

The EPA Administrator, Michael S. Regan, signed the following notice on 11/04/2024, and EPA is submitting it for publication in the *Federal Register* (FR). While we have taken steps to ensure the accuracy of this Internet version of the rule, it is not the official version of the rule for purposes of compliance. Please refer to the official version in a forthcoming FR publication, which will appear on the Government Printing Office's govinfo website (<https://www.govinfo.gov/app/collection/fr>) and on Regulations.gov (<https://www.regulations.gov>) in Docket No. EPA-HQ-OAR-2003-0156. Once the official version of this document is published in the FR, this version will be removed from the Internet and replaced with a link to the official version.

6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 60**

**[EPA-HQ-OAR-2003-0156; FRL-7547.4-02-OAR]**

**RIN 2060-AW27**

**Other Solid Waste Incinerators: Air Curtain Incinerators Title V Permitting Provisions;**

### **Technical Correction**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; technical correction.

**SUMMARY:** The Environmental Protection Agency (EPA) is correcting a final rule that appeared in the *Federal Register* (FR) on April 17, 2024. The EPA finalized the Other Solid Waste Incinerators (OSWI); Title V Permitting Provisions rule which removed title V permitting requirements for air curtain incinerators that burn only wood waste, clean lumber, yard waste, or a mixture of these three types of waste. Following publication of this final rule, the EPA discovered inadvertent errors in the regulatory text and is correcting them in this action.

**DATES:** The final rule is effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** The EPA has established a docket for this rulemaking under Docket ID No. EPA-HQ-OAR-2003-0156. All documents in the docket are listed on the

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<https://www.regulations.gov/> website. Although listed, some information is not publicly available, *e.g.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through <https://www.regulations.gov/>.

**FOR FURTHER INFORMATION CONTACT:** Dr. Felica Davis, Sector Policies and Programs Division (E143-05), Office of Air Quality Planning and Standards, U.S.

Environmental Protection Agency, 109 T.W. Alexander Drive, P.O. Box 12055, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-4857; and email address: [davis.felica@epa.gov](mailto:davis.felica@epa.gov).

*Preamble acronyms and abbreviations.* Throughout this document the use of “we,” “us,” or “our” is intended to refer to the EPA. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

CAA	Clean Air Act
CFR	Code of Federal Regulations
EPA	Environmental Protection Agency
FR	<i>Federal Register</i>
NAICS	North American Industry Classification System
OSWI	other solid waste incineration
VSMWC	very small municipal waste combustion

*Organization of this document.* The information in this preamble is organized as follows:

## I. General Information

A. Does this action apply to me?

B. Where can I get a copy of this document and other related information?

C. Statutory Authority

D. Judicial Review and Administrative Reconsideration

## II. Summary of Final Action

This document is a prepublication version, signed by EPA Administrator, Michael S. Regan on 11/04/2024. We have taken steps to ensure the accuracy of this version, but it is not the official version.

- A. Summary of Technical Corrections in 40 CFR part 60, subpart EEEE
- B. Summary of Technical Corrections in 40 CFR part 60, subpart FFFF
- III. Summary of Cost, Environmental, and Economic Impacts
- IV. Rulemaking Procedures
- V. Statutory and Executive Order Reviews

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this action apply to me?*

Categories and entities potentially affected by this action are shown in table 1 of this preamble.

Table 1 – Industrial Source Categories Affected by This Final Action

Source Category	NAICS Code <sup>1</sup>	Examples Of Potentially Regulated Entities
Any State, local, or Tribal government using a VSMWC unit.	562213, 92411	Solid waste combustion units burning municipal solid waste.
Any correctional institution using an institutional waste incineration unit.	922, 7213	Correctional institutions.
Any nursing or residential care facility using an OSWI unit.	623	Any nursing care, residential intellectual and developmental disability, residential mental health and substance abuse, or assisted living facilities.
Any Federal government agency using an OSWI unit.	928, 7121	Department of Defense (labs, military bases, munition facilities) and National Parks.
Any educational institution using an OSWI unit.	6111, 6112, 6113	Primary and secondary schools, universities, colleges, and community colleges.
Any church or convent using an OSWI unit.	8131	Churches and convents.
Any civic or religious organization using an OSWI unit.	8134	Civic associations and fraternal associations.
Any industrial or commercial facility using a VSMWC unit.	114, 211, 212, 221, 486	Oil and gas exploration operations; mining; pipeline operators; utility providers; fishing operations.

