

US EPA ARCHIVE DOCUMENT

Office of Solid Waste (5305W)

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



**RCRA STREAMLINED PERMIT
MODIFICATIONS**

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, information on the RCRA streamlined permit modification procedure which may be used to expedite the process for installing facility upgrades to achieve compliance with the HWC MACT standards.

Background

On June 19, 1998, EPA promulgated the Hazardous Waste Combustors; Revised Standards; Final Rule - Part 1, commonly referred to as the "Fast Track" rule, finalizing certain elements of the proposed revisions to the air emission standards for hazardous waste burning incinerators, cement kilns and lightweight aggregate kilns (see 63 FR 33782, June 19, 1998, for the Fast Track rule and 61 FR 17358, April 19, 1996, for the initial proposal). One of the elements of the Fast Track rule was a streamlined modification procedure for amending RCRA permits prior to implementing facility upgrades that may be necessary to meet the HWC NESHAP.

What is the streamlined permit modification procedure?

The streamlined permit modification procedure, which we promulgated in 40 CFR 270.42(j) with an associated item (L.9.) added to Appendix 1 of that section, allows facility owners or operators

to request changes necessary to meet the HWC MACT standards as a class 1 modification that requires prior Agency approval. Class 1 requests typically are processed more quickly than class 2 or 3 modifications. Before they can request a permit modification under the streamlined procedure, facility owners or operators must have first complied with the requirements that were in effect prior to October 11, 2000 governing the Notification of Intent to Comply (NIC) in 40 CFR 63.1210(b) and (c).¹

Once the regulatory agency receives the modification request, they have 90 days to approve or deny it. If the regulator needs additional time to review the materials, they may extend that review period one time for up to an additional 30 days (for a total of 120 days). If the regulator does not act on the request within that time frame, the request is deemed approved and the facility owner or operator may proceed with making the necessary changes (see 40 CFR 270.42(j)(2)).

How did the July 25, 2000 Court decision to vacate certain “Fast Track” provisions affect the streamlined permit modification procedure?

On July 25, 2000, the Court of Appeals for the District of Columbia Circuit decided *Chemical Manufacturers Association v. EPA*, 217 F. 3d 861 (D.C. Cir. 2000) by vacating several Phase 1 HWC NESHAP requirements, including the NIC. The NIC served several purposes for sources, the public, and regulatory agencies, alike. For example, sources could use the NIC as both a compliance planning tool and a public communications tool. In turn, the public could use the NIC as a mechanism to provide input to the source regarding its plans for compliance and the regulatory agency could use the NIC as a means to measure a source’s progress toward compliance. 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. Since the mandate did not go into effect until *after* October 2, 2000, we determined that the court’s action did not impact a source’s ability to request a RCRA permit modification using the streamlined procedure. As long as a source complied with the NIC provisions, the source would be considered to have met the requirements in 40 CFR 270.42(j)(1) and be eligible for the streamlined permit modification.

Why have a streamlined permit modification procedure?

The CAA sets a maximum time frame of three years for facility owners or operators to comply

¹ The NIC requirements were promulgated in the June 19, 1998 Fast Track rule in section 63.1211, however, these requirements were later moved to section 63.1210 in the final Phase 1 HWC NESHAP rule. We have since removed these requirements, as well as the Compliance Progress Report and Early Cessation provision, from the federal regulations (see 66 FR 24270, May 14, 2001).

with MACT emission standards once EPA publishes final standards in the Federal Register. When developing the MACT standards for hazardous waste combustors, we recognized that many owners or operators might need to make changes to their processes in order to comply with the anticipated emission limits. For facilities operating under RCRA permits, these changes have to be incorporated into the permit before they may be put in place at the facility. We were concerned that the RCRA permit modification procedures, as a practical matter, would not allow facility owners or operators to complete the modifications in time to meet the three year compliance time frame mandated by the CAA. We did not want the RCRA permit modification process to hinder a facility's ability to comply with the new emission standards, so we promulgated a streamlined procedure to address this concern.

Why did EPA promulgate this procedure on an expedited schedule?

We finalized the streamlined permit modification procedure before promulgating final emission standards so that state agencies would have time to develop comparable procedures before facility owners or operators begin to submit their requests. In most cases, EPA has authorized state permitting agencies to issue and modify RCRA permits. Authorized states that wish to implement the streamlined procedure may have to modify their state procedures accordingly before they can use them to respond to MACT-related modification requests from facility owners or operators. It was our intent, by putting out the new modification procedure before putting out the final standards, to give the states time to complete this effort.

What are the opportunities for public involvement in the streamlined modification process?

Through the former NIC requirements, the public had an opportunity to become involved early in the process by attending a meeting hosted by the facility owner or operator. Facilities that wanted to use the streamlined process, must have first complied with the NIC requirements that were in effect prior to October 11, 2000 in 40 CFR 63.1210(b) and (c) of *40 CFR Part 63 Revised as of July 1, 2000*. Under those requirements, they had to advertise and conduct, by July 31, 2000, an informal meeting with the public to discuss their anticipated plans for complying with the new emission standards. If facility owner or operators needed to modify their equipment or operations, they should have discussed those plans during the meeting. The need to modify their RCRA permit before implementing those plans should have been a natural component of the discussion.

Through the NIC meeting, communities were afforded an early vehicle for learning, among other things, about potential changes to a facility. Of course, in accordance with the current RCRA Class 1 permit modification procedures, the facility owner or operator must also tell the public about the changes within 90 days of their approval by the permitting agency (see 40 CFR 270.42(a)(1)(ii)).

What can I do if my facility is in a state that does not adopt the streamlined procedure?

