

Virginia Regulatory Town Hall

Final Regulation Agency Background Document

Agency Name:	State Air Pollution Control Board
Regulation Title:	Regulations for the Control and Abatement of Air Pollution
Primary Action:	Article 45 (9 VAC 5-40-6250 et seq.) of 9 VAC 5 Chapter 40
Secondary Action(s):	None.
Action Title:	Emission Standards for Commercial/Industrial Solid Waste Incinerators (Revision J00)
Date:	April 7, 2003

Please refer to the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia), Executive Order Twenty-Five (98), and the Virginia Register Form, Style and Procedure Manual for more information and other materials required to be submitted in the final regulatory action package.

Summary

Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation.

The regulation applies to commercial/industrial solid waste incinerators (CISWIs), and includes emission limits for particulate matter, carbon monoxide, dioxins/furans, hydrogen chloride, sulfur dioxide, nitrogen oxides, lead, cadmium, and mercury. Special CISIWI operator training and qualification requirements are included in order to assure proper facility operation and compliance with the emissions limitations; sources are also required to prepare overall waste management plans. Compliance, emissions testing, and monitoring requirements are delineated, as well as recordkeeping and reporting of such test results. Procedures for obtaining a compliance schedule extension, and for shutdown and restart activities are provided. Finally, specific compliance schedules are provided.

Substantial Changes Made Since the Proposed Stage

Please briefly and generally summarize any substantial changes made since the proposed action was published. Please provide citations of the sections of the proposed regulation that have been substantially altered since the proposed stage.

1. Provisions intended to clarify the distinction between state and federal requirements have been added or revised. [9 VAC 5-40-6250 G and H; 9 VAC 5-40-6400 B, K, and L]
2. The compliance schedule has been revised to reflect EPA's proposed federal plan. [9 VAC 5-40-6250 F; 9 VAC 5-40-6400 D 1; 9 VAC 5-40-6400 I; 9 VAC 5-40-6410 B; 9 VAC 5-40-6420; 9 VAC 5-40-6460 B]
3. Compliance schedule extension and shutdown/restart requirements, as provided in the proposed federal plan, have been added. [9 VAC 5-40-6421; 9 VAC 5-40-6422]
4. Revisions reflecting proposed federal plan requirements for air curtain incinerators have been made. [9 VAC 5-40-6490]

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency, including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

On April 7, 2003, the State Air Pollution Control Board adopted final amendments to regulations entitled "Regulations for the Control and Abatement of Air Pollution", specifically, Emission Standards for Commercial/Industrial Solid Waste Incinerators (9 VAC Chapter 40, Article 45). The regulation amendments are to be effective on a date as provided in the Administrative Process Act.

Basis

Please identify the section number and provide a brief statement relating the content of the statutory authority to the specific regulation adopted. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to adopt the regulation and that it comports with applicable state and/or federal law.

Section 10.1-1308 of the Virginia Air Pollution Control Law (Title 10.1, Chapter 13 of the Code of Virginia) authorizes the State Air Pollution Control Board to promulgate regulations abating, controlling and prohibiting air pollution in order to protect public health and welfare. Written assurance from the Office of the Attorney General that (i) the State Air Pollution Control Board possesses the statutory authority to promulgate the regulation and that (ii) the regulation comports with the applicable state and/or federal law is available upon request.

Purpose

Please provide a statement explaining the rationale or justification of the regulation as it relates to the health, safety or welfare of citizens.

The purpose of the regulation is to establish emission standards that will require the owners of commercial/industrial solid waste incinerators (CISWIs) to limit emissions of organics (such as dioxins/furans), metals (such as particulate matter), and acid gases (such as sulfur dioxide and hydrogen chloride) to a specified level necessary to protect public health and welfare. The regulation is needed to meet the requirements of § 111(d) and § 129 of the federal Clean Air Act, and 40 CFR Part 60 Subpart DDDD of federal regulations.

Substance

Please identify and explain the new substantial provisions, the substantial changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the changes.

