

US EPA ARCHIVE DOCUMENT

Office of Solid Waste (5305W)

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



TITLE 5 OPERATING PERMITS

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 discusses, for the convenience of all interested stakeholders, regulators, and industry, the Title 5 Operating Permits Program contained in Title 5 of the CAA and how it applies to sources regulated as a result of the hazardous waste combustor (HWC) NESHAP. The regulatory requirements summarized in this fact sheet may be found at 40 CFR Parts 63, 70, and 71.

General Information

What Is the History and Purpose of the Title 5 Program?

In the 1990 amendments to the Clean Air Act (CAA), Congress established an innovative program to reduce air pollutants from large facilities. This new program, contained in Title 5 of the CAA, enhances the way Federal, State, Tribal, and Local permitting authorities regulate air pollution by consolidating all air pollution control requirements into a single comprehensive "operating permit" that covers all aspects of a source's year-to-year air pollution activities. The Title 5 program is designed to make it easier for owners and operators to understand and comply with the CAA requirements applicable to their sources. We believe that this will result in improved air quality.

What Does Title 5 Require?

The CAA requires all State, Local, and Tribal permitting authorities to develop and implement an operating permits program that meets minimum Federal Title 5 requirements. Following the promulgation of Title 5 regulations (40 CFR part 70) in 1992, we have worked with State, Local,

and Tribal authorities to assist them in establishing an operating permits program in every State, as well as in 60 localities, and some U.S. Territories. Additionally, in conjunction with State, Local, and Tribal authorities, industry and others, we have initiated efforts to streamline and substantially simplify the permit program requirements. This has resulted in increased flexibility for both industry and permitting authorities.

Who Is Required to Obtain Title 5 Operating Permits?

All major sources and other sources as defined in 40 CFR 70.2 and 71.2 are required to obtain operating permits.

What Are Some Key Provisions of the Title 5 Operating Permits Program?

- A source's air pollution control requirements are determined in large part from the information the source submits in its Title 5 permit application. See 40 CFR 70.5(c) and 71.5(c).
 - Examples of information required in Title 5 permit applications include:
 - emissions-related information (pollutants, all points of emission, emission rates);
 - all air pollution control requirements that apply to the source;
 - any additional information determined necessary by the permitting authority to define alternative operating scenarios;
 - a compliance plan; and
 - a compliance certification which includes a certification of compliance with all applicable requirements by a responsible official, a statement of methods used in determining compliance, a schedule for submitting compliance certifications (at least once a year), and a statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the CAA.
- Sources are required to provide monitoring reports to their permitting authorities at least semiannually and must certify their compliance status annually.
- Sources must periodically renew their operating permit, generally every 5 years.
- To fund their programs, permitting authorities are required to collect permit fees from sources subject to the operating permits program. Fees are frequently assessed on a dollar per ton basis with sources paying fees based on the tons of air pollutants they emit in a year.
- Public notification and opportunity for comment must be provided during the permit review process for every new permit and when permits are renewed or significantly revised.
- EPA is responsible for overseeing the implementation of State, Local, and Tribal operating permits programs and may object to a permit that fails to comply with program requirements.
- EPA is also required to establish a Federal permit program in any area where the permitting authority fails to develop and maintain an adequate program of its own.

- State and Local authorities can and do implement separate requirements that are appropriate for their unique local conditions through Title 5 permits. However, such requirements are not enforceable by the Federal government and must be placed in a separate section of a Title 5 permit.

Procedural Aspects of Title 5 Permitting

What Is the Procedure for Drafting a Title 5 Permit?

- *Application:* Sources who are subject to Title 5 for the first time as a result of new standards being promulgated must submit complete applications to the permitting authority within 12 months of the effective date of those standards (40 CFR 70.5 (a)(1)(i) and 71.5 (a)(1)(i)). The permitting authority then has up to 18 months from the date of receiving a complete application to take final action on it, e.g., issue the permit (40 CFR 70.7 (a)(2) and 71.7 (a)(2)).
- *Draft Permit:* When the permitting authority receives a complete application, it will draft a permit to include the applicable requirements which apply to the source (40 CFR 70.6 or 71.6).

What Opportunities Are There for Public Participation and EPA Review?

Under 40 CFR Part 70 - State Operating Permit Programs

- *Public Participation:* In accordance with all permit proceedings (draft permit issuance, permit modifications and renewals), notice shall be given to the public via local newspaper, or State publication, to persons on a mailing list, and by other means if necessary to assure adequate notice to the affected public. See 40 CFR 70.7(h)(2) for content of a notice to the public. The permitting authority shall provide at least 30 days for public comment. The permitting authority shall also provide at least 30 days notice of any hearing.
- *Public Petitions:* If the Administrator does not object in writing within 45 days of receipt of a proposed permit and all necessary supporting information, any person may petition the Administrator to object to the permit within 60 days of the end of the Administrator's 45-day review period. The petition may only be based on objections that were raised (with reasonable specificity) during the public comment period. See 40 CFR 70.8(d) for further details. The permitting authority must also provide an opportunity for judicial review in a State court of the final permit action. See 40 CFR 70.4(b)(3)(x).

