

**DECLARATION OF EMERGENCY**

Department of Environmental Quality  
Office of the Secretary

Repeal of Incorporation by Reference of 40 CFR 63, Subpart DDDDD  
(LAC 33:III.501, 3003, and 5122) (AQ290E)

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act, which allows the Department of Environmental Quality to use emergency procedures to establish rules, and under the authority of R.S. 30:2011, the secretary of the department hereby finds that imminent peril to the public welfare exists and declares that an emergency action is necessary to repeal the department's incorporation by reference of 40 CFR 63, Subpart DDDDD—National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters (hereafter, the Boiler MACT) and the September 22, 2005, revisions to the definitions of *commercial and industrial solid waste incineration (CISWI) unit*, *commercial or industrial waste*, and *solid waste* found in 40 CFR 60.2265 and 60.2875 (hereafter, the CISWI Definitions Rule).

LDEQ incorporated by reference the provisions of the revisions to the definitions in 40 CFR 60.2265 and 60.2875 at LAC 33:III.3003, and the Boiler MACT at LAC 33:III.5122.A. On June 8, 2007, the U.S. Court of Appeals for the District of Columbia Circuit vacated the Boiler MACT and the CISWI Definitions Rule (*Natural Resources Defense Council v. EPA*, D.C. Cir., No. 04-1385). The Court made its ruling effective on July 30, 2007.

In sum, the Court concluded that EPA's definition of "commercial or industrial waste" was too narrow in scope, thereby improperly limiting the number of solid waste incineration units subject to Section 129 of the Clean Air Act. Relevant passages from the decision follow.

[W]e conclude that EPA's definition of "commercial or industrial waste," as incorporated in the definition of "commercial and industrial solid waste incineration unit" (CISWI unit), is inconsistent with the plain language of section 129 and that the CISWI Definitions Rule must therefore be vacated. We further conclude that, because the Boilers Rule must be substantially revised as a consequence of our vacatur and remand of the CISWI Definitions Rule, the Boilers Rule as well must be vacated.

[I]f the court requires EPA to revise the CISWI Definitions Rule, as we do in this opinion, the Boilers Rule will need to be revised as well because the universe of boilers subject to its standards will be far smaller and more homogenous after all CISWI units, as the statute unambiguously defines them, are removed from its coverage.

Thus, the standard to which a number of sources will ultimately be subject—whether it be the "re-promulgated" Boiler MACT, federal rules for commercial and industrial solid waste incineration units (i.e., 40 CFR 60, Subpart CCCC), or Louisiana's §111(d) plan implementing 40 CFR 60, Subpart DDDD (69 FR 9949-9954, March 3, 2004)—is ambiguous at best and not likely to be resolved in the near term.

Consequently, arbitrarily requiring compliance with the Boiler MACT would not be without severe economic consequences for certain source types. For example, the owner or operator of a single existing, large solid fuel-fired boiler may incur capital costs in the range of \$450,000 and an annualized cost of approximately \$230,000. EPA's estimate of the capital and

annual costs for new and existing sources is set forth at 68 FR 1687-1688 (January 13, 2003) and is summarized below.

Source	Subcategory	Estimated/ projected number of affected units	Annualized cost (10 <sup>6</sup> \$/yr)	Capital costs (10 <sup>6</sup> \$/yr)
Existing Units	Large solid units	3,481	814	1,605
	Small solid units	327	0	0
	Limited use solid units	249	23	105
	Liquid units	7,251	0	0
	Gaseous units	46,892	0	0
New Units	Large solid units	211	10	21
	Small solid units	25	3	3
	Limited use solid units	11	1	1
	Large liquid units	90	1	3
	Small liquid units	164	0	0
	Limited use liquid units	51	0.3	2
	Gaseous units	3,463	11	51

This Emergency Rule is effective on September 24, 2007, and shall remain in effect for a maximum of 120 days or until a final rule is promulgated, whichever occurs first. For more information concerning AQ290E, you may contact the Regulation Development Section at (225) 219-3550.

