



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA-R05-OAR-2015-0701; FRL-9936-96-Region 5]

Air Plan Approval; Michigan; Sewage Sludge Incinerators State Plan and Small Municipal Waste Combustors Negative Declaration for Designated Facilities and Pollutants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving Michigan's State Plan to control air pollutants from "Sewage Sludge Incinerators" (SSI). The Michigan Department of Environmental Quality (MDEQ) submitted the State Plan on September 21, 2015. The State Plan is consistent with the Emission Guidelines (EGs) promulgated by EPA on March 21, 2011. This approval means that EPA finds that the State Plan meets applicable Clean Air Act (Act) requirements for subject SSI units. Once effective, this approval also makes the State Plan Federally enforceable. EPA is also notifying the public that we have received from Michigan a negative declaration for Small Municipal Waste Combustors (SMWC). The MDEQ submitted its negative declaration on July 27, 2015. MDEQ notified EPA in its negative declaration letter that there are no SMWC units subject

to the requirements of the Act currently operating in Michigan.

DATES: This direct final rule will be effective **[insert date 60 days after the date of publication in the Federal Register]**, unless EPA receives adverse comments by **[insert date 30 days after the 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, and will respond to all comments in a final action based upon the associated proposal.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2015-0701, by one of the following methods:

1. www.regulations.gov: Follow the on-line instructions for submitting comments.
2. Email: nwia.jacqueline@epa.gov.
3. Fax: (312) 692-2566.
4. Mail: Jacqueline Nwia, Acting 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: Jacqueline Nwia, Acting 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 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to Docket ID No.

EPA-R05-OAR-2015-0701. 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 not contain special characters or any form of encryption, and should be free of any defects or viruses.

Docket: All documents in the docket are listed in the 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 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 a.m. to 4:30 p.m., 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.

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

Section 111(d) of the Act requires that EPA develop regulations providing that states must submit to EPA plans establishing standards of performance for certain existing sources of pollutants when a standard of performance would apply to the existing source if it were a new source, and if the pollutants are noncriteria pollutants (i.e., pollutants for which there is no national ambient air quality standard) and are not on a list published under section 108 of the Act or emitted from a source category regulated under section 112 of the Act. Section 129 of the Act and 40 CFR part 60, subpart B apply the section 111(d) requirements to existing solid waste combustors, including SSIs and SMWCs, and provide that EPA should include, as part of the performance standards, emissions guidelines (EGs) that include the plan elements required by section 129.

EPA promulgated new source performance standards and EGs for SMWCs on December 6, 2000, (64 FR 76349, 65 FR 76377). The

standards and EGs are codified at 40 CFR part 60, subparts AAAA and BBBB, respectively. Thus, states were required to develop plans for existing SMWCs, pursuant to sections 111(d) and 129 of the Act and 40 CFR part 60, subpart B.

EPA promulgated new source performance standards and EGs for SSIs on March 21, 2011, (76 FR 15372). The standards and EGs are codified at 40 CFR part 60, subparts LLLL and MMMM, respectively. Thus, states were required to develop plans for existing SSIs, pursuant to sections 111(d) and 129 of the Act and 40 CFR part 60, subpart B.

A SMWC unit is defined in 40 CFR 60.1550, as any device that has the capacity to combust at least 35 tons per day of municipal solid waste but no more than 250 tons per day of municipal solid waste or refuse derived fuel. The designated facilities to which the EGs apply are existing SMWC units that commenced construction on or before August 30, 1999.

A SSI unit is defined in 40 CFR 60.5250 as any device that combusts sewage sludge for the purpose of reducing the volume of the sewage sludge by removing combustible matter. The designated facilities to which the EGs apply are existing SSI units that commenced construction on or before October 14, 2010. 40 CFR 60.5060.

Under section 129(b)(2) of the Act and the EGs at 40 CFR part 60, subpart MMMM, States with SSIs must submit to EPA plans

that implement the EGs. The plans, which must be at least as protective as the EGs, become Federally enforceable when EPA approves them. 42 U.S.C. 7411(d)(2). If the state fails to submit a satisfactory plan, the Administrator must promulgate a Federal plan for implementation and enforcement. *Id.*

40 CFR part 60, subpart B contains general provisions applicable to the adoption and submittal of state plans for subject facilities under sections 111(d) and 129 (111(d)/129 plan). 40 CFR part 62, subpart A provides the procedural framework for the submission of the plans. However, 40 CFR 60.23(b) and 62.06 provide that, if there are no existing sources of the designated pollutant in a state, the state may submit a letter of certification to that effect (i.e., a negative declaration) in lieu of a plan. The negative declaration exempts the state from the provisions of 40 CFR part 60, subpart B that require the submittal of a 111(d)/129 plan.

On September 21, 2015, MDEQ submitted its SSI State Plan. The State's final rule became effective on May 20, 2015. The public hearing for the State Plan was on August 19, 2015. The plan includes State rule R 336.1972, "Emission standards for existing sewage sludge incineration units," and R 336.1902 "Adoption of standards by reference," which contain emission standards for existing SSI.

On July 27, 2015, MDEQ submitted its SMWC negative

declaration, in which it certifies that there are no SMWC units currently operating in Michigan.

