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Statutory Authority: 48-1-10 et seq.

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Document No. 4070

**DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**

CHAPTER 61

Statutory Authority: 1976 Code Sections 48-1-10 et seq.

61-62.Air Pollution Control Regulations and Standards

**Synopsis:**

On May 18, 2005, the United States Environmental Protection Agency (EPA) published a final rule in the *Federal Register* titled, *Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units* (70 FR 28606), also referred to as the “Clean Air Mercury Rule” (CAMR). This final rule established standards of performance for mercury for new and existing coal-fired electric utility steam generating units (EGUs), as defined in the Clean Air Act (CAA) section 111. This final rule became effective July 18, 2005. The South Carolina CAMR became state-effective upon the publication of a Notice of Final Regulation in the South Carolina *State Register* (*State Register)* on June 22, 2007 (Document No. 3083). The final package for the State CAMR was submitted to the EPA on August 16, 2007, for approval.

On February 8, 2008, the United States Court of Appeals for the District of Columbia Circuit (Court of Appeals) vacated the CAMR (Case No. 05-1097). The EPA filed a petition for a rehearing by the full Court of Appeals, but the petition was denied. The EPA has received two extensions to appeal the vacatur. On October 17, 2008, the U.S. Department of Justice filed an appeal with the U.S. Supreme Court requesting that the court overturn the Court of Appeals vacatur of the CAMR. On February 6, 2009, the EPA motioned to dismiss its case and remove the petition currently pending before the Supreme Court. The Supreme Court denied the remaining industry request to review the Court of Appeals mandate on February 23, 2009.

On May 16, 2003, the EPA published a final rule in the *Federal Register* titled, *National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing; and National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing; Final Rule* (68 FR 26690), establishing National Emission Standards for Hazardous Air Pollutants (NESHAP) that required major sources of those types to apply maximum achievable control technology (MACT). These subparts (40 CFR 63, subparts JJJJJ and KKKKK) are also known as the “Brick MACT” and “Clay MACT” respectively. This final rule became effective May 16, 2003, and was incorporated by reference in Regulation 61-62.63, *National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories*, by a Notice of Final Regulation published in the *State Register* (Document No. 2913) on September 24, 2004. On March 13, 2007, the Court of Appeals vacated this rule (Case No. 03-1202). The final mandate for this case was issued on June 18, 2007.

On September 13, 2004, the EPA published a final rule in the *Federal Register* titled, *National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters; Final Rule* (69 FR 55218), establishing NESHAP that required major sources of those types to apply MACT. This subpart (40 CFR 63, subpart DDDDD) is also known as the “Boiler MACT.” This final rule became effective November 12, 2004, and was incorporated by reference in R. 61-62.63, by a Notice of Final Regulation published in the *State Register* (Document No. 2980) on August 26, 2005. On June 8, 2007, the Court of Appeals vacated this rule (Case No. 04-1385). The final mandate for this case was issued on July 30, 2007.

The South Carolina Department of Health and Environmental Control (Department or DHEC) has amended R. 61-62, *Air Pollution Control Regulations and Standards,* by removing the aforementioned provisions of the State CAMR in R. 61-62.60, *South Carolina Designated Facility Plan and New Source Performance Standards*, and R. 61-62.72, *Acid Rain*. The Department has also amended R. 61-62.63, by removing all the provisions of the aforementioned rules published in the *Federal Register* May 16, 2003, and September 13, 2004.

A Notice of Drafting for these amendments was published in the State Register on November 28, 2008.

Discussion of Revisions:

SECTION CITATION/EXPLANATION OF CHANGE:

R. 61-62.60:

Subpart A has been revised to remove previous amendments that incorporated by reference Federal amendments published in 70 FR 28606.

R. 61-62.60:

Subpart B has been revised to remove previous amendments that incorporated by reference Federal amendments published in 70 FR 28606, 71 FR 33388 and 72 FR 59190.

R. 61-62.60:

Subpart Da has been revised to remove previous amendments that incorporated by reference Federal amendments published in 70 FR 28606, 70 FR 51266, and 71 FR 33388.

R. 61-62.60:

Subpart Db has been revised to remove previous amendments that incorporated by reference Federal amendments published in 71 FR 33388.

R. 61-62.60:

Remove and reserve Subpart HHHH.

R. 61-62.63:

Remove and reserve Subpart DDDDD.

R. 61-62.63:

Remove and reserve Subpart JJJJJ.

