



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 61 and 63

[EPA-R01-OAR-2022-0496; FRL-10522-02-R1]

**Approval of the Clean Air Act, Section 112(I), Authority for Hazardous Air Pollutants:
Asbestos Management and Control; State of New Hampshire Department of
Environmental Services**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is granting the New Hampshire Department of Environmental Services (NH DES) the authority to implement and enforce the state's amended Asbestos Disposal Site Rule in place of the National Emission Standard for Asbestos provisions for inactive waste disposal sites. NH DES's amended rule applies to all inactive waste disposal sites that ceased operation on or before July 9, 1981. This approval makes the NH DES amended Asbestos Disposal Site Rule federally enforceable. This action is being taken under the Clean Air Act (CAA).

DATES: This rule is effective on **[Insert date 30 days after date of publication in the Federal Register]**. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of **[Insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: The EPA has established a docket for this action under Docket Identification No. EPA-R01-OAR-2022-0496. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available at

<https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA Region 1 Office, Office of Ecosystem Protection, Air Permits, Toxics and Indoor Programs Unit, 5 Post Office Square - Suite 100, Boston, MA. The EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office’s official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Liam Numrich, Air Permits, Toxics, and Indoor Programs Branch, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square-Suite 100, Boston, MA 02109-3912, tel: (617) 918-1307, email: numrich.liam@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

Table of Contents

- I. Background and Purpose
- II. Response to Comments
- III. Final Action
- IV. Incorporation by Reference
- V. Statutory and Executive Order Reviews

I. Background and Purpose

On January 12, 2023 (88 FR 2057), the EPA published a Notice of Proposed Rulemaking (NPR) that proposed approval of NH DES’s amended rules in Env-Sw 2100, “Management and Control of Asbestos Sites Not Operated after July 9, 1981,” (Asbestos Disposal Site Rule) effective September 1, 2018, as a partial rule substitution for the National Emission Standard for Asbestos (Asbestos NESHAP).

Under CAA section 112(l), EPA may approve state or local rules or programs to be implemented and enforced in place of certain otherwise applicable Federal rules, emissions

standards, or requirements. The Federal regulations governing EPA's approval of state and local rules or programs under section 112(l) are located at 40 CFR part 63, subpart E. *See* 58 FR 62262 (November 26, 1993), as amended by 65 FR 55810 (September 14, 2000). Under these regulations, a state air pollution control agency has the option to request EPA's approval to substitute a state rule for the applicable Federal rule (*e.g.*, the National Emission Standards for Hazardous Air Pollutants). Upon approval by EPA, the state agency is authorized to implement and enforce its rule in place of the Federal rule.

The EPA first promulgated standards to regulate asbestos emissions on April 6, 1973 (see 38 FR 8826). These standards have since been amended several times and recodified in 40 CFR part 61, subpart M. On June 28, 2002, NH DES submitted a partial rule substitution request to implement and enforce its regulation Env-Wm 3900 titled "Management and Control of Asbestos Disposal Sites Not Operated After July 9, 1981" in lieu of some sections of the Asbestos NESHAP as they apply to certain inactive waste disposal sites. On May 28, 2003, EPA approved the NH DES's earlier version of the Asbestos Disposal Site Rule as a partial rule substitution for the provisions of the Asbestos NESHAP at 40 CFR 61.151, which apply to inactive waste disposal sites not operated after July 9, 1981 (see 68 FR 31611). On January 28, 2010, NH DES requested approval of its readopted and recodified rules pertaining to inactive waste disposal sites in New Hampshire. On January 11, 2013, EPA approved New Hampshire's readopted and recodified rules in Env-Sw 2100 titled "Management and Control of Asbestos Sites Not Operated After July 9, 1981," effective as of February 16, 2010 (see 78 FR 2333).

NH DES enacted amendments to Env-Sw 2100 in 2018. The purpose of these amendments is to more effectively address large quantities of asbestos waste buried throughout Nashua and Hudson, NH on residential, commercial, and industrial properties. On December 29, 2021, NH DES requested EPA approval to implement its amended rules in Env-Sw 2100 as a partial substitute for 40 CFR 61.01 through 40 CFR 61.18 (Subpart A, General Provisions) and 40 CFR 61.151 (Subpart M provisions applicable to inactive asbestos disposal sites). NH DES

seeks to have the 2010 substituted rule formally replaced with the 2018 amended Asbestos Disposal Site rule. EPA has reviewed the State's submission and determined that the amended Asbestos Disposal Site Rule is no less stringent than the provisions of the Asbestos NESHAP.

II. Response to Comments

We received two comments on the proposed action in favor of finalizing the proposal. The comments did not identify any concerns specific to this action. Therefore, the EPA will not provide any further responses to these comments.

