



IMPLEMENTING THE RCRA/CAA  
AIR EMISSION CONTROLS  
COMPLIANCE  
EXEMPTION/ELECTION  
PROVISIONS THROUGH RCRA  
PERMITS

Office of Resource Conservation and  
Recovery  
Office of Land and Emergency Management  
U.S. Environmental Protection Agency

October 2019  
EPA530-R-19-006



*DISCLAIMER*

*This document describes existing statutory and regulatory requirements and current U.S. Environmental Protection Agency's policy as of the date of issuance. The information in this document does not represent final Agency action and cannot be relied upon to create any rights enforceable by any party.*

*NOTICE*

*This document was developed by the U.S. Environmental Protection Agency's Office of Resource Conservation and Recovery and the Agency's RCRA Air Emission Standards Workgroup. EPA wishes to acknowledge and thank the following EPA and state representatives for providing input into this document:*

Paula Bansch, Indiana DEM	Thomas Martin, EPA Region 5
Dave Bartus, EPA Region 10	Martin Matlin, EPA Region 3
Jim Blough, EPA Region 5	Rachel Mirro, EPA Region 3
Grecia Castro, EPA/OAR/OAQPS	Mimi Newton, EPA Region 9
Patrick Chang, EPA/OGC	David Ogulei, EPA Region 5
Lilybeth Colón, EPA/OLEM	David Panofsky, Wisconsin DNR
Daniel Dailey, Michigan DEQ	Harry Shah, EPA Region 6
Ted Dragovich, Illinois EPA	Lon Stewart, Idaho DEQ
George Faison, EPA/OLEM	Laura Welles, EPA/OECA
Sasha Gerhard, EPA/OLEM	Gary Westefer, EPA Region 5
Denise Housley, EPA Region 4	Mike Zabaneh, EPA Region 9
Sharon Lin, EPA Region 9	

## Table of Contents

Table of Contents .....	3
I. Introduction and Purpose .....	5
II. RCRA Air Emission Standards and their Relationship with CAA Requirements.....	6
III. Summary of Relevant Regulations .....	7
A. Subpart AA – Process Vents Associated with Certain Processes for Managing Hazardous Waste ..	7
B. Subpart BB – Equipment Leaks .....	8
C. Subpart CC – Tanks, Surface Impoundments, and Containers.....	8
D. Additional Requirements .....	9
IV. Description of the RCRA/CAA Compliance Exemption/Election Provisions .....	9
A. 40 CFR Part 264/265, Subparts AA and CC Air Emission Controls Exemptions .....	10
B. 40 CFR Part 264/265, Subpart BB Compliance Election .....	10
V. General Implementation Requirements .....	11
A. Enforceable CAA Requirement .....	11
B. Written Certification/Election Statement and Documentation of Compliance .....	13
VI. Applying Air Emission Controls Exemption/Election Provisions.....	13
A. Review Application/Documentation .....	14
B. Draft the Permit .....	16
C. Process and Issue the Permit, Renewal Permit, or Modification.....	16
VII. Example Language Documenting Application of Exemption/Election in RCRA Permits.....	17
SECTION A: AIR EMISSION STANDARDS FOR PROCESS VENTS (40 CFR PART 264 SUBPART AA) .....	17
Statement of Basis/Fact Sheet .....	17
Permit Conditions.....	18
SECTION B: AIR EMISSION STANDARDS FOR EQUIPMENT LEAKS (40 CFR PART 264 SUBPART BB).....	19
Statement of Basis/Fact Sheet .....	19
Permit Conditions.....	20
SECTION C: AIR EMISSION STANDARDS FOR TANKS, SURFACE IMPOUNDMENTS AND CONTAINERS (40 CFR PART 264 SUBPART CC).....	22
Statement of Basis/Fact Sheet .....	22
Permit Conditions.....	22
SECTION D: REQUIREMENT OF PIPING AND INSTRUMENT DIAGRAM.....	24
Appendix A: Permit Writers’ Checklists for RCRA/CAA Air Emission Controls Compliance Exemption/Election Provisions.....	26

Subpart AA Checklist – Process Vents.....	27
Subpart BB Checklist – Equipment Leaks .....	28
Subpart CC Checklist – Tanks, Surface Impoundments, and Containers .....	29
Appendix B: Definitions.....	30

# Implementing the RCRA/CAA Air Emission Controls Compliance Exemption/Election Provisions Through RCRA Permits

## I. Introduction and Purpose

Control of organic air emissions is important to reduce adverse impacts on human health and the environment. Congress thus directed the U.S. Environmental protection Agency (EPA or Agency) to develop standards to address organic air emissions under the Resource Conservation and Recovery Act (RCRA), as well as organic and other air emissions under the Clean Air Act (CAA). To reduce any potential regulatory overlap, Congress directed EPA to minimize, if not eliminate, any duplication to the extent allowed under these different legislative acts.<sup>1</sup> Therefore, EPA intends both sets of standards to work together to create a comprehensive air program for addressing organic air emissions from all waste and related material recovery operations.

This document provides information and model permit language for RCRA permit writers implementing the regulatory compliance exemption/election provisions found in 40 CFR part 264/265, subpart AA (applicable to certain process vents), subpart BB (applicable to equipment leaks), and subpart CC (applicable to certain tanks, containers, surface impoundments).<sup>2,3</sup> Although it is mostly intended for regional and state permit writers, it also assists regulated entities in understanding the compliance exemption/election provisions and what should be included in a permit application.

### WHY REGULATE ORGANIC AIR EMISSIONS?

Many volatile organic compounds may be classified as air toxics, which are responsible for adverse human health effects such as cancer. In addition, volatile organic compounds are involved in the formation of ozone, which has been shown to have harmful effects on human health and adversely affect agricultural production.

Sections II and III of this document address the relationship between the RCRA air emission standards and CAA requirements, and provide a general regulatory overview. Next, Sections IV through VI present a description of the RCRA air compliance exemption/election provisions, general implementation requirements, and recommended process for applying these provisions. Lastly, Section VII provides example permit language applying the exemption/election provisions in RCRA permits, Appendix A provides a checklist for reviewing a facility's request for a compliance exemption or election, and Appendix B provides some definitions.

---

<sup>1</sup>As applicable, Section 112(n)(7) of CAA directs EPA to ensure to the maximum extent practicable and consistent with CAA 112, consistency between the requirements of CAA section 112 and RCRA Subtitle C requirements for the source category. Similarly, section 1006(b) of RCRA requires that RCRA provisions avoid duplication with CAA standards to the maximum extent practicable.

<sup>2</sup> In this document, process vents (subject to 40 CFR parts 264/265, subpart AA), equipment (subject to subpart BB), tanks, surface impoundments, and/or containers (subject to subpart CC) are referred to as "the subject AA, BB, or CC units."

<sup>3</sup> Certain miscellaneous units may also be subject to subparts AA, BB, and CC, see 40 CFR 264.601.

## II. RCRA Air Emission Standards and their Relationship with CAA Requirements<sup>4</sup>

In 1990, amendments to section 112 of CAA changed the way EPA regulated hazardous air pollutants – to be established by source categories rather than set by pollutant. The source categories identified per CAA resulted in potential for RCRA/CAA overlap because many of the industrial sectors identified may manage hazardous wastes (e.g., treatment, storage, and disposal facilities (TSDFs)). Under RCRA authority, EPA established national standards to control volatile organic air emissions from certain Large Quantity Generators (LQGs),<sup>5</sup> and TSDFs that generate or manage hazardous wastes that contain volatile organic chemicals (40 CFR parts 264/265, subparts AA, BB, CC).<sup>6</sup> Similarly, under CAA authority, EPA promulgated national emission standards for hazardous air pollutants (NESHAP) that are emitted from off-site waste and recovery operations (40 CFR part 63, subpart DD), benzene waste operations (40 CFR part 61, subpart FF) and synthetic organic chemicals manufacturing industry sources (40 CFR part 63, subparts F, G, H and I), as well as standards of performance for specific categories of stationary sources, which are referred to as new source performance standards (NSPS, 40 CFR part 60).

Consequently, facilities at which hazardous waste are managed may be subject to both, NESHAP and the RCRA air standards under 40 CFR parts 264 and 265. But because the standards are unit-specific, at some of these facilities, specific waste management or recovery units/equipment used to manage hazardous waste may be subject to either the NESHAP and the RCRA air emission control requirements, but not both, while in certain situations, some other waste management or recovery units/equipment may be subject to air emission control requirements under both set of rules. After careful analysis, EPA determined that under some circumstances compliance with CAA requirements (which are based on a technology-based standard) would be considered as protective as compliance under the RCRA air standards by adequately controlling air emissions.<sup>7</sup> EPA considers it unnecessary for owners and operators of waste management or recovery units/equipment subject to air standards under both sets of rules to perform duplicative testing and monitoring, keep duplicative sets of records, or perform other duplicative actions. Thus, EPA amended the RCRA air emission regulations (Subpart CC in 1996, and Subparts AA and BB in 1997) to provide a mechanism to address potential regulatory overlap with CAA requirements, specifically 40 CFR parts 60, 61, and 63. Consequently, where facility air emission units or equipment are subject to both CAA and RCRA requirements, an owner/operator may take specified steps to comply with CAA requirements in place of the RCRA requirements under certain conditions.

