

**SUMMARY:** EPA is taking direct final action to approve New Hampshire Department of Environmental Services' (NHDES) request for partial rule substitution for inactive waste disposal sites pursuant to section 112(l) of the Clean Air Act (CAA).

**DATES:** This action will be effective July 28, 2003, unless EPA receives relevant adverse comments by June 27, 2003. If EPA receives such comments, then it will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. The incorporation by reference of certain publications in this rule is approved by the Director of the Federal Register as of July 28, 2003.

**ADDRESSES:** Written comments should be mailed concurrently to the addresses below: Steven Rapp, Chief, Air Permits, Toxics, and Indoor Programs Unit (CAP), U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Boston, MA 02114 and Philip J. O'Brien, Ph.D., Director, Waste Management Division, New Hampshire Department of Environmental Services, 6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095. Copies of the requests for approval are available for public inspection at EPA's Region I Office, Air Permits, Toxics, and Indoor Programs Unit, during normal business hours.

**FOR FURTHER INFORMATION CONTACT:** Ida McDonnell, Air Permits, Toxics, and Indoor Programs Unit, U.S. EPA Region I, One Congress St., Suite 1100 (CAP), Boston, MA 02114, (617) 918-1653, [mcdonnell.ida@epa.gov](mailto:mcdonnell.ida@epa.gov).

**SUPPLEMENTARY INFORMATION:**

This **SUPPLEMENTARY INFORMATION** is organized as follows:

- I. Background and Purpose
- II. What Requirements Must a State Rule Meet To Substitute for a Section 112 Rule?
- III. Why is NH DES Seeking Partial Rule Substitution?
- IV. When Did the Authority To Implement and Enforce Section 112 Standards Become Effective in New Hampshire?
- V. Opportunities for Public Comments
- VI. Summary of EPA's Action
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**I. Background and Purpose**

The Environmental Protection Agency (EPA) first promulgated standards to regulate asbestos emissions on April 6, 1973 (*see* 38 FR 8826), and added requirements for the control of asbestos emissions at inactive waste disposal sites on October 14, 1975 (*see* 40 FR 48299). These standards have since been amended several times and re-codified in 40 CFR part 61, subpart M, "National Emission Standard for Asbestos" (Asbestos NESHAP). On June 28, 2002,

NH DES submitted a partial rule substitution request to implement and enforce its regulation entitled "Management and Control of Asbestos Disposal Sites Not Operated After July 9, 1981" in lieu of some sections of the Asbestos NESHAP rule as they apply to certain inactive waste disposal sites. NH DES's request for approval was submitted pursuant to the provisions of 40 CFR part 63, subpart E and was found to be complete on July 30, 2002.

**II. What Requirements Must a State Rule Meet To Substitute for a Section 112 Rule?**

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, when the State or local rules are determined to be no less stringent than the corresponding Federal rules 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 at 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 section 112 Federal rule (National Emission Standard for Hazardous Air Pollutants (NESHAP)). Upon approval, the State agency is given the authority to implement and enforce its rule in place of the NESHAP.

Section 112(l)(5) of the Act requires that a State's NESHAP program contain adequate authorities to assure compliance with each applicable Federal requirement, adequate resources for implementation, and an expeditious compliance schedule. These are also requirements for an adequate operating permits program under 40 CFR part 70. On September 24, 2001, EPA promulgated full approval of the State's operating permits program as administered by NH DES (*see* 66 FR 48806). In addition, on May 16, 2001, EPA provided "up-front" approval of NH DES's request to implement and enforce alternative requirements in the form of title V permit terms and conditions for subpart S, "National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry" (Pulp and Paper MACT I), and subpart MM, "National Emission Standards for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite and Stand-Alone Semichemical Pulp Mills" (Pulp and Paper MACT II) (*see* 66 FR 27032). Under 40 CFR

63.91(d)(2), once a State has satisfied up-front approval criteria, it needs only to reference the previous demonstration and reaffirm that it still meets the criteria for any subsequent submittals. NH DES has affirmed that it still meets the up-front approval criteria.

Additionally, the "rule substitution" option requires EPA to "make a detailed and thorough evaluation of the State's submittal to ensure that it meets the stringency and other requirements" of 40 CFR 63.93 (*see* 58 FR 62274). A rule will be approved if EPA finds: (1) The State or local rules are "no less stringent" than the corresponding Federal regulations, (2) the State or local government has adequate authorities to implement and enforce the rules, and (3) the schedule for implementation and compliance is "no less stringent" than the deadlines established in the otherwise applicable Federal rule. *See* 40 CFR 63.93(b). After reviewing NH DES's partial rule substitution request and equivalency demonstration for the Asbestos NESHAP as it applies to certain inactive waste disposal sites, EPA has determined this request meets all the requirements necessary for approval under CAA section 112(l) and 40 CFR 63.91 and 63.93.

**III. Why Is NH DES Seeking Partial Rule Substitution?**

In New Hampshire, virtually all known inactive waste disposal sites not operated after July 9, 1981, are concentrated in two neighboring communities, Nashua and Hudson. Due to dumping practices by a former asbestos manufacturing plant, over 250 sites are known to exist in these two areas on properties that are actively in use for residential, commercial, industrial, recreational and public purposes. The asbestos manufacturing plant operated in Nashua, and until the late 1970's disposed of its asbestos containing waste by delivering it to the property owners for use as fill (*i.e.*, in low-lying areas). The material exists in and around schoolyards, roadways, parking lots, and shopping centers as well as within wooded areas, along riverbanks, and within conservation areas.

The requirements of 40 CFR 61.151, the portion of the Asbestos NESHAP that applies to inactive waste disposal sites, were established with traditional industrial/commercial dumpsites in mind, rather than dumpsites spread throughout a developed and active community setting. Consequently, certain aspects of § 61.151 are not well suited for inactive waste disposal sites not operated after July 9, 1981 in New Hampshire.