COVER SHEET FOR FINAL PROPOSAL

Notice Number	2022-6	Rule Number	A 501.01, Env-A 502.01, Env-A 503.01, Env-A 506.01
1. Agency Name & A	Address:	2. RSA Authority:	RSA 125-C:4, I(a)
<i>C</i> ,		3. Federal Authority:	42 U.S.C. §§7411(c)&(d), 7412(l)
Department of Env 29 Hazen Drive P.O. Box 95 Concord, NH 0330	vironmental Services	4. Type of Action: Adoption Repeal Readoption Readoption	w/amendment
5. Short Title: Stand Air Pollutants	lards Applicable to Cert	ain New or Modified Fa	cilities and Sources of Hazardous
6. Contact person for	copies and questions:		
Name: Karla	McManus	Title: ARD	Planning and Rules Manager
29 Haz P.O. Bo	ment of Environmental Se en Drive ox 95 d, NH 03302-0095	rvices Phone #: (603)) 271-6854
	Agency requests review by view pursuant to RSA 541		n the Office of Legislative Services and
8. The rulemaking no	tice appeared in the <u>Rulen</u>	naking <u>Register</u> on Janua	ary 27, 2022.
SEE THE	INSTRUCTIONSPLEA	ASE SUBMIT 2 COPIE	S OF THIS COVER SHEET
	AND 2 COP	PIES OF THE FOLLOW	VING:
	(and nu	ımbered correspondingl	(y)
9. The "Final Proposa appendix.	l-Fixed Text", including t	he cross-reference table r	equired by RSA 541-A:3-a, II as an
10. Yes \(\sum \) N/A \(\sum \)		erence for which an Incor	e this rule incorporates a document or poration by Reference Statement is
11. Yes N/A			how the proposed rule was changed tial Proposal pursuant to RSA 541-A:12,
12. Yes ☐ N/A ⊠		_	e change to the text of the Initial

notice number	2022-0	Rufe Number	502.01, Env-A 503.01, Env- A 506.01	
1. Agency Name & A	Address:	2. RSA Authority:3. Federal Authority:	RSA 125-C:4, I(a) 42 U.S.C. §§7411(c)&(d),	
Department of Environmental Services		3. Federal Authority.	7412(l)	
29 Hazen Drive		4. Type of Action:		
P.O. Box 95	Adoption			
Concord, NH 033)3302-0095	Repeal		
		Readoption	<u></u>	
		Readoption w/	amendment X	
5. Short Title: Stan	ndards Applicable to Certa	in New or Modified Facili	ties and Sources of	

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6. (a) Summary of what the rule says and of any proposed amendments:

2022 6

Matica Number

The Department is proposing to amend Env-A 500, Standards Applicable to Certain New or Modified Facilities and Sources of Hazardous Air Pollutants. The existing rule incorporates by reference certain federal New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP), State Plans for Designated Facilities and Pollutants, and NESHAP for specific source categories (also known as MACT, for Maximum Achievable Control Technology). These four groups of federal standards, codified at 40 CFR 60, 61, 62 and 63, respectively, are currently in effect and applicable to numerous state sources.

Under the State's delegation agreement with the United States Environmental Protection Agency (U.S. EPA), New Hampshire's rule is updated to incorporate new and revised federal NSPS, NESHAP, and MACT standards that have been promulgated since the last update. This rulemaking will incorporate updates from July 1, 2020 until June 30, 2021.

These federal standards are already in effect for existing sources, so adopting them by reference into Env-A 500 will not impose new requirements on any sources in New Hampshire. It will, however, allow DES to include these requirements in state permits and be the lead on enforcement, so that sources can work with DES if they have any compliance issues, rather than having to work with EPA.

In addition, DES is taking delegation of a new federal standard, codified at 40 CFR 62, Approval and Promulgation of State Plans for Designated Facilities and Pollutants, by amending Part Env-A 506 to take delegation of the federal plan for existing municipal solid waste landfills. We will also be amending our delegation agreement with U.S. EPA.

