, also should be the basis of U.S. EPA's dioxin inventory calculations.

I am requesting immediate correction of this error, even though U.S. EPA has sought public comment on the External Review Draft. I draw your attention to U.S. EPA's policy in this regard:

It is EPA policy to consider requests for correction prior to the final Agency action or information product in those cases where the agency has determined that an earlier response would not unduly delay issuance of the Agency action or information product and the complainant has shown a reasonable likelihood of suffering actual

¹ The Cement Kiln Recycling Coalition represents all U.S. cement manufacturers recovering energy from hazardous waste by using it as fuel in cement kilns.

² Disseminated to the public at <http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=55264>, and via 70 Fed. Reg. 24039 (May 6, 2005).

harm from the Agency's dissemination if the Agency does not resolve the complaint prior to the final Agency action or information product.³

As detailed further herein, CKRC members have a reasonable likelihood of suffering actual harm from dissemination of this erroneous information.

1. Background

Hazardous waste combustor ("HWC") cement kilns have been subject to dioxin/furan emissions limitations under the RCRA Boilers and Industrial Furnaces ("BIF") Rule since 1991. *See* 40 C.F.R. §266 subpart H. More recently, dioxin/furan emissions have been more stringently regulated by the National Emission Standard for Hazardous Air Pollutants for Hazardous Waste Combustors ("HWC NESHAP"). *See* 40 C.F.R. §63 subpart EEE. Both the BIF Rule and the HWC NESHAP mandate periodic stack testing of emissions, including dioxin/furan emissions, to demonstrate compliance with regulatory limitations. As a result, there is a comprehensive database of actual emissions data from all HWC cement kilns in the United States.⁴ As described more fully below, because the actual emissions data is not utilized by the External Review Draft to calculate the dioxin inventory level for this subcategory of sources, dioxin emissions from HWC cement kilns are greatly overstated and the public is misled by publication of inaccurate information.

2. Total Dioxin/Furan Emissions Are Grossly Overestimated

The External Review Draft incorrectly estimates that HWC cement kilns emit 68.40 g TEQ of dioxins/furans each year and are responsible for 4.47% of annual dioxin emissions in the United States. (*See* Executive Summary at xliii). In contrast, the preamble to the HWC NESHAP finalized by U.S. EPA in 1999 reports the agency's calculation of dioxin/furan emissions from HWC cement kilns in 1997 at approximately 13.1 g TEQ/year.⁵ This discrepancy exists because the External Review Draft uses an incorrect emissions factor instead of the actual emissions data that has been collected by the U.S. EPA's Office of Solid Waste. (*See* Chapter 8).

As noted above, reliable emissions data for dioxins and furans is available for all HWC cement kilns in the HWC emissions database maintained by EPA's Office of Solid Waste. That database contains stack gas emission concentrations, feedstream characteristics, and other combustor information from trial burn, risk burn, and Certification of Compliance test reports that have been collected from each

³ Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Action, EPA/260R-02-008, October 2002 at section 8.5.

⁴ This database is maintained by U.S. EPA's Office of Solid Waste (OSW).

⁵ NESHAPS: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors, 64 Fed. Reg. 52877 (September 30, 1999). As a result of litigation challenging these final standards, interim standards are currently in place (published February 13, 2002), and new final standards are expected from U.S. EPA in September 2005.

HWC cement kiln in the United States.⁶ This data was the basis of U.S. EPA's 1999 conclusion that HWC cement kilns produced 13.1 g TEQ/year⁷, and more recent information is currently available at <http://www.epa.gov/epaoswer/hazwaste/combust/newmact/tchsprtdoc2.htm>. The new data includes all combustors burning hazardous waste during the early 2003 time period. U.S. EPA is using actual emissions data from the HWC database to finalize the HWC NESHAP Replacement Standards, and the Agency should be consistent by using actual emissions data for the External Review Draft and final Year 2000 Dioxin Inventory.

3. Dissemination of Inaccurate Data Harms CKRC's Members

On May 6, 2005, the U.S. EPA requested comments on the External Review Draft. 70 Fed. Reg. 24039. CKRC is submitting this petition within the 60-day comment period provided by that notice; however, CKRC believes that correction of this fundamental error through the regular comment process will not be sufficiently timely to protect the interests of CKRC's members. Correction of these errors through the regular comment process could take months, if not years. In the meantime, the information disseminated by the External Review Draft will have adverse impacts on CKRC's members.

First, HWC cement kilns in the US and overseas historically have been and continue to be the focus of intense scrutiny by interest groups. Interest groups, particularly those inclined to oppose energy recovery in cement kilns, often promote their goals by trumpeting negative allegations about cement kilns. As an example, consider the April 2003 newsletter from a Texas group opposed to HWC cement kilns with this blaring headline: "REPORT: KILNS ARE BIG DIOXIN POLLUTERS." The newsletter goes on to claim that, based on EPA data from 2000, that "the cement industry is the 7th largest source for industrial dioxin pollution" and that "out of the top 50 largest individual facility sources of dioxin pollution, 7 are cement plants." (See "Smoke and Mirrors: A Bulletin for Citizens Opposing Cement Plant Pollution" by Downwinders at Risk at <http://www.cementkiln.com/Documents/SmokeAndMirrorsSpring2003Edition.pdf>.)

It is particularly important that EPA not allow data that the Agency knows to be incorrect, such as the HWC cement kiln dioxin emission estimate in the External Review Draft, to become fodder for these types of publications.

Second, CKRC's members are regulated by both the U.S. EPA and state agencies. The existence of conflicting data between the External Review Draft and information disseminated during the HWC NESHAP rulemaking process could become a significant source of confusion for federal and state permit writers and regulators.

⁶ See Draft Technical Support Document for HWC MACT Standards, Volume V: Emissions Estimates and Engineering Costs, U.S. EPA Office of Solid Waste and Emergency Response, March 2004.

⁷ See Final Technical Support Document for HWC MACT Standards, Volume V: Emission Estimates and Engineering Costs", July 1999.

Finally, CKRC expects U.S. EPA to re-issue a final HWC NESHAP in the coming months. If this rule is subject to a judicial challenge by environmental organizations, the agency's inconsistency in estimating dioxin/furan emissions could cause problems for EPA on judicial review, which could lead to continued regulatory uncertainty for HWC cement kilns.

4. Conclusion

The U.S. EPA guidelines emphasize that the objectivity, utility and integrity of data should be maximized.⁸ The information based only on emission factors disseminated by the External Review Draft conflicts with the actual emission data compiled and relied on by U.S. EPA in developing the HWC NESHAP. Further, the data is likely to confuse federal and state regulators and mislead the public as to the level of risk posed by hazardous waste burning cement kilns. For these reasons, CKRC respectfully requests that U.S. EPA correct the estimate of dioxin emissions from HWC cement kilns in the External Review Draft as soon as possible.

For additional information, please contact either Mr. Michel Benoit at the CKRC or me. Mr. Benoit can be reached at (202) 466-6802.

Very truly yours,

A handwritten signature in black ink, appearing to read 'R. Stoll', with a long horizontal line extending to the right from the end of the signature.

Richard G. Stoll

cc: Michel Benoit, CKRC
David Cleverly, National Center for Environmental Assessment

⁸ Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Action, EPA/260R-02-008, October 2002 at section 5.1.