The regulation defines and identifies the sources to which it applies, as well as exemptions. Emission limits for particulate matter, carbon monoxide, dioxins/furans, hydrogen chloride, sulfur dioxide, nitrogen oxides, lead, cadmium, and mercury are established, as well as limitations for and cross references to existing state requirements for visible emissions, fugitive dust/emissions, odor, and toxic pollutants. General good operating practices that contribute to the overall effectiveness of the technical requirements are included, in the form of an operator training and qualification program, and waste management plans, which are intended to reduce the amount of emissions. A compliance schedule with specific increments of progress is provided. Procedures for obtaining a compliance schedule extension, and for shutdown and restart activities are provided. Operating limits for operating parameters such as maximum charge rates, minimum pressure drop, and minimum scrubber liquor flow rate are prescribed. Procedures to be followed in the event of facility and control equipment maintenance or malfunction are provided. Test methods to be used in determining compliance with the emission limits are specified. Compliance requirements, including testing schedules, are specified. Equipment necessary to monitor compliance with the site-specific operating limits are to be installed, calibrated, maintained, and operated. Records of monitoring and test results are to be maintained and reported. Air curtain incinerators must meet separate requirements for increments of progress, opacity limits, compliance monitoring and testing, recordkeeping, and reporting. Finally, state requirements for facility and control equipment maintenance or malfunction; test methods and procedures; compliance, monitoring; recordkeeping and reporting; registration; and permits are cross-referenced.

Issues

Please provide a statement identifying the issues associated with the regulatory action. The term "issues" means: 1) the primary advantages and disadvantages to the public of implementing the new or amended provisions; and 2) the primary advantages and disadvantages to the agency or the Commonwealth. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

1. Public: The general public will experience a number of health and welfare advantages. CISWI emissions cause a number of serious health effects. Therefore, reduction of these emissions will reduce disease and its related costs. Reduction of CISWI emissions will also reduce the risk of damage to vegetation and property, which will in turn enhance property values, tax revenues, payroll, and other socioeconomic components. Generally, the wide availability of alternatives to incineration will limit disadvantages, and may in fact provide a benefit in the form of reduced costs.

A limited number of CISWIs may experience an economic disadvantage if they must install pollution control systems. A number of CISWIs may benefit by shutting down outdated equipment and finding more efficient and cost-effective alternatives. In addition to CISWIs, industry in general will also benefit from the rule: overall ozone reductions may lessen the risk of current attainment areas being designated nonattainment, and current nonattainment areas being reclassified to a more serious classification.

2. Department: The Department may need to perform additional inspection, monitoring and recordkeeping to ensure that the emissions limitations are being met, which will require increased expenditure in personnel and equipment. However, the increase in data to be gathered and analyzed will benefit the Department by enhancing its ability to make both short- and long-term planning decisions. Furthermore, these sources have been, for the most part, permitted, inspected, and monitored for many years, therefore, little new additional new effort will be expended. It is anticipated that more sources will seek alternatives to incineration, thereby reducing the number of sources the department will need to inspect and monitor.

Public Comment

Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.

A summary and analysis of the public testimony, along with the basis for the decision of the Board, is attached.

Detail of Changes

Please detail any changes, other than strictly editorial changes, made since the publication of the proposed regulation. This statement should provide a section-by-section description of changes.

