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Office of Solid Waste (5305W)

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**Hazardous Waste Combustion (HWC) National  
Emission Standards for Hazardous Air Pollutants  
(NESHAP) Fact Sheet:**



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**NOTIFICATION OF INTENT TO COMPLY  
AND COMPLIANCE PROGRESS REPORT**

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*EPA promulgated the Phase 1 Maximum Achievable Control Technology (MACT) standards, also called the National Emission Standards for Hazardous Air Pollutants (NESHAP), for hazardous waste burning incinerators, cement kilns, and lightweight aggregate kilns (64 FR 52828, September 30, 1999). These standards were promulgated under the joint authority of the Clean Air Act (CAA) and Resource Conservation and Recovery Act (RCRA). Since 1999, we have issued several technical corrections and amendments to the Phase 1 HWC NESHAP to improve its implementation. In addition, we have also revised specific sections in response to vacaturs ordered by the Court of Appeals for the District of Columbia Circuit. Most notably, we promulgated negotiated interim emission standards that temporarily replace the 1999-promulgated standards, and we extended the compliance date by one year. This fact sheet summarizes, for the convenience of all interested stakeholders, regulators, and industry, the Notification of Intent to Comply (NIC) and Compliance Progress Report requirements, and any relevant amendments.*

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**Notification of Intent to Comply**

In the June 19, 1998 “fast track” final rule (63 FR 33782), we required that sources notify their regulatory agencies of their intent to comply or not to comply with the Phase 1 HWC NESHAP. We repeated this requirement, called the Notification of Intent to Comply (NIC), in the final Phase 1 HWC NESHAP rule published on September 30, 1999 (64 FR 52828). The NIC requirement applied to all sources subject to the original Phase 1 HWC NESHAP, including those that began burning after the September 30, 1999 promulgation date of the rule (see 40 CFR 63.1212(b) of *40 CFR Part 63 Revised as of July 1, 2000*).

On July 25, 2000, the Court of Appeals for the District of Columbia Circuit decided *Chemical Manufacturers Ass’n v. EPA*, 217 F. 3d 861 (D.C. Cir. 2000) by vacating several Phase 1 HWC NESHAP requirements, including the NIC. Because sources were required to comply with the NIC in order to be eligible for the RCRA streamlined permit modification procedure, EPA requested and the court agreed to withhold issuing its mandate to vacate until after October 2, 2000, the date that final NICs were due for existing sources. The court issued its mandate on October 11, 2000. We removed the NIC requirements from the federal regulations on May 14,

2001 (66 FR 24270). Since the court issued its mandate after the final NICs were due for existing sources, we chose to retain this fact sheet in the Toolkit. You will note, however, that we modified the original version of the fact sheet, which was dated June 2000, to include this summary information concerning the October 11, 2000 vacatur.

## Purpose of the Notification of Intent to Comply

The NIC served several purposes for you (the source), the public and your regulatory agency. In general, these included:

- ◆ A planning tool for you to determine an efficient means to achieve compliance with the Phase 1 HWC NESHAP,
- ◆ A communications tool for you to convey information to both the public and the regulatory agencies,
- ◆ A communications tool for the public to provide you with input regarding your planned activities, and
- ◆ A measurement tool for regulatory agencies to determine your progress toward achieving compliance by the compliance date or, alternatively, your progress toward closure if you elected not to comply.

## Notification of Intent to Comply Process

You were required to complete the following basic steps to comply with the NIC requirement:

- ◆ Prepare a **draft NIC** and make it available for public review by July 1, 2000. See 40 CFR 63.1210(b)(2) of *40 CFR Part 63 Revised as of July 1, 2000*.
- ◆ Provide **notice** of a NIC Public Meeting by July 1, 2000 through the following mechanisms: newspaper advertisement, visible and accessible sign posting at or near the source, broadcast media announcement, and notice to your facility mailing list. See 40 CFR 63.1210(c)(3) of *40 CFR Part 63 Revised as of July 1, 2000*.
- ◆ Hold an informal **NIC Public Meeting** no later than July 31, 2000. See 40 CFR 63.1210(c)(1) of *40 CFR Part 63 Revised as of July 1, 2000*.
- ◆ Submit a **final NIC** to your regulatory agency by October 2, 2000. See 40 CFR 63.1210(b)(3) of *40 CFR Part 63 Revised as of July 1, 2000*.

## Draft Notification of Intent to Comply

You were required to make the draft NIC available to the public for their review by July 1, 2000. In this way, the document could be used as the basis for the discussion at the NIC public meeting which was required to occur no later than July 31, 2000. The draft NIC should have contained:

- ◆ General facility information including:
  - Name and address of the owner/operator and the source.
  - Whether you are a major or area source.
  - Any waste minimization and pollution control techniques you were considering to ensure compliance with the Phase 1 HWC NESHAP. You should have indicated if you required an extension to your compliance date for the addition or installation of waste minimization controls. Where necessary, sources can request an extension to their compliance date for up to one year for the purpose of adding waste minimization measures or equipment. Such requests are subject to approval by the regulatory agency. See 40 CFR 63.1213. Waste minimization may include equipment or technology modifications, work practices, maintenance, training, inventory control, closed loop recycling, and/or environmentally sound on-site or off-site recycling (excluding burning for energy recovery as recycling).
  - Any emission monitoring techniques you were considering.
  - Waste minimization and pollution control technique effectiveness and how you arrived at that determination.
  - A statement that you intended or did not intend to comply with the HWC NESHAP.