---

<sup>4</sup> For more information about the interrelationship of the National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations with the RCRA air emission standards, see *Implementation Guidance for Off-Site Waste and Recovery Operations (OSWRO) NESHAP - Interrelationships with Other Related EPA Air Rules*, EPA-305-00-006, September 2000.

<sup>5</sup> The RCRA air emission standards apply to both TSDFs and large quantity hazardous waste generator facilities that have on-site tanks and containers. LQGs can accumulate hazardous waste for up to 90 days without a RCRA permit, provided certain conditions are met, including compliance with the RCRA air emission standards in 40 CFR part 264/265 subparts AA, BB, and CC applicable to tanks and containers (40 CFR 262.17(a)(1)(i) and (a)(2)).

<sup>6</sup> The solvent remanufacturing exclusion found at 40 CFR 261.4(a)(27) requires solvent remanufacturers operating under the exclusion to either operate their equipment under CAA regulations per 40 CFR parts 60, 61 or 63, or comply with appropriate standards in 40 CFR part 261 subparts AA, BB, and CC, which are equivalent to the technical standards found in 40 CFR part 264/265 subparts AA, BB, CC.

<sup>7</sup> 61 Fed. Reg. 59938-9 (1996)

In addition, EPA also developed integrated and consistent sets of standards that work together to create a comprehensive air program for addressing organic air emissions from all waste and related material recovery operations. For instance, EPA included applicability provisions in the off-site waste and recovery operations NESHAP (40 CFR 63.680) to control the air emissions from facilities managing hazardous waste but which were exempted from the RCRA air standards. An example of consistency is the Agency's coordination of testing, recordkeeping, reporting, and other implementation requirements under both sets of standards.<sup>8</sup>

### III. Summary of Relevant Regulations

This document focuses on the RCRA air emission standards established under three subparts in both 40 CFR parts 264 (permitted facilities) and 265 (interim status facilities). Subpart AA controls air emissions from certain process vents, Subpart BB controls air emissions from specified equipment leaks, while Subpart CC controls air emissions from certain tanks, containers, and surface impoundments. Air emissions from miscellaneous units may be subject to Subparts AA, BB and CC as necessary to protect human health and the environment, 40 CFR 264.601. These air emission standards are briefly summarized below.

#### A. Subpart AA – Process Vents Associated with Certain Processes for Managing Hazardous Waste

Subpart AA applies to process vents associated with distillation, fractionation, thin-film evaporation, solvent extraction, or air/steam stripping operations that manage hazardous wastes with organic concentrations of at least 10 parts per million by weight (ppmw), if these operations are conducted at the following types of units: (1) units subject to the permitting requirements of 40 CFR part 270 (i.e., permitted or interim-status), (2) hazardous waste recycling units that are located at hazardous waste management facilities that store hazardous waste prior to recycling or are otherwise subject to the permitting requirements of Part 270 (i.e., the facility has a RCRA permit or is in interim status), and (3) “90-day” LQG accumulation tanks or container units. Hazardous waste recycling units at facilities that do not store hazardous waste prior to recycling and are

#### CRITERIA UNDER RCRA AND CAA

Section 3004(n) of RCRA directs EPA to establish standards for the monitoring and control of emissions from hazardous waste facilities, as necessary to protect human health and the environment (i.e., risk-based standard).

Section 111 of CAA directs EPA to develop new source performance standards that are generally technology-based (i.e., new source performance standards).

Similarly, section 112 of CAA directs EPA to regulate the emissions of hazardous air pollutants from a published list of stationary source categories by establishing national emission standards for major sources of listed hazardous air pollutants (i.e., NESHAP) primarily based on the application of Maximum Achievable Control Technology (MACT) (i.e., generally technology-based).

Section 112 of CAA also requires EPA to assess the risk to public health remaining after the implementation of NESHAP. If the "residual risk" for a source category does not protect public health with "an ample margin of safety," EPA must promulgate health-based standards for that source category to further reduce hazardous air pollutant (HAP) emissions.

<sup>8</sup> 59 Fed. Reg. 62906-7 (1994).



not otherwise subject to the permitting requirements of Part 270 are not subject to the standards. The owner/operator must reduce total organic emissions released from all affected process vents either to a level below 3 pounds/hour and 3.1 tons/year, or by use of a control device that reduces total organic emissions by 95 percent by weight. Additionally, units exempt under §§264/265.1 are not subject to the Subpart AA air emission control requirements.

## B. Subpart BB – Equipment Leaks

The emission control requirements of Subpart BB apply to owners/operators of facilities that handle hazardous wastes with an organic concentration of at least 10 percent by weight and that are contained in or in contact with equipment (e.g., valves, pumps, pressure relief devices, connectors) for 300 or more hours per calendar year, if they are managed at the following types of units: (1) units subject to the permitting requirements of 40 CFR part 270 (i.e., permitted or interim-status), (2) hazardous waste recycling units that are located at hazardous waste management facilities that store hazardous waste prior to recycling or are otherwise subject to the permitting requirements of Part 270 (i.e., the facility has a RCRA permit or is in interim status), (3) “90-day” LQG accumulation tanks or container units. Hazardous waste recycling units at facilities that do not store hazardous waste prior to recycling and are not otherwise subject to the permitting requirements of Part 270 are not subject to the standards. Additionally, units exempt under §§264/265.1 are not subject to the Subpart BB air emission control requirements.

The requirements of this regulation are dependent on the type of equipment in use (e.g., pressure relief devices in gas/vapor service, sampling connection systems, compressors), but can include, among other things:

- monitoring for and repairing leaking equipment (i.e., implementing a leak detection and repair (LDAR) program),<sup>9</sup> or
- capturing the emissions in a closed-purge, closed-loop, closed vent system that routes the emissions to a control device (e.g., vapor recovery device, combustion device, flare).

Each piece of equipment regulated under this subpart must be marked so it can be easily distinguished from other pieces of equipment and monitored.<sup>10</sup>

## C. Subpart CC – Tanks, Surface Impoundments, and Containers

Subpart CC requires owners/operators of facilities to control emissions of volatile organic hazardous waste that is managed in tanks, containers, and surface impoundments if the waste has a volatile organic concentration of at least 500 parts per million by weight (ppmw) at the point of generation unless an exemption applies. Subpart CC also applies to LQGs accumulating waste in tanks and containers. Units exempt under §§264/265.1 are not subject to these air emission control requirements. In addition, various other units are specifically exempt from the air emissions control standards, including the following: (1) a waste management unit into which hazardous waste was placed before December 6, 1996, as long as no hazardous waste is added to the units after December 6, 1996, (2) a container with a capacity of less than or equal to 0.1 m<sup>3</sup> (approximately 26 gallons), (3) a tank or surface impoundment in

---

<sup>9</sup> For more information on LDAR, see the *LDAR Best Practices Guide*.

<sup>10</sup> The requirements in 40 CFR 264.1064(b)(1), including assigning and recording an individual ID number to each piece of equipment, as well as developing/maintaining a list of the equipment ID numbers with a plot diagram illustrating the location of the equipment, is an effective means to easily distinguish regulated equipment from other pieces of equipment.



which the owner or operator has stopped adding hazardous waste and the owner or operator has begun implementing or completed closure pursuant to an approved closure plan, (4) a waste management unit used solely to manage hazardous waste generated under corrective action, CERCLA, or another federal or state remediation authority, (5) a waste management unit used solely to manage radioactive mixed waste in accordance with the Atomic Energy Act and Nuclear Waste Policy Act, (6) a hazardous waste management unit operating with controls in compliance with a CAA standard under 40 CFR parts 60, 61, or 63, an (7) a tank with process vent, as defined in §264/265.1031. The specific control requirements depend on factors such as the size of the unit and maximum organic vapor pressure of the waste.

#### D. Additional Requirements

In addition to control requirements, Subparts AA, BB, and CC also include inspection and monitoring requirements to ensure proper operation and maintenance. These requirements vary depending on type of equipment, waste management unit, and air emission controls used. For example, Subpart BB generally requires Method 21 using monitoring equipment such as Photo Ionization Detectors (PID) and Flame Ionization Detectors (FID) to detect air emissions. Some tanks subject to Subpart CC may require visual inspections while others may require Method 21. Recordkeeping and reporting requirements may also be required to demonstrate compliance with the standards.