In the preamble to the Fast Track rule, and through subsequent outreach efforts, we strongly encouraged our state partners to adopt the streamlined procedure. We pointed out the obvious advantages to them of doing so (for example, having a mechanism available to process a potentially large volume of requests in a relatively short period of time, thus alleviating the workload burden on their permit writers). We believe the majority of the states have adopted or are in the process of adopting this procedure. However, because the streamlined procedure is less stringent than the existing procedures, states are not obligated to adopt it.

If your facility is located in a state that does not pick up the new procedure, we encourage you to talk with your permit writer to work out a strategy that enables you to comply with both the RCRA permit requirements and the HWC MACT compliance date. There are other approaches available, such as continuing to use the “regular” modification procedures, using the temporary authorization procedures in 40 CFR 270.42(e), or applying for a compliance extension under 40 CFR 63.6(i)(4).

“Regular” Permit Modification Procedures

As mentioned earlier, the types of changes that facilities will likely need to make to comply with the new standards (e.g., changes in air pollution control devices) would normally fall into the class 2 or 3 permit modification categories. Although the procedures involved with these can, in some instances, take a significant amount of time to complete, close coordination early on and throughout the process may help reduce the time frame.

For those that continue to use the “regular” modification procedures, we strongly encourage permit writers and facility owners or operators to work out a site-specific strategy for assuring that the RCRA permit modification process will not be a barrier to MACT compliance. The strategy could include, for example, such components as scheduling dates for completing key activities or prioritization of resources.

Temporary Authorizations

The temporary authorization provisions in 40 CFR 270.42(e) may be used to approve facility changes needed to comply with the HWC MACT standards. If you receive temporary authorization, you could start implementing the upgrades upon approval. The regulations allow you to operate under the temporary authorization for no longer than 180 days. However, you may request that your temporary authorization be re-issued for an additional 180 days, if necessary, and provided that you also request either a class 2 or 3 permit modification for the activities covered by the temporary authorization. This means you would have about one year to complete the upgrades.

Compliance Extensions

You can request a one-year extension to the MACT compliance date if the additional time is necessary to install controls. This extension is allowed under the 40 CFR part 63 general provisions (see 40 CFR § 63.6(i)(4)) and is separate from the one-year extension to pursue waste minimization activities. We expect that the regulatory agency would readily grant this request in cases where the need for the extension stems from the agency's own administrative procedures.

Compliance Schedules

If, despite your best efforts and those of your permit writer, it looks like you will not be able to complete the permit modification process in time to document compliance with the new standards, you can explore the possibility of entering into some type of compliance agreement with your regulatory agency. The agreement would likely include a specified schedule for completing the necessary activities. We expect that this approach would be needed in only a few limited situations, if at all.

When is it appropriate to use the streamlined procedure?

The regulations provide for using the streamlined permit modification procedure only for those changes necessary to comply with the HWC NESHAP standards. The streamlined procedure is not available for general retrofitting changes beyond those needed for MACT compliance. We recognize, however, that the examples we provided in the preamble to the Fast Track rule may mislead people into thinking those are the only types of changes allowed under the new procedure. The examples we described focused on modifications to air pollution control equipment and certain operating parameters (see 63 FR 33803, June 19, 1998). Those examples are not all-inclusive. As long as you can explain how a change contributes to the unit's ability to meet one or more of the standards, you can use the streamlined procedures.

If it is unclear whether a particular type of change qualifies for the streamlined procedures, you should discuss your plans with your permit writer.

What if I want to make other modifications while I am in the process of implementing changes to meet the new standards?

We have heard that some facility owners or operators want to effect additional upgrades while they are in the process of installing upgrades necessary to comply with the HWC MACT standards. We understand that in some cases it makes sense to look at your units holistically. If you find yourself in this situation, you should discuss how to approach the modifications with your permit writer. It may be appropriate to use a combination of the various procedures available. For example, you could use the streamlined procedure for those changes needed to meet MACT, and apply for temporary authorization for the others (which you would

subsequently follow up with a class 2 or 3 modification request, as appropriate). This approach would allow you to initiate the additional changes concurrently with those that are MACT-related.

Depending on the nature or extent of the additional modifications, you and your permit writer may want to look at the schedule for accomplishing the RCRA permit activities and making the changes vis-à-vis the schedule of activities that have to take place under the MACT requirements. There may be opportunities to coordinate certain activities. For example, if some of the changes you want to make would typically trigger a new trial burn as part of RCRA class 2 or 3 permit modification procedures, you and the permit writer may agree to accelerate your schedule for performance testing under MACT instead. In this situation, if the MACT performance test successfully demonstrates compliance with the new emissions limits, the RCRA trial burn would not be necessary. If, however, a RCRA risk burn is necessary, you could combine the risk burn with the performance test.

For More Information

HWC NESHAP Fast Track Rule - *Hazardous Waste Combustors; Revised Standards; Final Rule - Part 1: RCRA Comparable Fuels 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).

Internet Address: <http://www.epa.gov/epaoswer/hazwaste/combust/fastrack/fr-fast.pdf>

HWC NESHAP Fast Track Court Vacatur- *NESHAPs: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors; Final Rule; Implementation of Court Orders* (66 FR 24270, May 14, 2001). Internet Address:

<http://www.epa.gov/fedrgstr/EPA-WASTE/2001/May/Day-14/f12043.htm>

Notification of Intent to Comply and Compliance Progress Report Fact Sheet - Hazardous Waste Combustion NESHAP Toolkit. Internet Address:

<http://www.epa.gov/epaoswer/hazwaste/combust/toolkit/factshts.htm>