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<sup>1</sup> North American Industry Classification System (NAICS).

Table 1 is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this final action. To determine whether your entity is affected by this action, you should carefully examine the applicability criteria found in 40 Code of Federal Regulations (CFR) 60.2885, 60.2981, and 60.2991. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this preamble, your delegated authority, or your EPA Regional representative listed in 40 CFR 60.4 (General Provisions).

*B. Where can I get a copy of this document and other related information?*

In addition to being available in the docket, an electronic copy of this final action will also be available on the internet. Following signature by the EPA Administrator, the EPA will post a copy of this final action at: <https://www.epa.gov/stationary-sources-air-pollution/other-solid-waste-incinerators-oswi-new-source-performance>. Following publication in the *Federal Register* (FR), the EPA will post the FR version and key technical documents at the same website.

*C. Statutory Authority*

Section 129 of the CAA, entitled “Solid Waste Combustion,” requires the EPA to establish performance standards and other requirements for each category of solid waste incineration unit. Such standards must include emissions limitations applicable to new units (CAA section 129(a)) and guidelines applicable to existing units (CAA section 129(b)). Statutory authority for the rulemaking procedures followed in this action is provided by Administrative Procedure Act (APA) section 553(b)(B), 5 U.S.C. 553(b)(B) (good cause exception to notice and comment rulemaking).

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#### *D. Judicial Review and Administrative Reconsideration*

Under Clean Air Act (CAA) section 307(b)(1), judicial review of this final action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

#### **II. Summary of Final Action**

The EPA finalized the Other Solid Waste Incinerators (OSWI); Title V Permitting Provisions rule which removed title V permitting requirements for air curtain incinerators that burn only wood waste, clean lumber, yard waste, or a mixture of these 3 types of waste on April 17, 2024. Following publication of this final rule, the EPA discovered inadvertent errors in the regulatory text and is correcting them in this action. These technical corrections correct the regulatory text to read as described in the preamble of the April 17, 2024, final rule. 89 FR 27392 (4/17/2024). As such, the EPA is not making corrections to the preamble of the April 17, 2024, final rule. The EPA finds that there is good cause for finalizing these technical corrections without public notice or hearing, as explained in greater detail in section IV of this preamble. Notice and comment procedures are unnecessary here because the public is already aware of this action and its contents. See 5 U.S.C. 553(b)(B).

In the *Federal Register* notice finalizing the removal of title V permit requirements for units that burn only wood waste, yard waste, clean lumber, or a mixture of these three types of waste, and which are not located at title V major sources or subject to title V for other reasons, the EPA made seven inadvertent errors in the amendatory text: three in 40 CFR part 60, subpart EEEE, and four in 40 CFR part 60, subpart FFFF. See 89 FR 27397. A memorandum showing

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these technical corrections to the regulatory text is available in the docket (Docket ID No. EPA-HQ-OAR-2003-0156).

*A. Summary of Technical Corrections in 40 CFR part 60, subpart EEEE*

First, the EPA is revising 40 CFR 60.2966, “Am I required to apply for and obtain a title V operating permit for my unit?”, to conform with what was described in the April 17, 2024, final rule preamble. As described in that preamble, the owner or operator of an OSWI incinerator is required to apply for and obtain a title V operating permit unless the incinerator is excluded under 40 CFR 60.2887 or unless the incinerator is an air curtain incinerator that burns only wood waste, yard waste, clean lumber, or a mixture of these 3 types of waste, as long as the air curtain incinerator is not located at a title V facility or otherwise required to obtain a title V operating permit.

