

# CITY OF ALBUQUERQUE



February 4, 2014

Mr. Guy Donaldson  
Chief, Air Planning Section (6PD-L)  
U.S. Environmental Protection Agency (EPA), Region VI  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

SUBJECT: Negative declaration of the presence of any Hospital/Medical/Infectious Waste Incinerators (HMIWI) within Bernalillo County, New Mexico

Dear Mr. Donaldson,

“Under Section 111(d) of the Clean Air Act (CAA), the EPA published regulations at 40 CFR Part 60, Subpart B, Section 60.23, which requires states to submit plans to control emissions of designated pollutants from designated facilities. In the event that a state does not have a particular designated facility located within its boundaries, EPA requires that a ‘negative declaration’ be submitted in lieu of a control plan.”<sup>1</sup> Therefore, this letter serves as a negative declaration of the presence of any HMIWI units (see attachment) for which construction commenced on or before December 1, 2008 or modifications began on or before April 6, 2010, subject to 40 CFR Part 60, Subpart Ec, *Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996*, or Subpart Ce, *Emission Guidelines and Compliance Times for Hospital/Medical/Infectious Waste Incinerators*, within Bernalillo County, New Mexico, upon lands under the jurisdiction of the Albuquerque-Bernalillo County Air Quality Control Board (Air Board). This certification exempts Albuquerque-Bernalillo County from the requirements of 40 CFR Part 60, Subpart B, Section 60.23 that requires the submittal of a 111(d)/129 plan.

20.11.68 NMAC, *Incinerators and Crematories*, Section 200, *Applicable Requirements*, Subsection B *Construction/Operation*, stipulates that: “The construction, use or operation of an incinerator, even if an ‘affected facility’ pursuant to 40 CFR 60, Subpart Ea as amended, on any property is prohibited, except for certain crematories as allowed by this part.” To date, no “affected facility” (*i.e.* “with reference to a stationary source, any apparatus to which a standard is applicable”<sup>2</sup>) has been constructed or modified pursuant to Subpart Ea, *Standards of Performance for Municipal Waste Combustors for Which Construction is Commenced After December 20, 1989 and on or Before September 20, 1994*. In addition, 20.11.1.7.R NMAC defines a “crematory” as “any combustion unit designed and used solely for cremating human or animal remains or parts and tissues thereof, and other items normally associated with the cremation process, but not including pathological waste.” Therefore, since “hospital waste” consists of everything except human remains intended for interment or cremation, and “medical/infectious waste” includes “pathological waste”, no “medical/infectious waste” can be

<sup>1</sup> EPA, Federal Register language regarding ‘Approval and Promulgation of State Plans For Designated Facilities and Pollutants: (State); Negative Declaration’ (e.g. ‘What is the Origin of the Requirements?’).

<sup>2</sup> 40 CFR 60 Subpart A, Section 60.2.

Negative Declaration for HMIWI Units

combusted legally at any “crematory” within Bernalillo County. Thus, the only way an HMIWI unit could be constructed or operated legally within Bernalillo County, would be through the granting of a variance by the Air Board from the requirements of 20.11.68 NMAC pursuant to 20.11.7 NMAC, *Variance Procedure*.

To date there has only been one variance granted for an incinerator within Bernalillo County (granted 10/11/06); a natural gas fired, C.B. 400, batch-loaded pathological waste incinerator constructed and operated by the Albuquerque Police Department, at 5350 Second St. NW, in Albuquerque, New Mexico. However, this incinerator is used to combust narcotics and not hospital or medical/infectious waste; therefore, it is not subject to the HMIWI rule.

The only other incinerator is located at the Albuquerque International Sunport. This incinerator constructed in 1974, and operated by U.S. Customs and Border Protection along with the USDA, is used to destroy contraband. Therefore, this incinerator falls under the Other Solid Waste Incinerator (OSWI) rule, at FFFF, *Emission Guidelines and Compliance Times for Other Solid Waste Incineration Units That Commenced Construction On or Before December 9, 2004*, and not under the HMIWI rule. In addition, this incinerator may be excluded from the requirements of the OSWI rule because of the exclusion at 40 CFR 60.2887(p), *Units that combust contraband or prohibited goods*, which states: “The incineration unit is excluded if the unit is owned or operated by a government agency such as police, customs, agricultural inspection, or a similar agency to destroy only illegal or prohibited goods such as illegal drugs, or agricultural food products that can not be transported into the country or across State lines to prevent biocontamination. This exclusion does not apply to items either confiscated or incinerated by private, industrial, or commercial entities.” Therefore, there are no incinerators subject to the HMIWI rule in Bernalillo County.

Should you have any questions regarding this matter, please do not hesitate to contact me at (505) 768-2639 or [dnevarez@cabq.gov](mailto:dnevarez@cabq.gov).