1. Provisions intended to clarify the distinction between state and federal requirements have been added or revised. [9 VAC 5-40-6250 G and H; 9 VAC 5-40-6400 B, K, and L]
2. The compliance schedule has been revised to reflect EPA's proposed federal plan. [9 VAC 5-40-6250 F; 9 VAC 5-40-6400 D 1; 9 VAC 5-40-6400 I; 9 VAC 5-40-6410 B; 9 VAC 5-40-6420; 9 VAC 5-40-6460 B]
3. Compliance schedule extension and shutdown/restart requirements, as provided in the proposed federal plan, have been added. [9 VAC 5-40-6421; 9 VAC 5-40-6422]
4. Minor corrections and clarifications have been made. [9 VAC 5-40-6250 C 3, 4, 7, 12, 13, and 14; 9 VAC 5-40-6260 A; 9 VAC 5-40-6260 B, definitions of "calendar year" and "deviation"; 9 VAC 5-40-6390; 9 VAC 5-40-6410 C; 9 VAC 5-40-6450 A 2 b; 9 VAC 5-40-6480 B 10; 9 VAC 5-40-6480 D]
5. Revisions reflecting proposed federal plan requirements for air curtain incinerators have been made. [9 VAC 5-40-6490]
6. Section titles have been changed from "Limit for ..." to "Standard for ..." in order to maintain consistency with other provisions of the regulations. [9 VAC 5-40-6270 through 9 VAC 5-40-6360]

Family Impact Statement

Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

It is not anticipated that these regulation amendments will have a direct impact on families. However, there will be positive indirect impacts in that the regulation amendments will ensure that the Commonwealth's air pollution control regulations will function as effectively as possible, thus contributing to reductions in related health and welfare problems.

COMMONWEALTH OF VIRGINIA
STATE AIR POLLUTION CONTROL BOARD
SUMMARY AND ANALYSIS OF PUBLIC TESTIMONY FOR
REGULATION REVISION J00
CONCERNING

COMMERCIAL/INDUSTRIAL SOLID WASTE INCINERATORS
(9 VAC 5 CHAPTER 40)

INTRODUCTION

At the September 2001 meeting, the Board authorized the Department to promulgate for public comment a proposed regulation revision concerning commercial/industrial solid waste incinerators.

A public hearing was advertised accordingly and held in Richmond on October 10, 2002 and the public comment period closed on November 8, 2002. The proposed regulation amendments subject to the hearing are summarized below followed by a summary of the public participation process and an analysis of the public testimony, along with the basis for the decision of the Board.

SUMMARY OF PROPOSED AMENDMENTS

The proposed regulation amendments concerned provisions covering commercial/industrial solid waste incinerators. A summary of the amendments follows:

1. The regulation identifies the sources and geographic areas to which the regulation applies, as well as exemptions. [9 VAC 5-40-6250]
2. Terms unique to the article are defined. [9 VAC 5-40-6260]
3. Emission limits for particulate matter, carbon monoxide, dioxins/furans, hydrogen chloride, sulfur dioxide, nitrogen oxides, lead, cadmium, and mercury are established. [9 VAC 5-40-6270 through 9 VAC 5-40-6350]
4. Limitations for and cross references to existing state requirements for visible emissions, fugitive dust/emissions, odor, and toxic pollutants are provided. [9 VAC 5-40-6360 through 9 VAC 5-40-6390]
5. CISWI operator training and qualification requirements are specified. [9 VAC 5-40-6400]

6. Waste management plans are required. The regulation includes required elements of such plans, which are intended for sources to separate certain components from the waste stream in order to reduce the amount of toxic emissions from the incinerated waste. [9 VAC 5-40-6410]
7. A compliance schedule with specific increments of progress is provided. [9 VAC 5-40-6420]
8. Operating limits for operating parameters such as maximum charge rates, minimum pressure drop, and minimum scrubber liquor flow rate are prescribed. [9 VAC 5-40-6430]
9. In the event of facility and control equipment maintenance or malfunction, certain procedures must be followed. [9 VAC 5-40-6440]
10. Test methods to be used in determining compliance with the emission limits are specified. [9 VAC 5-40-6450]
11. Compliance requirements, including testing schedules, are specified. [9 VAC 5-40-6460]
12. Equipment necessary to monitor compliance with the site-specific operating limits are to be installed, calibrated, maintained, and operated. [9 VAC 5-40-6470]
13. Records of monitoring and test results are to be maintained and reported. [9 VAC 5-40-6480]
14. Air curtain incinerators must meet separate requirements for increments of progress, opacity limits, compliance monitoring and testing, recordkeeping, and reporting. [9 VAC 5-40-6490]
15. Cross references are provided for state requirements for facility and control equipment maintenance or malfunction; test methods and procedures; compliance, monitoring; recordkeeping and reporting; registration; and permits. [9 VAC 5-40-6440, 9 VAC 5-40-6450, 9 VAC 5-40-6460, 9 VAC 5-40-6470, 9 VAC 5-40-6480, 9 VAC 5-40-6500, 9 VAC 5-40-6510]

