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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:**



**PERMIT TRANSITION: MOVING FROM  
RCRA TO THE CAA**

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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 on September 30, 1999 (64 FR 52828). These standards were promulgated under the joint authority of the Clean Air Act (CAA) and the Resource Conservation and Recovery Act (RCRA). Since 1999, we have issued several technical corrections and amendments to the Phase 1 NESHAP to improve its implementation. In addition, we have also revised specific sections in response to vacatur orders 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. For the convenience of all interested stakeholders, regulators, and industry, this fact sheet provides information on the transition from the RCRA permit mechanism to the CAA Title 5 permit mechanism as articulated in the final HWC MACT standards (64 FR 52828) and any relevant amendments.*

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**Background**

In the final rule promulgating MACT standards for hazardous air pollutants from incinerators, cement kilns and lightweight aggregate kilns that burn hazardous waste (see 64 FR 52828, September 30, 1999), we chose to avoid imposing duplicative requirements under both RCRA and the CAA, where possible, by:

- 1) placing the standards only in the CAA implementing regulations at 40 CFR part 63 subpart EEE,
- 2) specifying that the analogous standards in the RCRA regulations no longer apply once a facility demonstrates compliance with the HWC MACT standards in subpart EEE, and
- 3) requiring the HWC MACT standards to be incorporated into operating permits issued under Title 5 of the CAA rather than into RCRA permits.

**What is “Permit Transition”?**

“Permit transition” is a broad term we use to describe the process of moving certain requirements governing emissions of hazardous air pollutants from hazardous waste combustors

(HWCs) out of RCRA and into the CAA.

*It is important to remember that permit transition is **only** for the air emissions we are regulating under the HWC MACT rule. All other components of the RCRA permit applicable to the combustion unit and to other hazardous waste management units remain in the RCRA permit.*

- ◆ Permit transition refers not only to switching from the RCRA permitting process to the Title 5 permitting process, but also to the more general idea of switching from compliance with RCRA performance standards (either those in RCRA interim status regulations or in RCRA permits) to compliance with the HWC MACT standards in subpart EEE. This is why you may hear people use the phrase “transition from RCRA to MACT/Title 5.”
- ◆ The point at which facilities can transition out of RCRA is not necessarily tied to their Title 5 permit.
- ◆ Given the current backlog in issuing Title 5 permits, we could not anticipate how long it might take to incorporate the HWC MACT standards into Title 5 permits.
  - On the other hand, many of the activities required under subpart EEE are self implementing in that facilities have to conduct them independently of the Title 5 permit process.
  - Consequently, we tied the transition out of RCRA to the point when facilities demonstrate compliance with the HWC MACT standards by conducting their initial comprehensive performance tests and submitting their test results in their Notifications of Compliance (NOCs).
    - ▶ NOCs can either document compliance or non-compliance. To transition out of RCRA, the NOCs must show compliance.
    - ▶ The test results in the NOCs include the operating parameters shown during the test to ensure compliance with the required emission levels.
    - ▶ NOCs are ultimately incorporated into Title 5 permits. If a source already has a Title 5 permit when they submit their initial NOC, the NOC should be incorporated using the significant permit modification procedures (see 40 CFR 70.7(e)(4) or 71.7(e)(4)).
- ◆ A goal all regulatory agencies should try to meet in transitioning facilities from RCRA to the CAA is to minimize the amount of time a facility might be subject to duplicative requirements under the two programs.
- ◆ During the period of time a facility might be subject to requirements under both

programs, the facility must comply with both (i.e., the more stringent governs).

- ◆ There may be instances where a facility may not be able to transition all emission standards and operating requirements from RCRA to the CAA.
  - Section 3005(c)(3) of RCRA requires that each RCRA permit contain the terms and conditions necessary to protect human health and the environment. Thus, if a regulatory authority determines that more stringent conditions than those required by the HWC MACT are necessary to protect human health and the environment for your facility, then the regulatory authority may include or retain those conditions in your RCRA permit.
  - Hazardous waste combustors may elect to comply with RCRA requirements during startup, shutdown, and malfunctions (SSMs), or with CAA requirements that achieve the equivalent objective of minimizing emissions. If a facility chooses the RCRA option, the permit conditions that address SSM events will be included or retained in the RCRA permit and will be enforced only when operating under the SSM plan. See 67 FR 6792.
  - Sources may elect to comply with the alternative to the particulate matter (PM) standard for incinerators feeding low levels of metals. A source electing to comply with the alternative requirement will be subject to the RCRA PM standard in its RCRA permit. See 66 FR 35093 and 35104.
  - Sources may elect to comply with a hazardous waste mercury feedrate limit in lieu of complying with a mercury emission standard. If the source chooses this option, it must notify the RCRA permitting authority in writing. If warranted, the permit writer may determine that the RCRA mercury emission standard should be retained in the permit pursuant to Section 3005(c)(3) of RCRA. See 67 FR 6813.