Second, in 40 CFR 60.2967, “When must I submit a title V permit application for my new unit?”, subsections (a) and (b) were inadvertently revised and subsection (c) was unintentionally reserved. In this action, the EPA is restoring 40 CFR 60.2967 subsections (a) through (c) to the text displayed in the electronic CFR (eCFR) as of April 16, 2024, and adding subsection (d) reiterating that a title V operating permit is not needed for an air curtain incinerator that burns only wood waste, yard waste, clean lumber, or a mixture of these 3 types of waste as long as the air curtain incinerator is not located at a title V facility or otherwise required to obtain a title V operating permit.

Third, 40 CFR 60.2969, “What are the requirements for air curtain incinerators used in disaster recovery?”, was inadvertently removed and the section reserved. In this action, the EPA is restoring 40 CFR 60.2969 to the text displayed in the eCFR as of April 16, 2024. This section

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exempts temporary-use incinerators and air curtain incinerators used in disaster recovery from OSWI requirements if they meet the conditions set out in this provision.

*B. Summary of Technical Corrections in 40 CFR part 60, subpart FFFF*

First, a typo removed a portion of the title of 40 CFR part 60, subpart FFFF. In this action, the EPA is restoring the entire title of 40 CFR part 60, subpart FFFF, “Emission Guidelines and Compliance Times for Other Solid Waste Incineration Units that Commenced Construction On or Before December 9, 2004.”

Second, the EPA is revising 40 CFR 60.3059, “Am I required to apply for and obtain a title V operating permit for my unit?”, to conform with what was described in the April 17, 2024, final rule preamble. The requirements for owners and operators to obtain title V operating permits are discussed in more detail above in section II.A of this preamble.

Third, 40 CFR 60.3060, “When must I submit a title V application for my existing unit?”, was inadvertently removed and the section reserved. In this action, the EPA is restoring 40 CFR 60.3060 subsections (a) through (c) to the text displayed in the eCFR as of April 16, 2024, making a minor clarification in (a)(1) specifying the title V permit application deadline, and adding subsection (d) reiterating that a title V operating permit is not needed for an air curtain incinerator that burns only wood waste, yard waste, clean lumber, or a mixture of these 3 types of waste as long as the air curtain incinerator is not located at a title V facility or otherwise required to obtain a title V operating permit.

Fourth, in 40 CFR part 60, subpart FFFF, 40 CFR 60.3069, “Am I required to apply for and obtain a title V operating permit for my air curtain incinerator that burns only wood waste,

clean lumber, and yard waste?”, was inadvertently left in the regulatory text. In this action the EPA is removing and reserving 40 CFR 60.3069.

These corrections make the regulatory text consistent with the description in the April 17, 2024, final rule preamble. Thus, the EPA finds good cause to make these corrections in this final action (see Section IV, Rulemaking Procedures, below).

### **III. Summary of Cost, Environmental, and Economic Impacts**

This action will have no cost, environmental, or economic impacts beyond the impacts presented in the April 17, 2024, Other Solid Waste Incinerators; Title V Permitting Provisions final rule (89 FR 27392).

### **IV. Rulemaking Procedures**

The EPA’s authority for the rulemaking procedures followed in this action is provided by the Administrative Procedure Act, 5 U.S.C. section 553. In general, an agency issuing a rule must provide prior notice and an opportunity for public comment, but APA section 553(b)(B) includes an exemption from notice-and-comment requirements “when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.” This action is being issued without prior notice or opportunity for public comment because the EPA finds that the APA “good cause” exemption from notice-and-comment requirements applies here.

Following notice-and-comment procedures is unnecessary for this action. This action corrects purely technical errors resulting in the inadvertent deletion and inclusion of certain regulatory text that was neither proposed nor envisioned in the notice for the April 17, 2024,

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rule, thus ensuring the regulatory text comports with the description of the rule in the final rule preamble. Thus, it is critical to timely correct the identified errors to avoid confusion over the regulatory text.

