

**COMMONWEALTH OF VIRGINIA
STATE AIR POLLUTION CONTROL BOARD
REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION**

**PRELIMINARY DETERMINATION REVIEW DOCUMENT FOR
PROPOSED REGULATION REVISION S97
CONCERNING**

**HOSPITAL/MEDICAL/INFECTIOUS WASTE INCINERATORS
(9 VAC 5 CHAPTER 40)**

PROVISIONS AFFECTED (TENTATIVE DETERMINATION)

Hospital/medical/infectious waste incinerators, 9 VAC 5-40-NNNN.

REASON FOR PROPOSED REGULATION

The regulation amendments (adoption of the provisions cited above) are being proposed because they have been determined to be required by federal mandate (33 111 and 129 of the federal Clean Air Act).

STATEMENT OF LEGAL AUTHORITY

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.

STATEMENT OF STATUTORY MANDATES

The contemplated regulation amendments are mandated by federal law or regulation. A succinct statement of the source (including legal citation) and scope of the mandate may be found below. A copy of all cited legal provisions is attached.

Hospital/medical/infectious waste incinerator (HMIWI) emissions are a "designated" pollutant under 33 111(d) of the Clean Air Act. Designated pollutants are pollutants which are not included on a list published under 33 108(a) of the Act ("criteria" pollutants), or 33 112(b)(1)(A) ("hazardous" pollutants), but for which standards of performance for new sources have been established under 33 111(b). When the U.S. Environmental Protection Agency (EPA) establishes a new source performance standard, states are required to develop standards for existing facilities based on EPA emission guidelines. Designated pollutant controls are critical for two reasons. First, only a limited number of air pollutants potentially harmful to human health are regulated at the federal level. Second, health

risks from small exposures to designated air pollutants can be high, depending on the substances involved.

EPA has determined that HMIWI facilities should be regulated under § 111 (New Source Performance Standards) of the Clean Air Act because:

1. HMIWI emissions may be reasonably anticipated to contribute to the endangerment of public health and welfare.
2. The range of health and welfare effects and the range and uncertainties of estimated cancer risks do not warrant listing HMIWI emissions as a hazardous pollutant under § 112 of the Act.
3. Section 112 of the Act could not be used to address particular constituents or subgroups of emissions (such as hydrogen chloride).
4. Section 111(d) of the Act would permit a more thorough evaluation of existing HMIWIs at the state level than would be feasible in a general rulemaking at the federal level.

The 1990 Clean Air Act Amendments added a new § 129 to the Act that applies to solid waste incinerators, including municipal waste combustors, HMIWIs, and industrial waste incinerators. Section 129 of the Act and its associated standards were promulgated because EPA determined that incinerator emissions cause or contribute significantly to air pollution which may reasonably be expected to endanger public health and welfare. The intended effect of the standards and guidelines is to form a basis for state action to develop state regulations controlling HMIWI emissions to the level achievable by the best demonstrated system of continuous emission reduction, considering costs, non-air quality health and environmental impacts, and energy requirements.

Section 129 of the Act directs that the standards and guidelines for HMIWIs be broadened, and provides the schedule for this activity. Regulating HMIWI emissions for new sources under § 111(b) of the Act (New Source Performance Standards) establishes HMIWI emissions as a designated pollutant, and requires the EPA to promulgate guidelines under § 111(d) for states to use in developing regulations to control pollutants from existing HMIWIs. Emissions guidelines for existing HMIWIs that began construction on or before December 20, 1989 have been promulgated under §§ 111(d) and 129 of the Act. In order for §§ 111 and 129 to be effected, the specific guidelines are promulgated in the Code of Federal Regulations (CFR) (subpart Ce of 40 CFR 63). State regulations must be at least as stringent as the guidelines.

The final rule published by EPA in the Federal Register of September 15, 1997 (62 FR 48348) applies to existing HMIWIs built on or before June 20, 1996.

STATEMENT OF CONCLUSIONS

The contemplated regulation is essential (i) to protect the health, safety or welfare of citizens and (ii) for the efficient and economical performance of an important governmental function. The reasoning for this conclusion is set forth below.

HMIWI emissions are known or suspected of causing cancer, nervous system damage, developmental abnormalities, reproductive impairment, immune suppression, liver dysfunction, hormone imbalance, and other

serious health effects. Control of such emissions will reduce and prevent such serious health effects.

Failure to develop an adequate regulation will also result in imposition of a federal program. Meeting the basic requirements of the law and its associated regulations will ensure that Virginia retains its rights to govern Virginia sources.

STATEMENT OF PROCESS FOR CONSIDERING ALTERNATIVES

Alternatives to the proposed regulation amendments are being considered by the Department. The Department has tentatively determined that the first alternative is appropriate, as it is the least burdensome and least intrusive alternative that fully meets the purpose of the regulatory action. The alternatives being considered by the Department are discussed below.

1. Amend the regulations to satisfy the provisions of the law and associated regulations and policies. This option is being selected because it meets the stated purpose of the regulatory action: to comply with the requirements of the federal Clean Air Act.
2. Make alternative regulatory changes to those required by the provisions of the law and associated regulations and policies. This option is not being selected because it will not ensure consistency with federal requirements.
3. Take no action to amend the regulations. This option is not being selected because it will result in the imposition of a federal program.

As provided in the public participation procedures of the State Air Pollution Control Board, the Department will include, in the subsequent Notice of Intended Regulatory Action, a description of the above alternatives and a request for comments on other alternatives and the costs and benefits of the above alternatives or the other alternatives that the commenters may provide.

STATEMENT OF IMPACT ON FAMILY FORMATION, STABILITY AND AUTONOMY

In the formulation of these regulation amendments, the Department will consider the impact of the regulation amendments on family formation, stability and autonomy. It is not anticipated that these regulation amendments will have a direct impact on families. However, there may be positive indirect impacts in that the regulation amendments will contribute to the prevention of air pollution, thus also contributing to reductions in associated fertility disorders, fetal mutation and deformity, disease, and premature death.

CONTACT PERSON

Questions on the proposal should be referred to:

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