

US EPA ARCHIVE DOCUMENT

treatment system during the initial and any subsequent performance tests.

(m) * * *

(2) * * *

(ii) Compliance with the segregation requirements specified in § 63.446(c)(3) is demonstrated if the total HAP mass determined in paragraph (m)(2)(i) of this section is equal to or greater than the appropriate mass requirements specified in § 63.446(c)(3).

* * * * *

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 63 and 270

[FRL-6978-4]

NESHAPS: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Implementation of court orders.

SUMMARY: In *Chemical Manufacturers Association v. EPA*, 217 F. 3d 861 (D.C. Cir. 2000), the court vacated the Notice of Intent to Comply (NIC) provisions of EPA's rules relating to the standards for hazardous waste combustors. Today's action takes the ministerial step of removing these provisions from the Code of Federal Regulations (CFR). Since the vacated NIC provision is also referenced in the permit modification procedures of RCRA in Part 270, today's action modifies this reference as well. In addition, at EPA's request, the D.C. Circuit vacated certain parameter limits of baghouses and electrostatic precipitators in order for EPA to solicit further comment on these provisions. *CKRC v. EPA*, no. 99-1457 (Order of April 5, 2001). Today's action likewise takes the ministerial step of removing these provisions from the CFR.

DATES: This rule is effective on May 14, 2001.

ADDRESSES: The official record (i.e., the public docket) of this rulemaking is identified as Docket Number F-2001-RC3F-FFFFF, located in RCRA Information Center (RIC), Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA HQ), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460-0002. The RIC is open from 9 am to 4 pm Monday through Friday, excluding Federal holidays. To review docket materials or

for information on accessing an electronic copy of those materials, please call 703-603-9230. You may copy up to 100 pages from any regulatory document at no charge. Additional copies cost \$ 0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, call the RCRA Call Center at 1-800-424-9346 or TDD 1-800-553-7672 (hearing impaired). Callers within the Washington Metropolitan Area must dial 703-412-9810 or TDD 703-412-3323 (hearing impaired). The RCRA Call Center is open Monday-Friday, 9 am to 5 pm, Eastern Standard Time. For more information on specific aspects of this rule, contact Mr. Shiva Garg at 703-308-8459, garg.shiva@epa.gov, or write him at the Office of Solid Waste, 5302W, U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

I. Vacatur of Requirements for Early Cessation of Hazardous Waste Burning

In anticipation of establishing revised emission standards for cement kilns and incinerators burning hazardous waste, EPA promulgated at 63 FR 33821-2 (June 19, 1998) that sources which elect to stop burning hazardous waste rather than comply with the new emission standards must do so within two years of the effective date of the emission standards (the so-called "early cessation" requirement). These regulations were later recodified as 40 CFR 63.1206(a)(2)(i) and 1211(b)(2)(iii) and (5), at 64 FR 53038, September 30, 1999. Sources that continued to burn hazardous wastes but seek to comply with the new emission limits, such as by improving their emission control capabilities, have three years to comply. 40 CFR 63.1206(a)(1). Both methods of compliance were implemented by submission of two reporting requirements: a Notification of Intent to Comply ("NIC"), and a Progress Report. 40 CFR 63.1210(b), 63.1211(b), and 63.1212.

In the case of sources intending to comply by meeting the emission standards, submittal of a NIC is a condition required for eligibility for accelerated modification of the source's existing permit under the Resource Conservation and Recovery Act ("RCRA"). 40 CFR 70.42(j)(1). These accelerated permit modifications (so-called "Class I modifications") allow sources to modify their existing hazardous waste permits issued pursuant to RCRA by simply submitting an application to the permitting authority rather than waiting for prior

Agency approval and going through public hearings (63 FR 33803, June 19, 1998). Permit modifications are necessary because, unless modified, existing RCRA permits limit the ability of sources to modify their design or operation, and such modifications may be necessary to comply with the Clean Air Act emission standards. *Id.* Accelerated permit modifications are needed (where modifications are needed at all) because usual permit modification procedures entail prior agency approval and public hearings, an often lengthy process which could preclude compliance with the emission standards within the three years allowed (with a possible one-year extension) under section 112(i)(3) of the Clean Air Act (42 U.S.C. 7412(i)(3)), forcing facilities to choose between violating RCRA and violating the Clean Air Act. EPA therefore amended its permitting rules to use the accelerated Class I modification procedures to amend permits to allow sources to make technology changes—such as installation of new air pollution control devices or process modifications—needed to comply with the new air emission standards, provided, as noted above, that the "[f]acility * * * must comply with the Notification of Intent to Comply (NIC) requirements * * * before a permit modification can be requested under this section." 40 CFR 270.42(j)(1) and Appendix I, entry L (9) to § 270.42.

