

List of Subjects in 33 CFR Part 330

Administrative practice and procedure, Intergovernmental relations, Navigation (water), Water pollution control, Waterways.

Dated: November 23, 2004.

Don T. Riley,

Major General, U.S. Army, Director of Civil Works.

For the reasons stated in the preamble, the Corps proposes to amend 33 CFR part 330 as follows:

PART 330—NATIONWIDE PERMIT PROGRAM

1. The authority citation for part 330 continues to read as follows:

Authority: 33 U.S.C. 401 *et seq.*; 33 U.S.C. 1344; 33 U.S.C. 1413.

2. Amend § 330.1 by revising paragraph (e)(1) to read as follows:

§ 330.1 Purpose and policy.

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(e) * * * (1) In most cases, permittees may proceed with activities authorized by NWP's without notifying the DE. However, the prospective permittee should carefully review the language of the NWP to ascertain whether he must notify the DE prior to commencing the authorized activity. For NWP's requiring advance notification, such notification must be made in writing as early as possible prior to commencing the proposed activity. The permittee may presume that his project qualifies for the NWP unless he is otherwise notified by the DE within a 45-day period. The 45-day period starts on the date of receipt of the notification in the Corps district office and ends 45 calendar days later regardless of weekends or holidays. If the DE notifies the prospective permittee that the notification is incomplete, a new 45-day period will commence upon receipt of the revised notification. The prospective permittee may not proceed with the proposed activity before expiration of the 45-day period unless otherwise notified by the DE. If the DE fails to act within the 45-day period, he must use the procedures of 33 CFR 330.5 in order to modify, suspend, or revoke the NWP authorization.

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3. Amend § 330.4 by revising paragraphs (c)(6) and (d)(6) to read as follows:

§ 330.4 Conditions, limitations, and restrictions.

* * * * *

(c) * * *

(6) In instances where a state has denied the 401 water quality

certification for discharges under a particular NWP, permittees must furnish the DE with an individual 401 water quality certification or a copy of the application to the state for such certification. For NWP's for which a state has denied the 401 water quality certification, the DE will determine a reasonable period of time after receipt of the request for an activity-specific 401 water quality certification (generally 60 days), upon the expiration of which the DE will presume state waiver of the certification for the individual activity covered by the NWP's. However, the DE and the state may negotiate for additional time for the 401 water quality certification, but in no event shall the period exceed one (1) year (see 33 CFR 325.2(b)(1)(ii)). Upon receipt of an individual 401 water quality certification, or if the prospective permittee demonstrates to the DE state waiver of such certification, the proposed work can be authorized under the NWP. For NWP's requiring a 45-day pre-construction notification the district engineer will immediately begin, and complete, his review prior to the state action on the individual section 401 water quality certification. If a state issues a conditioned individual 401 water quality certification for an individual activity, the DE will include those conditions as activity-specific conditions of the NWP.

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(d) * * *

(6) In instances where a state has disagreed with the Corps consistency determination for activities under a particular NWP, permittees must furnish the DE with an individual consistency concurrence or a copy of the consistency certification provided to the state for concurrence. If a state fails to act on a permittee's consistency certification within six months after receipt by the state, concurrence will be presumed. Upon receipt of an individual consistency concurrence or upon presumed consistency, the proposed work is authorized if it complies with all terms and conditions of the NWP. For NWP's requiring a 45-day pre-construction notification the DE will immediately begin, and may complete, his review prior to the state action on the individual consistency certification. If a state indicates that individual conditions are necessary for consistency with the state's Federally-approved coastal management program for that individual activity, the DE will include those conditions as activity-specific conditions of the NWP unless he determines that such conditions do not comply with the provisions of 33

CFR 325.4. In the latter case the DE will consider the conditioned concurrence as a non-concurrence unless the permittee chooses to comply voluntarily with all the conditions in the conditioned concurrence.

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4. Amend § 330.6 by revising paragraph (a)(3)(ii) to read as follows:

§ 330.6 Authorization by nationwide permit.