Subpart CC does not apply to recycling units because the emission mechanisms for hazardous waste storage tanks differ significantly from the emission mechanism of the distillation-type unit used for recycling and certain treatment operations (e.g. air strippers and thin-film evaporators) regulated under subpart AA. Recycling units typically emit air pollutants through some type of process vent, and consequently are controlled under the subpart AA process vent standards (61 FR 59931, 59935; November 25, 1996). Units storing hazardous waste before it is recycled are subject to all applicable provisions of 40 CFR parts 264 and 265, including Subpart CC (40 CFR 261.6(c)(1)).

## IV. Description of the RCRA/CAA Compliance Exemption/Election Provisions<sup>11</sup>

Where CAA and RCRA requirements would both apply to the same unit(s) or equipment, the RCRA regulations allow for a compliance exemption/election from the RCRA organic air standards, referred to in this document as the “RCRA/CAA Air Emission Controls Compliance Exemption/Election Provisions.”

Specifically, for Subparts AA and CC, the RCRA air emission standards exempt all process vents subject to AA<sup>12</sup> and hazardous waste management units subject to CC<sup>13</sup> that the facility owner or operator certifies as being *equipped with and operating air emission controls* in accordance with an

---

<sup>11</sup> More information about the RCRA/CAA air emission control compliance exemption/election provisions can be found in EPA Region 4’s guidance entitled *CAA and RCRA Overlap Provisions in Subparts AA, BB, and CC of 40 CFR Parts 264 and 265*, EPA Region 4 (Oct. 2000).

<sup>12</sup> See 40 CFR 264.1030(e)/265.1030(d)

<sup>13</sup> See 40 CFR 264/265.1080(b)(7)

applicable CAA regulation codified under 40 CFR parts 60, 61, or 63.<sup>14</sup> For Subpart BB, the facility owner or operator may elect to determine compliance by documentation in accordance with an applicable CAA regulation codified under 40 CFR parts 60, 61, or 63.<sup>15</sup>

In understanding the RCRA/CAA compliance exemption/election provisions, it is important to distinguish that only Subparts AA and CC provide “exemptions” from RCRA air emission controls, and that Subpart BB does not. Rather, Subpart BB allows the facility’s owner/operator to elect to demonstrate compliance with Subpart BB either via § 264/265.1064 or the facility’s corresponding CAA requirements, and thus this is referred to as a “compliance election” provision. A facility choosing compliance election continues to be subject to Subpart BB, which means the RCRA program still issues a permit (for TSDFs), and determines compliance by evaluating the CAA records that the owner or operator elects to maintain under § 264/265.1064(m) (for both TSDFs and LQGs).

See below for a closer look at the regulations pertaining to the compliance election and the exemption provisions.

#### A. 40 CFR Part 264/265, Subparts AA and CC Air Emission Controls Exemptions

The RCRA/CAA air emission controls exemption provisions apply to process vents subject to Subpart AA and tanks, surface impoundments, and containers subject to Subpart CC, where the facility owner or operator *certifies* that all of the process vents and units that would otherwise be subject to Subpart AA or Subpart CC are “*equipped with and operating air emission controls* [emphasis added] in accordance with the . . . requirements of an applicable Clean Air Act regulation codified under 40 CFR part 60, part 61, or part 63.” Both exemption provisions state that relevant portions of Subpart AA and Subpart CC “do not apply” if the owner or operator certifies compliance with the applicable CAA requirements. See 40 CFR 264.1030(e)/265.1030(d) for Subpart AA and 264/265.1080(b)(7) for Subpart CC.

Note, units exempt from Subpart CC under 40 CFR 264/265.1080(b)(7) must still comply with a limited set of requirements of Subpart CC. For example, recordkeeping requirements to demonstrate compliance in 264.1089(j)/265.1090(j) continue to apply pursuant to 40 CFR 264.1089(a). Also, there is an exception to the section 264/265.1080(b)(7) exemption for tanks controlled through the use of an enclosure rather than a cover.

#### B. 40 CFR Part 264/265, Subpart BB Compliance Election

The RCRA compliance election provision for equipment leaks from specific equipment (e.g., pumps, valves, compressors) subject to Subpart BB allows owners or operators to “elect [emphasis added] to determine compliance with this subpart [Subpart BB] either by documentation pursuant to § 264/265.1064 of this subpart, or by documentation of compliance with the regulations at 40 CFR part 60, part 61, or part 63 pursuant to the relevant provisions of the regulations at 40 [CFR] part 60, part 61 or part 63.” See 40 CFR 264/265.1064(m). Unlike Subparts AA and CC above, under this election

---

<sup>14</sup> 40 CFR part 60 contains CAA standards for new sources (NSPS); part 61, CAA national emission standards for hazardous air pollutants (NESHAP), and part 63, the national emission standards for hazardous air pollutants for source categories.

<sup>15</sup> See 40 CFR 264/265.1064(m).

provision, Subpart BB requirements are still enforceable under the RCRA permit, even if the facility elects to show compliance with Subpart BB through CAA documentation requirements.

## V. General Implementation Requirements

To obtain an exemption or election in a RCRA permit, the following criteria must be met:

### A. Enforceable CAA Requirement

The RCRA permit fact sheet/administrative record should identify the enforceable CAA requirement that applies to the unit and supports granting the exemption/compliance election. Similarly, the permit fact sheet/administrative record should explain why there is no applicable or enforceable RCRA requirement for a unit. For the Subparts AA and CC exemptions to apply, the subject units must be “*equipped with and operating air emission controls* [emphasis added] in accordance with” CAA requirements.<sup>16, 17</sup> For an exemption to apply, the regulations make clear that *each* process vent subject to Subpart AA and unit subject to CC (tanks, surface impoundments, and containers) must be equipped with and operating air emission controls in accordance with applicable requirements under 40 CFR parts 60, 61, or 63 of the CAA regulations. This also means that any units complying with CAA requirements through “emission averaging,”<sup>18</sup> or pursuant to a facility-wide emissions threshold determination, rather than by using air emission control requirements applicable under those CAA regulations, does not qualify for the exemptions listed at 40 CFR 264.1030(e), 265.1030(d), and 264/265.1080(b)(7). The most common example of a regulation that allows emissions averaging is the boiler MACT (40 CFR part 63, subpart DDDDD). Other such regulations include: 40 CFR part 63, subpart G-National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater; and 40 CFR part 63, subpart U-National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins. Similarly, facilities exempted from the requirements of 40 CFR parts 60, 61, or 63 of the CAA regulations do not qualify for the exemption or election from RCRA requirements. Examples of these facilities include certain areas sources avoiding a major source NESHAP relevant to

---

<sup>16</sup> 40 CFR 264.1030(e), 265.1030(d), and 264/265.1080(b)(7).

<sup>17</sup> The 1996 final regulation titled “Hazardous Waste Treatment, Storage, and Disposal Facilities and Hazardous Waste Generators; Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers” discussing the Subpart CC provision, states: “The EPA has decided that the best way to eliminate any regulatory overlap is to amend the RCRA rules to exempt units that are using air emission controls in accordance with the requirements of applicable Clean Air Act NESHAP or NSPS regulations... It is important to note that this exemption [to Subpart CC] only applies to those units using organic air emission controls... A unit that does not use the required air emission controls but is in compliance with a NESHAP through an ‘emission averaging’ or ‘bubbling’ provision does not qualify for the exemption since EPA lacks assurance that emissions from the unit are controlled to the extent necessary to protect human health and the environment. Similarly, if the Clean Air Act standard for the particular unit is no control (for example, because the MACT floor for the source category is no control and the Agency decided not to apply controls more stringent than the floor), the exemption from the RCRA standards would not apply since the unit would not actually be controlled under provisions of the MACT standard.” 61 Fed. Reg. 59932, 59938-9 (1996) (footnote omitted). Although RCRA section 1006(b) requires some accommodation with certain other regulatory standards, including standards under CAA, it “does not permit the substantive standards of RCRA to be compromised.” *Chemical Waste Management v. EPA*, 976 F.2d 2, 23 (D.C. Cir 1992).

<sup>18</sup> 40 CFR 63.2 defines “emissions averaging” as “a way to comply with the emission limitations specified in a relevant standard, whereby an affected source, if allowed under a subpart of this part, may create emission credits by reducing emissions from specific points to a level below that required by the relevant standard, and those credits are used to offset emissions from points that are not controlled to the level required by the relevant standard.” (The term “bubbling” was used interchangeably with emissions averaging in the past but is now in disuse.)

the RCRA emissions unit by complying with a facility-wide potential to emit limit for HAP/HAPs, also, low emitting facilities exempted from the requirements of 40 CFR 63.682 through 63.699 under the facility-wide exemption provision in 40 CFR 63.680(d), as well as those subject to the exemptions found in 40 CFR 60.480(d) and 60.660(c).

