



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA-R03-OAR-2013-0475; FRL-9913-32-Region 3]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Delaware, District of Columbia, and West Virginia; Control of Emissions from Existing Sewage Sludge Incinerator Units

AGENCY: The Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve the Clean Air Act (CAA) negative declarations for the State of Delaware, the District of Columbia, and the State of West Virginia for existing sewage sludge incinerator (SSI) units. These negative declarations certify that SSI units subject to the requirements of sections 111(d) and 129 of the CAA do not exist within the jurisdictional boundaries of the Delaware Department of Natural Resources and Environmental Control (DNREC), the District Department of the Environment (DDOE), and the West Virginia Department of Environmental Protection (WVDEP). EPA is accepting the negative declarations in accordance with the requirements of the CAA.

DATES: This rule is effective on [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] without further notice, unless EPA receives adverse written comment by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the Federal Register and inform the public that the rule will

not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number **EPA-R03-OAR-2013-0475** by one of the following methods:

A. www.regulations.gov. Follow the on-line instructions for submitting comments.

B. E-mail: rehn.brian@epa.gov.

C. Mail: EPA-R03-OAR-2013-0475, Brian Rehn, Acting 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-2013-0475**. 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 submittals are available at the Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903, the District of Columbia Department of the Environment, Air Quality Division, 1200 1st Street, NE, Fifth Floor, Washington, DC 20002, and 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, (215) 814-2039, or by e-mail at gordon.mike@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

EPA's statutory authority for the regulation of new and existing solid waste incineration units is outlined in CAA sections 129 and 111. Section 129 of the CAA is specific to solid waste combustion, and requires EPA to establish performance standards for each category of solid waste incineration units. These standards include new source performance standards (NSPS), applicable to new units, and emissions guidelines for existing units. Under CAA section 129, an NSPS or emissions guideline must contain numerical emissions limitations for particulate matter, opacity (as appropriate), sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins and dibenzofurans. While the NSPS is directly applicable to affected facilities, the emissions guidelines for existing units are intended for states to use in order to develop a state plan to submit to EPA. Once approved by EPA, the state plan becomes federally enforceable. If a State does not submit an approvable state plan to EPA, EPA is responsible for enforcing and implementing a federal plan.

While section 129 of the CAA is specific to the combustion of solid waste, it also relies on CAA section 111 in promulgating the NSPS and emissions guidelines. Section 111 of the CAA gives EPA the statutory authority to promulgate an NSPS and/or emissions guideline for certain categories of stationary sources, and describes the procedural requirements for the development and implementation of these standards. More specifically, CAA section 111(d) requires EPA to establish procedures for States to submit a state plan to EPA for the regulation of existing sources whenever emissions guidelines are promulgated. The general provisions for the submittal and approval of state plans are codified in 40 CFR part 60, subpart B and 40 CFR part

62, subpart A.

States have options other than submitting a state plan in order to fulfill their obligations under CAA sections 111(d) and 129. If a State does not have any existing solid waste incineration units for the relevant emissions guidelines, 40 CFR 60.23(b) and 62.06 provide that a letter may be submitted certifying that no such units exist within the State (i.e., negative declaration) in lieu of a state plan. The negative declaration exempts the State from the requirements of subpart B that would otherwise require the submittal of a CAA section 111(d)/129 plan.

On March 21, 2011 (76 FR 15372), EPA promulgated new source performance standards, 40 CFR part 60, subpart LLLL, and emission guidelines, subpart MMMM, for new and existing SSI units, respectively. Existing SSI units are units that commenced construction on or before October 14, 2010. The DNREC, DDOE, and WVDEP have each determined that there are no existing SSI units subject to CAA sections 111(d) and 129 requirements in their individual air pollution control jurisdictions. In order to fulfill obligations under CAA sections 111(d) and 129, DNREC, DDOE, and WVDEP submitted negative declaration letters to EPA on February 7, 2012, July 26, 2012, and August 27, 2012, respectively. The submittal of these declarations exempts DNREC, DDOE, and WVDEP from the requirement to submit a state plan for existing SSI units.

II. Final EPA Action

In this direct final action, EPA is amending part 62 to reflect receipt of the negative declaration

letters from DNREC, DDOE, and WVDEP. EPA is publishing this rule without prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comment. However, in the “Proposed Rules” section of this Federal Register, EPA is publishing a separate document that will serve as the proposal to approve the negative declarations if adverse comments are filed. This rule will be effective on [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] without further notice unless EPA receives adverse comment by [INSERT DATE 30 DAYS AFTER 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.

III. 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 notifies the public of EPA receipt of negative declarations from air pollution control agencies without any existing SSI units in their jurisdiction. This action imposes no requirements. Accordingly, EPA 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 action 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 action 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 negative declarations for existing SSI units from DNREC, DDOE, and WVDEP and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This action also is not subject to Executive Order 13045 “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it is not economically significant.

With regard to negative declarations for existing solid waste incineration facilities received by EPA from states, EPA’s role is to notify the public of the receipt of such negative declarations and revise 40 CFR part 62 accordingly. 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 approve or disapprove a CAA section 111(d)/129 plan negative declaration submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a

CAA section 111(d)/129 negative declaration, to use VCS in place of a section 111(d)/129 negative declaration 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 action 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 action 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. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action 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 CAA, 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 AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of this Federal Register, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action approving negative declarations for SSI units from DNREC, DDOE, and WVDEP 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.

Dated: June 11, 2014.

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

40 CFR part 62 is amended as follows:

**PART 62 – APPROVAL AND PROMULGATION OF STATE PLANS FOR
DESIGNATED FACILITIES AND POLLUTANTS**

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

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

Subpart I—Delaware

2. Subpart I is amended by adding after §62.1990 an undesignated center heading and § 62.1995 to read as follows:

Emissions From Existing Sewage Sludge Incineration Units

§ 62.1995 Identification of plan – negative declaration.

Letter from the Delaware Department of Natural Resources and Environmental Control, submitted to EPA on February 7, 2012, certifying that there are no known existing sewage sludge incineration units in the State of Delaware.

Subpart J—District of Columbia

3. Subpart J is amended by adding after §62.2155 an undesignated center heading and § 62.2160 to read as follows:

Emissions From Existing Sewage Sludge Incineration Units

§ 62.2160 Identification of plan – negative declaration.

Letter from the District Department of the Environment, submitted to EPA on July 26, 2012, certifying that there are no known existing sewage sludge incineration units in the District of Columbia.

Subpart XX—West Virginia

4. Subpart XX is amended by adding after §62.12165 an undesignated center heading and § 62.12170 to read as follows:

Emissions From Existing Sewage Sludge Incineration Units

§ 62.12170 Identification of plan – negative declaration.

Letter from the West Virginia Department of Environmental Protection, submitted to EPA on August 27, 2012, certifying that there are no known existing sewage sludge incineration units in the State of West Virginia.

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