(a) * * *

(3) * * *

(ii) The DE's response will state that the verification is valid for a specific period of time (generally until the expiration date of the NWP) unless the NWP authorization is modified, suspended, or revoked. The response should also include a statement that the verification will remain valid for the specified period of time, if during that time period, the NWP authorization is reissued without modification or the activity complies with any subsequent modification of the NWP authorization. Furthermore, the response should include a statement that the provisions of § 330.6(b) will apply, if during that period of time, the NWP authorization expires, or is suspended or revoked, or is modified, such that the activity would no longer comply with the terms and conditions of an NWP.

Finally, the response should include any known expiration date that would occur during the specified period of time. A period of time less than the amount of time remaining until the expiration date of the NWP may be used if deemed appropriate.

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[FR Doc. 04-26263 Filed 11-29-04; 8:45 am]
BILLING CODE 3710-92-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R05-OAR-2004-IN-0005; FRL-7838-2]

Approval and Promulgation of Air Implementation Plans; Indiana; Rules To Control Particulate Matter and Carbon Monoxide Emissions From Incinerators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve, through direct final procedure, a revision to a plan submitted by Indiana concerning emissions of carbon monoxide (CO) and particulate matter

(PM) from existing incinerators. The revision was submitted on October 30, 2002, and on January 10, 2003, following required public process. The rules being amended and re-adopted apply to incinerators in the State for which there are no presently applicable Federal rules or guidelines.

In the final rules section of this **Federal Register**, EPA is approving the changes to the State Implementation Plan (SIP) for CO and PM as a direct final rule without prior proposal because we view this action as noncontroversial and anticipate no adverse comments. If no written adverse comments are received in response to the direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives meaningful written adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. If no adverse written comments are received, the direct final rule will take effect on the date stated in that document and no further activity will be taken on this proposed rule. Any party interested in commenting on this action should do so within the timeframe noted below.

DATES: Comments on this action must be received by December 30, 2004.

ADDRESSES: Submit comments, identified by Regional Material in e-Docket (RME) ID No. R05-OAR-2004-IN-0005 by one of the following methods: Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments. Agency Web site: <http://docket.epa.gov/rmepub/index.jsp> is EPA's electronic public docket and comment system. It is EPA's preferred method for receiving comments. Once in the system, select "quick search" then key in the instructions for submitting comments.

E-mail: bortzer.jay@epa.gov.

Fax: (312) 886-5824.

Mail: You may send written comments to: J. Elmer Bortzer, Chief, Air Programs Branch, (AR-18J), Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Hand delivery: Deliver your comments to: J. Elmer Bortzer, Chief, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday,

8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to RME ID No. R05-OAR-2004-IN-0005. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME <http://www.regulations.gov>, or e-mail. The EPA RME Web site and the Federal <http://www.regulations.gov> Web site are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the electronic docket are listed in the RME index at <http://www.epa.gov/rmepub/index.jsp>. Although listed in the index, some information is not publicly available, *i.e.*, any documents submitted for which the submittal claims be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Publicly available docket materials are available either electronically in RME or in hard copy at Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (We recommend that you telephone John Paskevicz, Engineer, at (312) 886-6084 before visiting the Region 5 office.) This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: John Paskevicz, Engineer, Criteria Pollutant Section, Air Programs Branch (AR-18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-8656.
paskevicz.john@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever "we," "us," or "our" are used we mean the EPA. The supplementary information is organized in the following order:

- I. General Information
 - A. Does this action apply to me?
 - B. How can I get copies of this document and other related Information?
 - C. How and to whom do I submit comments?

I. General Information

A. Does This Action Apply To Me?

This action applies to particulate matter and carbon monoxide emission limitations for incinerators.

