



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 62**

**[EPA-R05-OAR-2012-0086; FRL-9663-2]**

**Direct Final Approval of Hospital/Medical/Infectious Waste  
Incinerators State Plan for Designated Facilities and  
Pollutants: Indiana**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving Indiana's revised State Plan to control air pollutants from "Hazardous/Medical/Infectious Waste Incinerators" (HMIWI). The Indiana Department of Environmental Management (IDEM) submitted the revised State Plan on December 14, 2011. The revised State Plan is consistent with revised Emission Guidelines (EGs) promulgated by EPA on October 6, 2009. This approval means that EPA finds that the revised State Plan meets applicable Clean Air Act (Act) requirements for subject HMIWI units. Once effective, this approval also makes the revised State Plan Federally enforceable.

**DATES:** This direct final rule will be effective [insert date 60 days from date of publication in the Federal Register], unless EPA receives adverse comments by [insert date 30 days from date of publication in the Federal Register]. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the Federal Register informing the public that the

rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2012-0086, by one of the following methods:

1. [www.regulations.gov](http://www.regulations.gov): Follow the on-line instructions for submitting comments.
2. Email: [nash.carlton@epa.gov](mailto:nash.carlton@epa.gov).
3. Fax: (312)886-6030.
4. Mail: Carlton T. Nash, Chief, Toxics and Global Atmosphere Section, Air Toxics and Assessment Branch (AT-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. Hand Delivery: Carlton T. Nash, Chief, Toxics and Global Atmosphere Section, Air Toxics and Assessment Branch (AT-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 AM to 4:30 PM excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID No.

EPA-R05-OAR-2012-0086. 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](http://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](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://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](http://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 docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain

other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This Facility is open from 8:30 AM to 4:30 PM, Monday through Friday, excluding Federal holidays. We recommend that you telephone Margaret Sieffert, Environmental Engineer, at (312) 353-1151 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Margaret Sieffert, Environmental Engineer, Environmental Protection Agency, Region 5, 77 West Jackson Boulevard (AT-18J), Chicago, Illinois 60604, (312) 353-1151, [sieffert.margaret@epa.gov](mailto:sieffert.margaret@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. Background
- II. What Does the State Plan Contain?
- III. Does the State Plan Meet the EPA Requirements?
- IV. What Action is EPA Taking?
- V. Statutory and Executive Order Reviews

**I. Background**

On October 6, 2009, in accordance with sections 111 and 129

of the Act, EPA promulgated revised HMIWI EGs and compliance schedules for the control of emissions from HMIWI units. See 74 FR 51368. A HMIWI unit as defined in 40 CFR 60.51c is any device that combusts any amount of hospital waste and/or medical/infectious waste. EPA codified these revised regulations at 40 CFR part 60, subpart Ce. Under section 129(b)(2) of the Act and the revised EGs at subpart Ce, States with subject sources must submit to EPA plans that implement the revised EGs. The plans must be at least as protective as the revised EGs, which are not Federally enforceable until EPA approves a State Plan (or promulgates a Federal Plan for implementation and enforcement).

On December 14, 2011, Indiana submitted its revised HMIWI State Plan, which EPA received on December 19, 2011. This submission followed public hearings for preliminary adoption of the revised State rule on May 4, 2011 and for final adoption on August 3, 2011. The State adopted the final rule on August 3, 2011 and it became effective on October 28, 2011. The State submitted a correction to the Indiana Air Pollution Control Board on December 6, 2011 to correct a typographical error and it was accepted for filing. The correction was effective on January 20, 2012. The revised plan includes revisions to State rule 326 IAC 11-6, which establishes emission standards for existing HMIWI.