R. 61-62.63:

Remove and reserve Subpart KKKKK.

R. 61-62.72:

Subpart A has been amended to remove previous amendments that incorporated by reference Federal amendments published in 70 FR 28606.

**Instructions:**

Amend Regulation 61-62, *Air Pollution Control Regulations and Standards,* pursuant to each individual instruction provided below with the text of the amendments.

**Text:**

*Regulation 61-62.60, Subpart A shall be amended as follows:*

**Subpart A - “General Provisions”**

The provisions of Title 40 CFR Part 60, subpart A, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

| **40 CFR Part 60 subpart A** | | | |
| --- | --- | --- | --- |
| Federal Register Citation | Volume | Date | Notice |
| Original Promulgation | Vol. 36 | December 23, 1971 | [36 FR 24877] |
| Revision | Vol. 38 | October 15, 1973 | [38 FR 28565] |
| Revision | Vol. 39 | March 8, 1974 | [39 FR 9314] |
| Revision | Vol. 39 | November 12, 1974 | [39 FR 39873] |
| Revision | Vol. 40 | April 25, 1975 | [40 FR 18169] |
| Revision | Vol. 40 | October 6, 1975 | [40 FR 46254] |
| Revision | Vol. 40 | November 17, 1975 | [40 FR 53346] |
| Revision | Vol. 40 | December 16, 1975 | [40 FR 58418] |
| Revision | Vol. 40 | December 22, 1975 | [40 FR 59205] |
| Revision | Vol. 41 | August 20, 1976 | [41 FR 35185] |
| Revision | Vol. 42 | July 19, 1977 | [42 FR 37000] |
| Revision | Vol. 42 | July 27, 1977 | [42 FR 38178] |
| Revision | Vol. 42 | November 1, 1977 | [42 FR 57126] |
| Revision | Vol. 43 | March 3, 1978 | [43 FR 8800] |
| Revision | Vol. 43 | August 3, 1978 | [43 FR 34347] |
| Revision | Vol. 44 | June 11, 1979 | [44 FR 33612] |
| Revision | Vol. 44 | September 25, 1979 | [44 FR 55173] |
| Revision | Vol. 45 | January 23, 1980 | [45 FR 5617] |
| Revision | Vol. 45 | April 4, 1980 | [45 FR 23379] |
| Revision | Vol. 45 | December 24, 1980 | [45 FR 85415] |
| Revision | Vol. 47 | January 8, 1982 | [47 FR 951] |
| Revision | Vol. 47 | July 23, 1982 | [47 FR 31876] |
| Revision | Vol. 48 | March 30, 1983 | [48 FR 13326] |
| Revision | Vol. 48 | May 25, 1983 | [48 FR 23610] |
| Revision | Vol. 48 | July 20, 1983 | [48 FR 32986] |
| Revision | Vol. 48 | October 18, 1983 | [48 FR 48335] |
| Revision | Vol. 50 | December 27, 1985 | [50 FR 53113] |
| Revision | Vol. 51 | January 15, 1986 | [51 FR 1790] |
| Revision | Vol. 51 | January 21, 1986 | [51 FR 2701] |
| Revision | Vol. 51 | November 25, 1986 | [51 FR 42796] |
| Revision | Vol. 52 | March 26, 1987 | [52 FR 9781, 9782] |
| Revision | Vol. 52 | April 8, 1987 | [52 FR 11428] |
| Revision | Vol. 52 | May 11, 1987 | [52 FR 17555] |
| Revision | Vol. 52 | June 4, 1987 | [52 FR 21007] |
| Revision | Vol. 54 | February 14, 1989 | [54 FR 6662] |
| Revision | Vol. 54 | May 17, 1989 | [54 FR 21344] |
| Revision | Vol. 55 | December 13, 1990 | [55 FR 51382] |
| Revision | Vol. 57 | July 21, 1992 | [57 FR 32338, 32339] |
| Revision | Vol. 59 | March 16, 1994 | [59 FR 12427, 12428] |
| Revision | Vol. 59 | September 15, 1994 | [59 FR 47265] |
| Revision | Vol. 61 | March 12, 1996 | [61 FR 9919] |
| Revision | Vol. 62 | February 24, 1997 | [62 FR 8328] |
| Revision | Vol. 62 | September 15, 1997 | [62 FR 48348] |
| Revision | Vol. 63 | May 4, 1998 | [63 FR 24444] |
| Revision | Vol. 64 | February 12, 1999 | [64 FR 7463] |
| Revision | Vol. 65 | August 10, 2000 | [65 FR 48914] |
| Revision | Vol. 65 | October 17, 2000 | [65 FR 61744] |
| Revision | Vol. 65 | December 6, 2000 | [65 FR 76350, 76378] |
| Revision | Vol. 65 | December 14, 2000 | [65 FR 78268] |
| Revision | Vol. 66 | February 6, 2001 | [66 FR 9034] |
| Revision | Vol. 67 | June 28, 2002 | [67 FR 43550] |
| Revision | Vol. 68 | April 14, 2003 | [68 FR 17990] |
| Revision | Vol. 68 | May 28, 2003 | [68 FR 31611] |
| Revision | Vol. 69 | July 8, 2004 | [69 FR 41346] |
|  |  |  |  |
| Revision | Vol. 70 | December 16, 2005 | [70 FR 74870] |
| Revision | Vol. 71 | June 1, 2006 | [71 FR 31100] |
| Revision | Vol. 71 | July 6, 2006 | [71 FR 38482] |