II. What Does the State Plan Contain?

The State SSI plan submittal is based on the Federal SSI EGs. As set forth in section 129 of the Act and in 40 CFR part 60, subparts B and Mmmm, the State Plan addresses the nine minimum required elements, as follows:

1. An inventory of affected SSI units, including those that have ceased operation but have not been dismantled. Michigan has provided this along with the shutdown notices for four facilities and the operating permits for the remaining three affected facilities in Michigan.
2. An inventory of the emissions from affected SSI units. Michigan has provided this.
3. Compliance schedules for each affected SSI unit. Michigan has provided a compliance schedule with a compliance date of March 21, 2016.
4. Emission limits, emission standards, operator training and qualification requirements and operating limits for affected SSI units that are at least as protective as the EGs. Michigan has provided this.
5. Performance testing, recordkeeping and reporting and requirements. Michigan has provided this.
6. Certification that the hearing on the state plan was held,

a list of witnesses and their organizational affiliations, if any, appearing at the hearing, and a brief written summary of each presentation or written submission.

Michigan has provided the required certification and other information, including a summary of the one comment it received.

7. A provision for State progress reports to EPA. Michigan has stated that it will submit an annual report that will include updates to the inventory, removing sources that have shut down, adding any new sources, and identifying any sources that have met increments of progress. The annual report will also include any enforcement activities initiated against designated facilities and submission of technical reports on all performance testing on designated facilities, including updated emissions inventories.
8. Identification of enforceable state mechanisms that the State selected for implementing the EGs. Michigan has provided a detailed list which identified the enforceable mechanisms.
9. A demonstration of the State's legal authority to carry out the SSI State Plan. Michigan has provided a detailed list which demonstrated that it has such legal authority. This includes the legal authority to incorporate by reference federal emission guidelines provisions, as confirmed by a

Michigan Attorney General's Opinion letter dated May 27, 2015.

III. Does the State Plan Meet the EPA Requirements?

EPA evaluated the SSI State Plan and related information submitted by Michigan for consistency with the Act, EPA regulations and policy. For the reasons discussed above, EPA has determined that the State Plan meets all applicable requirements and, therefore, is approvable.

IV. What Action Is EPA Taking?

EPA is approving the State Plan which Michigan submitted on September 21, 2015, for the control of emissions from existing SSI sources in the State. EPA is also providing the public with notice of, and amending 40 CFR part 62 to reflect, EPA's receipt of Michigan's negative declaration for SMWC facilities.

The EPA Administrator continues to retain authority for several tasks, as provided in 40 CFR 60.5050 and as stated in the cover letter of the State Plan.

EPA is publishing this approval action 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 after the date of publication in the Federal Register] without further notice unless we receive relevant adverse written comments by **[insert date 30 days after 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. We will then address all public comments received 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 can 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 after the date of publication in the Federal Register]**.

V. Statutory and Executive Order Reviews

A. General Requirements

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and therefore is not subject to review by the Office of Management and Budget under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011). 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 merely notifies the public of EPA receipt of a negative declaration from an air pollution control agency without any existing SMWC units in its state. This action imposes no requirements beyond those imposed by the state. 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 is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law 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. With regard to negative declarations for designated 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 disapprove a section 111(d)/129 plan submission or negative declaration for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a section 111(d)/129 plan or negative declaration submission, to use VCS in place of a section 111(d)/129 plan or negative

declaration 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 after the 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 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 Michigan's section 111(d)/129 plan for SSI sources or negative declaration for SMWC units 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, Intergovernmental relations, Reporting and recordkeeping requirements, Sewage sludge incinerators, Small municipal waste combustors.

Dated: October 29, 2015.

Susan Hedman,
Regional Administrator, Region 5.

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 X-Michigan

2. Add two undesignated center headings and §§62.5620, 62.5621, 62.5622, and 62.5630 to subpart X to read as follows:

CONTROL OF AIR EMISSIONS FROM SEWAGE SLUDGE INCINERATORS

§62.5620 Identification of plan.

On September 21, 2015, Michigan submitted a State Plan for implementing the emission guidelines for Sewage Sludge Incinerators (SSI). The enforceable mechanism for this State Plan is a State rule codified in R 336.1972, "Emission standards for existing sewage sludge incineration units," and R 336.1902 "Adoption of standards by reference." The State's final rule became effective on May 20, 2015.

§62.5621 Identification of sources.

The Michigan State Plan for existing Sewage Sludge Incinerators (SSI) applies to all SSIs for which construction commenced on or before October 14, 2010 or for which a modification was commenced on or before September 21, 2011 primarily to comply with this rule.

§62.5622 Effective date.

The Federal effective date of the Michigan State Plan for existing Sewage Sludge Incinerators is **[insert date 60 days after the date of publication in the Federal Register]**.

CONTROL OF AIR EMISSIONS FROM SMALL MUNICIPAL WASTE COMBUSTORS
§62.5630 Identification of plan - negative declaration.

On July 27,2015, the Michigan Department of Environmental Quality submitted a negative declaration letter to EPA certifying that there are no existing Small Municipal Waste Combustors (SMWC) units in the State of Michigan subject to the emissions guidelines at 40 CFR part 60, subpart BBBB.

[FR Doc. 2015-28911 Filed: 11/13/2015 8:45 am; Publication Date: 11/16/2015]