In *Chemical Manufacturers Ass'n v. EPA*, 217 F. 3d 861 (D.C. Cir. 2000) the panel majority held that EPA possesses legal authority to impose an early cessation requirement, but held further that the agency had impermissibly interpreted the statute to allow it to impose the requirement without a showing that it would lead to human health or environmental benefit (benefits such as "the amount of hazardous waste produced, the amount of hazardous waste burned, or the levels of hazardous air pollutant emissions"). 217 F. 3d at 865, 866-67.¹ The Court therefore vacated the early cessation requirement. The Court further held that because it could not determine whether EPA would have promulgated the NIC and Progress Report reporting requirements absent an early cessation provision, the provisions were so

¹ Judge Sentelle dissented, arguing that since the early cessation requirement was in accord with the express statutory command for compliance with section 112 emission standards "as expeditiously as practicable", it was not arbitrary and capricious. CAA section 112(i)(3)(A), 42 U.S.C. 7412(i)(3)(A). 217 F.3d at 868-69.

interlinked as to require vacatur as well. *Id.* at 867–68.

In response to EPA's Motion to Withhold Issuance of Mandate (EPA, Motion to Stay Issuance of Mandate, filed Sept. 8, 2000 in *Chemical Mfrs. Ass'n v. EPA*, no. 99–1236 (D.C. Cir.)), the Court agreed to stay issuance of its mandate for a long enough period to allow affected sources to submit Notices of Intent to Comply so that they would be eligible for Class I permit modifications. EPA worked closely with the regulated community to assure that all sources submitted NICs before the Mandate issued.

This action takes the ministerial step of directing the Office of the Federal Register to remove the vacated provisions from the CFR.

II. Vacatur of Compliance Assurance Monitoring Requirements for Baghouses and Electrostatic Precipitators

The final rule requires sources to establish and monitor limits on the following parameters for electrostatic precipitators (ESPs) and baghouses for compliance assurance: (1) Minimum power (kVA) per field of an ESP; and (2) minimum and maximum pressure drop for each cell of a baghouse. See §§ 63.1209(m)(1)(ii) and (iii). EPA filed a motion with the D.C. Circuit to vacate this provision in order to allow a considered opportunity for notice and comment on the issue (see *CKRC v. EPA*, no. 99–1457, EPA Motion of November 14, 2000). The court granted EPA's motion on April 5, 2001, and ordered the vacatur of the above two paragraphs of § 63.1209. In accordance with the above, we are deleting these two paragraphs of the regulation. Permit writers are, of course, authorized under the provisions of § 63.1209(g)(2), to adopt operating parameters for baghouses and ESPs on a case-by-case basis if "necessary to document compliance with the emission standards."

III. Implementation Issues: Sources' Ability To Request a RCRA Permit Modification Using the Streamlined Modification Procedure of § 270.42(j)

In 40 CFR 270.42(j)(1), the regulations require facilities to comply with the NIC requirements of 40 CFR 63.1211 before they can use the streamlined permit modification procedures. This requirement enhances the public participation procedures for these streamlined Class 1 modifications which otherwise would have been classified as Class 2 and Class 3 modifications. Facilities were required to submit their NICs by October 2, 2000,

and EPA worked closely with the regulated community to assure that all sources intending to continue operating submitted these NICs. The court issued its mandate to vacate the NIC provisions on October 11, 2000. Since the mandate did not go into effect until after facilities were required to submit their NICs, we have determined that the court's action does not impact a facility's ability to request a RCRA permit modification using the streamlined procedures of 40 CFR 270.42(j), provided, of course, they submitted the NIC as required by the rule. As long as a facility complied with the NIC provisions, the facility met the requirements in 40 CFR 270.42(j)(1) and is therefore eligible for the streamlined modification process.

We also note, as a matter of technical drafting, that in 40 CFR 270.42(j)(1), the ability to seek a fast-track permit modification by filing a NIC (as referenced by 40 CFR 63.1211) is no longer available. The NIC requirements were promulgated in the fast-track rule (63 FR 33782, June 19, 1998) and placed in 40 CFR 63.1211. In the final rule (64 FR 52828, September 30, 1999), the NIC requirements were moved to 40 CFR 63.1210, but the corresponding reference in 40 CFR 270.42(j)(1) was not changed through oversight. 40 CFR 270.42(j)(1) should have been conformed to reference the NIC requirements of 40 CFR 63.1210.