*Regulation 61-62.60, Subpart B shall be amended as follows:*

**Subpart B - “Adoption and Submittal of State Plans for Designated Facilities”**

The provisions of Title 40 CFR Part 60, subpart B as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

| **40 CFR Part 60 subpart B** | | | |
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| Federal Register Citation | Volume | Date | Notice |
| Original Promulgation | Vol. 40 | November 17, 1975 | [40 FR 53346] |
| Revision | Vol. 44 | November 9, 1979 | [44 FR 65071] |
| Revision | Vol. 54 | December 20, 1989 | [54 FR 52189] |
| Revision | Vol. 60 | December 19, 1995 | [60 FR 65387] |
| Revision | Vol. 65 | December 6, 2000 | [65 FR 76378] |
|  |  |  |  |
| Revision | Vol. 70 | October 13, 2005 | [70 FR 59848] |
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*Regulation 61-62.60, Subpart Da shall be amended as follows:*

**Subpart Da - “Standards of Performance for Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978”**

The provisions of Title 40 CFR Part 60, subpart Da as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

| **40 CFR Part 60 subpart Da** | | | |
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| Federal Register Citation | Volume | Date | Notice |
| Original Promulgation | Vol. 44 | June 11, 1979 | [44 FR 33613] |
| Revision | Vol. 48 | January 27, 1983 | [48 FR 3737] |
| Revision | Vol. 54 | February 14, 1989 | [54 FR 6663] |
| Revision | Vol. 54 | May 17, 1989 | [54 FR 21344] |
| Revision | Vol. 55 | February 14, 1990 | [55 FR 5212] |
| Revision | Vol. 55 | May 7, 1990 | [55 FR 18876] |
| Revision | Vol. 63 | September 16, 1998 | [63 FR 49453, 49454] |
| Revision | Vol. 64 | February 12, 1999 | [64 FR 7464] |
| Revision | Vol. 65 | October 17, 2000 | [65 FR 61744] |
| Revision | Vol. 66 | April 10, 2001 | [66 FR 18546] |
| Revision | Vol. 66 | June 11, 2001 | [66 FR 31177] |
| Revision | Vol. 66 | August 14, 2001 | [66 FR 42608] |
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| Revision | Vol. 71 | February 27, 2006 | [71 FR 9866] |
|  |  |  |  |

*Regulation 61-62.60, Subpart Db shall be amended as follows:*

**Subpart Db - “Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units**”

The provisions of Title 40 CFR Part 60, subpart Db as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

| **40 CFR Part 60 subpart Db** | | | |
| --- | --- | --- | --- |
| Federal Register Citation | Volume | Date | Notice |
| Original Promulgation | Vol. 52 | December 16, 1987 | [52 FR 47842] |
| Revision | Vol. 54 | December 18, 1989 | [54 FR 51819, 51820] |
| Revision | Vol. 54 | December 18, 1989 | [54 FR 51825] |
| Revision | Vol. 55 | May 7, 1990 | [55 FR 18876] |
| Revision | Vol. 60 | May 30, 1995 | [60 FR 28062] |
| Revision | Vol. 61 | March 29, 1996 | [61 FR 14031] |
| Revision | Vol. 62 | October 8, 1997 | [62 FR 52641] |
| Revision | Vol. 63 | September 16, 1998 | [63 FR 49455] |
| Revision | Vol. 64 | February 12, 1999 | [64 FR 7464] |
| Revision | Vol. 65 | March 13, 2000 | [65 FR 13242] |
| Revision | Vol. 65 | October 17, 2000 | [65 FR 61744] |
| Revision | Vol. 66 | April 10, 2001 | [66 FR 18546] |
| Revision | Vol. 66 | June 11, 2001 | [66 FR 31177] |
| Revision | Vol. 66 | August 14, 2001 | [66 FR 42608] |
| Revision | Vol. 66 | October 1, 2001 | [66 FR 49830] |
| Revision | Vol. 71 | February 27, 2006 | [71 FR 9866] |
|  |  |  |  |
| Revision | Vol. 71 | November 16, 2006 | [71 FR 66681] |