Facilities handling hazardous waste may have a Title V operating permit. This type of permit is intended to incorporate all CAA applicable requirements, including NSPSs and NESHAPs, and specifies the origin of and authority for each term, condition, or requirement, including reference to the underlying federal regulations (see 40 CFR 70.6(a)(1)(i)). Infrequently, some state Title V permits may only reference the state regulation in the delegated state program from which the applicable federal requirement may not be readily discernible. In this case, the RCRA permit writer should confirm the corresponding federal CAA provision supporting the exemption/compliance election. Generally, this information is included in the Title V Permit's Statement of Basis. EPA encourages RCRA and CAA permit writers to work together to assure alignment of permit conditions in both the RCRA and Title V permits.

Note that a Title V permit may continue to cover a facility beyond its specified expiration date – i.e., no longer than five years from the permit effective date. Unlike a construction permit (sometimes called a permit-to-install or a Title 1 permit), a Title V operating permit must be timely renewed or revised, as necessary, according to regulatory deadlines. In the case of renewals, if the applicant submits a timely and complete renewal application before the existing permit expires, and the permitting authority has not yet issued a renewed permit, the permit continues to cover the source beyond the expiration date. If a Title V permit is revoked or allowed to expire, because the source no longer has a need for it, any monitoring, recordkeeping and reporting terms and conditions that were established in the Title V permit independently of an applicable requirement no longer apply. However, any applicable NSPS, NESHAP, or construction permit requirements continue to apply. Permit writers should be aware that state, local, or tribal permitting authorities implement CAA requirements applicable to stationary sources through conditions in “operating”<sup>19</sup> and/or “construction” permits, but that CAA regulatory requirements may apply directly to emissions units, absent a permit, by virtue of the CAA and the implementing regulations themselves.<sup>20</sup> If relying on a CAA requirement applicable only to major sources, which is included in a Title V permit, for purposes of the compliance exemption/election, the permit writer and applicant should discuss the need for a reporting condition when circumstances have changed (e.g., facility is no longer subject to the major source requirement) since the RCRA permit would need updating.

Generally, a Title V operating permit for the facility would incorporate all applicable CAA requirements and include relevant information as part of the permit record. Occasionally, a facility may not yet be covered by a permit or the permit may not be current. However, the absence of an operating or

---

<sup>19</sup> A less common type of federally-enforceable operating permit for TSDFs, which states might use to establish CAA requirements, is called a Federally Enforceable State Operating Permit (FESOP). A FESOP is used to limit a facility's potential emissions to levels that ensure the facility is not subject to major source requirement(s) under a NESHAP or does not require a Title V or CAA Prevention of Significant Deterioration (PSD) permit. The expiration date for a FESOP varies by permitting authority.

<sup>20</sup> States can implement 40 CFR parts 60, 61, or 63 of the CAA regulations under state rules approved by the EPA, which may allow for implementation through preconstruction programs, and operating permits programs.

construction permit or a permit condition does not necessarily preclude application of a RCRA/CAA air emission control exemption or compliance election, provided the relevant CAA provision applies to the source independent of its inclusion in a permit.<sup>21</sup>

## B. Written Certification/Election Statement and Documentation of Compliance

For the Subpart AA exemption, the regulations in 40 CFR 264.1030(e)/265.1030(d) require the facility owner or operator to *certify* the subject unit is equipped with and operating air emission controls in compliance with CAA requirements (see paragraph (IV)(A) above). Once the Subparts AA exemption is applied, the facility must ensure that documentation of compliance under the regulations at 40 CFR parts 60, 61, or 63 is kept with or made readily available with the facility operating record.

For the Subpart BB election provision, under 40 CFR 264/265.1064(m), the owner or operator shall *elect* to determine compliance either by documentation with 40 CFR 264.1064 or by documentation of compliance with 40 CFR parts 60, 61, or part 63.

For the Subpart CC exemption, the regulations in 40 CFR 264.1080(b)(7) and 1089(j) require the facility owner and operator to (1) certify that the waste management unit is equipped with and operating air emission controls in compliance with CAA requirements, and (2) record and maintain the certification as well as identification of the specific CAA requirements with which the waste management unit is in compliance. 40 CFR 264.1089(a) requires this information to be maintained in the operating record for as long as the waste management unit is not using air emission controls specified in 40 CFR 264.1084 through 264.1087.

## VI. Applying Air Emission Controls Exemption/Election Provisions

The owner or operator may request to employ the air emission exemption/election provisions upon issuance of a RCRA permit; upon reissuance (or renewal) of a RCRA permit; or via modification of an existing RCRA permit. In each of these situations, the application review and implementation process will be the same.

---

<sup>21</sup> A facility that is subject to a newly promulgated NESHAP or NSPS must comply with that rule by the compliance date in those regulations regardless of whether it has an operating or construction permit that includes such requirement and regardless of whether the permit has been updated to include the requirement for permitted facilities. For example, in the case of facilities that become newly subject to Title V as a result of requirements issued in those regulations (e.g., NESHAP Subpart EEE for hazardous waste combustors), it can still take years before the Title V permit is issued. Additionally, although Title V permits (once issued) have “permit shields” that “shield” the source from allegations of noncompliance with the regulations if it is in compliance with the permit, the permit shield does not extend to requirements that have not specifically been identified in the permit (such as any requirements omitted).

## A. Review Application/Documentation

40 CFR 270.13 through 270.27 sets forth the required contents of the RCRA permit application.<sup>22</sup> For the air emission controls exemption/election provisions, the permit application must identify what CAA requirements apply to what units at the facility, the units' associated emission control equipment or program and operation, and information relating to the monitoring, testing and compliance status of the control equipment or program.<sup>23</sup>

40 CFR 270.10(c) states that the Regional Administrator or State Director shall not issue a permit before receiving a "*complete application* [emphasis added]." Further, an application is not complete until the Regional Administrator or State Director receives "an application form and any supplemental information which are completed to his satisfaction." Id. See also 40 CFR 270.42(b)(iv), (c)(iv) (detailing required submissions for permit modifications). Thus, EPA and the states have ample authority under the existing regulations to require all information necessary to determine whether a compliance exemption or election can be documented in the permit.

Per these regulations, a certain minimum set of information is needed to document an exemption/election. In other words, if any of this information is missing, the permit writer may be unable to apply the exemption/election and thus RCRA air emissions standards would continue to apply to the units.

A summary of the minimum information needed to apply RCRA air emission controls compliance exemption/election is listed below.

- For Subparts AA and CC:

---

<sup>22</sup> Some states have put together checklists listing subject matter and information requirements that need to be addressed for the Part B permit application to be "complete." For example, Illinois EPA's "*RCRA Part B Hazardous Waste Permit Application Completeness and Technical Evaluation Checklist*" is available [online](#) and upon request (page 45 addresses "Exemption from Part CC"). EPA recommends that such checklists address both the Subparts AA/CC compliance exemption and the Subpart BB compliance election.

<sup>23</sup> The owner or operator of the facility is required to provide all the documentation referenced in the text above in its permit application. See 40 CFR 270.13, 14, 15, 16, 17, 24, 25, and 27. Under 40 CFR 270.13(k), the contents of the Part A permit application shall include a listing of all permits or construction approvals received under other programs, including but not limited to the CAA Prevention of Significant Deterioration (PSD) program, the nonattainment program, and the NESHAPS preconstruction approval program, as well as state CAA permits. Under 40 CFR 270.14(b)(8)(vi), the contents of the Part B permit application shall include "[a] description of procedures, structures, or equipment used at the facility to ...[p]revent releases to atmosphere." 40 CFR 270.15, 16, and 17 require owners and operators of containers, tank systems, and surface impoundments subject to Subpart CC to submit design and operation information of the unit as well as detailed information on compliance with air emission control requirements as set forth in 40 CFR 270.27. 40 CFR 270.24 requires, among other things, documentation of compliance with process vent standards and design analysis addressing control device operation parameters, as well as specifications, drawings, schematics, and piping and instrumentation diagrams. 40 CFR 270.25 requires, among other things, a detailed description of and locations for equipment subject to Subpart BB, as well as documentation for and the method of compliance with Subpart BB standards. The RCRA regulations also make it clear that owners/operators must generate, for purposes of the Part B application and thereafter, and keep detailed records concerning pollution control system design documentation, monitoring, operating, inspection, and testing information providing proof of compliance with RCRA requirements. See 40 CFR 270.24 and 264.1035 (Part B application documentation and recordkeeping requirements for Subpart AA process vents); 40 CFR 270.25 and 264.1064 (Part B application documentation and recordkeeping requirements for Subpart BB equipment); and 40 CFR 270.27 and 264.1089 (Part B application documentation and recordkeeping requirements for Subpart CC tanks, surface impoundments, and containers).