6. (b) Brief description of the groups affected:

Entities subject to this rule include Municipal Solid Waste Landfills that commenced construction on or before July 17, 2014 and have not been modified or reconstructed since July 17, 2014, and are therefore regulated by State Plans for Designated Facilities under Subpart OOO.

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

Rule	State Statute(s) Implemented	Federal Statute/Regulation Implemented
Env-A 501.01(a)	RSA 125-C:4, I(a)	42 U.S.C. §7411(c); 40 CFR 60
Env-A 501.01(b)	RSA 125-C:4, I(a)	42 U.S.C. §7412(1); 40 CFR 61; 40 CFR 63
Env-A 502	RSA 125-C:4, I(a)	42 U.S.C. §7411(c); 40 CFR 60; 42 U.S.C.
		§7412(1); 40 CFR 61; 40 CFR 63
Env-A 502.01	RSA 125-C:4, I(a)	42 U.S.C §7411(c); 40 CFR 60; 42 U.S.C.
		§7412(I); 40 CFR 61; 40 CFR 63
Env-A 502.01(a)	RSA 125-C:4, I(a)	42 U.S.C §7411(c); 40 CFR 60; 42 U.S.C.
		§7412(1); 40 CFR 61; 40 CFR 63
Env-A 503	RSA 125-C:4, I(a)	42 U.S.C. §7411(c); 40 CFR 60
Env-A 503.01	RSA 125-C:1; RSA 125-C:6, II & XI	42 U.S.C. §7411(c); 40 CFR 60
Env-A 504	RSA 125-C:4, I(a)	42 U.S.C. §7412(1); 40 CFR 61
Env-A 505	RSA 125-C:4, I(a); RSA 125-C:6, II & X	42 U.S.C. §7412(1); 40 CFR 63

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Title: Name: Karla McManus **DES-ARD Planning and Rules** Manager

Department of Environmental Services Phone #: (603) 271-6854 Address: 29 Hazen Drive

Fax#: P.O. Box 95 (603) 271-1381 Concord, NH 03302-0095

E-mail: Karla.S.McManus@des.nh.gov The rules also can be viewed in PDF in the Public Comment Opportunities TTY/TDD Access: Relay NH 1section of the NHDES website at <a href="https://www.des.nh.gov/public-p

comment-opportunities and selecting "Rulemaking"

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: 4:00 p.m. on Friday, March 4, 2022

Other format (specify): X Fax E-mail

9. Public hearing scheduled for:

Date and Time: **Tuesday, February 22, 2022 at 10:30 AM**

Place: Room 208C, DES Offices, 29 Hazen Drive, Concord, NH

> NOTE: NHDES security procedures require all visitors to sign in and present photo identification (such as a driver's license). If you plan to attend the public hearing in person, please bring photo identification with you.

800-735-2964 or dial 711 (in NH)

You also may attend the hearing via WebEx, which can be accessed through the

following link:

https://nhgov.webex.com/nhgov/j.php?MTID=m876522786883c5b33793bbbdc9742ef3

Meeting number (access code): 2312 543 9688

Meeting password: EEyJ93PSvv6

You also may join the meeting by phone: Call in Number: +1-415-655-0001 US Toll

Access Code: 2312 543 9688

Contact Meg King at Margaret.M.King@des.nh.gov or (603) 271-6893 if you have

any questions or technical issues connecting to the hearing.

10.	Fiscal Impact Statement	(Prepared by	Legislative Bu	adget Assistant):

FIS # 21:134 , dated 12/02/2021

1. Comparison of the costs of the proposed rule(s) to the existing rule(s):

There is no difference in cost between the proposed rules and the existing rules.

2. Cite the Federal mandate. Identify the impact on state funds:

No federal mandate, no impact on state funds.

- 3. Cost and benefits of the proposed rule(s):
 - A. To State general or State special funds:

None.

B. To State citizens and political subdivisions:

None.