III. Final Action

EPA is approving NH DES's revised Env-Sw 2100, "Management and Control of Asbestos Disposal Sites Not Operated After July 9, 1981," effective September 1, 2018, in place of the Asbestos NESHAP provisions for inactive waste disposal sites not operated after July 9, 1981 as a partial rule substitution for the same provisions of 40 CFR 61.01 through 40 CFR 61.18 and 40 CFR 61.151.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of New Hampshire Regulations at Env-Sw 2100: "Management and Control of Asbestos Disposal Sites Not Operated after July 9, 1981," effective September 1, 2018, which establishes requirements for managing asbestos disposal sites where asbestos exists on or in the ground due to dumping activities that ceased prior to July 10, 1981. The EPA has made, and will continue to make, these documents generally available at the EPA Region 1 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator has the authority to approve section 112(l) submissions that comply with the provisions of the Act and applicable Federal regulations. In

reviewing section 112(l) submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act and of EPA's implementing regulations. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the 112(1) submission is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects

40 CFR Part 61

Environmental protection, Air pollution control, Administrative practice and procedure, Arsenic, Asbestos, Benzene, Beryllium, Hazardous substances, Incorporation by reference, Intergovernmental relations, Mercury, Radioactive materials, Radon, Reporting and recordkeeping requirements, Uranium, Vinyl chloride

40 CFR Part 63

Environmental protection, Air pollution control, Administrative practice and procedure, Business and industry, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements,

Dated: May 17, 2024.

David Cash,
Regional Administrator,
EPA Region 1.

For the reasons set out in the preamble, title 40, CFR parts 61 and 63 of the Code of Federal Regulations is amended as follows:

**PART 61-NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR
POLLUTANTS**

1. The authority citation for part 61 continues to read as follows:

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

Subpart A – General Provisions

2. Amend § 61.04 by revising paragraph (c)(1)(i) to read as follows:

§ 61.04 Address.

(c) * * *(1) * * *

(i) Inactive waste disposal sites not operated after July 9, 1981 within the state of New Hampshire must comply with the New Hampshire Regulations at Env-Sw 2100 (incorporated by reference, see § 61.18).

* * * * *

3. Amend § 61.18 by revising and republishing paragraph (e)(1) to read as follows:

§ 61.18 Incorporation by reference.

* * * * *

(e) * * *(1) **State of New Hampshire**, New Hampshire Department of Environmental Services, 29 Hazen Drive, Concord, NH 03302-0095, (603) 271-3503, <https://www.des.nh.gov/>

(i) New Hampshire Code of Administrative Rules: Chapter Env-Sw 2100, Management and Control of Asbestos Disposal Sites Not Operated after July 9, 1981, effective September 1, 2018, (including a letter from Robert R. Scott, Commissioner, Department of Environmental Services, State of New Hampshire, to David J. Alukonis, Director, Office of Legislative Services, dated October 23, 2018, certifying that the enclosed rule, Env-Sw 2100, is the official

version of this rule), IBR approved for § 61.04(c). (ii) New Hampshire Code of Administrative Rules: Chapter Env-A 1800, Asbestos Management and Control, effective as of May 5, 2017 (certified with June 23, 2017 letter from Clark B. Freise, Assistant Commissioner, Department of Environmental Services, State of New Hampshire), as follows: Revision Notes #1 and #2; Part Env-A 1801–1807, excluding Env-A 1801.02(e), Env-A 1801.07, Env-A 1802.02, Env-A 1802.04, Env-A 1802.07–1802.09, Env-A 1802.13, Env-A 1802.15–1802.17, Env-A 1802.25, Env-A 1802.31, Env-A 1802.37, Env-A 1802.40, Env-A 1802.44, and Env-A 1803.05–1803.09; and Appendices B, C, and D; IBR approved for § 61.04(c).

* * * * *

PART 63-NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

4. The authority citation for part 63 continues to read as follows:

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

Subpart A – General Provisions

5. Amend § 63.14 by revising paragraph (n)(6)(i) to read as follows:

§ 63.14 Incorporation by reference.

* * * * *

(n)* * *

(6)(i) New Hampshire Regulations at Env-Sw 2100, Management and Control of Asbestos Disposal Sites Not Operated after July 9, 1981, effective September 1, 2018, (including a letter from Robert R. Scott, Commissioner, Department of Environmental Services, State of New Hampshire, to David J. Alukonis, Director, Office of Legislative Services, dated October 23, 2018, certifying that the enclosed rule, Env-Sw 2100, is the official version of this rule), IBR approved for § 63.99(a).

* * * * *

Subpart E—Approval of State Programs and Delegation of Federal Authorities

6. Amend § 63.99 by revising paragraph (a)(30)(iii) to read as follows:

§ 63.99 Delegated Federal authorities.

* * * * *

(a) * * *

(30) * * *

(iii) Affected inactive waste disposal sites not operated after July 9, 1981 within New Hampshire must comply with New Hampshire Regulations Chapter Env-Sw 2100: Management and Control of Asbestos Disposal Sites Not Operated after July 9, 1981, effective September 1, 2018 (incorporated by reference, see § 63.14) as described in paragraph (a)(30)(iii)(A) of this section:

(A) The material incorporated by reference from Chapter Env-Sw 2100, Management and Control of Asbestos Disposal Sites Not Operated after July 9, 1981, pertains to inactive waste disposal sites not operated after July 9, 1981 in the State of New Hampshire's jurisdiction, and has been approved under the procedures in § 63.93 to be implemented and enforced in place of the Federal NESHAPs for Inactive Waste Disposal Sites (40 CFR 61.151).

(B) [Reserved]

* * * * *