See 40 CFR 63.1210(b)(1)(i) of *40 CFR Part 63 Revised as of July 1, 2000*.

- ◆ A description of the key activities you intended to perform in order to comply with all HWC NESHAP emission control requirements. For each activity, you were required to include estimated initiation and completion dates. Although you were required to include these dates in your NIC, they were for informational purposes only in order to measure your progress toward compliance with the NESHAP or facility closure; they were not enforceable.

Below are the key activities that we identified in the Phase 1 HWC NESHAP rule that must have been included in the NIC. You could also have included additional key activities as appropriate.

- The dates by which you intended to develop engineering studies for emission

control systems or process changes for emission reductions.

- The dates by which you intended to commit or secure internal or external resources (i.e., funds or personnel) for installing emission control systems or making process changes. And/or, the dates by which you intended to issue orders for the purchase of component parts to accomplish emission control or process changes.
- The dates by which you intended to submit construction applications to the appropriate authorities.
- The dates by which you intended to initiate and complete on-site construction, installation of emission control equipment, or process changes.
- The date by which you expected to achieve final compliance.
- Information on the emission controls and techniques selected to comply with the emission standards if this information was available at the time of the draft NIC.

See 40 CFR 63.1210(b)(1)(ii) of *40 CFR Part 63 Revised as of July 1, 2000*.

- ◆ The following “Certification of Intent to Comply” signed and dated by an authorized representative:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.”

The authorized representative should be: a responsible corporate officer (for a corporation), a general partner (for a partnership), the proprietor (of a sole proprietorship), or a principal executive officer or ranking elected official (for a municipality, State, Federal, or other public Agency).

See 40 CFR 63.1212(a)(1) and (2) of *40 CFR Part 63 Revised as of July 1, 2000*.

Sources that did not intend to comply with the Phase 1 HWC NESHAP were required to stop burning hazardous waste on or before October 1, 2001, with one exception. This exception was for those facilities that had another on-site source subject to the HWC NESHAP and needed to continue burning hazardous waste in one source while making equipment modifications in the other. Under that scenario, you could continue burning hazardous waste after October 1, 2001, if you certified in your NIC that:

- You would stop burning hazardous waste on or before September 30, 2002 (the original Phase 1 HWC NESHAP compliance date), and
- You would combust hazardous waste from another on-site source during the year prior to September 30, 2002, because the other source was either installing equipment to comply with the Phase 1 HWC NESHAP or was installing source reduction modifications to eliminate the need for further combustion of wastes.

See 40 CFR 63.1210(b)(1)(iv) of *40 CFR Part 63 Revised as of July 1, 2000*.

### **Notification of Intent to Comply Public Meeting and Notice**

An informal public meeting was required to be held no later than July 31, 2000 to discuss the draft NIC. The notice and format of this meeting should have been similar to that of RCRA pre-application public meetings. It should have been an open, flexible and informal meeting during which you and the public shared ideas regarding compliance with the Phase 1 HWC NESHAP or your plans to move toward RCRA closure if you elected not to comply.

You must have given the public notice of the NIC meeting by July 1, 2000 using each of the following mechanisms:

- ◆ An advertisement in a newspaper of general circulation in the county or equivalent jurisdiction where your facility is located. In addition, you were required to publish the notice in a newspaper of general circulation in adjacent counties or equivalent jurisdictions where such publication would be necessary to inform the affected public.
- ◆ A visible and accessible sign at or near your facility.
- ◆ A broadcast media announcement on at least one local radio or television station.
- ◆ A copy of the notice to all members of your mailing list, in accordance with 40 CFR 124.10(c)(1)(ix).

You were required to include the following items in your public notice:

- ◆ The date, time, and location of the meeting.
- ◆ A brief description of the purpose of the meeting.
- ◆ A brief description of the source and proposed operations, including the address or a map of the source location.

- ◆ A statement that encouraged people to contact you at least 72 hours before the meeting, if they needed special access to participate in the meeting.
- ◆ A statement describing how the public could obtain your draft NIC.
- ◆ The name, address, and telephone number of your contact person for your draft NIC.

During the public meeting, you were required to:

- ◆ Post a sign-in sheet or otherwise provide the means by which the attendees could give their names and addresses on a voluntary basis.
- ◆ Provide an introductory presentation of the draft NIC, including source operations and plans for compliance with the Phase 1 HWC NESHAP or RCRA facility closure.
- ◆ Facilitate questions and feedback from the public.
- ◆ Collect and retain any written comments or materials submitted at the meeting for inclusion in your final NIC.

See 40 CFR 63.1210(c) of *40 CFR Part 63 Revised as of July 1, 2000*.