C. To independently owned businesses:

None.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

The rules incorporate by reference currently existing and applicable federal standards. Therefore, any political subdivision with a source subject to NSPS or NESHAP is already subject to those standards and will continue to be. The Department's amendments to these standards will not cause any additional sources to be subject to the standards. Accordingly, the proposed rules do not violate Part I, Article 28-a of the New Hampshire Constitution, because the rules do not assign any new, modified, or expanded programs or responsibilities to any political subdivision of the state in such a way as to increase local expenditures.



The State of New Hampshire

DEPARTMENT OF ENVIRONMENTAL SERVICES



Robert R. Scott, Commissioner

FP 2022-6, Env-A 500 Standards Applicable to Certain New or Modified Facilities and Sources of Hazardous Air Pollutants Summary of Comments on Initial Proposal with DES Responses April 26, 2022

Introduction

The Department is proposing to amend Env-A 500, Standards Applicable to Certain New or Modified Facilities and Sources of Hazardous Air Pollutants. The existing rule incorporates by reference certain federal New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP), State Plans for Designated Facilities and Pollutants, and NESHAP for specific source categories (also known as MACT, for Maximum Achievable Control Technology). These four groups of federal standards, codified at 40 CFR 60, 61, 62 and 63, respectively, are currently in effect and applicable to numerous state sources.

Under the State's delegation agreement with the United States Environmental Protection Agency (U.S. EPA), New Hampshire's rule is updated to incorporate new and revised federal NSPS, NESHAP, and MACT standards that have been promulgated since the last update. This rulemaking will incorporate updates from July 1, 2020 until June 30, 2021. These federal standards are already in effect for existing sources, so adopting them by reference into Env-A 500 will not impose new requirements on any sources in New Hampshire. It will, however, allow DES to include these requirements in state permits and be the lead on enforcement, so that sources can work with DES if they have any compliance issues, rather than having to work with EPA.

In addition, DES is taking delegation of a federal standard, codified at 40 CFR 62, *Approval and Promulgation of State Plans for Designated Facilities and Pollutants*, by amending Part Env-A 506 to take delegation of the federal plan for existing municipal solid waste landfills. We will also be amending our delegation agreement with U.S. EPA.

The Department conducted a hybrid public hearing on these rules via WebEx and in person on February 22, 2022. No one from the public attended the hearing. (This is not unusual; the Department's experience with in-person hearings for prior rulemaking proceedings for subtitle Env-A was that no one attended those hearings either.) Had anyone attended, the Department would have enabled the microphone of each individual one at a time in order to ensure that each person had an opportunity to comment. The Department did not hear from anyone during the hearing or subsequent to the hearing about any technical difficulties with access to the WebEx forum. Written comments were received from the Office of Legislative Services, Administrative Rules (OLS); those comments and the Department's responses thereto are summarized below.

Env-A 501.01(d) and Env-A 506.01(b)

<u>Comment</u>: OLS provided a comment in regard to the legislative intent, stating, "Unless this is (and has been) a federal requirement that was already applicable, it appears to conflict with Part 1, Art.23 of the NH Constitution by setting a retrospective requirement."

<u>Response</u>: As stated in the introduction above, DES is taking delegation of a federal standard, codified at 40 CFR 62. These federal standards are already in effect for existing sources, so adopting them by reference into Env-A 500 will not impose new requirements on any sources in New Hampshire. It will, however, allow DES to include these requirements in state permits and be the lead on enforcement, so that sources can work with DES if they have any compliance issues, rather than having to work with EPA.

In order for the Department to receive approval to implement the state plan and to amend its delegation agreement with EPA, it must demonstrate that it has legal authority to administer and enforce the federal program relative to municipal solid waste landfills that commenced construction on or before July 17, 2014 and have not been modified or reconstructed since July 17, 2014. Adoption of Env-A 506.01(b) will allow the Department to obtain the required approval and to implement and enforce the state plan in New Hampshire in lieu of EPA.