### **How Might State Authorization Affect Permit Transition?**

If a state regulatory agency does not seek authorization for all the amendments to the RCRA regulations promulgated in the final Phase 1 HWC MACT rule (and any subsequent final rules), then there may not be a transition out of RCRA. In addition to the CAA requirements applying to an affected source, the full scope of the state's RCRA regulations would continue to apply as well. Important considerations to keep in mind include:

- ◆ The changes we made for certain RCRA provisions to no longer apply once a source demonstrates compliance with the HWC MACT standards in 40 CFR part 63 subpart EEE may be more or less stringent than the existing federal RCRA requirements.
- ◆ In the case of less stringent requirements, authorized states do not have to incorporate the changes into their state RCRA programs (i.e., they may choose not to adopt the provisions that "sunset" RCRA HWC requirements). If they choose to maintain their

current authorized programs instead, then a source may still have to obtain a “complete” RCRA permit as well as a CAA Title 5 permit.

- ◆ Although states are obligated only to “pick up” the RCRA requirements that are more stringent than the current program, we strongly encourage states to incorporate all aspects of the Phase 1 HWC NESHAP into their state regulations. In this way, states will meet the intended spirit of the regulatory scheme we put in place, which is to avoid duplicative requirements under the two statutes.

### **How Do I Transition If I Already Have A RCRA Permit?**

- ◆ If you already have a RCRA permit, you still have to comply with the conditions in your permit until they either expire (and you choose not to submit an application for permit renewal under 40 CFR 270.15) or you modify your permit to remove them.
- ◆ You can request a permit modification to remove RCRA conditions covered under the HWC MACT standards once you conduct the comprehensive performance test and submit the NOC documenting compliance with the standards to your regulatory agency. The appropriate regulatory agency will likely be, in most cases, the state environmental agency.
- ◆ We promulgated a new line item (A.8.) in the RCRA permit modification table in 40 CFR 270.42 Appendix 1 specifically to address permit transition. The new line item, designated as class 1 requiring prior Agency approval, allows you to request removal of permit conditions that are no longer applicable (i.e., because the standards upon which they are based are no longer applicable).
  - The RCRA performance standards for emissions of hazardous air pollutants no longer apply once a facility demonstrates compliance with the HWC MACT standards (see 40 CFR §§ 264.340(b), 265.340(b), and 266.100(b)).
  - The premise in the new line item to the modification table is that once an underlying performance standard is no longer applicable, the permit condition(s) governing that standard should no longer remain in the permit.
- ◆ We recommend that when you submit your RCRA permit modification request you identify the conditions you would like to remove from your RCRA permit. We also recommend that you attach a copy of your NOC.
  - This information will help the RCRA permit writer determine whether there are any conditions that need to remain in your RCRA permit. For example, any conditions imposed under RCRA omnibus authority that are more stringent than the corresponding requirement in the NOC would have to remain in the RCRA permit.

- Providing this information to the RCRA permit writer will likely expedite review of your permit modification request.
- ◆ We expect that in some situations RCRA permit writers may not approve a request to remove conditions until they know that their counterparts in the Air programs have reviewed the NOCs and verified that the facility has successfully demonstrated compliance with the HWC MACT standards.
  - If you have received confirmation that the regulatory agency has made a Finding of Compliance based on your NOC, then we recommend you include that with your RCRA permit modification request.
  - Once people in the Air program responsible for reviewing NOCs have completed an evaluation of the test results, they should inform their RCRA counterparts. This courtesy will help RCRA permit writers complete their review of the RCRA permit modification requests, thereby facilitating the permit transition.

### **How Do I Transition If I Am Currently Operating Under RCRA Interim Status?**

- ◆ If you are currently operating under RCRA interim status, you must continue to meet RCRA performance standards governing emissions of hazardous air pollutants in 40 CFR part 265 or 266 until you conduct your comprehensive performance test and submit your NOC documenting compliance with the HWC MACT standards to the regulatory agency.
- ◆ The RCRA permitting procedures in 40 CFR part 270 also continue to apply to you; however once you demonstrate compliance, the air emission limitations (other than any risk-based conditions that are still needed) will drop out of the process.
- ◆ After you have conducted your comprehensive performance test and submitted your NOC documenting compliance with the HWC MACT standards to the regulatory agency, you may either continue to comply with interim status emissions standards and operating requirements relevant to control of emissions during SSM events, or you can submit written notification and documentation to your RCRA regulatory agency that the startup, shutdown, and malfunction plan has been approved by the appropriate CAA authority under 40 CFR 63.1206(c)(2)(ii)(B). See 67 FR 6818, section 270.235 (b).
- ◆ If you elected to comply with the alternative to the particulate matter HWC MACT standard for incinerators feeding low levels of metals, the RCRA particulate matter standards will continue to apply to you. See 66 FR 35093 and 35106.
- ◆ If you elected to comply with the mercury feedrate limit in lieu of the HWC MACT mercury emission standard, your RCRA permit writer may choose to retain the mercury emission standard in your RCRA permit. See 67 FR 6813.



