



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 62

[EPA-R03-OAR-2016-0081; FRL-9961-23-Region 3]

#### **Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; State of Delaware, District of Columbia, and Commonwealth of Pennsylvania, City of Philadelphia; Control of Emissions from Existing Commercial and Industrial Solid Waste Incinerator Units**

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

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking direct final action to notify the public that it has received negative declarations relating to commercial and industrial solid waste incineration (CISWI) units within the State of Delaware, the District of Columbia, and the City of Philadelphia in the Commonwealth of Pennsylvania. These negative declarations certify that CISWI units subject to the requirements of sections 111(d) and 129 of the Clean Air Act (CAA) do not exist within the jurisdictional boundaries of the State of Delaware, the District of Columbia, and the City of Philadelphia in the Commonwealth of Pennsylvania. 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 No. EPA-R03-OAR-2016-0081 at <https://www.regulations.gov>, or via email to [miller.linda@epa.gov](mailto:miller.linda@epa.gov). For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “For Further Information Contact” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Mary Cate Opila, (215) 814-2041, or by e-mail at [opila.marycate@epa.gov](mailto:opila.marycate@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Sections 111(d) and 129 of the CAA require submittal of state plans to control certain pollutants (designated pollutants) at existing solid waste combustor facilities (designated facilities)

whenever standards of performance have been established by EPA under section 111(b) for new sources of the same source category and the EPA has established emission guidelines for such existing sources. When designated facilities are located in a state, the state must then develop and submit a plan for the control of the designated pollutant. Subpart B of 40 CFR part 60 establishes procedures to be followed and requirements to be met in the development and submission of state plans for controlling designated pollutants from designated facilities under sections 111(d) and 129 of the CAA. Also, Subpart A of 40 CFR part 62 provides the procedural framework for the submission of these plans.

If a state fails to submit a satisfactory plan, the CAA provides the EPA the authority to prescribe a plan for regulating the designated pollutants at the designated facilities. The EPA prescribed plan, also known as a federal plan, is often delegated to states with designated facilities but no EPA approved state-specific plan. If no such designated facilities exist within a state's jurisdiction, a state may submit to the EPA a letter of certification to that effect (referred to as a negative declaration) in lieu of a state plan to satisfy the state's obligation. 40 CFR 60.23(b) and 62.06. A negative declaration exempts the state from the requirement to submit a CAA section 111(d)/section 129 plan for that designated pollutant and source category. 40 CFR 60.23(b).

## **II. Commercial and Industrial Solid Waste Incinerators**

On December 1, 2000 (60 FR 75338), the EPA promulgated new source performance standards for new CISWI units, 40 CFR part 60, subpart CCCC, and emission guidelines for existing CISWI units, 40 CFR part 60, subpart DDDD. After a series of legal challenges, amendments, and reconsiderations, the EPA promulgated the Reconsideration and Final Amendments for CISWI units on February 7, 2013 (78 FR 9112) (providing final standards for new and existing

sources). A CISWI unit is any distinct operating unit of any commercial or industrial facility that combusts, or has combusted in the preceding six months, any solid waste, as that term is defined in 40 CFR part 241, Solid Wastes Used as Fuels or Ingredients in Combustion Units. 40 CFR 60.2875. A state plan must address all existing CISWI units that commenced construction on or before June 4, 2010, or for which modification or reconstruction was commenced on or before August 7, 2013, with limited exceptions as provided in 40 CFR 60.2555. See 40 CFR 60.2550.

As discussed previously, if there are no designated facilities in the state, the state may submit a negative declaration in lieu of a state plan. The EPA will provide public notice of receipt of a state's negative declaration with respect to CISWI. See 40 CFR 60.2530. If any subsequently identified existing CISWI unit is found in a state that had submitted a negative declaration, the Federal plan implementing the emission guidelines for subpart DDDD would automatically apply to that CISWI unit until a state plan is approved. See 40 CFR 60.2530.