SUMMARY OF PUBLIC PARTICIPATION PROCESS

A public hearing was held in Richmond, Virginia on October 10, 2002. No one attended the hearing; one written comment was received during the public comment period. As required by law, notice of this hearing was given to the public on or about September 9, 2002 in the Virginia Register and in seven major newspapers (one in each Air Quality Control Region) throughout the Commonwealth. In addition, personal notice of this hearing and the opportunity to comment was given by mail to those persons on the

Department's list to receive notices of proposed regulation revisions. A list of hearing attendees and the complete text or an account of each person's testimony is included in the hearing report which is on file at the Department.

ANALYSIS OF TESTIMONY

Below is a summary of each person's testimony and the accompanying analysis. Included is a brief statement of the subject, the identification of the commenter, the text of the comment and the Board's response (analysis and action taken). Each issue is discussed in light of all of the comments received that affect that issue. The Board has reviewed the comments and developed a specific response based on its evaluation of the issue raised. The Board's action is based on consideration of the overall goals and objectives of the air quality program and the intended purpose of the regulation.

1. **SUBJECT:** General § 111(d)/129 plan requirements.

COMMENTER: U.S. Environmental Protection Agency, Region III

TEXT: 40 CFR part 60, subpart B, requires a state § 111(d)/129 plan to contain an enforceable mechanism (e.g., state regulation) that incorporates all applicable emission guideline (EG) requirements. If any required EG provision is not included in the state regulation, the plan is not approvable by EPA.

RESPONSE: All EG provisions are included in the state regulation.

No change has been made to the proposal as a result of this comment.

2. **SUBJECT:** Availability of cross-referenced regulations. [9 VAC 5-40-6250 C]

COMMENTER: U.S. Environmental Protection Agency, Region III

TEXT: 9 VAC 5-40-6250 C 3 a, C 4, C 7, and C 12 cross-reference other Virginia regulations. The department must identify and make available, during the public comment period, the applicable cross-referenced regulation that will be the basis for each type of exempted facility.

RESPONSE: The referenced regulations were identified and made available during the public comment period. Indeed, they are readily available at all times, not just during formal public comment periods.

No change has been made to the proposal as a result of this comment.

3. **SUBJECT:** Delegation of authority. [9 VAC 5-40-6250 C 14 b]

COMMENTER: U.S. Environmental Protection Agency, Region III

TEXT: EPA will not delegate to states certain regulatory authorities that are reserved for action by the administrator only. The retention of discretionary federal authority is consistent with EPA policy on delegation of new source performance standards authorities, which is explained in EPA's March 19, 1999 letter to VADEQ and source-specific § 111(d)/129 rule provisions, regarding this matter. In Virginia's case, short of amending its proposed rule, the plan narrative could clarify EPA and board authorities, consistent with EPA regulations and policy, and the provisions of 9 VAC 5-20-80, Relationship of state regulations to federal regulations. The purpose for EPA's retention of certain federal authorities is to help assure: 1) state regulations are "at least as protective" as the EG emission limitations and other § 129 requirements, and 2) national consistency in the implementation and enforcement of § 111(d)/129 plans.

RESPONSE: The assignment of regulatory authorities is already contained in the § 111(d)/129 plan narrative, as found in the draft plan submitted to EPA on September 18, 2002, not in the implementing regulation. They are consistent with the associated NSPS (40 CFR 60.2030).

No change has been made to the proposal as a result of this comment.