## II. What Does the State Plan Contain?

The State submittal is based on the revised HMIWI EGs (40 CFR part 60, subpart Ce) and the revised New Source Performance Standards (NSPS) (40 CFR part 60, subpart Ec) for HMIWI promulgated on October 6, 2009. As set forth in section 129 of the Act and in 40 CFR part 60, subparts B and Ce, the revised State Plan addresses the thirteen minimum required elements, as follows:

1. A demonstration of the State's legal authority to carry out the HMIWI State Plan and identified the enforceable mechanisms. Indiana has provided a detailed list which demonstrated that it has such legal authority and identified the enforceable mechanism.
2. An inventory of affected HMIWI units, including language that states that sources subject to the standard "include but are not limited to" the inventory in the State Plan and an additional statement that says "should another source be discovered subsequent to this notice, there will be no need to reopen the State Plan." Indiana has provided this.
3. An inventory of the emissions from each of the HMIWI units. Indiana has provided this.
4. Emission limits for HMIWI that are the same as those required by the EG. Indiana has provided this.
5. Testing and monitoring requirements are the same as those

- required by the EG. Indiana has provided this.
6. Reporting and recordkeeping requirements are the same as those required by the EG. Indiana has provided this.
  7. Operator training and qualification requirements are the same as those required by the EG. Indiana has provided this.
  8. Inspections requirements are the same as those required by the EG. Indiana has provided this.
  9. The waste management plan requirements are the same as those in the EG. Indiana has provided this.
  10. A compliance schedule with increments. Indiana has provided this.
  11. A final compliance date of October 6, 2014. Indiana has provided this.
  12. A record of public hearings on the revised State rule and Plan. Indiana has provided this.
  13. A provision for State progress reports to EPA. Indiana has stated that it will submit an annual report that will include updates to the inventory, any enforcement activities and submission of copies of technical reports on all performance testing on designated facilities. The Air Facility System will be used to submit information pertaining to emissions, inspections, status of compliance, dates of performance testing, and enforcement actions.

### III. Does the State Plan Meet the EPA Requirements?

EPA evaluated the revised HMIWI State Plan submitted by Indiana for consistency with the Act, EPA regulations and policy. For the reasons discussed above, EPA has determined that the revised State Plan meets all applicable requirements and, therefore, is approving it.

### IV. What Action Is EPA Taking?

EPA is approving the revised State Plan which Indiana submitted on December 14, 2011, for the control of emissions from existing HMIWI sources in the State. EPA is publishing this approval notice without prior proposal because the Agency views this as a non-controversial action and anticipates no adverse comments. However, in the proposed rules section of this Federal Register publication, EPA is publishing a separate document that will serve as the proposal to approve the State Plan in the event adverse written comments are filed. This rule will be effective [insert date 60 days from the date of publication in the Federal Register] without further notice unless we receive relevant adverse written comments by [insert date 30 days from the date of publication in the Federal Register]. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final

rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective [insert date 60 days from the date of publication in the Federal Register].

## **V. 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 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 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 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 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 Indiana'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, Air pollution control,  
Administrative practice and procedure, Hospital medical  
infectious waste incinerators, Intergovernmental relations,  
Reporting and record-keeping requirements.

Dated: April 9, 2012.

Susan Hedman,  
Regional Administrator, Region 5.

40 CFR part 62 is amended as follows:

**PART 62-- [AMENDED]**

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

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

**Subpart P - Indiana**

2. Sections 62.3640, 62.3641, and 62.3642 are revised to read as follows:

**§ 62.3640 Identification of plan.**

On December 14, 2011, Indiana submitted a revised State Plan for implementing the revised emission guidelines for Hospital/Medical/Infectious Waste Incinerators (HMIWI). The enforceable mechanism for this revised State Plan is a State rule codified in 326 Indiana Administrative Code (IAC) 11-6. The rule was adopted on August 3, 2011, and became effective on October 28, 2011. A typographical correction was submitted to the Indiana Air Pollution Control Board and accepted on December 6, 2011 and became effective on January 20, 2012.

**§ 62.3641 Identification of sources.**

The Indiana State Plan for existing Hospital/Medical/Infectious Waste Incinerators (HMIWI) applies to all HMIWIs for which construction commenced on

(a) On or before June 20, 1996 or for which modification was commenced on or before March 1998; or

(b) 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.

**§ 62.3642 Effective Date.**

The Federal effective date of the Indiana State Plan for existing Hospital/Medical/Infectious Waste Incinerators is [insert date 60 days from date of publication in the Federal Register]

[FR Doc. 2012-9724 Filed 04/23/2012 at 8:45 am; Publication Date: 04/24/2012]