### **III. State Submittals and EPA Analysis**

The State of Delaware, through the Department of Natural Resources & Environmental Control (DNREC), the District of Columbia District through the Department of Energy & Environment (DDOEE), and the City of Philadelphia through the Department of Public Health, Air Management Services in the Commonwealth of Pennsylvania (Philadelphia AMS) have determined that there are no CISWI units subject to CAA 111(d)/129 requirements in their respective jurisdictional boundaries. Accordingly, each state and local agency has submitted to EPA a negative declaration letter certifying this fact. DNREC submitted a negative declaration letter to EPA on January 7, 2014. DDOEE submitted a negative declaration letter to EPA on

November 8, 2013. Philadelphia AMS submitted a negative declaration letter to EPA on March 4, 2015. A typographical error in the letter was noted and clarified by Philadelphia AMS in an e-mail on February 4, 2016. These negative declaration letters and a copy of the February 4, 2016 e-mail are in the docket for this action and are available online at <https://www.regulations.gov> . A description of the states' submittals and EPA's rationale for the approval is also set forth in a technical support document for this action. Supporting documentation, including the technical support document, for this action is available in the docket for this rulemaking and available online at <https://www.regulations.gov>.

#### **IV. Final Action**

In this direct final action, EPA is amending 40 CFR part 62 to reflect the receipt of negative declaration letters from the noted state and local agencies. EPA accepts these negative declarations as meeting the requirements in paragraph 40 CFR 60.23(b). Amendments are being made to 40 CFR part 62, subparts I (Delaware), J (District of Columbia), and NN (Pennsylvania). With respect to subpart NN, this action is only applicable to the City of Philadelphia air pollution control agency's jurisdiction; it does not include the remaining geographical areas in the Commonwealth of Pennsylvania. EPA is providing notice of receipt of these negative declarations.

After publication of this **Federal Register** action, if a designated facility (i.e., existing CISWI unit) is later found within any of the three noted jurisdictions, then the overlooked facility will become subject to the requirements of the federal plan for CISWI units for that designated facility, including the compliance schedule, when promulgated by EPA. See 40 CFR 60.2530. The federal plan would no longer apply if EPA subsequently receives and approves a section

111(d)/129 plan from the jurisdiction with the overlooked CISWI facility.

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 today’s **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the action 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.

## **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 notifies the public of EPA receipt of negative declarations from air pollution control agencies without any existing CISWI units within their jurisdictional boundaries. 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 the negative declarations for existing CISWI units from DNREC, DDOEE and Philadelphia AMS. The action 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. This action does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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. 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 today’s **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 action. This action approving negative declarations for existing CISWI units from DNREC, DDOEE and Philadelphia AMS 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, Commercial and industrial solid waste incineration units, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 21, 2017.

Cecil Rodrigues,  
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. Revise § 62.1985 to read as follows:

**§ 62.1985 Identification of plan—negative declaration.**

(a) Letter from the Delaware Department of Natural Resources and Environmental Control submitted November 16, 2001, certifying that there are no existing commercial/industrial solid waste incineration units within the State of Delaware that are subject to 40 CFR part 60, subpart DDDD.

(b) Letter from the Delaware Department of Natural Resources and Environmental Control submitted January 7, 2014, certifying that there are no existing commercial/industrial solid waste incineration units within the State of Delaware that are subject to 40 CFR part 60, subpart DDDD.

**Subpart J—District of Columbia**

3. Revise § 62.2155 to read as follows:

**§ 62.2155 Identification of plan—negative declaration.**

(a) Letter from the District of Columbia Department of Health, Environmental Health Administration, submitted November 27, 2001, certifying that there are no existing commercial/industrial solid waste incineration units within the District of Columbia that are subject to 40 CFR part 60, subpart DDDD.

(b) Letter from the District of Columbia, District Department of Energy & Environment, submitted November 8, 2013, certifying that there are no existing commercial/industrial solid waste incineration units within the District of Columbia that are subject to 40 CFR part 60, subpart DDDD.

**Subpart NN—Pennsylvania**

4. Revise § 62.9670 to read as follows:

**§ 62.9670 Identification of plan—negative declaration.**

(a) Letter from the City of Philadelphia, Department of Public Health, submitted February 9, 2001, certifying that there are no existing commercial/industrial solid waste incineration units within the City of Philadelphia, Pennsylvania that are subject to 40 CFR part 60, subpart DDDD.

(b) Letter from the City of Philadelphia, Department of Public Health, submitted March 4, 2015, as amended February 4, 2016, certifying that there are no existing commercial/industrial solid waste incineration units within the City of Philadelphia, Pennsylvania that are subject to 40 CFR part 60, subpart DDDD.

[FR Doc. 2017-08657 Filed: 4/28/2017 8:45 am; Publication Date: 5/1/2017]