

APR 4 2002

MEMORANDUM

From: Bruce Buckheit, Director
Air Enforcement Division

To: Christopher Pilla (3AT13)

Re: Maplewood Landfill/Ingenco Applicability Determination Issues

We have reviewed the materials you have provided us regarding the joint NSPS and Title V permit draft applicability determination for the USA Waste Inc., Maplewood landfill (Maplewood) and INGENCO and offer the following comments for your consideration:

The situation at hand arises because Maplewood, a landfill operator and Ingenco, the operator of internal combustion engines using the landfill's gas, claim to be separate companies, with each having no control over the others' operations. However, the combined Maplewood/Ingenco operation is clearly subject to the New Source Performance Standard (NSPS) Subpart WWW regulations. Furthermore, since INGENCO controls the valve that determines whether the gas is routed to Maplewood's flare or its own engines, it clearly has control over the fate of the emissions from the landfill.

Our primary issue of concern is with regards to NSPS applicability. We have determined that both Maplewood and INGENCO are subject to all aspects of the NSPS. Our finding stems from the explicit definition of "owner or operator" found in the General Provisions (40 CFR Part 60, Subpart A). Maplewood and Ingenco each control some aspect of the landfill operation and the collection and control systems that are part of the controlled landfill. This approach is consistent with prior EPA determinations in other cases. Under NSPS Subpart WWW, the owner or operator must demonstrate compliance with the NMOC destruction requirements, regardless of whether the control system is a power generating engine or flare, and regardless of who actually operates those controls.

In light of the materials you submitted for our review, we do not object to the issuance of separate Title V permits to Maplewood and INGENCO. Since both of these entities are subject to the NSPS standard as described above, they are both required to obtain Title V permits. In these permits, we recommend that the permitting authority specify explicitly what monitoring, recordkeeping, operational practice and compliance certification provisions are the responsibility of each party. Guidance describing these requirements can be found in 40 CFR 70.6 a) 1) and 70.6 c) 5) iii, respectively. However, under no circumstances may the separate individual

permits limit the compliance liabilities of the parties. Both permits must be consistent with the NSPS requirements.

We believe this approach will result in a compromise that should be acceptable to all parties without inappropriately limiting the State's or EPA's enforcement ability under NSPS, PSD, or the Title V programs. We would appreciate receiving a copy of both draft permits once the State has submitted them to your office for review.

If you have any questions, please call Robert Dresdner or Zofia Kosim of my staff at 202-564-7116 or 202-564-8733, respectively.

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