This Emergency Rule is available on the Internet at [www.deq.louisiana.gov/portal/tabid/1669/default.aspx](http://www.deq.louisiana.gov/portal/tabid/1669/default.aspx), and is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 645 N. Lotus Drive, Suite C, Mandeville, LA 70471.

Adopted this 24th day of September, 2007.

Mike D. McDaniel, Ph.D.  
Secretary

**Title 33**  
**ENVIRONMENTAL QUALITY**  
**Part III. Air**

**Chapter 5. Permit Procedures**

**§501. Scope and Applicability**

A. – B.7. ...

8. Any term or condition in a permit that references 40 CFR Part 63, Subpart DDDDD shall be null and unenforceable, unless the condition was included in the permit in lieu of an alternative applicable, enforceable condition. Such terms or conditions shall be removed or modified, as appropriate, in the next modification or renewal of the permit.

C. – C.13. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2011 and 2054.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 16:613 (July 1990), LR 17:478 (May 1991), LR 19:1420 (November 1993), LR 20:1281 (November 1994), LR 20:1375 (December 1994), LR 23:1677 (December 1997), amended by the Office of the Secretary, LR 25:660 (April 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2445 (November 2000), LR 28:997 (May 2002), amended by the Office of Environmental Assessment, LR 31:1063 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2436 (October 2005), LR 32:1842 (October 2006), LR 33:\*\* (October 2007), LR 33:\*\*.

**Chapter 30. Standards of Performance for New Stationary Sources (NSPS)**

**Subchapter A. Incorporation by Reference**

**§3003. Incorporation by Reference of 40 Code of Federal Regulations (CFR) Part 60**

A. – B.9, table. ...

10. The definitions of *commercial and industrial solid waste incineration (CISWI) unit*, *commercial or industrial waste*, and *solid waste* do not include the revisions to the definitions in 40 CFR 60.2265 and 60.2875, promulgated by the EPA on September 22, 2005 (70 FR 55568-55581).

C. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2054.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 22:1212 (December 1996), amended LR 23:1681 (December 1997), LR 24:1287 (July 1998), LR 24:2238 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1239 (July 1999), LR 25:1797 (October 1999), LR 26:1607 (August 2000), LR 26:2460, 2608 (November 2000), LR 27:2229 (December 2001), LR 28:994 (May 2002), LR 28:2179 (October 2002), LR 29:316 (March 2003), LR 29:698 (May 2003), LR 30:1009 (May 2004),

amended by the Office of Environmental Assessment, LR 31:1568 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2446 (October 2005), LR 32:809 (May 2006), LR 32:1596 (September 2006), LR 33:1620 (August 2007), LR 33:\*\* (October 2007), LR 33:\*\*.

**Chapter 51. Comprehensive Toxic Air Pollutant Emission Control Program**

**Subchapter C. Incorporation by Reference of 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) as It Applies to Major Sources**

**§5122. Incorporation by Reference of 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) as It Applies to Major Sources**

A. – C.2. ...

3. 40 CFR Part 63, Subpart D, Regulations Governing Compliance Extensions for Early Reductions of Hazardous Air Pollutants; Subpart E, Approval of State Programs and Delegation of Federal Authorities; ~~and~~ Subpart J, National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production; and Subpart DDDDD, National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters, are not included in this incorporation by reference.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:61 (January 1997), amended LR 23:1659 (December 1997), LR 24:1278 (July 1998), LR 24:2240 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1464 (August 1999), LR 25:1798 (October 1999), LR 26:690 (April 2000), LR 26:2271 (October 2000), LR 27:2230 (December 2001), LR 28:995 (May 2002), LR 28:2180 (October 2002), LR 29:699 (May 2003), LR 29:1474 (August 2003), LR 30:1010 (May 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2449 (October 2005), LR 31:3115 (December 2005), LR 32:810 (May 2006), LR 33:1620 (August 2007), LR 33:\*\* (October 2007), LR 33:\*\*.