Sincerely,



Danny Nevarez  
Deputy Director  
City of Albuquerque Environmental Health Department

cc: Jeff Robinson, Chief, Air Permits Section, U.S. EPA, Region 6  
Ken Boyce, Environmental Protection Specialist, Air Planning Section, U.S. EPA, Region 6  
John Walser, SIP Coordinator, Air Planning Section, U.S. EPA, Region 6  
Dr. Dona Upson, Chair,  
Albuquerque - Bernalillo County Air Quality Control Board  
Mary Lou Leonard, Director, Environmental Health Department  
Margaret Nieto, Control Strategies Supervisor, Air Quality Program  
Richard Goodyear, Acting Chief, Air Quality Bureau, NM Environment Department

Attachment

## ATTACHMENT – Background of HMIWI

A **“Hospital/medical/infectious waste incinerator”** (HMIWI) or **HMIWI unit** means any device that combusts any amount of hospital waste and/or medical/infectious waste. [40 CFR §60.51c].

**“Hospital waste”** means discards generated at a hospital, except unused items returned to the manufacturer. The definition of hospital waste does not include human corpses, remains, and anatomical parts that are intended for interment or cremation. [40 CFR §60.51c].

**“Medical/infectious waste”** means any waste generated in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals which include: (1) Cultures and stocks of infectious agents and associated biologicals, including: cultures from medical and pathological laboratories; cultures and stocks of infectious agents from research and industrial laboratories; wastes from the production of biologicals; discarded live and attenuated vaccines; and culture dishes and devices used to transfer, inoculate, and mix cultures; (2) Human pathological waste, including tissues, organs, and body parts and body fluids that are removed during surgery or autopsy, or other medical procedures, and specimens of body fluids and their containers; (3) Human blood and blood products including: (i) Liquid waste human blood; (ii) Products of blood; (iii) Items saturated and/or dripping with human blood; or (iv) Items that were saturated and/or dripping with human blood that are now caked with dried human blood; including serum, plasma, and other blood components, and their containers, which were used or intended for use in either patient care, testing and laboratory analysis or the development of pharmaceuticals. Intravenous bags are also included in this category; (4) Sharps that have been used in animal or human patient care or treatment or in medical, research, or industrial laboratories, including hypodermic needles, syringes (with or without the attached needle), Pasteur pipettes, scalpel blades, blood vials, needles with attached tubing, and culture dishes (regardless of presence of infectious agents). Also included are other types of broken or unbroken glassware that were in contact with infectious agents, such as used slides and cover slips; (5) Animal waste including contaminated animal carcasses, body parts, and bedding of animals that were known to have been exposed to infectious agents during research (including research in veterinary hospitals), production of biologicals or testing of pharmaceuticals; (6) Isolation wastes including biological waste and discarded materials contaminated with blood, excretions, exudates, or secretions from humans who are isolated to protect others from certain highly communicable diseases, or isolated animals known to be infected with highly communicable diseases; (7) Unused sharps including the following unused, discarded sharps: hypodermic needles, suture needles, syringes, and scalpel blades.. The definition of medical/infectious waste does not include hazardous waste identified or listed under the regulations in 40 CFR Part 261; household waste, as defined in 40 CFR §261.4(b)(1); ash from incineration of medical/infectious waste, once the incineration process has been completed; human corpses, remains, and anatomical parts that are intended for interment or cremation; and domestic sewage materials identified in 40 CFR §261.4(a)(1). [40 CFR §60.51c].

“Incineration of hospital/medical/infectious waste causes the release of a wide array of air pollutants, some of which exist in the waste feed material and are released unchanged during combustion, and some of which are generated as a result of the combustion process itself. These pollutants include particulate matter; heavy metals, including lead, cadmium, and mercury; toxic organics, including chlorinated dibenzo-p-dioxins / dibenzofurans; carbon monoxide; nitrogen oxides (NO<sub>x</sub>); and acid gases, including hydrogen chloride (HCl) and sulfur dioxide (SO<sub>2</sub>). In addition to the use of pollution prevention measures (*i.e.*, waste segregation) and good combustion control practices, HMIWI are typically controlled by wet scrubbers or dry sorbent injection fabric filters (dry scrubbers).”<sup>1</sup>

---

<sup>1</sup> Federal Register, 10/6/09, Volume 74, No. 192, page 51369.