- Identification of and description for each process vent and unit subject to the request for exemption, and its location.
  - A description of the pollution control equipment installed at each subject AA or CC unit or emission control program being implemented at the facility.
  - Identification of the current CAA requirement applicable to each subject AA or CC unit or equipment, and the source of the requirement (e.g., construction permit, permit to install, regulations).
  - A written statement that the owner/operator certifies all subject units are “operating air emission controls in accordance with the requirements of an applicable Clean Air Act regulation codified under 40 CFR parts 60, 61, or 63.”<sup>24</sup> This certified written statement, accompanied by the specific information listed above, must state that all subject units are in compliance with applicable CAA requirements and that no unit for which the RCRA exemption is being claimed is currently exempted or will be exempted in the future from operating air emission controls because of emission averaging across the facility, via emission threshold determination, or for other reasons.
- For Subpart BB:
    - Identification and description of all equipment subject to Subpart BB and how the equipment is controlled by application of an emission control program under CAA (such as an LDAR program).
    - Identification of the current CAA requirement applicable to each subject BB equipment, and the source of the requirement (e.g., construction permit, permit to install, regulations).
    - A written statement that the owner/operator elects to determine compliance of all subject equipment under the identified CAA requirements, and that such documentation is kept with or made readily available with the facility operating record.

Appendix A contains a checklist which references information and documentation that the regulations require to document the exemption/election provisions in the permit.

In addition to reviewing the above information, the RCRA permit writer should consult with the applicable CAA permitting authority (the state or EPA), where the facility’s certification of compliance may be reviewed. These offices have access to the facility’s CAA compliance certifications, annual reports, and other documentation/reporting requirements set forth at 40 CFR 60.19 (for facilities subject to the NSPS), or 40 CFR 61.10 and 63.10 (for facilities subject to the NESHAPS), which may be

---

<sup>24</sup> Subpart AA is 40 CFR 264.1030(e); Subpart CC is 40 CFR 264.1080(b)(7).



reviewed to assess the facility's certification. Discovery of an on-going CAA enforcement action involving subject AA or CC units could provide grounds for denial of the exemption.

## B. Draft the Permit

The permit should identify the process vents, equipment, and units that are subject to Subparts AA, BB, CC, and whether an applicable exemption or election is being applied. The permit should also set forth the applicable CAA requirements that apply to each subject unit and make clear that the Subparts AA and CC exemptions are automatically suspended if CAA requirements no longer require, on an on-going basis, operation of air emission controls on each subject AA or CC unit to achieve or maintain compliance with applicable limits (e.g., because of emission averaging, or due to a threshold determination).<sup>25</sup> Under the Subpart BB compliance election, although compliance is demonstrated under specific CAA requirements, the Subpart BB provisions remain an enforceable part of the RCRA permit.

The example permit language in Section VII below provides an optional guide for use in drafting a permit section which incorporates a Subpart AA or Subpart CC air emission controls exemption or a Subpart BB election.

## C. Process and Issue the Permit, Renewal Permit, or Modification

During the processing of the permit, re-issued permit, or modification, the owner or operator's CAA certification of compliance, and/or other relevant supporting records, should be attached or referenced as a part of the RCRA permit fact sheet and administrative record. If the action is taken under RCRA modification procedures, EPA expects that in most situations, Subparts AA and CC air emission control exemptions or Subpart BB elections will not involve physical changes to the units involved or their capacity and/or operation, and so could generally be accomplished through Class 2 permit modification procedures; however, the appropriate procedures will be determined on a case-by-case basis.<sup>26</sup> See 40 CFR 270.42(d).

---

<sup>25</sup> In the case where NESHAPs and MACTs include requirements to operate air emission controls only some of the time or under certain conditions (due to emission averaging, etc.), it may be appropriate to anticipate this scenario and draft a permit provision that states that during conditions where the CAA provision does not require air emission controls, then the units shall be subject to specified RCRA Subparts AA or CC requirements. This approach ensures that operation of air emission controls is always required and may obviate the need for a permit modification, in some cases. (In practice, this should not be challenging for a facility to implement since the Agency took care to be consistent in testing, recordkeeping, reporting, and other implementation requirements for both CAA and RCRA standards.) In another possible scenario, a previously applicable NESHAP or MACT standard may no longer apply to the facility, e.g., the facility may have changed its process and may qualify for an exemption due to its total potential to emit HAP emissions below 25 tons/year facility-wide (or below 10 tons/year for a single HAP), or may have obtained area source status by limiting their potential to emit HAPs below major source thresholds. A NESHAP standard may or may not apply to an area source, depending on the source category. In these cases, the example permit language requires the permittee to report this change, which could in turn require a permit modification or revised certification.

<sup>26</sup> The changes resulting from application of the compliance election under Subpart BB or exemption under Subparts AA and CC generally appear to fall within the following Class 2 Modification categories set forth at 40 CFR 270.42: "other changes" in frequency of or procedures for monitoring, reporting, sampling or maintenance (see 40 CFR 270.42 app. I at A.4.b); "other changes" in waste sampling or analysis methods (see 40 CFR 270.42 app. I at B.1.d); or frequency of or content of inspection schedules (see 40 CFR 270.42 app. I at B.4).

## VII. Example Language Documenting Application of Exemption/Election in RCRA Permits

The language below provides an example of how to document the appropriate site-specific application of the air emission controls exemption or compliance election. Applying the exemption under Subparts AA and CC involves documenting in the RCRA permit the applicability of specific CAA requirements in lieu of Subparts AA or CC. Under the Subpart BB compliance election, it should be noted that since Subpart BB still applies (with compliance shown under specific CAA requirements documented in the permit), the Subpart BB provisions remain an enforceable part of the RCRA permit.

The example language is organized into two categories: (1) example language for the statement of basis or fact sheet, and (2) example permit language. The statement of basis/fact sheet language provides background or the basis for permit requirements and does not establish an obligation on the part of the permittee. The example permit language provides conditions that establish an affirmative obligation to act on the part of the permittee.

Example language is provided for Subparts AA (Section A), BB (Section B) and CC (Section C). The examples also include a requirement that the permittee keep and maintain in the Operating Record file the facility's Piping and Instrument Diagram (Section D) which contains reference to labels or tags showing the locations of the facility's Hazardous Waste Fugitive Emissions Points and designating each point with a number or letter.<sup>27</sup>

The example permit language is for demonstrative purposes only. The case-specific facts concerning the subject AA, BB, or CC units included in the language below [within brackets] should correspond to the individual situation. Other provisions relating to application of the compliance exemption or election (for example, more detail on the application of CAA requirements) should be added as necessary. EPA encourages RCRA and CAA permit writers to work together to ensure alignment between permit conditions in the RCRA and Title V permits.

The example language below presumes that a federally-enforceable CAA permit exists. Cite the applicable CAA regulations if there are no permit-implementing CAA requirements.

### SECTION A: AIR EMISSION STANDARDS FOR PROCESS VENTS (40 CFR PART 264 SUBPART AA)

#### Statement of Basis/Fact Sheet

The Permittee's Part B Permit Application states that [company name] is operating a total of [#### (#)] process vents associated with [distillation, fractionation, thin-film evaporation, solvent extraction, or air/steam stripping operations] that manage hazardous wastes with organic concentrations of at least 10 parts per million by weight (ppmw). The #### (#) process vents include #### (#) thin film evaporator(s), #### (#) safety-thermal drier(s), #### (#) washex still unit(s), and #### (#) distillation column unit(s). Each

---

<sup>27</sup> RCRA permitting regulations and subparts AA, BB, and CC require the facility to provide the Piping and Instrumentation Diagram as part of the part B permit application. See 40 CFR 270.24(d)(3) for Subpart AA, 40 CFR 270.25(e)(3) for Subpart BB, and 40 CFR 270.27(a)(5) for Subpart CC (which references 40 CFR 270.24(d)).

process vent is routed through a closed-vent system to an air emission control device, i.e., the Regenerative Fume Oxidizer.]

The air emission standards for process vents, 40 CFR part 264, subpart AA (Subpart AA), at 40 CFR 264.1030(e) provide:

*The requirements of this subpart do not apply to the process vents at a facility where the facility owner or operator certifies that all of the process vents that would otherwise be subject to this subpart are equipped with and operating air emission controls in accordance with the process vent requirements of an applicable Clean Air Act regulation codified under 40 CFR part 60, part 61, or part 63. The documentation of compliance under regulations at 40 CFR part 60, part 61, or part 63 shall be kept with, or made readily available with, the facility operating record.*

The Permittee's Part B Permit Application contains a written certified statement from a responsible company official that each hazardous waste process vent permitted under the [state or federal] RCRA permit is equipped with and operating air emission controls according to [cite applicable regulation, e.g., 40 CFR 63.690 (Subpart DD - National Emission Standards for Hazardous Pollutants from Off-Site Waste and Recovery Operations)]. For purposes of this permit, [EPA or the state] considers this a certification pursuant to 40 CFR 264.1030(e) with respect to those hazardous waste process vents (Subpart AA Certification). Therefore, according to 40 CFR 264.1030(e), the air emission control requirements of Subpart AA do not apply to the process vents listed below at the facility. Rather, the process vents specified in the Permittee's Part B Permit Application are subject to the CAA and must be equipped with and operate air emission controls in accordance with the requirements of [cite applicable regulation, e.g., 40 CFR part 63, subpart DD] at all times hazardous waste is managed in the unit(s).

