



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA-R01-OAR-2018-0069; FRL-9975-17-Region 1]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; New Hampshire; Delegation of Authority

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a request from the New Hampshire Department of Environmental Services (NH DES) for delegation of authority to implement and enforce the Federal Plan Requirements for Sewage Sludge Incineration Units Constructed on or before October 14, 2010 (SSI Federal Plan). under Clean Air Act (CAA).

DATES: Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R01-OAR-2018-0069 at www.regulations.gov, or via email to bird.patrick@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, the 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. The 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 www.epa.gov/dockets/commenting-epa-dockets.

Publicly available docket materials are available at www.regulations.gov or at the U.S.

Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square – Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office’s official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Patrick Bird, Air Permits, Toxic, & Indoor Programs Unit, U.S. Environmental Protection Agency, Region 1, 5 Post Office Square – Suite 100, Mail Code: OEP05-2, Boston, MA, 02109-3912, tel. (617) 918-1287, email bird.patrick@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

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I. What Action is the EPA Proposing to Take Today?

The EPA is proposing to approve the NH DES request for delegation of authority to implement and enforce the SSI Federal Plan found at 40 CFR part 62 subpart LLL and to adhere to the terms and conditions prescribed in the Memorandum of Agreement (MoA) signed by the EPA and the NH DES, as further explained further in this action. The purpose of this SSI Federal Plan delegation is to transfer primary implementation and enforcement responsibility from the EPA to the NH DES for all affected facilities within the jurisdiction of the State of New Hampshire. However, nothing in this action, nor in the MoA, shall be construed to prohibit the EPA from enforcing the SSI Federal Plan.

II. What are the CAA Requirements?

Sections 111(d) and 129 of the CAA require states to submit plans to control certain pollutants (designated pollutants) at existing solid waste combustor facilities (designated facilities) whenever standards of performance have been established under section 111(b) for new sources of the same type and the EPA has established emission guidelines for such existing sources. A designated pollutant is any pollutant for which no air quality criteria has been issued or which is not included on a list published under section 108(a) (national ambient air quality standards) or section 112 (hazardous air pollutants) of the CAA, but emissions of which would be subject to a standard of performance for new stationary sources under section 111(b). In addition, section 129 of the CAA also requires the EPA to promulgate emission guidelines for solid waste incineration units that emit specific air pollutants or a mixture of air pollutants. These pollutants include organics (dioxins and dibenzofurans), carbon monoxide, metals (cadmium, lead and mercury), acid gases (hydrogen chloride, sulfur dioxide and oxides of nitrogen), particulate matter and opacity (as appropriate).

On March 21, 2011 (76 FR 15372), the EPA promulgated new source performance standards and emission guidelines for sewage sludge incineration (SSI) units at 40 CFR part 60 subparts LLLL and MMMM, respectively. The designated facility to which the emission guidelines applies is existing SSI units, as stipulated in subpart MMMM, that commenced construction on or before October 14, 2010.

Pursuant to section 129 of the CAA, state plan requirements must be “at least as protective” as the emission guidelines and become federally enforceable upon approval by the EPA. The procedures for adoption and submittal of state plans are codified in 40 CFR part 60, subpart B. For states that fail to submit a plan, the EPA is required to develop and implement a Federal Plan within two years following promulgation of the emission guidelines. The EPA implementation and enforcement of the Federal Plan is viewed as an interim measure until states assume their role as the preferred implementers of the emission guidelines requirements stipulated in the Federal Plan. Accordingly, the EPA promulgated the SSI Federal Plan on April 29, 2016. In this rulemaking, the EPA strongly encouraged state and local agencies in jurisdictions that did not submit approvable State Plans to request delegation of the SSI Federal Plan so that they can have the primary responsibility for implementing and enforcing regulations affecting existing source SSI unit, consistent with the intent of section 129 of the CAA.

III. What Was Submitted by the NH DES and How Did the EPA Respond?

On November 14, 2017, the NH DES submitted to the EPA a request for delegation of authority to implement and enforce the SSI Federal Plan. The EPA evaluated the NH DES request for delegation pursuant to the provisions of the SSI Federal Plan and the EPA's Delegation Manual.¹ Section 62.15865 of the SSI Federal Plan establishes that a state may meet

¹ Section 7-139 of the EPA's Delegation Manual is entitled “Implementation and Enforcement of 111(d)(2) and 111(d)/129(b)(3) Federal Plans” and the reader may refer to it in the docket for this rulemaking at www.regulations.gov (see Docket ID Number EPA-R01-OAR-2018-0069.)

its CAA section 111(d)/129 obligations by submitting an acceptable written request for delegation of the Federal Plan that includes the following requirements: (1) A demonstration of adequate resources and legal authority to administer and enforce the Federal Plan; (2) an inventory of affected SSI units, an inventory of emissions from affected SSI units, and provisions for state progress reports (see items under § 60.5015(a)(1), (2) and (7) from the SSI emission guidelines); (3) certification that the hearing on the state delegation request, similar to the hearing for a state plan submittal, 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; and (4) a commitment to enter into a MoA with the Regional Administrator that sets forth the terms, conditions and effective date of the delegation and that serves as the mechanism for the transfer of authority.

In parallel with our review of the delegation request, the EPA prepared the MoA which defines the policies, responsibilities, and procedures by which the SSI Federal Plan will be administered by both the NH DES and the EPA. The MoA is the mechanism for the transfer of responsibility from the EPA to the NH DES.

Both the EPA and the NH DES signed the MoA in which the parties agreed to the terms and conditions regarding the responsibility to implement and enforce the policies, responsibilities and procedures of the SSI Federal Plan. The MoA became effective upon signature by the EPA on December 22, 2017.

Under the EPA's Delegation Manual, item 7-139, the Regional Administrator is authorized to delegate implementation and enforcement of sections 111(d)/129 Federal Plans to state environmental agencies. The Regional Administrator may consider delegating authority to implement and enforce Federal Plans to a state provided the following conditions are met: (1) The state does not already have an EPA approved State Plan; (2) the state submits a

demonstration of adequate resources and legal authority to administer and enforce the Federal Plan; and (3) the state enters into a MoA with the Regional Administrator that sets forth the terms, conditions and effective date of the delegation and that serves as the mechanism for the transfer of authority.

NH DES has met all of the EPA's delegation requirements as described above. The reader may view the NH DES letter to the EPA requesting delegation and the MoA signed by both parties at www.regulations.gov, identified by Docket ID Number EPA-R01-OAR-2018-0069.

IV. What is the EPA's Proposed Conclusion?

The EPA has evaluated the NH DES submittal for consistency with the CAA, EPA regulations, and EPA policy. The NH DES has met all the requirements of the EPA's guidance for obtaining delegation of authority to implement and enforce the SSI Federal Plan. The NH DES entered into a MoA with the EPA, and it became effective on December 22, 2017. Accordingly, the EPA is proposing to approve the NH DES request dated November 14, 2017 for delegation of authority to implement and enforce the Federal Plan for existing SSI units. The EPA will continue to retain certain specific authorities reserved to the EPA in the SSI Federal Plan and as indicated in the MoA (*e.g.*, authority to approve major alternatives to test methods or monitoring, etc.).

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 section 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, 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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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 (Pub. L. 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 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 rulemaking does not 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).

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Administrative practice and procedure, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Waste treatment and disposal.

Dated: March 8, 2018.

Alexandra Dapolito Dunn,

Regional Administrator,

EPA Region 1.

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