

ROY COOPER
Governor

MARY PENNY KELLEY
Secretary

MICHAEL ABRACZINSKAS
Director



NORTH CAROLINA
Environmental Quality

October 24, 2024

The Hon. Michael S. Regan, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Jeaneanne Gettle, Acting Regional Administrator
U.S. EPA Region 4
Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, GA 30303-8960

Re: Request for Relief Concerning Air Curtain Incinerator Use in the State of North Carolina

Dear Administrator Regan and Acting Regional Administrator Gettle:

This letter shall serve as the State of North Carolina and the North Carolina Department of Environmental Quality's (DEQ's) written request for relief in the entire State of North Carolina from specific provisions of federal regulations for air curtain incinerators (ACIs) promulgated under the Clean Air Act, specifically 40 CFR Part 60, Subpart CCCC "Standards of Performance for Commercial and Industrial Solid Waste Incineration (CISWI) Units," Subpart DDDD "Emissions Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units," Subpart EEEE "Standards of Performance for Other Solid Waste Incineration Units (OSWI) for Which Construction is Commenced After December 9, 2004, or for Which Modification or Reconstruction is Commenced on or After June 16, 2006," and Subpart FFFF "Emission Guidelines and Compliance Times for Other Solid Waste." This relief is being requested for the entire state due to the extraordinary amount of disaster debris generated in western North Carolina that may have to be transported outside of federal major disaster declared counties in order to be managed. The specific provisions are outlined below.

On September 26, 2024, Hurricane Helene began making initial impacts to the State of North Carolina. The unprecedented magnitude of flooding and wind damage from this storm produced devastating impacts in western North Carolina, including tragic losses of lives and significant infrastructure and property damage. As a result, on September 28, 2024, the President of the United States approved an Expedited Major Disaster Declaration, FEMA-4827-DR, for the State of North Carolina under the Stafford Act. While recovery efforts are underway, including major repairs to water and wastewater infrastructure, transportation, and other critical infrastructure, all options for managing disaster debris, including the use of ACIs for burning vegetative debris, yard waste, and clean lumber, are being considered with public health and safety in the forefront.



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As the DEQ has been assisting a wide range of stakeholders, including federal, state, and local governments, to navigate the aforementioned federal regulations that apply to ACIs for disaster debris management, a number of permitting, notification, and throughput limitations are unnecessarily complicating our response to this unprecedented disaster.

Request to Waive Certain Permitting Requirements and Allow CISWI to Temporarily Be Used for Disaster Debris Through September 30, 2025

On April 17, 2024, the U.S. EPA published in the federal register changes to regulations promulgated under the Clean Air Act, specifically 40 CFR Part 60, Subparts EEEE and FFFF for OSWI units. Under §60.2966 and §60.3059, language was revised to state, “If you are the owner or operator of an air curtain incinerator that burns only wood waste, clean lumber, and yard waste [...], you are exempt from the obligation to obtain a title V operating permit, provided that your air curtain incinerator is not otherwise required to obtain a title V operating permit.” However, similar changes were not made to 40 CFR Part 60, Subparts CCCC or DDDD where §60.2242 and §60.2805 require that each CISWI and ACI subject to standards under these subparts must operate pursuant to a permit issued under Section 129(e) and Title V of the Clean Air Act. DEQ requests a waiver of these permitting provisions and a clear policy statement affirming that CISWI units can temporarily be used in disaster recovery due to vast amounts of disaster debris generated as a result of Hurricane Helene.

To further complicate matters, also occurring on April 17, 2024, 40 CFR Part 60, Subpart EEEE, Section §60.2969 for “Temporary-Use Incinerators and Air Curtain Incinerators Used in Disaster Recovery” was removed and reserved. Additionally, 40 CFR Part 60, Subpart FFFF, Section §60.3060 for “Temporary-Use Incinerators and Air Curtain Incinerators Used in Disaster Recovery” was removed and reserved, but Section §60.3061 for “What are the requirements for temporary-use incinerators and air curtain incinerators used in disaster recovery?” was left unchanged. The practical impact of this regulatory structure appears to only provide for temporary-use incinerators and air curtain incinerators to be used in disaster recovery if they are existing (but not new) units. In situations when the burning of vegetative debris is the only remaining option for disaster debris management, DEQ would much prefer the use of an ACI (regardless of whether it’s an existing or new unit) over open burning as it is safer (from a wildfire prevention perspective) and produces less particle pollution.

Request to Extend Temporary Disaster Debris Status to be Greater Than 16 Weeks

The DEQ further believes that federal regulations 40 CFR Part 60, Subparts CCCC, DDDD, EEEE, and FFFF are inconsistent with the Clean Air Act’s definition of a “Solid Waste Incineration Unit.” In Title I, Part A, Section 129 *Solid Waste Combustion*, paragraph (g) *Definitions*, subparagraph (1) *Solid Waste Incineration Unit* (42 U.S.C. §7429) states the following:

“The term ‘solid waste incineration unit’ means a distinct operating unit of any facility which combusts any solid waste material from commercial or industrial establishments or the general public (including single and multiple residences, hotels, and motels). [...] The term “solid waste incineration unit” does not include [...] (C) air curtain incinerators

provided that such incinerators only burn wood wastes, yard wastes and clean lumber and that such air curtain incinerators comply with opacity limitations to be established by the Administrator by rule.”

The federal rules (40 CFR Part 60, Subparts CCCC, DDDD, EEEE, and FFFF) appear to establish more than just opacity limitations for ACIs that only burn wood wastes, yard wastes, and clean lumber, especially in Subparts CCCC and DDDD which require ACIs to operate pursuant to a permit issued under Section 129(e) and Title V of the Clean Air Act. This includes the amount of time that an ACI can operate as a “Temporary-Use Incinerators and Air Curtain Incinerators Used in Disaster Recovery.” Currently, §60.3061 only allows for this designation for a period of 16 weeks before the operator must request an extension. Due to the amount of disaster debris that must be managed, the DEQ requests that State and Local Air Quality agencies be given the authority to adjust the 16-week period up to a 52-week period prior to requiring an official extension request by the operator. This will lessen the burden on the many entities working together to manage disaster debris over the many weeks and years to come.

The DEQ respectfully requests that the U.S. EPA grant this relief retroactive to September 26, 2024, through September 30, 2025, a period of approximately 12 months from the initial impacts of Hurricane Helene, with the opportunity to request an extension.

This request is the result of a natural disaster that could not reasonably have been foreseen or prevented and not the result of the lack of prudent planning. The granting of this relief is in the public interest as emergency response and disaster recovery operations are of the utmost concern to the general public. The State of North Carolina intends to be on the best possible footing with regard to addressing storm damage, emergency response, and recovery needs, and the relief requested would assist in those efforts.

If you have any questions about this request, please contact me at (919) 707-8447 or by email at Michael.Abraczinskas@deq.nc.gov.

Sincerely,



Michael A. Abraczinskas, Director
Division of Air Quality, NCDEQ

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