



COMMONWEALTH of VIRGINIA

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MEMORANDUM

TO: Regional Directors, Director – Air Permits, Director – Air Compliance, Director – Data Analysis and Planning, Director – Regulatory Affairs, Air Permit Managers, Air Compliance Managers

CC: Richard F. Weeks, Chief Deputy Director
James J. Golden, Deputy Director for Program Development

FROM: Michael G. Dowd – Director, Air Division *MGD*

SUBJECT: APG – 457, State Toxics and Solid Waste Combustion Rules

DATE: July 12, 2012

Purpose:

The purpose of this document is to provide guidance to air permitting staff regarding applicability of the Virginia state toxics regulations (9 VAC 5-60-200 and 9 VAC 5-60-300) to facilities subject to the Solid Waste Combustion rules under Sections 111(d) and 129 of the federal Clean Air Act (CAA). This guidance is not intended to cover every possible situation but should be applicable in most scenarios. Check with the regional air permit manager and/or the central office staff if a deviation from the guidance is deemed necessary.

Background:

Congress added Section 129 to the CAA in 1990 specifically to address emissions from solid waste combustion. Sections 111(b) and 129 require the Environmental Protection Agency (EPA) to establish new source performance standards (NSPS) for new units, while Sections 111(d) and 129 require the EPA to establish Emission Guidelines (EG) for existing units. Section 129 of the CAA requires EPA to use a “MACT-type” approach as used under Section 112 of the CAA for both the NSPS and the EG solid waste combustion rules.

NSPS are direct federal regulations that apply to new sources. In Virginia, these rules are adopted by reference in Rule 5-5 (Environmental Protection Agency Standards of Performance for New Stationary Sources). EGs do not directly regulate solid waste combustion units, but rather establish requirements for state plans which are the vehicle by which states implement the guidelines. In Virginia, the EG is implemented by a separate rule in 9 VAC5 Chapter 40 (Existing Stationary Sources). Once the State Plan is incorporated by EPA into 40 CFR Part 62 it becomes federally enforceable. If a state does not submit a plan acceptable to EPA, then EPA implements the EG through a federal plan promulgated under 40 CFR Part 62.

Applicability:

This guidance applies to new and existing facilities subject to a Solid Waste Combustion rule promulgated by EPA under Sections 129 and 111 of the CAA.

State Toxics Regulations (9VAC5 Chapter 60, Articles 4 and 5)

Pursuant to the state toxics rules applicability sections contained in 9VAC5-60-200 C 3 and C 4 (existing sources) and 9VAC50-60-300 C 3 and C 4 (new and modified sources) stationary sources subject to an emission standard or other requirement promulgated under Section 112 of the CAA are exempt from the requirements of the state toxics rules. This includes all maximum achievable control technology (MACT) and generally available control technology (GACT) standards promulgated under 40 CFR Part 63. **NOTE:** Only the part of the stationary source that is subject to the MACT or GACT is exempt from the state toxics regulations. This exemption applies regardless of whether or not the Department of Environmental Quality (DEQ) is the delegated authority for the rule.

Both the NSPS and the EG for the solid waste combustion rules under Sections 129 and 111 use a "MACT-type" approach similar to that used under section 112 of the CAA. For this reason, DEQ has determined that a stationary source subject to an NSPS promulgated under Section 129 of the CAA or a DEQ air regulation promulgated pursuant to Section 111(d) of the CAA are exempt from the state toxics regulations. The "MACT-like" rules and the associated DEQ air regulations include:

Large Municipal Waste Combustors

- **Subpart Ea** of 40 CFR Part 60 - New Source Performance Standards for Municipal Waste Combustors constructed after December 20, 1989 and on or before September 20, 1994
- **Subpart Eb** of 40 CFR Part 60 - New Source Performance Standards for Large Municipal Waste Combustors constructed after September 20, 1994
- Emission Standards for Large Municipal Waste Combustors (Rule 4-54)

Small Municipal Waste Combustors

- **Subpart AAAA** of 40 CFR Part 60 - New Source Performance Standards for Small Municipal Waste Combustion Units
- Emission Standards for Small Municipal Waste Combustors (Rule 4-46)

Commercial/Industrial Solid Waste Incinerators (CISWI)

- **Subpart CCCC** of 40 CFR Part 60 - New Source Performance Standards for Commercial/Industrial Solid Waste Incinerators
- Emission Standards for Commercial/Industrial Solid Waste Incinerators (Rule 4-45)

Hospital/Medical/Infectious Waste Incinerators (HMIWI)

- **Subpart Ec** of 40 CFR Part 60 - New Source Performance Standards for Hospital/Medical/Infectious Waste Incinerators constructed after June 20, 1996
- Emission Standards for Hospital/Medical/Infectious Waste Incinerators (Rule 4-44)

Sewage Sludge Incinerators (SSI)

- **Subpart LLLL** of 40 CFR Part 60 - New Source Performance Standards for SSI
- Sewage Sludge Incineration Units (Rule 4-55) (effective August 15, 2012)

Other Solid Waste Incinerators (OSWI) (Currently held in abeyance so state toxics applies to these units)

- **Subpart EEEE** of 40 CFR Part 60 - Standards of Performance for Other Solid Waste Incineration Units for Which Construction is Commenced After December 9, 2004, or for Which Modification or Reconstruction is Commenced on or After June 16, 2006