This action is effective immediately upon publication. Although the APA typically requires publication of the final rule to precede the effective date by at least 30 days unless, as relevant here, the rule relieves a restriction (section 553(d)(1)), or the agency finds good cause to make the rule effective sooner (section 553(d)(3)). Under APA section 553(d)(1), an exception applies to a rule that “grants or recognizes an exemption or relieves a restriction.” Part of this rule reinstates 40 CFR 60.2969, which provides for exemptions from OSWI requirements for temporary-use incinerators and air curtain incinerators used in disaster recovery. A secondary good cause basis for immediate effectiveness exists under APA section 553(d)(3). The additional corrections and clarifications under this action are both necessary and beneficial to regulated entities in understanding and complying with the final rule’s requirements. Further, because the rule does not impose any new regulatory requirements, the regulated community does not need time to prepare for the rule to come into effect. See *Omnipoint Corp. v. Fed. Comm’n Comm’n*, 78 F.3d 620, 630 (D.C. Cir. 1996) (in determining whether good cause exists to make a rule immediately effective, an agency should “balance the necessity for immediate implementation against principles of fundamental fairness which require that all affected persons be afforded a reasonable amount of time to prepare for the effective date of its ruling”).

Good cause exists for this rule to be made immediately effective. The EPA has balanced the necessity for immediate implementation against the benefits of delaying

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implementation. Because this rule makes technical corrections to a rule that has already been promulgated, the public is aware of the content of the rule. Making these technical corrections effective immediately would make the regulatory text consistent with what the proposed rule and the preamble to the final rule have described.

## **V. Statutory and Executive Order Reviews**

For a complete discussion of all the statutes, executive orders, and administrative requirements applicable to this action, see the final rule published in the Rules and Regulations section of the *Federal Register* (89 FR 27392).

### **List of Subjects in 40 CFR Part 63**

Environmental protection, Administrative practices and procedures, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting, and recordkeeping requirements.

**Michael S. Regan,**

*Administrator*

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

**PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES**

1. The authority citation for part 60 continues to read as follows:

**Authority:** 42 U.S.C. 7401, et seq.

**Subpart EEEE—Standards of Performance for Other Solid Waste Incineration Units for Which Construction is Commenced After December 9, 2004, or for Which Modification or Reconstruction is Commenced on or After June 16, 2006**

2. Revise § 60.2966 to read as follows:

**§ 60.2966 Am I required to apply for and obtain a title V permit for my unit?**

(a) Yes, if you are subject to this subpart, you are required to apply for and obtain a title V operating permit unless you meet the relevant requirements for an exemption specified in § 60.2887, or unless your unit is an air curtain incinerator exempt under subsection (b) of this section.

(b) If you own or operate an air curtain incinerator that burns only wood waste; clean lumber; yard waste; or a mixture of wood waste, clean lumber, and/or yard waste and that is subject only to the requirements in §§ 60.2970 through 60.2973, you are exempt from the obligation to obtain a title V operating permit, provided that your air curtain incinerator is not otherwise required to obtain a title V operating permit.

3. Revise § 60.2967 to read as follows:

**§ 60.2967 When must I submit a title V permit application for my new unit?**

(a) If your new unit subject to this subpart is not subject to an earlier permit application deadline, a complete title V permit application must be submitted on or before one of the dates

specified in paragraphs (a)(1) or (2) of this section. (See section 503(c) of the Clean Air Act and 40 CFR 70.5(a)(1)(i) and 40 CFR 71.5(a)(1)(i).)

(1) For a unit that commenced operation as a new source as of December 16, 2005, then a complete title V permit application must be submitted not later than December 18, 2006.

(2) For a unit that does not commence operation as a new source until after December 16, 2005, then a complete title V permit application must be submitted not later than 12 months after the date the unit commences operation as a new source.