4. **SUBJECT:** Increments of progress. [9 VAC 5-40-6420]

COMMENTER: U.S. Environmental Protection Agency, Region III

TEXT: § 129(f)(2) of the Clean Air Act and 40 CFR 60.24(c) both require compliance with applicable EG requirements as "expeditiously as practicable." In addition, § 129(b)(3) of the Act requires EPA to promulgate a federal plan for those states which have not submitted an approvable plan within two years after the date of the promulgated EG. Therefore, the statutory date for promulgation of a federal plan is December 1, 2002. State plans approved after promulgation of the federal plan must contain compliance schedules, including enforceable increments of progress, which are no less stringent than those contained in the federal plan. Promulgation of the proposed federal plan is expected in the near future.

RESPONSE: Region III's assertion that state plans approved after promulgation of the federal plan must contain compliance schedules no less stringent than those contained in the federal plan is incorrect. To the contrary, § VI C 1 of the proposed federal plan states, "After CISWI units in a State or Tribal area become subject to the Federal Plan, the State or Tribal agency may still adopt and submit a plan to EPA. If EPA determines that the State or tribal plan is as protective as the **emission guidelines**, EPA will approve the State or tribal plan." (Emphasis ours.) 9 VAC 5-40-6420 A requires compliance "as expeditiously as possible." Specific compliance dates and increments of progress are also fully consistent with EG requirements.

In any case, this comment is very confusing. Region III has consistently urged Virginia to submit its § 111(d)/129 plans as soon as possible and has required Virginia to make a commitment to submit the state plan for these facilities this fiscal year. Virginia administrative procedures for adoption of regulations require that regulations be developed along a particular schedule, with adoption occurring on or before a fixed date (in this case, 4/7/03) based on the overall regulation development schedule. Now, Region III wants Virginia to include the compliance dates from the federal plan in the state plan. EPA has only recently promulgated the proposed federal plan (11/25/02), and it is unlikely that the final federal plan will be promulgated before the fall of 2003. Therefore, Virginia would not be able to meet Region III's original required commitment.

The dates in the proposed federal plan are linked to the date of publication of the final federal plan in the Federal Register. In other words, rather than provide a specific date, the proposal generally refers to a period in time "after promulgation of the CISWI Federal plan in the Federal Register." Based on communications with the CISWI regulation writer at EPA's Office of Air Quality Planning and Standards, we expect the final federal plan to be promulgated and published in the Federal Register around November 1, 2003; however, this expectation has some uncertainty to it. To address this uncertainty, the compliance dates in the state regulation have been revised to also be dependent on publication of the final CISWI Federal plan in the Federal Register. However, to ensure that the compliance dates are not less stringent than the guidelines, a drop-dead date (12/1/03) has been added in case the federal plan is too late.

5. **SUBJECT:** Operator training. [9 VAC 5-40-6400 J 2]

COMMENTER: U.S. Environmental Protection Agency, Region III

TEXT: EPA retains the authority to grant deviations related to continued facility operations when a qualified CISWI operator is not available; see 9 VAC 5-40-6400 J 2.

RESPONSE: The assignment of regulatory authorities is already contained in the § 111(d)/129 plan narrative, as found in the draft plan submitted to EPA on September 18, 2002, not in the implementing regulation. They reflect the comment and are consistent with the associated NSPS (40 CFR 60.2030).

No change has been made to the proposal as a result of this comment.

6. **SUBJECT:** Operator training. [9 VAC 5-40-6400 K]

COMMENTER: U.S. Environmental Protection Agency, Region III

TEXT: With respect to 9 VAC 5-40-6400 K, for purposes of rule enforceability and clarity, EPA needs to know the applicable § 111(d)/129 plan provisions, or exclusions, if any, under the Board of Waste Management Facility Operators (18 VAC 155-20-10 et seq.) rule and § 54.1-2212 of the Code of Virginia for the certification of

CISWI operators. This request is consistent with 40 CFR 60.26(a) and (b). A copy of the applicable cross-referenced Virginia regulation and Code must be submitted to EPA at the time of plan submittal, unless it has been approved as a portion of a preceding § 111(d)/129 plan submittal.

