



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA-R02-OAR-2018-0564, FRL-9983-42-Region 2]

Approval and Promulgation of State Plans for Designated Facilities; New York

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the State plan submitted by New York State to implement and enforce Emission Guidelines (EG) for existing large municipal waste combustor (MWC) units. The State plan is consistent with the amended EG promulgated by EPA on May 10, 2006. New York's plan establishes emission limits and other requirements for the purpose of reducing emissions of lead, mercury, cadmium, organics, hydrogen chloride and other air pollutants from large MWC units throughout the State. New York submitted its plan to fulfill the requirements of sections 111(d) and 129 of the Clean Air Act.

DATES: Comments must be received on or before **insert date 30 days from date of publication in the Federal Register**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R02-OAR-2018-0564 to <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. 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, 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>.

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I. EPA Action

- A. What action is EPA proposing today?

EPA is proposing to approve New York's revised State plan, submitted on July 12, 2013, for the control of air emissions from existing large municipal waste combustor (MWC) units throughout the State, except for any existing large MWC units located in Indian Nation Land. In accordance with the Clean Air Act (CAA), New York previously submitted a State plan on December 15, 1997, as supplemented on June 22, 1998, which was approved by EPA on August 4, 1998, 63 FR 41427. New York also submitted a revised State plan on October 7, 1998, as supplemented on November 5, 1998 which was approved by the EPA on February 9, 1999, 64 FR 6237. New York submitted its July 2013 revised plan to fulfill the requirements of section 111(d) and 129 of the CAA. The revised State plan adopts and implements the Emission Guidelines (EG) amended by EPA on May 10, 2006 applicable to existing large MWC units, and establishes revised

emission limits and other requirements for units constructed on or before September 20, 1994.

This proposed approval, once finalized and effective, will make New York's revised large MWC rules included in the State plan federally enforceable.

B. Who is affected by New York's revised State plan?

New York's revised State plan regulates all the units designated by the amended EG applicable to existing large MWC units with a combustion capacity greater than 250 tons per day of municipal solid waste for which construction commenced on or before September 20, 1994.

C. How does this approval affect sources located in Indian Nation Land?

New York's revised State plan is not applicable to units located in Indian Nation Land. Therefore, if there are any existing large MWC units located in Indian Nation Land these existing large MWC units will be subject to the Federal plan¹.

II. Background

A. What is a State plan?

Section 111 of the CAA, "Standards of Performance for New Stationary Sources," authorizes EPA to set air emissions standards for certain categories of sources. These standards are called New Source Performance Standards (NSPS). When a NSPS is promulgated for new sources, section 111(d) and EPA regulations also require that EPA publish an EG applicable to

¹ The EPA has not yet promulgated a Federal plan for the May 2006 large MWC EG. The current Federal plan was promulgated on May 24, 2000 (65 FR 33461) and amended on July 14, 2004 (69 FR 42117) for the large MWC EG promulgated on August 25, 1997 (62 FR 45124) as amended on July 12, 2001 (66 FR 36473).

control the same pollutants from existing (or designated) facilities. States with designated facilities must then develop a State plan to adopt the requirements of the EG into the State's body of regulations. States must also include in their State plan other requirements, such as inventories, legal authority, reporting and recordkeeping, and public participation documentation, to demonstrate their ability to enforce the State plans.

Section 129 of the CAA requires EPA to establish performance standards and emission guidelines for various types of new and existing solid waste incineration units. Section 129(b)(2) requires States to submit to EPA for approval section 111(d)/129 plans that implement and enforce the promulgated EG. Section 129(b)(3) requires EPA to promulgate a Federal plan (FP) within two years from the date on which the EG, or when revision to the EG, is promulgated. The FP is applicable to affected facilities when the state has failed to receive EPA approval of the section 111(d)/129 plan. The FP remains in effect until the state submits and receives EPA approval of its section 111(d)/129 plan.

State plan submittals under CAA sections 111(d) and 129 must be consistent with the relevant EG, in this instance 40 CFR part 60, subpart Cb, and the requirements of 40 CFR part 60, subpart B and part 62, subpart A. Section 129 of the CAA regulates air pollutants that include organics (dioxins/furans), carbon monoxide, metals (cadmium, lead, and mercury), hydrogen chloride, sulfur dioxide, nitrogen oxides, particulate matter, and opacity (as appropriate).

B. Why is EPA requiring New York to submit a revised large MWC State plan?

When EPA developed the amended NSPS for large MWC units, we simultaneously developed the amended EG to control air emissions from existing units (see 71 FR 27324, May 10, 2006). Under section 129 of the CAA, the EG is not federally enforceable; therefore, section 129 of the CAA also requires states to submit to EPA for approval State plans that implement and enforce the EG. Under section 129 of the CAA, these State plans must be at least as protective as the EG, and they become federally enforceable upon approval by EPA.