## Permit Conditions

### Units Exempted from Subpart AA

The process vents identified in Table X below are exempted from the requirements of 40 CFR part 264, subpart AA, as indicated.

Table X: Process Vents Exempted from Subpart AA<sup>28</sup> (filled with example information)

Process Vent	Exemption Claimed	Alternate Requirements or Standards
PV1	40 CFR 264.1030(e)	40 CFR 63.693
PV9	40 CFR 264.1030(e)	40 CFR 63.983

### Documentation of Compliance with CAA Requirements

As set forth at 40 CFR 264.1030(e), documentation of compliance under the regulations at [cite applicable regulation, e.g., 40 CFR 63.696] shall be kept with or made readily available with the facility

<sup>28</sup> If an exemption is not being claimed, permit writers should also identify process vents that are subject to Subpart AA in the RCRA permit.

operating record. [Company name] must inform [EPA or the state], in writing, about any local, state, or federal findings or notice of alleged noncompliance with CAA requirements at the subject process vents, at least [##] days after [company name]'s receipt of such notice of such noncompliance.

### Changes to Air Emission Controls

If [company name] anticipates changing the installed air emission control equipment, including any changes in the use or operation of such equipment, from that described in [facility name] Subpart AA Exemption Certification or permit application, the facility owner or operator must inform [EPA or the state], in writing, about the changes within seven (7) calendar days after the change is put into effect for Class 1 modifications, and within [##] days after implementing any such changes which were approved by [EPA or the state] for Class 2 and Class 3 modifications.<sup>29</sup>

In the event that any of the process vents specified in Table X are no longer equipped with and/or operating air emission controls because the alternative requirement or standard specified in Table X no longer requires, on an on-going basis, operation of such equipment to achieve or maintain compliance with the CAA (because of emission averaging or threshold determination, etc.), the Subpart AA exemption shall be suspended and such process vents shall be immediately subject to and comply with all applicable requirements of 40 CFR part 264, subpart AA. In this event, the Permittee must report this change to [EPA or the state] and may also be required to submit to [EPA or the state] a Class 2 permit modification request providing for the revision of this permit to apply 40 CFR part 264, subpart AA requirements to those process vents.

### Addition of New Units

Prior to installing a unit subject to Subpart AA or modifying an existing unit such that the unit(s) will become subject to 40 CFR part 264 subpart AA, the Permittee must apply for and be granted approval by [EPA or state] for a permit modification under 40 CFR 270.42. The Permittee must provide specific Part B application information required under 40 CFR 270.14-17 and 270.27, as applicable with the modification request.

## SECTION B: AIR EMISSION STANDARDS FOR EQUIPMENT LEAKS (40 CFR PART 264 SUBPART BB)

### Statement of Basis/Fact Sheet

The Permittee's Part B Permit Application states that [company name] is operating equipment subject to 40 CFR part 264, subpart BB. Such equipment includes [pumps, valves, pressure relief valves, flanges, and open-ended connectors] that contain or contact hazardous waste that have an organic concentration of at least ten (10) percent by weight for 300 or more hours per calendar year.

The air emission standards for equipment leaks, 40 CFR part 264, subpart BB (Subpart BB), at 40 CFR 264.1064(m) provide:

---

<sup>29</sup> The Permittee can put into effect Class 1 modifications without prior approval from EPA or the state RCRA program but must notify EPA or the RCRA program within seven calendar days after the change is put into effect. See 40 CFR 270.42(a) for detailed information regarding Class 1 modifications. Class 2 and Class 3 modifications must first be approved by EPA or the state RCRA program before they can be put into effect, see 40 CFR 270.42(b) and (c).

*The owner or operator of a facility with equipment that is subject to this subpart and to regulations at 40 CFR part 60, part 61, or part 63 may elect to determine compliance with this subpart either by documentation pursuant to § 264.1064 of this subpart, or by documentation of compliance with the regulations at 40 CFR part 60, part 61, or part 63 pursuant to the relevant provisions of the regulations at 40 [CFR] part 60, part 61, or part 63. The documentation of compliance under the regulations at 40 CFR part 60, part 61, or part 63 shall be kept with or made readily available with the facility operating record.*

The Permittee’s Part B Application provides that, in accordance with 40 CFR 264.1064(m), [company name] has elected to determine compliance with Subpart BB by documenting compliance with [cite applicable regulation, e.g., 40 CFR 63.691 (Subpart DD - National Emission Standards for Hazardous Pollutants from Off-Site Waste and Recovery Operations)].

For purposes of this permit, [EPA or the state] considers the written statement from a responsible company official in the Part B Application as [company name]’s election to determine compliance with Subpart BB by documenting compliance with [cite applicable regulation, e.g., 40 CFR part 63, subpart DD] (Subpart BB Determination of Compliance).

Permit Conditions

Equipment Subject to Subpart BB

All equipment listed in Table XX below must be operated in compliance with the air emission standards for equipment leaks at 40 CFR part 264 subpart BB. [Company] has elected, per 40 CFR 264.1064(m), to determine compliance with Subpart BB by documentation of compliance with [40 CFR part 60, 61, or 63]. Demonstrating compliance via documentation of compliance with CAA regulations does not exempt [company name] from the applicability of the Subpart BB standards.

[Table XX – Equipment Leaks for all valves, pumps, compressors, pressure relief devices, sampling connection systems, and open-ended valves or lines that contain or contact hazardous waste streams with organic concentrations of 10% by weight or greater. Equipment in vacuum service is not subject to control if identified in the facility operating record.]

Table XX – Equipment Leaks (filled with example information)

Equipment ID	Equipment Type	Waste Management Unit No	Waste Management Unit Name	% Weight Total Organics in Haz. Waste Stream	Waste State	Method of Compliance/ Regulation
V12	Valve	011	Unit A	100%	Light Liquid	40 CFR – Subpart H, Method 21 of 40 CFR part 60, appendix A-7, 40 CFR 63.694 or Optical Gas Imaging

						Instrument, 40 CFR 63.11(c) and 40 CFR 60.18(g)
P34	Pump	022	Unit B	100%	Heavy Liquid	40 CFR – Subpart H, Method 21 of 40 CFR part 60, appendix A-7, 40 CFR 63.694 or Optical Gas Imaging Instrument, 40 CFR 63.11(c) and 40 CFR 60.18(g)

Documentation of Compliance with CAA Requirements

As set forth at 40 CFR 264.1064(m), the documentation of compliance with the regulations at [cite applicable regulation, e.g., 40 CFR part 63, subpart DD] must be kept with or made readily available with the facility operating record for a period of not less than three (3) years, including all records necessary for demonstrating compliance.

[Company name] must submit a Class 1 or Class 2 permit modification notification/request, per 40 CFR 270.42(d), for changes to the election, per 40 CFR 264.1064(m), to determine compliance with Subpart BB by documentation of compliance with [40 CFR part 60, 61, or 63].

Addition of New Equipment

Prior to introducing additional volatile organic waste streams into existing piping and/or equipment that subjects existing equipment to Subpart BB, or installing additional equipment subject to Subpart BB regulation, the Permittee must apply for and be granted approval by [EPA or the state] for a permit modification under 40 CFR part 270.42, and provide specific Part B application information required under 40 CFR 270.14-17 and 270.27, as applicable, with the modification request.



## SECTION C: AIR EMISSION STANDARDS FOR TANKS, SURFACE IMPOUNDMENTS AND CONTAINERS (40 CFR PART 264 SUBPART CC)

### Statement of Basis/Fact Sheet

The Permittee's Part B Permit Application states that there are [##### (##) tanks which store hazardous waste with a volatile organic concentration of at least 500 parts per million by weight (ppmw) at the point of generation with total capacity of ##### gallons. Out of these ##### tanks, ##### (##) tanks, with capacity of ##### gallons, have capability for stabilizing waste in the tanks. The Part B Permit Application states that all of these ##### tanks are determined as qualifying for Level 1 controls (i.e., a fixed roof). All these tanks, have a conservation vent. ##### (#) of these tanks vent their emissions into the Regenerative Fume Oxidizer.]

There are also [##### (#) container storage areas that manage hazardous waste with a volatile organic concentration of at least 500 parts per million by weight (ppmw) at the point of generation with a capacity of ##### gallons. The Part B Permit Application states that all these containers are determined as qualifying for Level 1 or Level 2 controls.]

