

operators of hospital, medical, or infectious waste incinerators. Subpart Ce was promulgated on September 15, 1997, and requires states or tribes to develop plans to implement the Emission Guidelines. If approvable state or tribal plans were not developed, EPA was required to develop a Federal plan to implement the Emission Guidelines in such states or tribes. The Federal plan, subpart HHH was promulgated on September 14, 2000.

Subparts Ce and HHH require initial notifications, performance tests, and annual and semi-annual reporting. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance. Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least five years following the date of such measurements, maintenance reports, and records. All reports are sent to the state or tribal authority with an approved plan. In the event that there is no such approved plan, the reports are sent directly to the EPA regional office.

**Burden Statement:** The annual public reporting and recordkeeping burden for this collection of information is estimated to average 320 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

**Respondents/Affected Entities:** Owners or operators of hospital, medical, or infectious waste incinerators.

**Estimated Number of Respondents:** 72.

**Frequency of Response:** Initially, on occasion, semiannually and annually.

**Estimated Total Annual Hour Burden:** 69,067.

**Estimated Total Annual Cost:** \$5,705,702 includes \$0 annualized capital startup costs, \$130,000 annualized O&M costs and \$5,575,702 annualized labor costs.

**Changes in the Estimates:** There is a decrease of 36,161 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. The decrease in burden from the most recently approved ICR is due to an adjustment. The decrease in burden from the most recently approved ICR is due to a decrease in the number of sources. Our estimate is based on a facility and emissions index of Hospital/Medical/Infectious Waste Incinerator sources developed by the Office of Air Quality Planning and Standards. The data in the index was collected directly from industry and updated March 2006. The previous estimate of 189 respondents was derived from approximated state agency data. In addition, the standard applies only to facilities which commenced construction on or before June 20, 1996. Hence, the current estimate of 72 sources represents a source-by-source count and takes into account those sources which have shutdown. Therefore, we have adjusted the number of respondents from 189 to 72. The decrease in Operations and Maintenance cost from \$295,407,000 to \$130,000 is primarily due a typographical error in the last approval.

Dated: May 26, 2006.

**Oscar Morales,**

*Director, Collection Strategies Division.*

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## ENVIRONMENTAL PROTECTION AGENCY

[AMS-FRL-8178-7]

### California State Nonroad Engine and Vehicle Pollution Control Standards; Amendments to the California Small Offroad Emission Standards; Opportunity for Public Hearing and Request for Written Comment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of opportunity for public hearing and comment.

**SUMMARY:** The California Air Resources Board (CARB) has notified EPA that it has adopted revised exhaust emissions standards and test procedures and new evaporative emissions standards and test procedures (and certification procedures) for small offroad engines. By letter dated April 11, 2005, CARB

requested that EPA confirm that its exhaust emission standards and test procedures are within the scope of prior authorizations issued by EPA, and requested a new authorization for the evaporative emission standards, test procedures and certification procedures. This notice announces that EPA has tentatively scheduled a public hearing concerning California's requests and that EPA is accepting written comment on the requests.

**DATES:** EPA has scheduled a public hearing concerning CARB's requests on June 29, 2006 beginning at 10 a.m. Any party may submit written comments by August 1, 2006.

**ADDRESSES:** EPA will make available for public inspection at the Air and Radiation Docket and Information Center materials submitted by CARB, written comments received from interested parties, in addition to any testimony given at the public hearing. The official public docket is the collection of materials that is available for public viewing at the Air and Radiation Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air and Radiation Docket is (202) 566-1743. The reference number for this docket is EPA-HQ-OAR-2005-0133. Parties wishing to present oral testimony at the public hearing should provide written notice to David Dickinson at the address noted below. EPA will hold the public hearing in room 1153 at EPA's "East Building" located at 1201 Constitution Avenue, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** David Dickinson, Compliance and Innovative Strategies Division (6405), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Telephone: (202) 343-9256, Fax: (202) 343-2804, e-mail address: [Dickinson.David@EPA.GOV](mailto:Dickinson.David@EPA.GOV).

*For Obtaining and Submitting Electronic Copies of Comments*

Submit your comments, identified by Docket ID No. EPA-HQ-2005-0133, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
- E-mail: [dickinson.david@epa.gov](mailto:dickinson.david@epa.gov).
- Fax: (202) 343-2804.

• *Mail:* U.S. Environmental Protection Agency, EPA West (Air Docket), 1200 Pennsylvania Ave., NW., Room B108, Mail Code 6102T, Washington, DC 20460, Attention Docket ID No. EPA-HQ-OAR-2005-0133. Please include a total of two copies.

• *Hand Delivery:* EPA Docket Center, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. Instructions: Direct your comments to Docket ID No EPA-HQ-OAR-2005-0133.

EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, 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 <http://www.regulations.gov> or e-mail.

The <http://www.regulations.gov> Web site is an "anonymous access" system, 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 <http://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. *Docket:* All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy.