(b) If your new unit subject to this subpart is subject to title V as a result of some triggering requirement(s) other than this subpart (for example, a unit subject to this subpart may be a major source or part of a major source), then your unit may be required to apply for a title V permit prior to the deadlines specified in paragraph (a) of this section. If more than one requirement triggers a source's obligation to apply for a title V permit, the 12-month timeframe for filing a title V permit application is triggered by the requirement that first causes the source to be subject to title V. (See section 503(c) of the Clean Air Act and 40 CFR 70.3(a) and (b), 40 CFR 70.5(a)(1)(i), 40 CFR 71.3(a) and (b), and 40 CFR 71.5(a)(1)(i).)

(c) A "complete" title V permit application is one that has been determined or deemed complete by the relevant permitting authority under section 503(d) of the Clean Air Act and 40 CFR 70.5(a)(2) or 40 CFR 71.5(a)(2). You must submit a complete permit application by the relevant application deadline in order to operate after this date in compliance with Federal law. (See sections 503(d) and 502(a) of the Clean Air Act and 40 CFR 70.7(b) and 40 CFR 71.7(b).)

(d) If you own or operate an air curtain incinerator that burns only wood waste; clean lumber; yard waste; or a mixture of wood waste, clean lumber, and/or yard waste and that is subject only to the requirements in §§ 60.2970 through 60.2973, you are exempt from the

obligation to obtain a title V operating permit, provided that your air curtain incinerator is not otherwise required to obtain a title V operating permit.

4. Add § 60.2969 to read as follows:

**§ 60.2969 What are the requirements for temporary-use incinerators and air curtain incinerators used in disaster recovery?**

Your incinerator or air curtain incinerator is excluded from the requirements of this subpart if it is used on a temporary basis to combust debris from a disaster or emergency such as a tornado, hurricane, flood, ice storm, high winds, or act of bioterrorism. To qualify for this exclusion, the incinerator or air curtain incinerator must be used to combust debris in an area declared a State of Emergency by a local or State government, or the President, under the authority of the Stafford Act, has declared that an emergency or a major disaster exists in the area, and you must follow the requirements specified in paragraphs (a) through (c) of this section.

(a) If the incinerator or air curtain incinerator is used during a period that begins on the date the unit started operation and lasts 8 weeks or less within the boundaries of the same emergency or disaster declaration area, then it is excluded from the requirements of this subpart. You do not need to notify the Administrator of its use or meet the emission limitations or other requirements of this subpart.

(b) If the incinerator or air curtain incinerator will be used during a period that begins on the date the unit started operation and lasts more than 8 weeks within the boundaries of the same emergency or disaster declaration area, you must notify the Administrator that the temporary-use incinerator or air curtain incinerator will be used for more than 8 weeks and request permission to continue to operate the unit as specified in paragraphs (b)(1) and (2) of this section.

(1) The notification must be submitted in writing by the date 8 weeks after you start operation of the temporary-use incinerator or air curtain incinerator within the boundaries of the current emergency or disaster declaration area.

(2) The notification must contain the date the incinerator or air curtain incinerator started operation within the boundaries of the current emergency or disaster declaration area, identification of the disaster or emergency for which the incinerator or air curtain incinerator is being used, a description of the types of materials being burned in the incinerator or air curtain incinerator, a brief description of the size and design of the unit (for example, an air curtain incinerator or a modular starved-air incinerator), the reasons the incinerator or air curtain incinerator must be operated for more than 8 weeks, and the amount of time for which you request permission to operate including the date you expect to cease operation of the unit.

(c) If you submitted the notification containing the information in paragraph (b)(2) by the date specified in paragraph (b)(1), you may continue to operate the incinerator or air curtain incinerator for another 8 weeks, which is a total of 16 weeks from the date the unit started operation within the boundaries of the current emergency or disaster declaration area. You do not have to meet the emission limitations or other requirements of this subpart during this period.

(1) At the end of 16 weeks from the date the incinerator or air curtain incinerator started operation within the boundaries of the current emergency or disaster declaration area, you must cease operation of the unit or comply with all requirements of this subpart, unless the Administrator has approved in writing your request to continue operation.