The air emission standards for tanks and containers, 40 CFR part 264, subpart CC (Subpart CC) at 40 CFR 264.1080(b)(7) provide an exemption for:

*(7) A hazardous waste management unit that the owner or operator certifies is equipped with and operating air emission controls in accordance with the requirements of an applicable Clean Air Act regulation codified under 40 CFR part 60, part 61, or part 63. For the purpose of complying with this paragraph, a tank for which the air emission control includes an enclosure, as opposed to a cover, must be in compliance with the enclosure and control device requirements of § 264.1084(i), except as provided in § 264.1082(c)(5).*

The Permittee's Part B Permit Application contains a written certified statement from a responsible company official that each hazardous waste [tank and container] permitted under the [state or federal] RCRA permit is equipped with and operating air emission controls operated according to [40 CFR 63.685, 687 and 688 (Subpart DD - National Emission Standards for Hazardous Pollutants from Off-Site Waste and Recovery Operations)]. For purposes of this permit, [EPA or the state] considers this a certification pursuant to 40 CFR 264.1080(b)(7), with respect to those hazardous waste units (Subpart CC Certification). Therefore, according to 40 CFR 264.1080(b)(7), the air emission control requirements of Subpart CC do not apply to the hazardous waste management tanks and containers listed below at the facility. Rather, the [tanks and containers] described in the Permittee's Part B Permit Application are subject to the CAA and must be equipped with and operate air emission controls in accordance with the requirements of [40 CFR part 63, subpart DD] at all times hazardous waste is managed in the unit(s).

### Permit Conditions

#### Units Exempted from Subpart CC



The hazardous waste management units identified in Table XXX below are exempted from the requirements of 40 CFR part 264, subpart CC, as indicated.

Table XXX: Hazardous Waste Management Units which are Exempted from Subpart CC<sup>30</sup> (filled with example information)

Hazardous Waste Management Unit	Exemption Claimed	Alternate Requirements or Standards
Blend Tanks T-4101, T-4102, T-4103, and T-4104	40 CFR 264.1080(b)(7)	40 CFR Part 60 – Subpart Ka (specifically, 40 CFR 112(a) or 40 CFR Part 60 – Subpart Kb (specifically, 40 CFR 112(b) 40 CFR Part 61 – Subpart FF (specifically, 40 CFR 61.343(a)(1))
Burn Tanks T-4105 and T-4106	40 CFR 264.1080(b)(7)	40 CFR Part 60 – Subpart Kb 40 CFR Part 61 – Subpart FF
Tank Trucks	40 CFR 264.1080(b)(7)	40 CFR Part 63 – Subpart PP (specifically, 40 CFR 63.922, 923 or 924) 40 CFR Part 63 – Subpart DD (specifically, 40 CFR 63.688)
Railcars	40 CFR 264.1080(b)(7)	40 CFR Part 63 – Subpart PP 40 CFR Part 63 – Subpart DD (specifically, 40 CFR 63.688)
Containers (Drums, Totes, etc.)	40 CFR 264.1080(b)(7)	40 CFR Part 63 – Subpart PP 40 CFR Part 63 – Subpart DD (specifically, 40 CFR 63.688)

Waste Stabilization

[The Permittee shall not conduct a waste stabilization process, as defined at 40 CFR 265.1081, in containers and tanks.]

Documentation of Compliance with CAA Requirements

As set forth at 40 CFR 264.1089(a) and (j), [company name] must maintain in the operating record both: 1) a certification that each waste management unit is equipped with and operating air emission controls in accordance with the requirements of the applicable Clean Air Act regulation codified under 40 CFR parts 60, 61, or 63; and 2) identification of the specific requirements codified under 40 CFR parts 60, 61, or 63 with which each waste management unit is in compliance.

Within [xx months of the effective date of this permit and annually thereafter], [company name] shall update the Subpart CC Certification that all the tanks and containers subject to Subpart CC are equipped with and operating air emission controls in accordance with [cite applicable regulation, e.g., 40 CFR part

<sup>30</sup> If an exemption is not being claimed, permit writers should also identify hazardous waste management units that are subject to Subpart CC in the RCRA permit.

63, subpart DD]. The Subpart CC Certification must be retained at the facility and be provided to [EPA or the state], or their designees, upon request.

#### Notification of Non-compliance with CAA Requirements

[Company name] shall inform [EPA or the state], in writing, about any local, state, or federal findings or notice of alleged noncompliance with CAA requirements at the subject tanks and containers, at least ## days after [company name]'s receipt of such notice of noncompliance. Any written notice of noncompliance shall contain the EPA identification number, facility name and address, a description of the noncompliance event and the cause, the dates of the noncompliance, and the actions taken to correct the noncompliance and prevent reoccurrence of the noncompliance, 40 CFR 264.1089 and 265.1090.

#### Changes to Air Emission Controls

If [company name] anticipates changing the installed air emissions control equipment, including any changes to the use or operation of such equipment, from that described in [company name] Subpart CC Exemption Certification or permit application, the facility owner or operator must inform [EPA or the state], in writing, about the changes within seven (7) calendar days after the change is put into effect for Class 1 modifications, and within ## days after implementing any such changes which were approved by [EPA or the state] for Class 2 and Class 3 modifications.<sup>31</sup>

In the event that any of the [tanks and/or, containers] specified in Table XXX are no longer equipped with and/or operating air emission controls because the alternative requirement or standard specified in Table XXX no longer requires, on an on-going basis, operation of such equipment to achieve or maintain compliance with CAA (because of emission averaging or threshold determination, etc.), the Subpart CC exemption shall be suspended and such [tanks and/or containers] shall be immediately subject to and comply with all applicable requirements of 40 CFR part 264, subpart CC. In this event, the Permittee must report this change to [EPA or the state] and may also be required to submit to [EPA or the state] a Class 2 permit modification request providing for the revision of this permit to apply 40 CFR part 264, subpart CC requirements to those hazardous waste [tanks and/or containers].

#### Addition of New Units

Prior to installing a tank, container, or surface impoundment subject to 40 CFR part 264, subpart CC, or modifying an existing unit such that the unit(s) will become subject to 40 CFR part 264 subpart CC, the Permittee must apply for and be granted approval by [EPA or the state] for a permit modification under 40 CFR 270.42. The Permittee must provide specific Part B application information required under 40 CFR 270.14-17 and 270.27, as applicable with the modification request.

## SECTION D: REQUIREMENT OF PIPING AND INSTRUMENT DIAGRAM

---

<sup>31</sup> Generally, the Permittee can put into effect Class 1 modifications without prior approval from EPA or the state RCRA program but must notify EPA or the RCRA program within seven calendar days after the change is put into effect. See 40 CFR 270.42(a) for detailed information regarding Class 1 modifications. Class 2 and Class 3 modifications must first be approved by EPA or the state RCRA program before they can be put into effect, see 40 CFR 270.42(b) and (c).

The Permittee must keep and maintain in the Operating Record file (in a table or database) the facility's Piping and Instrument Diagram which contains reference to labels or tags showing the locations of the facility's Hazardous Waste Fugitive Emissions Points and designating each point with a number or letter.<sup>32</sup>

---

<sup>32</sup> For guidance, see *Leak Detection and Repair: A Best Practices Guide*, United States Environmental Protection Agency, Office of Compliance, Office of Enforcement and Compliance Assurance.

# Appendix A: Permit Writers' Checklists for RCRA/CAA Air Emission Controls Compliance Exemption/Election Provisions

**OBJECTIVE AND USE OF THE CHECKLISTS:** This document presents three checklists of documentation and information that the RCRA permit writer can review before exempting a process vent, tank, surface impoundment, or container under the 40 CFR part 264/265, subparts AA and CC exemption provisions; or before acknowledging compliance with the equipment leak requirements under CAA regulations pursuant to the compliance election in 40 CFR part 264/265, subpart BB. The documentation/information may be submitted as part of a new, revised, or modified RCRA permit application, consisting of both Parts A and B. All documentation and information that is used as a basis for the compliance exemption or election reflected in a RCRA permit must be maintained within the RCRA permit's administrative record. Although this document is intended to be used for permitted facilities, it also provides relevant information for interim status facilities.

These checklists set forth a suggested format for documenting the legitimacy of a facility owner or operator's request for a compliance exemption or election. If minimum documentation is not provided, the permit writer cannot acknowledge any compliance exemption/election in the RCRA permit and the units would continue to be subject to the requirements of a RCRA permit and RCRA air emissions control requirements.

---

**DISCLAIMER:** This checklist is based on existing statutory and regulatory requirements and current EPA policy as of the date this checklist was published. This checklist neither modifies any existing legal obligations nor binds EPA or any entity. Use of the words "should" or "ought" does not connote any legal obligation. EPA may deviate from any practice discussed in this document or revise this document at any time without prior public notice.

### Subpart AA Checklist – Process Vents<sup>33</sup>

The permit writer should verify the permittee’s file contains information or documentation referenced in the checklist.