#### SUPPLEMENTARY INFORMATION:

#### (A) Background and Discussion

Section 209(e)(1) of the Act addresses the permanent preemption of any State, or political subdivision thereof, from adopting or attempting to enforce any standard or other requirement relating to the control of emissions for certain new nonroad engines or vehicles.<sup>1</sup>

Section 209(e)(2) of the Act requires the Administrator to grant California authorization to enforce state standards for new nonroad engines or vehicles which are not listed under section 209(e)(1), subject to certain restrictions. On July 20, 1994, EPA promulgated a regulation that sets forth, among other things, the criteria, as found in section 209(e)(2), by which EPA must consider any California authorization requests for new nonroad engines or vehicle emission standards (section 209(e) rules).<sup>2</sup>

Section 209(e)(2) requires the Administrator, after notice and opportunity for public hearing, to authorize California to enforce standards and other requirements relating to emissions control of new engines not listed under section 209(e)(1).<sup>3</sup> The section 209(e) rule and its codified regulations<sup>4</sup> formally set forth the criteria, located in section 209(e)(2) of the Act, by which EPA must grant California authorization to enforce its new nonroad emission standards and they are as follows:

(a) The Administrator shall grant the authorization if California determines that its standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards.

(b) The authorization shall not be granted if the Administrator finds that:

(1) The determination of California is arbitrary and capricious;

(2) California does not need such California standards to meet compelling and extraordinary conditions; or

<sup>1</sup> Section 209(e)(1) of the Act provides:

No State or any political subdivision thereof shall adopt or attempt to enforce any standard or other requirement relating to the control of emissions from either of the following new nonroad engines or nonroad vehicles subject to regulation under this Act—(A) New engines which are used in construction equipment or vehicles or used in farm equipment or vehicles and which are smaller than 175 horsepower. (B) New locomotives or new engines used in locomotives. Subsection (b) shall not apply for purposes of this paragraph.

<sup>2</sup> See 59 FR 36969 (July 20, 1994), and regulations set forth therein, 40 CFR part 85, subpart Q, §§ 85.1601–85.1606.

<sup>3</sup> As discussed above, states are permanently preempted from adopting or enforcing standards relating to the control of emissions from new engines listed in section 209(e)(1).

<sup>4</sup> See 40 CFR part 85, subpart Q, § 85.1605.

(3) California standards and accompanying enforcement procedures are not consistent with section 209.

As stated in the preamble to the section 209(e) rule, EPA has interpreted the requirement "California standards and accompanying enforcement procedures are not consistent with section 209" to mean that California standards and accompanying enforcement procedures must be consistent with section 209(a), section 209(e)(1), and section 209(b)(1)(C), as EPA has interpreted that subsection in the context of motor vehicle waivers.<sup>5</sup> In order to be consistent with section 209(a), California's nonroad standards and enforcement procedures must not apply to new motor vehicles or new motor vehicle engines. Secondly, California's nonroad standards and enforcement procedures must be consistent with section 209(e)(1), which identifies the categories permanently preempted from state regulation.<sup>6</sup> California's nonroad standards and enforcement procedures would be considered inconsistent with section 209 if they applied to the categories of engines or vehicles identified and preempted from State regulation in section 209(e)(1).

Finally, because California's nonroad standards and enforcement procedures must be consistent with section 209(b)(1)(C), EPA reviews nonroad authorization requests under the same "consistency" criteria that are applied to motor vehicle waiver requests. Under section 209(b)(1)(C), the Administrator shall not grant California a motor vehicle waiver if he finds that California "standards and accompanying enforcement procedures are not consistent with section 202(a)" of the Act. As previous decisions granting waivers of Federal preemption for motor vehicles have explained, State standards are inconsistent with section 202(a) if there is inadequate lead time to permit the development of the necessary technology giving appropriate consideration to the cost of compliance within that time period or if the Federal and State test procedures impose inconsistent certification procedures.<sup>7</sup>

Congress further directed EPA to "give appropriate consideration to

<sup>5</sup> See 59 FR 36969, 36983 (July 20, 1994).

<sup>6</sup> Section 209(e)(1) of the Act has been implemented, see 40 CFR part 85, subpart Q §§ 85.1602, 85.1603.

<sup>7</sup> To be consistent, the California certification procedures need not be identical to the Federal certification procedures. California procedures would be inconsistent, however, if manufacturers would be unable to meet both the state and the Federal requirement with the same test vehicle in the course of the same test. See, e.g., 43 FR 32182 (July 25, 1978).

safety factors (including the potential increased risk of burn or fire) associated with compliance with the California standard" when considering any request from California to authorize the state to adopt or enforce standards or other requirements relating to the control of emission from new non-road spark-ignition engines smaller than 50 horsepower.<sup>8</sup>

When EPA receives new waiver or authorization requests from CARB, EPA traditionally publishes a notice of opportunity for public hearing and comment and then publishes a decision in the **Federal Register** following the public comment period. In contrast, when EPA receives within the scope waiver requests from CARB, EPA usually publishes a decision in the **Federal Register** and concurrently invites public comment if an interested party is opposed to EPA's decision.

