

Virginia Regulatory Town Hall

Notice of Intended Regulatory Action Agency Background Document

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| Agency Name: | State Air Pollution Control Board |
| Regulation Title: | Regulations for the Control and Abatement of Air Pollution |
| Primary Action: | Article 47 of 9 VAC 5 Chapter 40 (9 VAC 5-40-8200 et seq.) |
| Secondary Action(s): | None. |
| Action Title: | Commercial/Industrial Solid Waste Incinerators (Rev. J00) |
| Date: | December 4, 2000 |

This information is required prior to the submission to the Registrar of Regulations of a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B). Please refer to Executive Order Twenty-Five (98) for more information.

Purpose *

Please describe the subject matter and intent of the planned regulation.

The purpose of the proposed action is to develop a state regulation that controls emissions from commercial/industrial solid waste incinerators (CISWIs) as required by §§ 111(d) and 129 of the federal Clean Air Act.

Statutory Authority

Please identify the section number and provide a brief statement relating the content of the statutory authority to the specific regulation contemplated.

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.

Need *

Please provide an explanation of the need for the contemplated regulation and potential consequences that may result in the absence of the regulation. Also set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of citizens or would be essential for the efficient and economical performance of an important

governmental function. Include a discussion of the problems the regulation's provisions are intended to solve.

Section 111(d) of the Clean Air Act requires U.S. Environmental Protection Agency (EPA) to establish procedures under which states submit plans to control certain existing sources of certain pollutants. EPA implemented § 111(d) by promulgating Subpart B of 40 CFR Part 60 establishing procedures and requirements for adoption and submittal of state plans for control of "designated pollutants" from "designated facilities". Designated pollutants are pollutants which are not included on a list published under § 108(a) of the Clean Air Act (National Ambient Air Quality Standards) or § 112(b)(1)(A) (Hazardous Air Pollutants), but for which standards of performance for new sources have been established under § 111(b). A designated facility is an existing facility which emits a designated pollutant and which would be subject to a standard of performance for that pollutant if the existing facility were new.

Subpart B of 40 CFR Part 60 provides that EPA publish guideline documents for development of state emission standards after promulgation of any standards of performance for designated pollutants. The documents must specify emission guidelines and times for compliance and include other pertinent information such as discussion of the pollutant's effects on public health and welfare and description of control techniques and their effectiveness and costs. The emission guidelines reflect the degree of emission reduction attainable with the best adequately demonstrated systems of emission reduction, considering costs as applied to existing facilities.

After publication of a final guideline document for the pollutant in question, the states must develop and submit plans for control of that pollutant from designated facilities. After the final plan submittal date, EPA approves or disapproves each plan (or portion thereof). If a state plan (or portion thereof) is disapproved, EPA promulgates a federal plan (or portion thereof). These and related provisions of Subpart B are basically patterned after § 110 of the Clean Air Act and 40 CFR Part 51 (concerning adoption and submittal of state implementation plans under § 110).

Because failure to develop an adequate regulation will 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, and result in the efficient and economical performance of an important governmental function.

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. CISWI emissions consist of particulate matter, carbon monoxide, dioxin/furan, and other substances known or suspected of causing cancer, nervous system damage, developmental abnormalities, reproductive impairment, immune suppression, liver disfunction, hormone imbalance, and other serious health effects. Control of such emissions will reduce and prevent such serious health effects.

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

1. CISWI 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 CISWI 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 CISWIs 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 CISWI 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 CISWIs be broadened, and provides the schedule for this activity. Regulating CISWI emissions for new sources under § 111(b) of the Act (New Source Performance Standards) establishes CISWI 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 CISWIs. Emissions guidelines for existing CISWIs that began construction on or before November 30, 1999 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 DDD of 40 CFR 60). State regulations must be at least as stringent as the guidelines.

EPA's final rule was published in the Federal Register on December 1, 2000 (65 FR 75338). State plans are due by December 1, 2001.

Potential Issues *

Please supply a statement delineating any potential issues that may need to be addressed as the regulation is developed.