Env-A 506.01 intro lang

<u>Comment</u>: This appears to be a stand-alone sentence instead of introductory language.

Response: The Department agrees and has edited the language as suggested.

al Fixed Text 04-26-22 1

Readopt with amendment Env-A 501.01, eff. 9-22-17 (Document #12387), to read as follows:

Env-A 501.01 Purpose. The purpose of this chapter is to establish state standards to regulate:

- (a) Certain new or modified facilities in accordance with authority delegated by the EPA under §111(c) of the Clean Air Act;
- (b) Certain sources of hazardous air pollutants in accordance with authority delegated by the EPA under §112 of the Clean Air Act:
- (c) Certain sewage sludge incineration units that commenced construction on or before October 14, 2010 in accordance with authority delegated by the EPA under §129(b)(2) of the Clean Air Act; and
- (d) Certain municipal solid waste landfills that commenced construction on or before July 17, 2014 and have not been modified or reconstructed since July 17, 2014 in accordance with authority delegated by the EPA under §111(d) of the Clean Air Act.

Readopt with amendment Env-A 502.01, eff. 5-25-21 (Document #13209), to read as follows:

Env-A 502.01 References.

- (a) For the purpose of this chapter, unless otherwise specified all references to 40 CFR 60, 40 CFR 61, 40 CFR 62, or 40 CFR 63 shall be to the July 1, 2021 edition.
- (b) If any requirement specified in Env-A 503.01, Env-A 504.01, Env-A 505.01, or Env-A 506.01 is inconsistent with any requirement specified in other provisions of Env-A 100 et seq., NH Rules Governing the Control of Air Pollution, the more stringent requirement shall control.

Readopt with amendment Env-A 503.01, eff. 5-25-21 (doc #13209), to read as follows:

Env-A 503.01 New Source Performance Standards. The owner or operator of a new or modified facility shall comply with the following provisions of 40 CFR 60, Standards of Performance for New Stationary Sources, as applicable:

- (a) Subpart A, General Provisions, except for §§60.4, 60.9, 60.10, and 60.16;
- (b) Subpart D, Standards of Performance for Fossil-Fuel-Fired Steam Generators for which Construction is Commenced after August 17, 1971;
- (c) Subpart Da, Standards of Performance for Electric Utility Steam Generating Units for which Construction is Commenced after September 18, 1978;
- (d) Subpart Db, Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units;
- (e) Subpart Dc, Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units;
 - (f) Subpart E, Standards of Performance for Incinerators;
- (g) 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;

- Subpart Eb, Standards of Performance for Large Municipal Waste Combustors for which Construction is Commenced after September 20, 1994 or for which Modification or Reconstruction is Commenced after June 19, 1996;
- (i) Subpart Ec, Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for which Construction is Commenced after June 20, 1996;
 - (i) Subpart I, Standards of Performance for Hot Mix Asphalt Facilities;
 - (k) Subpart J, Standards of Performance for Petroleum Refineries;
- Subpart Ja, Standards of Performance for Petroleum Refineries for which Construction, Reconstruction, or Modification Commenced after May 14, 2007;
- (m) Subpart K, Standards of Performance for Storage Vessels for Petroleum Liquids for which Construction, Reconstruction, or Modification Commenced after June 11, 1973, and prior to May 19, 1978;
- (n) Subpart Ka, Standards of Performance for Storage Vessels for Petroleum Liquids for which Construction, Reconstruction, or Modification Commenced after May 18, 1978, and prior to July 23, 1984;
- (o) Subpart Kb, Standards of Performance for Volatile Organic Liquid Storage Vessels, Including Petroleum Liquid Storage Vessels, for which Construction, Reconstruction, or Modification Commenced after July 23, 1984;
 - (p) Subpart L, Standards of Performance for Secondary Lead Smelters;
 - (q) Subpart M, Standards of Performance for Secondary Brass and Bronze Production Plants;
- (r) Subpart N, Standards of Performance for Primary Emissions from Basic Oxygen Process Furnaces for which Construction is Commenced after June 11, 1973:
 - (s) Subpart O, Standards of Performance for Sewage Treatment Plants;
 - (t) Subpart Y, Standards of Performance for Coal Preparation and Processing Plants;
- (u) Subpart AA, Standards of Performance for Steel Plants: Electric Arc Furnaces Constructed after October 21, 1974 and on or before August 17, 1983;
- (v) Subpart AAa, New Source Performance Standards for Electric Arc Furnaces and Argon-Oxygen Steel Plants;
 - (w) Subpart BB, Standards of Performance for Kraft Pulp Mills;
 - (x) Subpart DD, Standards of Performance for Grain Elevators;
 - (y) Subpart EE, Standards of Performance for Surface Coating of Metal Furniture;
 - (z) Subpart GG, Standards of Performance for Stationary Gas Turbines;
 - (aa) Subpart KK, Standards of Performance for Lead-Acid Battery Manufacturing Plants;
 - (ab) Subpart LL, Standards of Performance for Metallic Mineral Processing Plants;
- (ac) Subpart QQ, Standards of Performance for the Graphic Arts Industry: Publication Rotogravure Printing;