Although CARB in its April 11, 2005 letter to EPA seeks confirmation that its exhaust emission amendments are within the scope of previous authorizations, EPA invites comment on whether California's exhaust emission standards and test procedures amendments, within the context of a within the scope analysis (a) Undermine California's previous determination that its standards, in the aggregate, are at least as protective of public health and welfare as comparable Federal standards, (b) affect the consistency of California's requirements with section 209 of the Act, and (c) raise new issues affecting EPA's previous authorization determinations. EPA also asks comment on how safety factors, including the potential increased risk of burn or fire, are affected by the California standards. Please also provide comment that if CARB's exhaust emission standards and test procedures amendments were not found to be within the scope of previous authorizations and instead required a full authorization analysis, whether (a) CARB's determination that its standards, in the aggregate, are at least as protective of public health and welfare as applicable Federal standards is arbitrary and capricious, (b) California needs separate standards to meet compelling and extraordinary conditions, and (c) California's standards and accompanying enforcement procedures are consistent with section 209 of the Act. EPA also asks comment on how safety factors, including the potential increased risk of burn or fire, are affected by the California standards.

EPA also invites comment on CARB's evaporative emission standards and test procedures (for which CARB seeks a full authorization) and whether (a) CARB's determination that its standards, in the aggregate, are at least as protective of public health and welfare as applicable federal standards is arbitrary and capricious, (b) California needs separate standards to meet compelling and extraordinary conditions, and (c) California's standards and accompanying enforcement procedures are consistent with section 209 of the Act. EPA also asks comment on how safety factors, including the potential increased risk of burn or fire, are affected by the California standards.

#### Procedures for Public Participation

In recognition that public hearings are designed to give interested parties an opportunity to participate in this proceeding, there are no adverse parties as such. Statements by participants will not be subject to cross-examination by other participants without special approval by the presiding officer. The presiding officer is authorized to strike from the record statements that he or she deems irrelevant or repetitious and to impose reasonable time limits on the duration of the statement of any participant.

The Agency will make a verbatim record of the proceedings. Interested parties may arrange with the reporter at the hearing to obtain a copy of the transcript at their own expense. EPA will keep the record open until August 1, 2006. Upon expiration of the comment period, the Administrator will render a decision on CARB's request based on the record of the public hearing, relevant written submissions, and other information that he deems pertinent. All information will be available for inspection at EPA Air Docket. (EPA-HQ-OAR-2005-0133).

Persons with comments containing proprietary information must distinguish such information from other comments to the greatest possible extent and label it as "Confidential Business Information" (CBI). If a person making comments wants EPA to base its decision in part on a submission labeled CBI, then a nonconfidential version of the document that summarizes the key data or information should be submitted for the public docket. To ensure that proprietary information is not inadvertently placed in the docket, submissions containing such information should be sent directly to the contact person listed above and not to the public docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the

extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when EPA receives it, EPA will make it available to the public without further notice to the person making comments.

Dated: May 26, 2006.

**William L. Wehrum,**

*Acting Assistant Administrator, Office of Air and Radiation.*

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## ENVIRONMENTAL PROTECTION AGENCY

[Regional Docket Nos. II-2003-02, II-2005-05; FRL-8179-2]

### Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for G-P Gypsum Corporation; and Request for Reconsideration of Order Regarding Eastman Kodak Company, Kodak Park Facility

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of final decisions concerning State operating permits.

**SUMMARY:** This document announces two decisions the EPA Administrator has made. First, the Administrator has partially granted and partially denied a citizen petition submitted by the South Jersey Environmental Justice Alliance (SJEJA) requesting that EPA object to an operating permit issued to the G-P Gypsum Corporation by the New Jersey Department of Environmental Protection (NJDEP). Secondly, the Administrator has granted a request from the New York State Department of Environmental Conservation (NYSDEC) that EPA reconsider certain revisions to the Kodak Park Facility's operating permit mandated by the Administrator's February 18, 2005 Order, which was issued in response to a citizen petition. In granting NYSDEC's request, the Administrator has amended the February 18, 2005 Order. While some changes have been made, none of the Administrator's previous issue-specific decisions to grant the Kodak Park petition have been reversed in the amendment.

Pursuant to section 505(b)(2) of the Clean Air Act (Act), Petitioner (SJEJA) may seek judicial review of those portions of the G-P Gypsum petition which EPA denied in the United States Court of Appeals for the appropriate circuit. Any petition for review shall be filed within 60 days from the date this

<sup>8</sup> See Fiscal Year 2004 Omnibus Appropriations Act (Pub. L. 108-199 Division G Section 428).