1. A new regulation must be promulgated which meets EPA's requirements for increments of progress, waste management plans, operator training and qualification, emission limitations and operating limits, performance testing, initial compliance requirements, continuous compliance requirement, monitoring, recordkeeping and reporting, Title V operating permits, and air curtain incinerators.
2. The regulation must also address separate state requirements for odor, toxics, fugitive emissions, and permits.
3. The open burning regulation (Article 40 of 9 VAC 5 Chapter 40, 9 VAC 5-40-5600 et seq.) may need to be revised to address issues related to air curtain incinerators.

Alternatives *

Please describe the process by which the agency has considered, or will consider, less burdensome and less intrusive alternatives for achieving the need. Also describe, to the extent known, the specific alternatives to the proposal that have been considered and will be considered to meet the need, and the reasoning by which the agency has rejected any of the alternatives considered.

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, along with the reasoning by which the Department has rejected any of the alternatives being considered, 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.

Public Participation *

Please indicate the nature of the comments the Department is soliciting pursuant to this notice and whether a public meeting is to be held to receive comments on this notice. If a public meeting is to be held, indicate where information on the public meeting (i.e. date, time, and place) may be found. Indicate whether it is the Department's intent to hold at least one public hearing on the proposed regulation after it is published in the Virginia Register.

The Department is soliciting comments on (i) the intended regulatory action, to include ideas to assist the Department in the development of the proposal, (ii) the impacts of the proposed regulation on farm and forest lands, and (iii) the costs and benefits of the alternatives stated in this notice or other alternatives. All comments must be received by the Department by 4:30 p.m. on the first business day after public meeting (see information below) in order to be considered. It is preferred that all comments be provided in writing to the Department, along with any supporting documents or exhibits; however, oral comments will be accepted at the meeting. Comments may be submitted by mail, facsimile transmission, e-mail, or by personal appearance at the meeting, but must be submitted to Karen G. Sabasteanski, Policy Analyst, Office of Air Regulatory Development, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia, 23240 (e-mail: kgsabastea@deq.state.va.us) (fax number: 804-698-4510). Comments by facsimile transmission will be accepted only if followed by receipt of the signed original within one week. Comments by e-mail will be accepted only if the name, address and phone number of the commenter are included. All testimony, exhibits and documents received are a matter of public record. Only comments (i) related to the potential issues, alternatives, and costs and benefits (see supporting information below) as specified in this notice and (ii) provided in accordance with the procedures specified in this notice will be given consideration in the development of the proposed regulation amendments.

A public meeting will be held by the Department to receive comments on and to discuss the intended action. Information on the date, time, and place of the meeting is published in the Calendar of Events section of the Virginia Register. Unlike a public hearing, which is intended only to receive testimony, this meeting is being held to discuss and exchange ideas and information relative to regulation development.

After publication in the Virginia Register of Regulations, the Department will hold at least one public hearing to provide opportunity for public comment on any regulation amendments drafted pursuant to this notice.

Ad Hoc Advisory Group *

Please indicate the extent to which the participatory approach will be used in the development of the proposed regulation. Indicate whether the Department is will be using an ad hoc advisory group in the development of the proposal.

The Department is soliciting comments on the advisability of forming an ad hoc advisory group, utilizing a standing advisory committee or consulting with groups or individuals registering interest in working with the Department to assist in the drafting and formation of any proposal. The primary function of any group, committee or individuals that may be utilized is to develop recommended regulation amendments for Department consideration through the collaborative approach of regulatory negotiation and consensus. Any comments relative to this issue must be submitted to the agency contact in writing by 4:30 p.m. the last day of the comment period.

Legal Requirements

Please identify the state and/or federal source of the legal requirements that necessitate promulgation of the contemplated regulation. The discussion of these requirements should include a description of their scope and the extent to which the requirements are mandatory or discretionary. Full citations for the legal requirements and, if available, web site addresses for locating the text of the cited legal provisions should be provided.