Under 40 CFR Part 71- Federal Operating Permit Programs

- The provisions for EPA review and public participation under 40 CFR part 71 are similar to the provisions under 40 CFR part 70. However, part 71 applies to a smaller universe of sources than part 70 since all states currently have interim approval or approved Title 5 permitting programs. For more information on part 71 requirements for public participation and EPA review, please see 40 CFR 71.11.

What Are Some Permit Procedures That A Source May or Will Be Subject to Following Permit Issuance?

- *Permit Reopening:* Each issued permit must contain provisions specifying the conditions under which the permit will be reopened prior to its expiration. There are several circumstances when a permit must be reopened. See 40 CFR 70.7(f) and 71.7(f). For example, permitting authorities are required to reopen permits within 18 months of new standards being promulgated that apply to the sources, if there are three or more years left in the permit term (40 CFR 70.7(f)(1)(i) and 71.7(f)(1)(i)). The permitting authorities then incorporate these standards into the sources' Title 5 permits.
- *Permit Renewal:* Sources who already have Title 5 permits must renew their permits (generally every 5 years) by submitting an application at least 6 months before the permit's expiration date (40 CFR 70.5(a)(1)(iii) and 71.5(a)(1)(iii)). A renewed permit will include any standards that were recently promulgated and that are applicable to the source.

Applicability of Title 5 to the HWC NESHAP

How Is the Title 5 Operating Permits Program Relevant to the HWC NESHAP?

- All HWCs subject to the HWC NESHAP are required to obtain Title 5 permits:
 - If a source has multiple hazardous waste combustion devices, each would be considered an emissions unit and would have to be addressed in the permit.
 - For this particular MACT rule, we exercised our discretion to apply Title 5 permitting requirements to HWCs that are nonmajor (area) sources. Both the CAA (see section 502(a)) and the implementing regulations (see 40 CFR 63.1(c)(2) and 70.3(b)(2)) give us the authority to make this decision. In fact, the presumption in the CAA (see section 502(a)) is that certain nonmajor sources will be permitted.
- If a nonmajor source is subject to Title 5 *only* because it has hazardous waste combustion devices that are subject to the HWC NESHAP, then we do not require that other emissions units, if any, at the source (i.e., emissions units not previously subject to Title 5) be included in the permit (see 40 CFR 70.3(c)(2) and 71.3(c)(2)).¹ However, the permit must incorporate *all* applicable requirements that apply to the hazardous waste combustion devices, not just those in 40 CFR part 63 subpart EEE.
- All current CAA requirements governing permit applications, permit content, permit issuance, renewals, reopenings and revisions of 40 CFR part 70 and 71 will apply to HWCs subject to the HWC NESHAP. (Likewise, the RCRA requirements governing the permitting procedures at 40 CFR part 270 will continue to apply to HWCs subject to the HWC NESHAP.)

¹ States have the right to establish requirements more stringent than the Federal requirements. For example, state authority may allow a permit writer to include all units at a nonmajor source in the Title 5 permit.

- Time frames for obtaining a Title 5 permit:
 - Sources who are newly subject to Title 5 as a result of this rule have 12 months to submit an application for a Title 5 permit.
 - Sources that already have Title 5 permits with 3 or more years remaining in the permit term as of September 30, 1999, must reopen their permits to incorporate the HWC NESHAP standards. This reopening must be completed within 18 months (by March 30, 2001).
 - Sources that already have Title 5 permits, but have less than 3 years remaining in the permit term as of September 30, 1999, do not have to reopen their permits. These sources can wait until permit renewal to incorporate the HWC NESHAP standards.
 - The above time frames (excluding dates) are also applicable for inclusion of the February 13, 2002 negotiated interim standards, since some of the 1999-promulgated HWC NESHAP standards have been revised. However, in cases where a source's Title V permit only references "subpart EEE", there would be no need to modify the permit. Sources should contact their permitting authority regarding whether a minor, a significant, or no permit modification is needed.
 - Regardless of when a source incorporates the HWC NESHAP into its Title 5 permit, it must comply with all applicable requirements specified in part 63, subpart EEE. This includes placing the Documentation of Compliance (DOC) in the operating record and complying with the operating terms in the DOC by September 30, 2003. (Please refer to "Implementation Time Line & Milestones".)

For More Information

HWC NESHAP Final Rule - *Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors* (64 FR 52828, September 30, 1999). See 52981-52990 specifically for information on time frames for transitioning from RCRA to Title 5 permitting. Internet Address: <http://www.epa.gov/hwcmact/preamble.htm>

HWC NESHAP Final Rule - *Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors* (64 FR 52828, September 30, 1999). See 52977 specifically for discussion of Title 5 permit applicability for this rule. Internet Address: <http://www.epa.gov/hwcmact/preamble.htm>

HWC NESHAP Interim Standards Rule – *Interim Standards for Hazardous Air Pollutants for Hazardous Waste Combustors* (67 FR 6792, February 13, 2002). See Part 2, *What Revisions Are We Making in This Rule?* for revisions to the 1999 promulgated standards.

Permit Transition - *Permit Transition: Moving from RCRA to the CAA* - HWC NESHAP toolkit: Permit Transition fact sheet. Internet Address: <http://www.epa.gov/epaoswer/hazwaste/combust/toolkit/permitfs.pdf>

Implementation Time Line & Milestones - HWC NESHAP Toolkit Internet Address: <http://www.epa.gov/epaoswer/hazwaste/combust/toolkit/milestne.htm>