

US EPA ARCHIVE DOCUMENT

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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:**



**RCRA STATE AUTHORIZATION FOR THE  
PHASE 1 HWC NESHAP**

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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 HWC 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. This fact sheet summarizes, for the convenience of all interested stakeholders, regulators, and industry, the State authorization process under Section 3006 of RCRA and relates this process specifically to the hazardous waste combustor (HWC) NESHAP as articulated in the preamble to the final MACT standards (64 FR 52828) and any relevant amendments.*

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**State Authorization Under RCRA**

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA hazardous waste program within the State. Following authorization, EPA maintains independent enforcement authority under sections 3007, 3008, 3013, and 7003 of RCRA, although authorized States have enforcement responsibility. States can become authorized for EPA rules by following the approval process described in 40 CFR 271.21. Under this process, States prepare and submit an application for authorization to EPA. This application includes copies of the State's regulations and statutes for which the State is seeking authorization, and may include documents such as revisions to the Statement from the State Attorney General and the Memorandum of Agreement (MOA) with EPA. EPA then reviews the application to determine whether the State regulations meet the requirements for authorization in the RCRA statute, such as being no less stringent than or equivalent to the Federal regulations and providing for adequate enforcement. If EPA approves the State's application, a notice is published in the Federal Register which gives the public an opportunity to comment before the authorization would become effective.

**State Authorization for the Phase 1 HWC NESHAP**

In 1984, Congress amended the RCRA statute with the Hazardous and Solid Waste Amendments (HSWA). Most of the Federal RCRA requirements in the September 30, 1999 Phase 1 HWC NESHAP rule were promulgated under the authority of HSWA. The amendments significantly

affected the implementation of rules in States that are authorized for the RCRA program. With respect to the negotiated interim standards rule, a new section has been added at 40 CFR 270.235. The provisions of this new section were promulgated under both HSWA and non-HSWA statutory authority. The applicability of either HSWA or non-HSWA authority is based on the type of waste unit that the standards are applied to. For instance, if the unit is a cement or lightweight aggregate kiln, the authority to apply the provisions of 40 CFR 270.235 is pursuant to HSWA. (Conversely, if the unit is an incinerator, the authority is non-HSWA.)

New EPA rulemakings that are promulgated under HSWA authority take effect at the same time in all States, regardless of whether or not the State is authorized for the RCRA program. Thus, the bulk of the RCRA portion of the Phase 1 HWC NESHAP is now federally enforceable. The situation is different for those provisions that are promulgated by EPA under the authority of the RCRA statute that was not changed by HSWA. These provisions do not become effective under RCRA until States adopt and become authorized for them. Examples of non-HSWA provisions are the change to the permit modification table in Appendix 1 to part 270.42; the expedited permit modification procedure to eliminate duplicative RCRA requirements when specified part 63, subpart EEE and other requirements have been met; and, the options under 270.235 for minimizing emissions during startup, shutdown, and malfunction events for incinerators.

States are not required to adopt new Federal regulations that are less stringent, or that reduce the scope of the Federal program. For example, states are not required to adopt the provisions that “sunset” the RCRA HWC performance standards once the facility demonstrates compliance with the HWC NESHAP standards. Further, EPA will not implement provisions promulgated under HSWA authority that are not more stringent than regulations for which States are authorized. Thus, the provisions that EPA will implement will depend on the provisions for which an individual State is already authorized.

### **State Adoption of the HWC NESHAP**

Although States must adopt only those requirements that are more stringent, in the spirit of RCRA §1006(b), which requires us to avoid duplicative RCRA and CAA requirements, we strongly urge States to adopt all aspects of the Phase 1 HWC NESHAP and the negotiated interim standards rules (including the clarifying as well as less stringent sections). The adoption of all portions of these rules by State agencies will:

- ▶ ensure clear, consistent requirements for owners and operators of HWCs, affected sources, State regulators, and the public;
- ▶ minimize resource burden on regulatory agencies by reducing duplication of effort;
- ▶ minimize burden on industry by eliminating duplicative requirements; and
- ▶ remove regulatory barriers to facilities complying on time.

Thus, we encourage States to adopt these regulations as quickly as their legislative and regulatory processes will allow.

### **For More Information**

**Phase 1 HWC NESHAP Final Rule - *Final Standards for Hazardous Air Pollutants for***

*Hazardous Waste Combustors* (64 **FR** 52828, September 30, 1999). See 52991-52993 specifically for discussion of RCRA state authorization for the HWC NESHAP rule. Internet Address: <http://www.epa.gov/hwcmact/preamble.htm>

**Phase 1 HWC NESHAP Interim Standards Rule** – *Interim Standards for Hazardous Air Pollutants for Hazardous Waste Combustors* (67 **FR** 6792, February 13, 2002). See Part Four, Section Three. *How would States Become Authorized Under RCRA?* (p. 6808). Internet Address: <http://www.epa.gov/epaoswer/hazwaste/combust/comb-02.htm>

**RCRA State Authorization** - please contact Wayne Roepe of the Office of Solid Waste, Permits and State Programs Division at (703) 308-8630 or [roepe.wayne@epa.gov](mailto:roepe.wayne@epa.gov).