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## What is the current status of hazardous waste combustor regulations ?

The hazardous combustor regulations are codified in 40 CFR Part 63, Subpart EEE. Before we answer the first question, we need to go into a short history of hazardous waste combustor regulations. EPA initially promulgated EEE on September 30, 1999. In 2001, the Appeals Court vacated the rules but gave the parties the opportunity to negotiate interim standards. The parties did this and EPA published the negotiated interim standards on February 13 and 14, 2002. EPA published the replacement standards for Phase I (incinerators, cement kilns, and lightweight aggregate kilns) and Phase II (boilers and halogen acid furnaces) on October 12, 2005. Both industry and environmental groups challenged this rule. EPA took a voluntary remand of parts of the rule in 2008 and a voluntary remand of the rest of the rule in 2009. As a result, EEE has been remanded to EPA.

So what does remand mean? When the court rules on a regulation, they have three options. They can uphold the rule, they can remand the rule, or they can remand and vacate the rule. If the court upholds the rule, this means that EPA has properly promulgated the rule and it stands as promulgated. If they remand the rule, it means that they have sent it back to EPA for additional information. It may be a simple request for more information or it could be that there are serious defects in the rule and EPA needs to completely redo the rule. If the court remands and vacates the rule, it is as if the rule was never promulgated in the first place. However, this does not remove the rule from the Code of Federal Regulations (CFR). It takes a Federal Register notice to do that. Most of the time, EPA gets around to such a notice eventually but it is not one of their higher priorities. Whether EPA actually removes the rule from the CFR does not matter since EPA cannot force compliance with the vacated rule. Since there is no enforcement, it does not matter whether the rule stays in the CFR or not.

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When the court decides to remand a rule that has serious defects, they often look at other factors to decide whether to vacate the rule or not. There are some judges on the U.S. Court of Appeals for the District of Columbia Circuit (this court hears all challenges to federal agency rulemakings) that believe that if a rule is remanded, it must also be vacated. There are other judges that believe there are circumstances where a flawed rule should stay in effect because it is needed while EPA fixes the underlying regulations.

For EEE, EPA recognized there were serious flaws in the rule and asked the court for a voluntary remand. None of the parties objected to this request and the court approved that motion. This means that the 2005 rule remains in the CFR and in effect until EPA attempts to correct those flaws. The current regulations can be found at ECFR ([www.gpoaccess.gov/ecfr](http://www.gpoaccess.gov/ecfr)) starting at 40 CFR 1200. EPA has not given any indication when they plan to revise the current regulations.