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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA-R03-OAR-2011-0848; FRL-9620-6]

Approval and Promulgation of State Air Quality Plans For Designated Facilities and Pollutants, State of West Virginia; Control of Emissions from Existing Hospital/Medical/Infectious Waste Incinerator Units, Plan Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the West Virginia hospital/medical/infectious waste incinerator (HMIWI) Section 111(d)/129 plan (the “plan”).

The revision contains a modified state rule for solid waste combustion that was updated as a result of the October 6, 2009 amendments to federal Emission Guidelines (EG) and New Source Performance Standards (NSPS), 40 CFR part 60, subparts Ce and Ec respectively. While West Virginia’s revised regulation contains requirements for various types of solid waste incineration units, the revisions and approval action relate only to HMIWI units.

DATES: This rule is effective [Insert date 60 days from the date of publication in the Federal Register] without further notice, unless EPA receives adverse written comment by [Insert date 30 days from date of publication in the Federal Register]. If EPA receives adverse comment, we will publish a timely withdrawal in the Federal Register informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number **EPA-R03-OAR-2011-0848** by one of the following methods:

- A. www.regulations.gov. Follow the on-line instructions for submitting comments.
- B. E-mail: cox.kathleen@epa.gov
- C. Mail: EPA-R03-OAR-2011-0848, Kathleen Cox, Associate Director, Office of Permits and Air Toxics, Mailcode 3AP10, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.
- D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. **EPA-R03-OAR-2011-0848**. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification,

EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index.

Although listed in the index, some information is not publicly available, i.e., 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 either electronically in www.regulations.gov or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street SE, Charleston, West Virginia 25304.

FOR FURTHER INFORMATION CONTACT: Mike Gordon, at (215) 814-2039, or by e-mail at gordon.mike@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Throughout this document, whenever “we,” “us,” or “our” is used, we mean EPA. Section 129 of the Clean Air Act (CAA) requires EPA to establish performance standards and emissions guidelines for various types of new and existing solid waste incineration units. Section 129(b)(2) requires States to submit to EPA for approval state plans that implement and enforce

the promulgated EG. Section 129(b)(3) requires EPA to promulgate a Federal Plan (FP) within two years from the date on which the EG, or revision, was promulgated. The FP is applicable to any affected facility if the state has failed to receive EPA approval of the state plan, or revision. The FP acts as an enforcement place holder until the state submits and receives EPA approval of its plan. State plan submittals must be consistent with the relevant emissions guidelines, in this instance 40 CFR part 60, subpart Ce, and the requirements of 40 CFR part 60, subpart B and part 62, subpart A. Section 129 of the CAA regulates a mixture of air pollutants including organics (dioxins/furans), carbon monoxide, metals (cadmium, lead, and mercury), acid gases (hydrogen chloride, sulfur dioxide, and nitrogen oxides) and particulate matter (which includes opacity).

The initial West Virginia plan for HMIWI units was approved by EPA on June 13, 2000 (65 FR 37046). The plan approval is codified in 40 CFR part 62, subpart XX. On September 7, 2011, the West Virginia Department of Environmental Protection submitted to EPA a formal Section 111(d)/129 plan revision for HMIWI units. The submitted plan revision was in response to the October 6, 2009 amendments to federal EG and NSPS requirements for HMIWI units, 40 CFR part 60, subparts Ce and Ec, respectively (74 FR 51367). This rulemaking action will supersede EPA's August 3, 2009 (74 FR 38348) approval of West Virginia's initial plan revision. While the state rule revised by this action, 45CSR18, contains requirements for various types of solid waste incineration units, the revision to the plan by West Virginia and EPA's approval action relate only to HMIWI units.

II. Summary of West Virginia's HMIWI Plan Revision

EPA has reviewed the West Virginia HMIWI plan revision submittal in the context of the requirements of 40 CFR part 60, subparts B and Ce, as amended, and part 62, subpart A. The submitted plan revision meets all the cited requirements and those as described in EPA's June 13, 2000 West Virginia plan approval.

III. Final Action

EPA is approving the West Virginia HMIWI Section 111(d)/129 plan revision to state rule 45CSR18 as a result of amendments to 40 CFR part 60, subparts Ce and Ec. Therefore, EPA is amending 40 CFR part 62, subpart XX to reflect this action. This approval is based on the rationale discussed above and in further detail in the technical support document (TSD) associated with this action. This plan revision approval does not negate or void any of the initial June 13, 2000 plan approval requirements, including compliance dates for any affected facility. The scope of this plan revision approval is limited to the provisions of 40 CFR parts 60 and 62 for existing HMIWI units, as referenced in the EG, subpart Ce, and the related NSPS, subpart Ec, as amended.

The EPA Administrator continues to retain authority for several tasks, as provided in section WV45CSR18-11. This retention of federal authority also includes the granting of waivers for initial and annual compliance testing requirements.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's Federal Register, EPA is publishing a separate document that will serve

as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on [insert date 60 days from date of publication in the Federal Register] without further notice unless EPA receives adverse comment by [insert date 30 days from date of publication in the Federal Register]. If EPA receives adverse comment, EPA will publish a timely withdrawal in the Federal Register informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). This rule also does not have tribal implications

because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

In reviewing Section 111(d)/129 plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a Section 111(d)/129 plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a Section 111(d)/129 plan submission, to use VCS in place of a Section 111(d)/129 plan submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork

Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. This rule is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving West Virginia’s Section 111(d)/129 plan revision for HMIWI sources may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Aluminum, Fertilizers, Fluoride, Intergovernmental relations, Paper and paper products industry, Phosphate, Reporting and recordkeeping requirements, Sulfur oxides, Sulfur acid plants, Waste treatment and disposal.

January 5, 2012

Dated:

W. C. Early, Acting
Regional Administrator,
Region III.

40 CFR part 62, subpart XX, is amended as follows:

PART 62-[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. Section 7401 et seq.

Subpart XX -- West Virginia

2. Section 62.12150 is amended by adding paragraph (c) to read as follows:

§ 62.12150 Identification of plan.

(c) On September 7, 2011 the West Virginia Department of Environmental Protection submitted a State plan revision that updates the state rule for Control of Air Pollution from Combustion of Solid Waste in Hospital/Medical/Infectious Waste Incinerators, WV45CSR18.

3. Revise §62.12151 to read as follows:

§ 62.12151 Identification of sources.

The plan applies to each individual HMIWI:

(a) For which construction was commenced on or before June 20, 1996, or for which modification was commenced on or before March 16, 1998.

(b) For which construction was commenced after June 20, 1996 but no later than December 1, 2008, or for which modification is commenced after March 16, 1998 but no later than April 6, 2010.

4. Section 62.12152 is amended by adding paragraph (c) to read as follows:

§61.12152 Effective date.

(c) The September 7, 2011 plan revision is effective [Insert date 60 days from publication in the Federal Register.]

6560-50-P

[FR Doc. 2012-1336 Filed 01/23/2012 at 8:45 am; Publication Date: 01/24/2012]