Federal Requirements

Federal Clean Air Act (CAA):

<http://www.epa.gov/ttn/oarpg/gener.html>

Code of Federal Regulations (CFR):

<http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html>

Federal Register (FR):

http://www.gpo.gov/su_docs/aces/aces140.html

Section 111(d) requires that each state submit a plan which will (i) establish standards of performance for any existing source for any air pollutant for which criteria have not been issued or which is not included on a list published under § 108(a) (or emitted from a source category which is regulated under § 112 or 112(b)) but to which a standard of performance under this section would apply if such existing source were a new source, and (ii) provides for the implementation and enforcement of such standards of performance. The state may take into consideration the remaining useful life of the existing source to which standards apply.

The EPA Administrator has the authority to prescribe a plan for a state in cases where the state fails to submit a plan and to enforce the provisions of such plan in cases where the state fails to enforce them.

Section 129 requires that EPA establish standards of performance for both new and existing solid waste combustion sources, with new sources covered under § 129(a) and existing sources covered under § 129(b).

Section 129(a), new source performance standards, requires EPA to develop performance standards pursuant to § 111 for each category of solid waste incineration units. A schedule is given in §§ 129(a)(B) through (E) for promulgating the standards, depending on size and type of unit--very large municipal waste combustors (MWCs) to be promulgated first, followed by smaller MWCs and medical waste incinerators, then commercial and industrial waste incinerators, and, finally, remaining types of solid waste incineration units.

Section 129(a)(2), Emissions Standard, provides detail on what the standards are to contain the maximum degree of reduction in emissions of air pollutants, taking into consideration cost and any non-air quality health and environmental impacts and energy requirements. The degree of reduction must be no less stringent than the emissions control that is achieved in practice by the best controlled similar unit. Section 129(a)(3) states that the standards must be based on methods and technologies for removal or

destruction of pollutants before, during, and after combustion, and must incorporate siting requirements that will minimize potential risks to public health or the environment.

The performance standards promulgated in §§ 111 and 129 must include numerical emissions limitations, as required under § 129(a)(4). The limitations must be determined for particulate matter, opacity, sulfur dioxide, hydrogen chloride, nitrogen oxides, carbon monoxide, lead, cadmium, mercury, and dioxins and furans. EPA is required to review and revise, as needed, the performance standards of §§ 111 and 129 periodically.

Section 129(b) addresses existing units. It directs EPA to develop guidelines that are to include emissions limitations and requirements on monitoring, operator training, permits, and residual risk. States are to then develop plans for implementing and enforcing these guidelines. Such plans must be no less stringent than the guidelines, and must be approved by EPA. As provided in § 129(a)(2), emission standards for existing units may be less stringent than standards for new units, but may not be less stringent than the average emissions limitation achieved by the best performing 12 percent of units in a particular category.

Monitoring requirements must be included in each performance standard, as are found in § 129(c), and must require sources to monitor emissions at various points, and to report monitoring results. Operator training and certification is also required, as put forth in § 129(d). Finally, according to § 129(e), sources must obtain Title V operating permits, whether from EPA or from an EPA-approved state operating permit program.

Section 129(f) contains a schedule of effective dates and enforcement for both new and existing units. Section 129(g) contains applicable definitions; § 129(h) discusses state and other authority under the Act.

40 CFR Part 60 subpart B provides the criteria for adoption and submittal of state plans for designated facilities. The issues include: (i) publication of guideline documents, emissions guidelines, and final compliance times; (ii) adoption and submittal of state plans including public hearings; (iii) emission standards and compliance schedules; (iv) emission inventories and source surveillance, reports; (v) actions by the EPA Administrator; (vi) plan revisions by the state; and (vii) plan revisions by the Administrator. The emission guidelines established by EPA under the provisions of § 129(b) of the Act are also contained in 40 CFR Part 60.

40 CFR Part 60, subpart DDDD (65 FR 75338, December 1, 2000) provides the emission guidelines for commercial/industrial solid waste incinerators. The regulation that the state develops based on the emission guidelines must be no less stringent than the guidelines.

Family Impact Statement

Please provide a preliminary analysis of the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent 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; 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.

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