“Section 129 of the CAA, entitled *Solid Waste Combustion*, requires EPA to develop and adopt new source performance standards (NSPS) and emissions guidelines (EG) for solid waste incineration units pursuant to CAA Sections 111 and 129.” Specifically, “Sections 111(b) and 129(a) of the CAA (NSPS program, 40 CFR Part 60, Subpart Ec) address emissions from *new* HMIWI, and CAA Sections 111(d) and 129(b) (EG Program, 40 CFR Part 60, Subpart Ce) address emissions from *existing* HMIWI.”<sup>2</sup>

“On September 15, 1997 [FR Vol. 62, No. 178, 48348-91], the EPA promulgated NSPS for new HMIWI, codified at 40 CFR Part 60, Subpart Ec, and Emission Guidelines for Existing HMIWI, codified at 40 CFR Part 60, Subpart Ce” (under the authority of Sections 111 and 129 of the CAA).<sup>3</sup>

“On March 2, 1999, in *Sierra Club v. EPA*, 167F.3d 658 [DC Cir. 1999], the U.S. Court of Appeals for the DC Circuit remanded the rule to the EPA for further explanation regarding how the EPA derived the maximum achievable control technology (MACT) emissions standards for HMIWI. The Court did not vacate the regulations and the regulations remained in effect during the remand.”<sup>4</sup>

“On October 6, 2009 [FR Vol. 74, No. 192, 51368-51415], the EPA published final revisions to the September 1997 NSPS and EG to respond to the remand and satisfy the 5-year review requirement under CAA Section 129(a)(5).”<sup>5</sup>

“HMIWI were treated differently under the 2009 amended EG than they were under the 1997 EG in terms of whether they are ‘existing’ or ‘new’ sources. The 2009 amended EG included new dates defining what are ‘existing’ and ‘new’ sources for purposes of the revised NSPS and EG. All HMIWI that complied with the 1997 EG (*i.e.*, those units for which construction commenced on or before June 20, 1996, or for which modification commenced on or before March 16, 1998) were still considered ‘existing’ sources under the 2009 amended EG and are required to meet the emissions limits under the amended EG by the applicable compliance date for the amended EG. All HMIWI that complied with the 1997 NSPS (*i.e.*, those units for which construction commenced after June 20, 1996, but no later than December 1, 2008, or for which modification commenced after March 16, 1998, but no later than April 6, 2010) were also considered ‘existing’ sources under the amended EG. Those HMIWI are required to meet the emissions limits under the amended EG by the applicable compliance date for the amended EG, except where the corresponding 1997 NSPS is more stringent, in which case the HMIWI are to continue to comply with that 1997 NSPS. In the interim, those 1997 NSPS sources that must meet the amended EG must continue to be subject to the NSPS as promulgated in 1997 until the date for compliance with the revised EG. Those units for which construction commenced after the December 1, 2008, HMIWI proposal, or for which modification commenced on or after April 6, 2010, are considered ‘new’ units subject to more stringent revised NSPS emissions limits.”<sup>6</sup>

On April 4, 2011, EPA published their Final Rule and Amendments to *Standards of Performance for New Stationary Sources and Emissions Guidelines for Existing Sources: Hospital/Medical/Infectious Waste Incinerators* effective May 4, 2011 [FR Vol. 76, No. 64, 18407-15]. “This action promulgates amendments to the NSPS and EG, correcting inadvertent drafting errors in the NO<sub>x</sub> and SO<sub>2</sub> emissions limits for large HMIWI in the NSPS, which did not correspond to EPA’s description of their standard-setting process, correcting erroneous cross-references in the reporting and recordkeeping requirements in the NSPS, clarifying that compliance with the EG must be expeditious if a compliance extension is granted, correcting the inadvertent omission of delegation of authority provisions in the EG, correcting errors in

---

<sup>2</sup> *Ibid.* 1, p. 51369

<sup>3</sup> Federal Register, 4/23/12, Volume 77, No. 78, page 24274.

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*, p. 24278.

the units' description for several emissions limits in the EG and NSPS, and removing extraneous text from the HCl emissions limit for large HMIWI in the EG.”<sup>7</sup>

On April 23, 2012, EPA published its proposed rule *Federal Plan Requirements for Hospital/Medical/Infectious Waste Incinerators Constructed on or Before December 1, 2008 and Standards of Performance for New Stationary Sources*, [FR Vol. 77, No. 78, pp. 24272-24299]. This action proposed “amendments to the HMIWI federal plan to implement the amended EG adopted on October 6, 2009, for those states that do not have an approved revised/new state plan implementing the EG, as amended, in place by October 6, 2011. This action also proposed to amend the NSPS to better reflect EPA’s original intent in the October 6, 2009, final rule in eliminating an exemption during startup, shutdown and malfunction periods from the requirement to comply with standards at all times.”<sup>8</sup>

On May 14, 2013, this proposed rule became final, and became effective June 12, 2013 [FR Vol. 78, No. 92, pp. 28052-78].

---

<sup>7</sup> Federal Register, 4/4/11, Volume 76, No. 64, page 18408.

<sup>8</sup> *Ibid.* 3, p. 24272.