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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 62

[EPA-R02-OAR-2017-0132; FRL-9968-13-Region 2]

### Approval and Promulgation of Plans for Designated Facilities; New Jersey; Delegation of Authority

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a request from the New Jersey Department of Environmental Protection (NJDEP) for delegation of authority to implement and enforce the Federal plan for Sewage Sludge Incineration (SSI) units. On April 29, 2016, the EPA promulgated the Federal plan for SSI units to fulfill the requirements of the Clean Air Act. The Federal plan addresses the implementation and enforcement of the emission guidelines applicable to existing SSI units located in areas not covered by an approved and currently effective state plan. The Federal plan imposes emission limits and other control requirements for existing affected SSI facilities which will reduce designated pollutants.

On January 24, 2017, the NJDEP signed a Memorandum of Agreement which is intended to be the mechanism for the transfer of authority between the EPA and the NJDEP and defines the policies, responsibilities and procedures pursuant to the Federal plan for existing SSI units.

**DATES:** This rule will be effective [insert date 30 days after date of publication in the Federal Register].

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R02-OAR-2017-0132. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information 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 through [www.regulations.gov](http://www.regulations.gov), or please contact the person identified in the “For Further Information Contact” section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Anthony (Ted) Gardella, Environmental Protection Agency, 290 Broadway, New York, New York 10007-1866, at (212) 637-3892, or by email at [gardella.anthony@epa.gov](mailto:gardella.anthony@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. What action is the EPA taking today?**

The EPA is approving the NJDEP’s request for delegation of authority to implement and enforce a Federal plan and to adhere to the terms and conditions prescribed in the Memorandum of Agreement (MOA) signed between the EPA and the NJDEP, as further explained below. The NJDEP requested delegation of authority of the Federal plan for existing applicable Sewage Sludge Incineration (SSI) units constructed on or before October 14, 2010. See 40 CFR part 62,

subpart LLL. The Federal plan was promulgated by the EPA to implement emission guidelines (see 40 CFR part 60, subpart MMMM) pursuant to sections 111(d) and 129 of the Clean Air Act (CAA). The purpose of this delegation is to acknowledge the NJDEP's ability to implement a program and to transfer primary implementation and enforcement responsibility from the EPA to the NJDEP for existing applicable sources of SSI units. While the NJDEP is delegated the authority to implement and enforce the SSI Federal plan, nothing in the delegation agreement shall prohibit the EPA from enforcing the SSI Federal plan.

## **II. What was submitted by the NJDEP and how did the EPA respond?**

On October 12, 2016, the NJDEP submitted to the EPA a request for delegation of authority from the EPA to implement and enforce the Federal plan for existing SSI units. The EPA prepared the MOA that defines the policies, responsibilities, and procedures by which the Federal plan will be administered by both the NJDEP and the EPA, pursuant to 40 CFR part 62, subpart LLL for SSI units. The MOA is the mechanism for the transfer of responsibility from the EPA to the NJDEP.

Both the EPA and the NJDEP signed the MOA in which the State agrees to the terms and conditions of the MOA and accepts responsibility to implement and enforce the policies, responsibilities and procedures of the SSI Federal plan. The transfer of authority to the NJDEP became effective upon signature by the NJDEP on January 24, 2017.

## **III. What comments were received in response to the EPA's proposed action?**

On July 13, 2017 (82 FR 32301), the EPA proposed to approve NJDEP's request for delegation of the SSI Federal plan. For a detailed discussion on the content and requirements of the NJDEP's delegation request, the reader is referred to the EPA's proposed rulemaking action. In response to the EPA's July 13, 2017 proposed rulemaking action, the EPA received no public comments.

#### **IV. What is the EPA's conclusion?**

For the reasons described in this action and in the EPA's proposal the EPA is approving NJDEP's request for delegation of the SSI Federal plan. For further details, the reader is referred to the EPA's proposal.

#### **V. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a State plan submission that complies with the provisions of the CAA sections 111(d) and 129(b)(2) and applicable Federal regulations. 42 U.S.C. 7411(d) and 7429(b)(2); 40 CFR 62.02(a). Thus, in reviewing State plan submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves a state delegation request as meeting Federal requirements and does not impose additional requirements beyond those already imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork

Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- 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);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the 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).

In addition, this rule, pertaining to the NJDEP's section 111(d)/129 request for delegation of authority to implement and enforce the Federal plan for existing SSI units, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because

the NJDEP's request for delegation of the SSI Federal plan is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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. The 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).

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 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. This action 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, Intergovernmental relations, Reporting and recordkeeping requirements, Waste treatment and disposal.

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

Dated: September 13, 2017. Walter Mugdan,  
Acting Regional Administrator,  
Region 2.

Part 62, chapter I, title 40 of the Code of Federal Regulations 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 FF--New Jersey**

2. Add §62.7607 and an undesignated heading to subpart FF to read as follows:

Air Emissions from Existing Sewage Sludge Incineration Units

**§62.7607 Identification of plan – delegation of authority.**

- (a) Letter from the New Jersey Department of Environmental Protection (NJDEP), submitted October 12, 2016, requesting delegation of authority from the EPA to implement and enforce the Federal plan for existing Sewage Sludge Incineration (SSI) units. The Federal plan will be administered by both the NJDEP and the EPA, pursuant to “Federal Plan Requirements for Sewage Sludge Incineration Units Constructed on or Before October 14, 2010” 40 CFR 62.15855-62.16050.
- (b) *Identification of sources.* The Federal plan applies to owners or operators of existing facilities that meet all three of the following criteria:
  - (1) The SSI unit(s) commenced construction on or before October 14, 2010;

- (2) The SSI unit(s) meets the definition of an SSI unit as defined in §62.16045;
- and
- (3) The SSI unit(s) is not exempt under §62.15860.
- (c) On December 27, 2016, the EPA prepared and signed a Memorandum of Agreement (MOA) between the EPA and NJDEP that define the policies, responsibilities and procedures pursuant to the SSI Federal plan identified in (a) above by which the Federal plan will be administered by both the NJDEP and the EPA. On January 24, 2017, Bob Martin, NJDEP Commissioner, signed the MOA, therefore agreeing to the terms and conditions of the MOA and accepting responsibility to enforce and implement the policies, responsibilities, and procedures for existing SSI units.
- (d) The delegation became fully effective on January 24, 2017, the date the MOA was signed by the NJDEP Commissioner.

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