RESPONSE: The regulation has been revised to include a general statement --consistent with the requirements of the EG--that operators shall comply with either a state-approved program or the ASME program, and that for the purposes of this regulation, the state-approved program is the Board for Waste Management Facility Operators program. The specific state program will then not need to be included as part of the § 111(d)/129 plan.

7. **SUBJECT:** Operator training. [9 VAC 5-40-6400 K]

COMMENTER: U.S. Environmental Protection Agency, Region III

TEXT: If there is a violation of an applicable provision of 18 VAC 155-20-10 et seq., what state agency will be assigned the responsibility for carrying out and enforcing the operator training and certification requirements of the § 111(d)/129 plan? For example, if a violation of an operator training and certification requirement of the § 111(d)/129 plan were to occur, what state agency would issue the notice of violation? This requested explanation is consistent with the requirement of 40 CFR 60.26(d).

RESPONSE: The Department of Environmental Quality and the Department of Professional and Occupational Regulation, representing, respectively, the State Air Pollution Control Board and the Virginia Board for Waste Management Facility Operators, are both responsible for enforcing their respective sets of regulations. Generally, enforcement of a regulation is not articulated in the regulation itself.

Many regulations cross-reference the requirements of other agencies. Most sources must meet the regulatory requirements of more than one agency. In addition to meeting the requirements of this regulation, CISWI operators must also meet an array of federal, state, and local water, waste, and zoning laws and regulations. Affected CISWIs have been subject to the operator licensing law and regulations, as well as other air quality regulations, in the absence of this regulation; no enforcement problems have ever been identified.

No change has been made to the proposal as a result of this comment.

8. **SUBJECT:** State-only provisions. [9 VAC 5-40-6370, 9 VAC 5-40-6380, 9 VAC 5-40-6390]

COMMENTER: U.S. Environmental Protection Agency, Region III

TEXT: 9 VAC 5-40-6370, 9 VAC 5-40-6380, and 9 VAC 5-40-6390 contain requirements related to fugitive dust, odors, and toxic pollutant emissions, respectively.

These provisions are outside the scope and requirements of the EG. Is it the intent of the department to include 9 VAC 5-40-6370, and exclude 9 VAC 5-40-6380 and 6390 from its proposed § 111(d)/129 plan? EPA has no authority under the Clean Air Act to approve plan provisions that relate to the control of odors. Also, it is highly questionable if EPA has the authority to approve, as part of a § 111(d)/129 plan, a regulatory provision that may include toxics not regulated under § 129 of the Act. If the department plans to include 9 VAC 5-40-6390, provide EPA with an enforceable copy of the referenced regulation for review and comment.

RESPONSE: As indicated in the draft plan submitted to EPA on September 18, 2002, these provisions are state-only, and will not be submitted for approval as part of the plan.

No change has been made to the proposal as a result of this comment.

9. **SUBJECT:** Fugitive emissions. [9 VAC 5-40-6360, 9 VAC 5-40-6370]

COMMENTER: U.S. Environmental Protection Agency, Region III

TEXT: 9 VAC 5-40-6360 A includes a reference to 9 VAC 5-40-60 et seq. that is questionable. If the department wishes to include the 9 VAC 4-40-90 fugitive emissions standard under its proposed plan, what is the required compliance method? Rule 4-1 does not specify or reference a compliance method (e.g., Method 22) for fugitive emissions.

RESPONSE: In the general provisions governing Chapter 40 and Rule 4-1, 9 VAC 5-40-30 A states, "Emission tests for existing sources shall be conducted and reported, and data shall be reduced as set forth in this chapter and in the appropriate reference methods." The plan (as demonstrated in the draft submitted to EPA on September 18, 2002) commits to obtaining EPA approval for alternative methods; obviously, an appropriate reference method is one either specified by EPA or approved as an alternative by EPA. If EPA has determined that a certain method is the appropriate method, then that is the one we require. 9 VAC 5-40-6450 D 10 (test methods and procedures) specifically requires that the visible emission standard be determined by conducting observations in accordance with Method 9. There is nothing in the plan or regulation, therefore, that allows the use of anything other than Method 9 unless EPA approves an alternative.