*Regulation 61-62.60, Subpart HHHH shall be amended as follows:*

| **Subpart HHHH – [Reserved]** | | | |
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*Regulation 61-62.63, Subpart DDDDD shall be amended as follows:*

| **Subpart DDDDD – [Reserved]** | | | |
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*Regulation 61-62.63, Subpart JJJJJ shall be amended as follows:*

| **Subpart JJJJJ – [Reserved]** | | | |
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*Regulation 61-62.63, Subpart KKKKK shall be amended as follows:*

| **Subpart KKKKK – [Reserved]** | | | |
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*Regulation 61-62.72, Subpart A shall be amended as follows:*

**Subpart A - “General Provisions”**

The provisions of Title 40 CFR Part 72, subpart A, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

| **40 CFR Part 72 subpart A** | | | |
| --- | --- | --- | --- |
| Federal Register Citation | Volume | Date | Notice |
| Original Promulgation | Vol. 58 | January 11, 1993 | [58 FR 3650] |
| Revision | Vol. 58 | March 23, 1993 | [58 FR 15634] |
| Revision | Vol. 58 | June 21, 1993 | [58 FR 33769] |
| Revision | Vol. 58 | July 30, 1993 | [58 FR 40746] |
| Revision | Vol. 59 | November 22, 1994 | [59 FR 60218] |
| Revision | Vol. 60 | April 4, 1995 | [60 FR 17100] |
| Revision | Vol. 60 | April 11, 1995 | [60 FR 18462] |
| Revision | Vol. 60 | May 17, 1995 | [60 FR 26510] |
| Revision | Vol. 62 | October 24, 1997 | [62 FR 55460] |
| Revision | Vol. 62 | December 18, 1997 | [62 FR 66278] |
| Revision | Vol. 63 | October 27, 1998 | [63 FR 57356] |
| Revision | Vol. 63 | December 11, 1998 | [63 FR 68400] |
| Revision | Vol. 64 | May 13, 1999 | [64 FR 25834] |
| Revision | Vol. 64 | May 26, 1999 | [64 FR 28564] |
| Revision | Vol. 66 | March 1, 2001 | [66 FR 12974] |
| Revision | Vol. 67 | June 12, 2002 | [67 FR 40394] |
| Revision | Vol. 67 | August 16, 2002 | [67 FR 53503] |
| Revision | Vol. 69 | April 9, 2004 | [69 FR 18801] |
| Revision | Vol. 70 | May 12, 2005 | [70 FR 25162] |
|  |  |  |  |
| Revision | Vol. 71 | April 28, 2006 | [71 FR 25328] |

**Fiscal Impact Statement:**

There will be no increased cost to the State or its political subdivisions.

**Statement of Need and Reasonableness:**

This statement of need and reasonableness was determined by staff analysis pursuant to S.C. Code Section 1-23-115(C)(1)-(3) and (9)-(11).

DESCRIPTION OF REGULATION: Amendments to Regulation 61-62, Air Pollution Control Regulations and Standards.

Purpose: The Federal requirements that necessitated the amendments to R. 61-62, described herein, have been effectively vacated by decisions of the United States Court of Appeals for the District of Columbia Circuit (Court of Appeals). Therefore, the Department has amended the aforementioned regulations by removing the vacated provisions to ensure enforceability of State regulations and clarify requirements for compliance.

Legal Authority: The legal authority for R. 61-62, Air Pollution Control Regulations and Standards is S.C. Code Section 48-1-10 et seq.