- ◆ There is not a “one size fits all” answer to how or when facilities operating under RCRA interim status should transition. RCRA permit writers, in coordination with facility owners or operators, should map out the most appropriate route to follow in each case. Factors they should take into consideration, include, but are not limited to:
  - the status of the facility in the RCRA permitting process on September 30, 1999, the date the final Phase 1 HWC MACT rule was originally promulgated;  
*For example – If a facility is on the verge of conducting a RCRA trial burn, it should proceed with the trial burn and continue through the RCRA permitting process.*
  - the facility’s anticipated schedule for demonstrating compliance with the HWC MACT standards;  
*For example – If the facility plans to come into compliance with the MACT standards early, it may make sense to transition to MACT before completing the RCRA permitting process.*
  - the priorities and schedule of the regulatory agency;  
*For example – A state agency may have made certain commitments (e.g., to the public or to its state legislature) regarding their RCRA or CAA programs that might impact its decisions regarding the transition.*
  - the level of environmental concern at a given site;  
*For example – To make sure that the facility is being operated in a manner protective of human health and the environment, the regulatory agency may decide to proceed with RCRA permitting, including the site-specific risk assessment, rather than delay the RCRA process to coordinate with testing under MACT.*
- ◆ In mapping out site-specific approaches to transition, both the regulators and the facility owners or operators should keep in mind the goal we mentioned earlier of minimizing the amount of time a facility might be subject to duplicative requirements under the two programs.
- ◆ If after evaluating all the relevant factors a decision is made to proceed with the RCRA permitting process, we suggest including language to facilitate the eventual transition. Regulators can attach “sunset” provisions to those conditions that will no longer apply once a source demonstrates compliance with part 63 subpart EEE standards. There are at least two approaches to developing sunset provisions.
  - We specified in the regulatory language that certain RCRA requirements no

longer apply once a source submits an NOC documenting compliance with the HWC MACT standards. A RCRA permit writer could base sunset provisions on this language.

- On the other hand, as we discussed above in the section on transitioning sources that already have RCRA permits, we expect that RCRA permit writers would not necessarily approve modification requests to remove conditions from the RCRA permit until they know that the NOC has been reviewed. A RCRA permit writer could incorporate this review step into sunset provisions.
- ◆ In transitioning facilities from one program to the other, testing under one program should not be unnecessarily delayed in order to coordinate with testing required under the other.
- In both our Hazardous Waste Minimization and Combustion Strategy and in the September 30, 1999 Phase 1 HWC MACT final rule, we emphasized the importance of bringing hazardous waste combustion units under enforceable controls that have been demonstrated to achieve compliance with performance standards.
  - We also emphasized the need to evaluate risks from these sources on a facility-specific basis, and if necessary, to supplement the performance standards by imposing additional risk-based conditions in the RCRA permit using the RCRA omnibus authority.
  - Both of these objectives are important to ensure that hazardous waste combustion units are operated in a manner protective of human health and the environment. Both are accomplished by stack testing – comprehensive performance tests for showing compliance with standards, and risk burns for generating data for site-specific risk assessments. Neither should be unnecessarily delayed solely for the purpose of conducting a coordinated test.

### **How Do I Transition If I Am in the Process of Renewing My RCRA Permit?**

- ◆ If you are in the process of renewing your RCRA permit, the approach to permit transition is basically the same as if you were operating under interim status (see above discussion). That is:
- The RCRA permitting procedures in 40 CFR part 270 continue to apply to you; however once you demonstrate compliance, the air emission limitations (other than any risk-based, SSM, PM or mercury limitations or conditions that are still needed) will drop out of the process.
  - There is not a “one-size fits all” approach. RCRA permit writers, in coordination with facility owners or operators, should map out the most appropriate route for



each case.

- If you are in the permit renewal process, you should refer to the factors for consideration discussed in the previous section. The points from that section pertaining to sunset provisions and coordinated testing are also relevant to the permit renewal situation.

### **For More Information**

**HWC NESHAP Final Rule** - *Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors* (64 FR 52828, September 30, 1999). See Part Five, Section D. *How Will Sources Transfer from RCRA to MACT Compliance and Title 5 Permitting?* (p. 52981).

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

**HWC NESHAP Direct Final Rule** - Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (66 FR 35087, July 3, 2001). See Part Two, Section Six. Alternative to the Particulate Matter Standard for Incinerators Feeding Low Levels of Metals (p. 35093). Internet Address: <http://www.epa.gov/fedrgstr/EPA-AIR/2001/July/Day-03/a16425.htm>

**HWC NESHAP Interim Standards Rule** – *Interim Standards for Hazardous Air Pollutants for Hazardous Waste Combustors* (67 FR 6792, February 13, 2002). See Part Two, Section Two. *What Are the Revisions to the Startup, Shutdown, and Malfunction Requirements?* (p. 6798) and 63.1206(b)(15) for the Alternative to the Interim Standards for Mercury for Cement and

Lightweight Aggregate Kilns (p. 6813). Internet Address:

<http://www.epa.gov/epaoswer/hazwaste/combust/comb-02.htm>

**Combustion Strategy:** *Strategy for Hazardous Waste Minimization and Combustion*. November 1994. Internet Address: <http://www.epa.gov/epaoswer/hazwaste/combust/general/strat-2.txt>