(2) If the Administrator has approved in writing your request to continue operation, then you may continue to operate the incinerator or air curtain incinerator within the boundaries of the

current emergency or disaster declaration area until the date specified in the approval, and you do not need to comply with any other requirements of this subpart during the approved time period.

**Subpart FFFF—Emission Guidelines and Compliance Times for Other Solid Waste Incineration Units That Commenced Construction On or Before December 9, 2004**

5. Revise the heading of Subpart FFFF to read as set forth above.

6. Revise § 60.3059 to read as follows:

**§ 60.3059 Am I required to apply for and obtain a title V operating permit for my unit?**

(a) Yes, if your OSWI unit is an existing incineration unit subject to an applicable EPA-approved and effective Clean Air Act section 111(d)/129 State or Tribal plan or an applicable and effective Federal plan, you are required to apply for and obtain a title V operating permit unless you meet the relevant requirements for an exemption specified in § 60.2993, or unless your unit is an air curtain incinerator exempt under subsection (b) of this section.

(b) If you own or operate an air curtain incinerator that burns only wood waste; clean lumber; yard waste; or a mixture of wood waste, clean lumber, and/or yard waste and is subject only to the requirements in §§ 60.3062 through 60.3068, you are exempt from the obligation to obtain a title V operating permit, provided that your air curtain incinerator is not otherwise required to obtain a title V operating permit.

7. Add § 60.3060 to read as follows:

**§ 60.3060 When must I submit a title V permit application for my existing unit?**

(a)(1) If your existing unit is not subject to an earlier title V permit application deadline, a complete title V permit application must be submitted on or before the earlier of the dates specified in paragraphs (a)(1)(i) through (iii) of this section. (See sections 129(e), 503(c), 503(d), and 502(a) of the Clean Air Act and 40 CFR 70.5(a)(1)(i) and 40 CFR 71.5(a)(1)(i).)

(i) 12 months after the effective date of any applicable EPA-approved Clean Air Act section 111(d)/129 State or Tribal plan.

(ii) 12 months after the effective date of any applicable Federal plan.

(iii) December 16, 2008.

(2) For any existing unit not subject to an earlier permit application deadline, the application deadline of 36 months after the promulgation of 40 CFR part 60, subpart FFFF, applies regardless of whether or when any applicable Federal plan is effective, or whether or when any applicable Clean Air Act section 111(d)/129 State or Tribal plan is approved by EPA and becomes effective.

(b) If your existing unit is subject to title V as a result of some triggering requirement(s) other than those specified in paragraph (a) of this section (for example, a unit may be a major source or part of a major source), then your unit may be required to apply for a title V permit prior to the deadlines specified in paragraph (a). If more than one requirement triggers a source's obligation to apply for a title V permit, the 12-month timeframe for filing a title V permit application is triggered by the requirement which first causes the source to be subject to title V. (See section 503(c) of the Clean Air Act and 40 CFR 70.3(a) and (b), 40 CFR 70.5(a)(1)(i), 40 CFR 71.3(a) and (b), and 40 CFR 71.5(a)(1)(i).)

(c) A “complete” title V permit application is one that has been determined or deemed complete by the relevant permitting authority under section 503(d) of the Clean Air Act and 40 CFR 70.5(a)(2) or 40 CFR 71.5(a)(2). You must submit a complete permit application by the relevant application deadline in order to operate after this date in compliance with Federal law. (See sections 503(d) and 502(a) of the Clean Air Act and 40 CFR 70.7(b) and 40 CFR 71.7(b).)



(d) If you own or operate an air curtain incinerator that burns only wood waste; clean lumber; yard waste; or a mixture of wood waste, clean lumber, and/or yard waste and is subject only to the requirements in §§ 60.3062 through 60.3068, you are exempt from the obligation to obtain a title V operating permit, provided that your air curtain incinerator is not otherwise required to obtain a title V operating permit.

8. Remove and reserve § 60.3069.

**§ 60.3069 [Removed and Reserved]**