Although the NIC requirements in 40 CFR 63.1210 are now being removed from the regulations, the substantive requirement to have submitted a NIC in order to use the fast-track permitting option still remains a part of the RCRA rule as explained above. In today's rulemaking, we are therefore clarifying the language in 40 CFR 270.42(j)(1) to reference 40 CFR 63.1210 that was in effect prior to July 1, 2000 and published in "40 CFR Part 63 Revised as of July 1, 2000". Thus, facilities that want to use streamlined permit modification process must have complied with the NIC provisions as specified in the now-vacated § 63.1210(b).

IV. Administrative Requirements

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B),² provides that when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an

² The provisions of 5 U.S.C. 553(b)(B) of the Administrative Procedure Act apply to this action, even though it arises under the Clean Air Act (to which section 553 normally does not apply). See Clean Air Act section 307(b)(1) (final sentence).

opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because this action is in direct response to the Court's Mandate, and implements that Mandate. With respect to the rules relating to operating parameters for baghouses and ESPs, the rule implements the Court's order vacating those provisions. Thus, notice and opportunity for public comment are unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B). For the same reason, EPA finds that there is good cause, within the meaning of 5 U.S.C. 553(d)(3), to make the rule immediately effective.

V. Regulatory Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. Because the Agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate as described in sections 203 and 204 of UMRA. This rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule is also not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This action does not involve technical standards, thus the requirements of section 12(d) of National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear

legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VI. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of May 14, 2001, for this rule. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to the publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

VII. Immediate Effective Date

As noted earlier, EPA is making this rule effective immediately. This rule adopts amendments which are purely technical, in that they implement the Court's mandate. Comment on such changes is unnecessary within the meaning of 5 U.S.C. 553(b)(3)(B). For the same reason, there is good cause to make the rule effective immediately pursuant to 5 U.S.C. 553(d)(3).

List of Subjects

40 CFR Part 63

Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

40 CFR Part 270

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: May 8, 2001.

Christine Todd Whitman,
Administrator.

For the reasons set forth in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 63—NATIONAL EMISSIONS STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for Part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart EEE—National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors

2. Section 63.1206 is amended by revising paragraph (a)(1), removing paragraph (a)(2), and redesignating paragraph (a)(3) as (a)(2) to read as follows:

§ 63.1206 When and how must sources comply with the standards and operating requirements?

(a) * * * (1) *Compliance date for existing sources.* You must comply with the standards of this subpart no later than September 30, 2002 unless the Administrator grants you an extension of time under § 63.6(i) or § 63.1213.

* * * * *

§ 63.1209 [Amended]

3. Section 63.1209 is amended by removing and reserving paragraphs (m)(1)(ii) and (iii).

§ 63.1210 [Amended]

4. Section 63.1210 is amended as follows:

a. In the table to paragraph (a)(1) by removing the entry "63.1210(b) and (c)"; and

b. By removing paragraph (b) and (c) and redesignating paragraph (d) as (b).

§ 63.1211 [Amended]

5. Section 63.1211 is amended by removing paragraph (b) and redesignating paragraphs (c) through (e), as (b) through (d) respectively.

§ 63.1212 [Removed and Reserved]

6. Section 63.1212 is removed and reserved.

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

7. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

8. Section 270.42 is amended by revising paragraph (j)(1) to read as follows:

§ 270.42 Permit modifications at the request of the permittee.

* * * * *

(j) * * *

(1) Facility owners or operators must have complied with the Notification of Intent to Comply (NIC) requirements of 40 CFR 63.1210 that was in effect prior to May 14, 2001, (See 40 CFR Part 63 Revised as of July 1, 2000) in order to request a permit modification under this section.

* * * * *

[FR Doc. 01-12043 Filed 5-11-01; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL-6950-2]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is granting a petition submitted by Tyco Printed Circuit Group, Melbourne Division, Melbourne, Florida, (Tyco), formerly Advanced Quick Circuits, L.P., to exclude (or "delist") a certain hazardous waste from the list of hazardous wastes under RCRA regulation. Tyco generates the petitioned waste by treating liquid waste from Tyco's printed circuit board manufacturing processes. The waste so generated is a wastewater treatment sludge that meets the definition of F006. Based on careful analyses of the waste-specific information provided by the petitioner, the Agency has concluded that Tyco's petitioned waste will not adversely affect human health and the environment. This action responds to Tyco's petition to delist this waste on a "generator-specific" basis from the hazardous waste lists, and to public