Site Name: _____ EPA ID #: _____ Facility Contact: _____		Date of Review: _____ Application/Modification Request Submission Date: _____			
A. GENERAL					
<input type="checkbox"/> Confirm receipt of a request for AA compliance exemption with clear description of process vents subject to the request.	<input type="checkbox"/> Confirm receipt of number, ID and location of process vent(s) with list and/or diagram of the unit(s) subject to the request.	<input type="checkbox"/> Confirm that receipt of a written and signed certification by facility owner or operator that the unit(s) that would otherwise be subject to AA are equipped with and operating air emission controls in compliance with the applicable CAA requirements, e.g., no emission controls for the unit(s) will be shut down under or pursuant to emission averaging or an emission threshold determination.	<input type="checkbox"/> Confirm documentation of compliance under 40 CFR part 60, 61, or 63 is kept with or made readily available with the facility on-site operating record.		
<input type="checkbox"/> Administratively complete/technically adequate <input type="checkbox"/> Date determined: _____ <input type="checkbox"/> Comments:	<input type="checkbox"/> Administratively complete/technically adequate <input type="checkbox"/> Date determined: _____ <input type="checkbox"/> Comments:	<input type="checkbox"/> Administratively complete/technically adequate <input type="checkbox"/> Date determined: _____ <input type="checkbox"/> Comments:	<input type="checkbox"/> Administratively complete/technically adequate <input type="checkbox"/> Date determined: _____ <input type="checkbox"/> Comments:		
B. DESCRIPTION/REGULATION OF UNIT(S) SUBJECT TO REQUEST	C. DESCRIPTION OF AIR EMISSION POLLUTION CONTROLS				
<input type="checkbox"/> Specifies ID number and location of process vent(s) subject to the request for exemption.	<input type="checkbox"/> Specifies the current CAA requirement applicable to process vent(s) associated with operations that manage hazardous wastes with organic concentrations of at least 10 ppmw and where requirement is found (e.g., CAA permit number and section of permit, citation to regulation with specific CFR section/subsection).	<input type="checkbox"/> Contains date of CAA Permit's number, effective date and expiration date (if applicable).	<input type="checkbox"/> Describes the air emission pollution control equipment installed at each unit.	<input type="checkbox"/> Confirms that each process vent subject to the AA exemption request has its own air emission control through the physical installation of a control device. Confirms each process vent is equipped with and operating air emission controls in compliance with applicable CAA standards under Part 60, 61, 63.	<input type="checkbox"/> Confirms that the process vent(s) to be exempted from AA is operating in compliance with the identified CAA requirements. Confirms that emissions from each process vent are routed through a closed-vent system to an air emissions control device.

<sup>33</sup> Miscellaneous units can also be subject to Subpart AA requirements, 40 CFR 264.601.

## Subpart BB Checklist – Equipment Leaks<sup>34</sup>

The permit writer should verify the permittee’s file contains information or documentation referenced in the checklist.

Site Name: _____ EPA ID #: _____ Facility Contact: _____	Date of Review: _____ Application/Modification Request Submission Date: _____				
<b>A. GENERAL</b>					
<input type="checkbox"/> Confirm receipt of a request for BB compliance election with clear description of equipment subject to the request.	<input type="checkbox"/> Confirm receipt of number, ID and location of equipment with list and/or diagram of the equipment subject to the request.	<input type="checkbox"/> Confirm receipt of a written statement from owner or operator in the Part B Application specifying election to determine compliance with Subpart BB by documenting compliance with the applicable CAA regulatory requirements.	<input type="checkbox"/> Confirm documentation of compliance under 40 CFR part 60, 61, or 63 is kept with or made readily available with the facility on-site operating record.		
<input type="checkbox"/> Administratively complete/technically adequate <input type="checkbox"/> Date determined: _____ <input type="checkbox"/> Comments:	<input type="checkbox"/> Administratively complete/technically adequate <input type="checkbox"/> Date determined: _____ <input type="checkbox"/> Comments:	<input type="checkbox"/> Administratively complete/technically adequate <input type="checkbox"/> Date determined: _____ <input type="checkbox"/> Comments:	<input type="checkbox"/> Administratively complete/technically adequate <input type="checkbox"/> Date determined: _____ <input type="checkbox"/> Comments:		
<b>B. DESCRIPTION/REGULATION OF UNIT(S) SUBJECT TO REQUEST</b>		<b>C. DESCRIPTION OF AIR EMISSION POLLUTION CONTROLS</b>			
<input type="checkbox"/> Specifies ID number of equipment subject to the request for compliance election.	<input type="checkbox"/> Specifies type of equipment (valves, pumps, pressure relief devices, compressors, sampling connection systems, and open-ended valves or lines) that contains or contacts hazardous waste streams with organic concentrations of 10% by weight or greater for 300 or more hours per calendar year.	<input type="checkbox"/> Contains date of CAA Permit's number, effective date and expiration date (if applicable).	<input type="checkbox"/> Describes the air emissions control program (such as a leak detection and repair program) applied to equipment.	<input type="checkbox"/> Specifies method of compliance (e.g., Method 21 of 40 CFR part 60, Appendix A-7, CAA 40 CFR 63.694).	<input type="checkbox"/> Confirms that for the equipment identified the owner or operator elects to determine compliance with Subpart BB requirements under the identified CAA requirements.

<sup>34</sup> Miscellaneous units can also be subject to Subpart BB requirements, 40 CFR 264.601.

## Subpart CC Checklist – Tanks, Surface Impoundments, and Containers<sup>35</sup>

The permit writer should verify the permittee’s file contains information or documentation referenced in the checklist.

Site Name: _____ EPA ID #: _____ Facility Contact: _____	Date of Review: _____ Application/Modification Request Submission Date: _____
--	--

### A. GENERAL

<input type="checkbox"/> Confirm receipt of a request for CC compliance exemption with clear description of unit(s) subject to the request.	<input type="checkbox"/> Confirm receipt of number, ID and location of tank(s), surface impoundment(s), container(s) subject to the request with list and/or diagram.	<input type="checkbox"/> Confirm that receipt of a written and signed certification by facility owner or operator that the unit(s) that would otherwise be subject to CC are equipped with and operating air emission controls in compliance with the applicable CAA requirements, e.g., no emission controls for the unit(s) will be shut down under or pursuant to emission averaging or an emission threshold determination.	<input type="checkbox"/> Confirm documentation of compliance under 40 CFR part 60, 61, or 63 is kept with or made readily available with the facility on-site operating record.
<input type="checkbox"/> Administratively complete/technically adequate <input type="checkbox"/> Date determined: _____ <input type="checkbox"/> Comments:	<input type="checkbox"/> Administratively complete/technically adequate <input type="checkbox"/> Date determined: _____ <input type="checkbox"/> Comments:	<input type="checkbox"/> Administratively complete/technically adequate <input type="checkbox"/> Date determined: _____ <input type="checkbox"/> Comments:	<input type="checkbox"/> Administratively complete/technically adequate <input type="checkbox"/> Date determined: _____ <input type="checkbox"/> Comments:

### B. DESCRIPTION/REGULATION OF UNIT(S) SUBJECT TO REQUEST

### C. DESCRIPTION OF AIR EMISSION POLLUTION CONTROLS

<input type="checkbox"/> Specifies ID number and location of tank(s), surface impoundment(s), and/or container(s) subject to the request for exemption.	<input type="checkbox"/> Specifies the current CAA requirement applicable to unit(s) managing hazardous waste with a volatile organic concentration of at least 500 ppmw at the point of generation and where requirement is found (e.g., CAA permit number and section of permit, citation to regulation with specific CFR section/subsection).	<input type="checkbox"/> Contains date of CAA Permit's number, effective date and expiration date (if applicable).	<input type="checkbox"/> Describes the air emissions pollution control equipment installed at each unit.	<input type="checkbox"/> Confirms that each unit subject to the CC exemption request has its own air emissions control through the physical installation of air emission controls.	<input type="checkbox"/> Confirms that the unit(s) to be exempted from CC is operating in compliance with the identified CAA requirements.

<sup>35</sup> Miscellaneous units can also be subject to Subpart CC requirements, 40 CFR 264.601.



# Appendix B: Definitions

**Control device** – means an enclosed combustion device, vapor recovery system, or flare. A device whose primary function is the recovery or capture of solvents or other organics for use, reuse, or sale (e.g., a primary condenser on a solvent recovery unit) is not a control device (40 CFR 264.1031).

**Container** – means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled. (40 CFR 260.10)

**Equipment** – means each valve, pump, compressor, pressure relief device, sampling connection system, open-ended valve or line, or flange or other connector, and any control devices or systems required by 40 CFR part 264. (40 CFR 264.1031)

**Process vent** – means any open-ended pipe or stack that is vented to the atmosphere either directly, through a vacuum-producing system, or through a tank (e.g., distillate receiver, condenser, bottoms receiver, surge control tank, separator tank or hot well) associated with hazardous waste distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations. (40 CFR 264.1031)

**Surface impoundment** – means a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds and lagoons. (40 CFR 260.10)

**Tank** – means a stationary device, designed to contain an accumulation of hazardous waste which is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) which provides structural support. (40 CFR 260.10)