B. How Can I Get Copies of This Document and Other Related Information?

1. The Regional Office has established an electronic public rulemaking file available for inspection at Regional Material in EDocket (RME) under RME ID No. R05-OAR-2004-IN-0005, and a hard copy file which is available for inspection at the Regional Office. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include any document claimed by the submittal to be CBI or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Air Programs Branch, Air and Radiation Division, EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. EPA requests that if at all possible, you contact John Paskevicz in the **FOR FURTHER INFORMATION CONTACT** section, to schedule your inspection of the file. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the [regulations.gov](http://www.regulations.gov) Web site located at <http://www.regulations.gov> where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the

Government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material you claimed to be CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text "Public comment on proposed rulemaking Region 5 Air Docket 'R05-OAR-2004-IN-0005'" in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

II. What Actions Are EPA Taking Today?

The EPA is proposing to approve a revision to the Indiana SIP submitted by the State which continues to serve as a tool to reduce emissions of CO and PM from incinerators in the State in order for the State to continue to protect the health of the people of Indiana.

1. *Submitting CBI.* Do not submit this information to EPA through RME, regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in

accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- b. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- d. Describe any assumptions and provide any technical information and/or data that you used.
- e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- f. Provide specific examples to illustrate your concerns, and suggest alternatives.
- g. Explain your views as clearly as possible, avoiding the use of vulgarity or personal threats.
- h. Make sure to submit your comments by the comment period deadline identified.

III. Additional Information

For additional information, see the direct final rule which is located in the rules section of this **Federal Register**. Copies of the request and the EPA's analysis are available electronically at RME or in hard copy at the above address. (Please telephone John Paskevicz at (312) 886-6084 before visiting the Region 5 Office.)

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

Dated: November 3, 2004.

Norman Niedergang,

Acting Regional Administrator, Region 5.

[FR Doc. 04-26400 Filed 11-29-04; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 194

[FRL-7844-4]

Waste Characterization Program Documents Applicable to Transuranic Radioactive Waste From the Hanford Site for Disposal at the Waste Isolation Pilot Plant

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability; opening of public comment period.

SUMMARY: The Environmental Protection Agency (EPA, we or Agency) is announcing the availability of and soliciting public comment for 30 days on, Department of Energy (DOE) documents applicable to the characterization of transuranic (TRU) radioactive solid waste from the Plutonium Finishing Plant (PFP) at the Hanford site. The documents are available for review in the public dockets listed in **SUPPLEMENTARY INFORMATION**. EPA is issuing this notice because the Agency must conduct an expedited review of one of the elements of Hanford's waste characterization (WC) processes, known as acceptable knowledge (AK). In June 2003, EPA conducted an inspection at Hanford, pursuant to 40 CFR 194.8, to evaluate the WC processes used for characterizing PFP solid waste. However, at that time, EPA did not examine the AK process for the same waste. In August 2003, EPA approved all WC components except AK for characterizing the PFP solid waste and noted in the approval letter that the PFP solid waste may not be disposed of at the WIPP because EPA had not examined and approved the AK process. In the absence of the EPA approval of this waste, however, in July 2004, the Department of Energy (DOE) mistakenly certified this waste stream as eligible for disposal at WIPP. As a result, 600 drums of PFP solids were emplaced in the WIPP repository between July and September 2004. Early in September 2004, the DOE discovered this error and immediately suspended the shipment of the PFP solids from Hanford. To meet the Agency's regulatory obligations EPA must conduct an "after-the-fact" review of the AK process to determine adequacy of the AK documentation. Therefore, EPA will conduct an evaluation of AK documents and, as needed, telephone interviews with site personnel specific to the PFP solids to determine Hanford's compliance with EPA's WIPP compliance criteria and ensure that the emplacement of this waste has no adverse effect on WIPP's performance. EPA's evaluation may lead to an approval at which time the site could resume shipment of the PFP solid waste to WIPP for disposal. EPA does not believe that the PFP solid wastes improperly emplaced at WIPP constitute a threat to human health, to the environment or to the long-term performance of the WIPP repository. Based on this determination, the Hanford PFP solid waste may remain in WIPP while EPA undertakes a desk-top review of the AK information.