

Agenda Item: 10-43

Hearing Officer's Report on Hospital, Medical and Infectious Waste Incinerator Rule Amendments

Explanation:

On September 7, 2010, Mr. Curry held a hearing on amendments to the Hospital, Medical and Infectious Waste Incinerator (HWIMI) Rule.

Rule 15A NCAC 02D .1206, Hospital, Medical, and Infectious Waste Incinerators, is proposed for amendment to reflect the new federal emission limits, operating procedure requirements, recordkeeping and reporting requirements for the three North Carolina incinerators applicable to this Rule. Any new hospital, medical infectious waste incinerator will not be subject to this Rule; they will instead be required to meet all New Source Performance Standards (NSPS) that are found in 40 CFR Part 60.

Sixty five people commented on the proposed Hospital, Medical and Infectious Waste Incinerator rule during the comment period for the hearing record.

The EMC sought comment on two compliance dates for the rule. Option 1 was October 6, 2012 and Option 2 was October 6, 2014. Sixty three people along supported the earlier date of October 6, 2012 compliance date. Resolutions supporting the October 6, 2012 were also received from four counties and ten towns and cities in North Carolina. Two people supported the October 6, 2014 compliance date. Based on a review of the comments and timeline supplied by industry, a compliance date of July 1, 2013 or 30 months after the anticipated effective date of this rule (January 1, 2011) appears consistent with the steps required to complete all the required tasks. While this is approximately 9 months beyond the Option 1 date in the proposed regulation, it requires compliance approximately 15 months earlier than Option 2, which is the maximum compliance date that EPA would allow.

Thirty three comments were received on waste segregation. Thirty one people wanted a requirement that the waste be segregated to prevent plastics, paper and metal from being incinerated. The current rule references the federal requirements that a facility has a waste management plan. The amended federal rule amended this section. Since the state rule adopts that section by reference, facilities should have a new waste management plan in place on the promulgation date of the rule. No changes were made to the proposed rule.

Five people requested that the Division of Air Quality require continuous emissions monitoring. The Federal emissions guidelines do not require, but do allow, the use of continuous emission monitors (CEMs) for HMIWI constructed before June 20, 1996 or modified before March 16, 1998. As published, the proposed rules impose a requirement for the installation and operation of continuous emission monitors. This was a typographical error and not the intended requirement. The rule was amended to correct the error.

One person requested an immediate review of the ambient air levels (AALs) . DAQ is confident that the current AALs are health-protective of the general public within prescribed margins of safety. No changes were made in the proposed rule.

Four people requested more frequent unannounced inspections. DAQ's inspections for Title V sources, such as these, are unannounced and are performed on an annual basis, at a minimum. Designated as "Full Compliance Evaluations," they may require more than one visit to the facility during the year to complete all the required inspection elements. Any additional inspections are conducted as needed and as warranted based on site conditions. No changes were made in the proposed rule.

Twenty seven people commented on bypass events. Twenty five people requested that the State remove the exemption for releases of uncontrolled toxic air emissions known as bypass events. The Federal rules explicitly treat all bypass events as a violation of the underlying emission standards and do not provide an exception or exemption for bypass events regardless of whether the reason is startup, shutdown or malfunction (SSM). Language was added to Rule 15A NCAC 02D .1206 to add and clarify the Federal requirement.

Two people commented that the state should not renew Stericycle's permit. The permit process has its own set of requirements for public noticing, public comment and review of the permit. Under EPA's delegated authority to the states for permitting, a facility that submits a complete permit application and meets all the regulatory requirements must be granted a permit. Denying a permit without cause violates the underlying requirement of "due process." No changes were made to the proposed rule.

Nine people commented on autoclaving. Seven of the commenter requested or encouraged that facilities switched to autoclaving

their medical waste. The Division of Waste Management requires pathological waste to be treated by incineration. Therefore, incineration as a method of medical waste disposal cannot be completely eliminated and replaced by autoclaving.

Two people requested that DAQ require training and education. Operator training and certification is already required under the Federal regulation. No changes were made to the proposed rule.

One person comments that the amended rule does not correctly apply the applicability requirements of 40 CFR 60.33e and the compliance, performance testing and monitoring requirements of 40 CFR 60.37e(a). The proposed rule was amended to incorporate the correct requirements.

One person requested equipment inspections and control device inspections be increased from annual to semi-annual. DAQ adopted the federal standards as specified in EPA's regulation. No changes were made to the proposed rule.

One person recommends that a fully trained and qualified HWIMI operator be at the facility at all times, whenever the HMIWI is operating. DAQ adopted the federal requirement for operator training and certification as published in 40 CFR 53c. For DAQ to require a trained and qualified HWIMI operator to be at the facility at all times while the HMIWI is operating, DAQ would be introducing a requirement that is not found in EPA's regulation. The General Statutes of North Carolina does not grant DAQ the authority to require training and certification.

Recommendation:

The Hearing Officer recommends that the full text of the amendments contained in the final version of revised 15A NCAC 02D .1206 as contained in Chapter II be adopted by the EMC.