Note that 9 VAC 5-40-6360 relates to visible emissions, not fugitive emissions, which is covered in 9 VAC 5-40-6370. 9 VAC 5-40-6370 was identified in the draft plan submitted to EPA on September 18, 2002, as not being part of the plan.

No change has been made to the proposal as a result of this comment.

10. **SUBJECT:** Alternative operating parameters. [9 VAC 5-40-6430 D]

COMMENTER: U.S. Environmental Protection Agency, Region III

TEXT: 9 VAC 5-40-6430 D allows a source owner to petition the board for specific operating parameters if an air pollution control device other than a wet scrubber is used. EPA has retained its authority to establish operating parameters for control devices other than wet scrubbers.

RESPONSE: The assignment of regulatory authorities is already contained in the § 111(d)/129 plan narrative, as found in the draft plan submitted to EPA on September 18, 2002, not in the implementing regulation. They reflect the comment and are consistent with the associated NSPS (40 CFR 60.2030).

No change has been made to the proposal as a result of this comment.

11. **SUBJECT:** Continuous monitoring. [9 VAC 5-40-6460 A 2 b]

COMMENTER: U.S. Environmental Protection Agency, Region III

TEXT: 9 VAC 5-40-6460 A 2 b references 40 CFR 60.11 which, under 40 CFR 60.11(e)(5) and (6), allows the use of continuous opacity monitoring system (COMS) data in lieu of Method 9 observation data and allows the administrator to make appropriate adjustments to the opacity standard, providing certain conditions are met. The noted provisions of 40 CFR 60.11(e) are not applicable to affected sources and are superseded by the requirements, including special provisions (e.g., 40 CFR 60.2030(c)) set forth under subpart CCCC and the related provisions of subpart DDDD. In other words, Method 9 is the only authorized visible emission compliance method, and the administrator can only revise an emission standard unless there has been a demonstration that the proposed standard revision is "at least as protective" as the EG emission limitation.

RESPONSE: In the Federal Register of January 31, 2003 (68 FR 5144), EPA revises 40 CFR 62.02(b)(2) to state: "The part 60 subpart A of this chapter general provisions and appendices to part 60 apply to part 62, except as follows: 40 CFR 60.7(a)(1), 60.7(a)(3), and 60.8(a) and where special provisions set forth under the applicable subpart of this part shall apply instead of any conflicting provisions." 40 CFR 60.11 is not included in this list. Therefore, our reference to 40 CFR 60.11 is consistent with EPA policy.

Also note that the draft § 111(d)/129 plan submitted to EPA on September 18, 2002 requires that the Department obtain approval from EPA Region III before implementing approval of alternative methods, equivalent methods, or major changes to reference methods. The plan is consistent with 40 CFR 60.2030(c).

No change has been made to the proposal as a result of this comment.

12. **SUBJECT:** Monitoring. [9 VAC 6470 A 2 b]

COMMENTER: U.S. Environmental Protection Agency, Region III

TEXT: 9 VAC 6470 A 2 b references 40 CFR 60.13, which in turn references 40 CFR 60.11, and thus allows a source to submit COMS data in lieu of reference Method 9 observation data. None of the promulgated EG allow COMS to be used as the compliance method.

RESPONSE: As explained in the response to comment 11, 40 CFR 60.13 is not included in EPA's list of exclusions.

No change to the proposal as been made as a result of this comment.

13. **SUBJECT:** Recordkeeping and reporting. [9 VAC 5-40-6480 D]

COMMENTER: U.S. Environmental Protection Agency, Region III

TEXT: In 9 VAC 5-40-6480 D the reference to 6420 A must be deleted and changed to reference 9 VAC 5-40-6420 B 1, relating to the final control plan submittal date, as required under the EG, and as stipulated under 9 VAC 5-40-6410 B.

RESPONSE: This comment is acceptable, and the proposal has been revised accordingly.