### **Final Notification of Intent to Comply**

You were required to submit your final NIC to your regulatory agency by October 2, 2000. The final NIC was required to contain final versions of all the items required for the draft NIC, as well as:

- ◆ A summary of the public meeting.
- ◆ A list of public meeting attendees and their addresses.
- ◆ Copies of any written comments or materials submitted at the meeting.
- ◆ Information on the emission controls and techniques selected to comply with the emission standards if this information was available at the time of the final NIC.
- ◆ The following “Certification of Intent to Comply” signed and dated by an authorized representative:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining



the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.”

See 40 CFR 63.1210(c)(2) and 63.1212(a)(1) of *40 CFR Part 63 Revised as of July 1, 2000*.

After you submitted your final NIC, you could revise the information, as necessary. You were required to submit any revisions to your regulatory agency and make them available to the public. See 40 CFR 63.1210(b)(1)(ii) of *40 CFR Part 63 Revised as of July 1, 2000*.

## Compliance Progress Report

If you intended to comply with the Phase 1 HWC NESHAP, we also required that you submit a Compliance Progress Report to your regulatory agency by October 1, 2001. You were required to include in your report documentation that demonstrated you made progress toward achieving compliance with the Phase 1 HWC NESHAP. If you did not intend to comply or your regulatory agency determined that you had not made sufficient progress toward compliance, you must have stopped burning hazardous waste on or before October 1, 2001. Your progress report was required to have included:

- ◆ An update of the progress you had made toward compliance since your final NIC submission. This would include information demonstrating that you had:
  - Completed engineering designs for any physical modifications needed to comply with the emission standards.
  - Submitted construction applications to the applicable regulatory authority.
  - Secured an internal or external commitment of resources (i.e., funds or personnel) to purchase, fabricate, and install equipment, devices, and ancillary structures necessary to meet the emission and operating standards.

If you demonstrated your progress toward compliance without conducting any of the actions cited earlier, you were required to document in your progress report either that you were in compliance with the rule requirements at that time, or specify other steps that you were taking to achieve compliance.

See 40 CFR 63.1211(b)(1) and (2) of *40 CFR Part 63 Revised as of July 1, 2000*.

- ◆ An update of the schedule or milestones you presented in the final NIC, including your anticipated progress during the period between the progress report submittal (October 1, 2001) and the Phase 1 HWC NESHAP compliance date. This update was required to



include:

- Bid and award dates for construction contracts and equipment supply contractors.
- Milestones such as ground breaking, completion of drawings and specifications, equipment deliveries, intermediate construction completions, and testing.
- Dates on which you applied for or obtained operating and construction permits or licenses.
- Dates by which you anticipated approvals of any permits or licenses.
- The projected date by which you expected to achieve compliance with the emission standards and operating requirements.

See 40 CFR 63.1211(b)(3) of *40 CFR Part 63 Revised as of July 1, 2000*.

- ◆ Information on the emission controls and techniques selected to comply with the emission standards if this information was available at the time of the progress report.
- ◆ The following “Certification of Intent to Comply” signed and dated by an authorized representative:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.”

See 40 CFR 63.1212(a)(1) of *40 CFR Part 63 Revised as of July 1, 2000*.

## For More Information

**Removal of the NIC, Compliance Progress Report and Early Cessation** - Implementation of Court Orders Final Rule (66 **FR** 24270, May 14, 2001). Internet Address:

<http://www.epa.gov/hwcmact/preamble.htm>

**Phase 1 HWC NESHAP Final Rule Technical Correction** - *Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors* (64 **FR** 63209, November 19, 1999). Section Two: *Corrections to the June 19, 1998 Final Rule*. Internet Address:

<http://www.epa.gov/hwcmact/preamble.htm>

**Phase 1 HWC NESHAP Final Rule** - *Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors* (64 **FR** 52828, September 30, 1999). See Part Five, Section Three: *What Are the Requirements for the Notification of Intent to Comply?* Internet Address: <http://www.epa.gov/hwcmact/preamble.htm>.

**Phase 1 HWC Revised Standards Final Rule** - *RCRA Comparable Fuel Exclusion; Permit Modifications for Hazardous Waste Combustion Units; Notification of Intent to Comply; Waste Minimization and Pollution Prevention Criteria for Compliance Extensions* (63 **FR** 33782, June 19, 1998). See Section V: *Notification of Intent to Comply and Progress Report*. Internet Address: <http://www.epa.gov/epaoswer/hazwaste/combust/fastrack/>

#### **RCRA Expanded Public Participation**

*RCRA Expanded Public Participation Final Rule* (60 **FR** 63417, December 11, 1995).  
Internet Address: <http://www.epa.gov/epaoswer/hazwaste/permit/pubpart.htm>

*RCRA Expanded Public Participation Brochure*. February 1996. EPA-530-F-95-030.  
Internet Address: <http://www.epa.gov/epaoswer/hazwaste/permit/pprule/brochpdf.pdf>

**Sample Notification of Intent to Comply Form** - HWC NESHAP Toolkit. Internet Address: <http://www.epa.gov/epaoswer/hazwaste/combust/toolkit/nicform.htm>