- (ad) Subpart RR, Standards of Performance for Pressure Sensitive Tape and Label Surface Coating Operations;
 - (ae) Subpart TT, Standards of Performance for Metal Coil Surface Coating;
 - (af) Subpart UU, Standards of Performance for Asphalt Processing and Asphalt Roofing Manufacture;
- (ag) Subpart VV, Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry;
- (ah) Subpart VVa, Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction, or Modification Commenced after November 7, 2006;
 - (ai) Subpart WW, Standards of Performance for the Beverage Can Surface Coating Industry;
 - (aj) Subpart XX, Standards of Performance for Bulk Gasoline Terminals;
- (ak) The following sections of Subpart AAA, Standards of Performance for New Residential Wood Heaters:
 - (1) §§60.530-531;
 - (2) §60.532(a)-(c);
 - (3) §60.536(a)-(f); and
 - (4) §60.538(a)-(d) and (g)-(i);
 - (al) Subpart BBB, Standards of Performance for the Rubber Tire Manufacturing Industry;
 - (am) Subpart FFF, Standards of Performance for Flexible Vinyl and Urethane Coating and Printing;
 - (an) Subpart GGG, Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries;
 - (ao) Subpart HHH, Standards of Performance for Synthetic Fiber Production Facilities;
 - (ap) Subpart JJJ, Standards of Performance for Petroleum Dry Cleaners;
- (aq) Subpart NNN, Standards of Performance for Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations;
 - (ar) Subpart OOO, Standards of Performance for Nonmetallic Mineral Processing Plants;
- (as) Subpart QQQ, Standards of Performance for VOC Emissions from Petroleum Waste Water Systems;
 - (at) Subpart SSS, Standards of Performance for Magnetic Tape Coating Facilities;
- (au) Subpart TTT, Standards of Performance for Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines;
 - (av) Subpart UUU, Standards of Performance for Calciners and Dryers in Mineral Industries;
- (aw) Subpart VVV, Standards of Performance for Polymeric Coating of Supporting Substrates Facilities:

- (ax) Subpart WWW, Standards of Performance for Municipal Solid Waste Landfills;
- (ay) Subpart XXX, Standards of Performance for Municipal Solid Waste Landfills That Commenced Construction, Reconstruction, or Modification After July 17, 2014, effective August 29, 2016;
 - (az) Subpart AAAA, Standards of Performance for Small Municipal Waste Combustion Units;
- (ba) Subpart CCCC, Standards of Performance for Commercial and Industrial Solid Waste Incineration Units;
 - (bb) Subpart EEEE, Standards of Performance for Other Solid Waste Incineration Units;
 - (bc) Subpart IIII, Stationary Compression Ignition Internal Combustion Engines;
 - (bd) Subpart JJJJ, Stationary Spark Ignition Internal Combustion Engines;
 - (be) Subpart KKKK, Stationary Combustion Turbines;
 - (bf) Subpart LLLL, Standards of Performance for New Sewage Sludge Incineration Units;
- (bg) Subpart OOOO, Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution for which Construction, Modification or Reconstruction Commenced after August 23, 2011, and on or before September 18, 2015;
- (bh) Subpart OOOOa, Standards of Performance for Crude Oil and Natural Gas Facilities for Which Construction, Modification or Reconstruction Commenced after September 18, 2015;
- (bi) The following sections of Subpart QQQQ, Standards of Performance for New Residential Hydronic Heaters and Forced-Air Furnaces:
 - (1) §§60.5472-5473;
 - (2) §60.5474(a) and (b);
 - (3) §60.5478(a)-(e); and
 - (4) §60.5480(a)-(d) and (g)-(i); and
- (bj) Subpart TTTT, Standards of Performance for Greenhouse Gas Emissions for Electric Utility Generating Units.

Readopt with amendment Env-A 506.01, eff. 9-22-17 (Document #12387), to read as follows:

- Env-A 506.01 <u>State Plans for Designated Facilities and Pollutants</u>. The owner or operator of a designated stationary source shall comply with the following subparts of 40 CFR 62, Approval and Promulgation of State Plans for Designated Facilities and Pollutants, as applicable:
 - (a) Subpart LLL, Federal Plan for Existing Source Sewage Sludge Incineration Units; and
- (b) Subpart OOO, Federal Plan Requirements for Municipal Solid Waste Landfills That Commenced Construction On or Before July 17, 2014 and Have Not Been Modified or Reconstructed Since July 17, 2014.

Please see the note on the top of page 1 regarding the incorporation of new federal requirements since the rule was last amended in 2017.

APPENDIX

Rule	Specific Section of State or Federal Statute or Regulation which the
	Rule Implements
Env-A 501.01(a)	RSA 125-C:4, I(a); 42 U.S.C. §7411(c); 40 CFR 60
Env-A 501.01(b)	RSA 125-C:4, I(a); 42 U.S.C. §7412(l); 40 CFR 61; 40 CFR 63;
	42 U.S.C. §7412(1); 40 CFR 61; 40 CFR 63
Env-A 501.01(c)	RSA 125-C:4, I(a); 42 U.S.C. §7411(d); 40 CFR 62
Env-A 502	RSA 125-C:4, I(a); 42 U.S.C. §7411(c); 40 CFR 60; 42 U.S.C. §7412(l);
	40 CFR 61; 40 CFR 63
Env-A 502.01	RSA 125-C:4, I(a); 42 U.S.C. §7411(c), (d); 42 U.S.C. §7412(<i>l</i>); 40 CFR
	60; 40 CFR 61; 40 CFR 62; 40 CFR 63
Env-A 503	RSA 125-C:4, I(a); 42 U.S.C. §7411(c); 40 CFR 60
Env-A 503.01	RSA 125-C:1; RSA 125-C:6, II & XI; 42 U.S.C. §7411(c); 40 CFR 60
Env-A 504	RSA 125-C:4, I(a); 42 U.S.C. §7412(1); 40 CFR 61
Env-A 505.01 intro, (cg),	RSA 125-C:4, I(a); 42 U.S.C §7412(I); 40 CFR 63
(cv) - (cx)	
Env-A 505.01 intro., (h)	RSA 125-C:4, I(a); 42 U.S.C. §7412(I); 40 CFR 63
Env-A 505.01(an)	RSA 125-C:4, I(a); 42 U.S.C. §7412(I); 40 CFR 63
Env-A 505.01 intro, (cg), (cw)	RSA 125-C:1; RSA 125-C:6, II & X; 42 U.S.C. §7412(1); 40 CFR 63
Env-A 506.01	RSA 125-C: 4, I(a); 42 U.S.C. §7411(d); 40 CFR 62