Plan for Implementation: The amendments take effect upon approval and adoption by the South Carolina Board of Health and Environmental Control, approval by the Legislature, and publication in the South Carolina *State Register (State Register).*

DETERMINATION OF NEED AND REASONABLENESS OF THE REGULATIONS BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS:

On May 18, 2005, the United States Environmental Protection Agency (EPA) published a final rule in the *Federal Register* titled, *Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units* (70 FR 28606), also referred to as the “Clean Air Mercury Rule” (CAMR). This final rule became effective July 18, 2005. The South Carolina CAMR became state-effective upon the publication of a Notice of Final Regulation in the *State Register* on June 22, 2007 (Vol. 31, Issue 6, Doc. No. 3083). The final package for the State CAMR was submitted to the EPA on August 16, 2007, for approval. On February 8, 2008, the United States Court of Appeals for the District of Columbia Circuit (Court of Appeals) vacated the CAMR (Case No. 05-1097). The EPA filed a petition for a rehearing by the full Court of Appeals, but the petition was denied. The EPA has received two extensions to appeal the vacatur. On October 17, 2008, the U.S. Department of Justice filed an appeal with the U.S. Supreme Court requesting that the court overturn the Court of Appeals vacatur of the CAMR. On February 6, 2009, the EPA motioned to dismiss its case and remove the petition currently pending before the Supreme Court. The Supreme Court denied the remaining industry request to review the Court of Appeals mandate on February 23, 2009.

On May 16, 2003, the EPA published a final rule in the *Federal Register* titled, *National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing; and National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing; Final Rule* (68 FR 26690), establishing National Emission Standards for Hazardous Air Pollutants (NESHAP) that required major sources of those types to apply maximum achievable control technology (MACT). These new subparts (40 CFR 63, subparts JJJJJ and KKKKK) are also known as the “Brick MACT” and “Clay MACT” respectively. This final rule became effective May 16, 2003, and was incorporated by reference in Regulation 61-62.63, *National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories*, by a Notice of Final Regulation published in the *State Register* (Vol. 28, Issue 9, Doc. No. 2913) on September 24, 2004. On March 13, 2007, the Court of Appeals vacated this rule (Case No. 03-1202). The final mandate for this case was issued on June 18, 2007.

On September 13, 2004, the EPA published a final rule in the *Federal Register* titled, *National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters; Final Rule* (69 FR 55218), establishing NESHAP that required major sources of those types to apply MACT. This new subpart (40 CFR 63, subpart DDDDD) is also known as the “Boiler MACT”. This final rule became effective November 12, 2004, and was incorporated by reference in R. 61-62.63, by a Notice of Final Regulation published in the *State Register* (Vol. 29, Issue 8, Doc. No. 2980) on August 26, 2005. On June 8, 2007, the Court of Appeals vacated this rule (Case No. 04-1385). The final mandate for this case was issued on July 30, 2007.

The Court of Appeals vacatur of the abovementioned rules effectively nullifies the Federal requirements established at the time of promulgation. The proposed amendments to remove these provisions from R. 61-62, are reasonable in that they ensure enforceability of State regulations and clarify the requirements for compliance.

DETERMINATION OF COSTS AND BENEFITS:

There will not be a negative fiscal or economic impact as a result of this regulatory action. Amending R. 61-62, to remove the provisions of the CAMR, will decrease the cost to the regulated community and result in a reduction of the use of existing State resources. For more information on the original cost estimates and additional information, please refer to the promulgation of the State CAMR (*State Register* Vol. 31, Issue 6, Doc. No. 3083).

Amending R. 61-62, to remove the provisions of the vacated requirements of 40 CFR 63, subparts DDDDD, JJJJJ, and KKKKK will decrease the cost to the regulated community and result in the reduction of the use of existing State resources. Please refer to the promulgation of the abovementioned subparts (*State Register* Vol. 28, Issue 9, Doc No. 2913, and *State Register* Vol. 29, Issue 8, Doc No. 2980) for the original cost estimates and additional information.

UNCERTAINTIES OF ESTIMATES:

There are no uncertainties of estimates relative to cost. These amendments will not create a burden for the public, the State or its political subdivisions. Refer to the above paragraph for cost estimates for the regulated community. Existing staff and resources will be utilized to implement these amendments.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

There will be no environmental or public health effect.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATIONS ARE NOT IMPLEMENTED:

There will be no specific detrimental effect on the environment and public health if the abovementioned amendments are not implemented.

**Statement of Rationale**:

Due to the Court of Appeals decisions in Cases No. 05-1097, 03-1202, and 04-1385 as described in the Statement of Need and Reasonableness above, the Department has determined it necessary to amend R. 61-62, to ensure enforceability of State regulations and to clarify requirements for compliance.