The procedures for adopting and submitting State plans are located in 40 CFR part 60, subpart B. If a state fails to have an approvable plan in place, the EPA is required to promulgate a federal plan to establish requirements for those sources not under an EPA-approved State plan. New York has developed and submitted a revised State plan, as required by sections 111(d)/129 of the CAA, to gain federal approval to implement and enforce the requirements of the amended EG for existing large MWC units. The procedures for EPA's approval and disapproval of State plans are located in 40 CFR part 62, subpart A. EPA is proposing to approve New York's State plan since it is deemed at least as protective as the standards set in the EG, as amended on May 10, 2006.

C. What are the requirements for a revised large MWC State plan?

A section 111(d) State plan submittal must meet the requirements of 40 CFR part 60, subpart B, sections 60.23 through 60.26, and the amended EG found at 40 CFR part 60, subpart Cb (see 71 FR 27324, May 10, 2006). Subpart B contains the procedures for the adoption and submittal of State plans. This subpart addresses public participation, legal authority, emission

standards and other emission limitations, compliance schedules, emission inventories, source surveillance, and compliance assurance and enforcement requirements.

EPA promulgated the amended EG at 40 CFR part 60, subpart Cb on May 10, 2006. Subpart Cb contains guidelines to the states for submittal of plans that address existing large MWC units. In addition, subpart Cb contains the technical requirements for existing large MWC units located at a facility designed to combust municipal solid waste and applies to each MWC unit with a combustion capacity greater than 250 tons per day for which construction was commenced on or before September 20, 1994. A state can address the large MWC technical requirements by adopting its own regulation that includes all the applicable requirements of subpart Cb or by incorporating by reference subpart Cb if the state meets certain requirements. States with affected facilities are required to submit to EPA a section 111(d)/129 plan to implement and enforce all provisions of subpart Cb, as amended on May 10, 2006. Prior to submittal to EPA, the State must make available to the public the State plan and provide opportunity for public comment, including a public hearing.

D. What revisions did EPA make to subpart Cb as amended on May 10, 2006?

Section 129(a)(5) of the CAA requires EPA to conduct 5-year reviews of NSPS for solid waste incinerators and amend standards and requirements as appropriate. Accordingly, EPA promulgated amended standards and requirements for large MWCs on May 10, 2006. This rulemaking resulted in two major revisions as well as other revisions. The two major revisions include revisions to emission limits and revisions to compliance testing provisions.

Relative to the 1995 EG, the emission limits in the May 2006 rulemaking for existing large MWC units are revised for dioxin/furans (only for units equipped with electrostatic precipitators), mercury, cadmium, lead, particulate matter, and nitrogen oxides (for some types of units). The second major revision to the EG included revisions to the compliance testing provisions to require increased data availability from continuous emissions monitoring Systems (CEMS). CEMS are required to generate at least 95% data availability on a calendar year basis and at least 90% data availability on a calendar quarter basis. Also, the compliance testing provisions have also been revised to allow the optional use of CEMS to monitor particulate matter and mercury.

Other revisions include the following:

- Operator stand-in provisions to clarify how long a shift supervisor is allowed to be off site when a provisionally certified control room operator is standing in;
- An 8-hour block average for measuring activated carbon injection rate;
- A provision for waiver of operating parameter limits during the mercury performance tests and two weeks preceding the test, as is already allowed for dioxin testing;
- A revision to the relative accuracy criterion for sulfur dioxide and carbon monoxide CEMS;
- Flexibility to the annual compliance testing schedule so that a facility tests once per calendar year, but no less than 9 months and not more than 15 months since the previous test;

- Allowing the use of parametric monitoring limits from an exceptionally well-operated MWC unit to be applied to all identical units at the same plant site without retesting for dioxin;
- The option of monitoring the activated carbon injection pressure or equivalent parameter; and
- Clarifying the exclusion of monitoring data from compliance calculations under certain conditions.

New York's revised State plan submittal in July 2013 for existing large MWCs includes all the revisions to subpart Cb, as amended on May 10, 2006.

III. New York's State Plan

A. What is contained in the New York State revised plan?

On July 12, 2013², the New York State Department of Environmental Conservation (NYSDEC) submitted to EPA its section 111(d)/129 State plan to implement EPA's amended EG for existing large MWC units located in New York State.

New York has incorporated by reference the applicable requirements of the amended EG in Part 200 of Title 6 of the New York Code of Rules and Regulations (6 NYCRR) of the State of New York, entitled "General Provisions." The amended regulation became effective on October 20, 2007. New York will enforce the requirements under Part 201, entitled "Permits and

² In an email dated 12/06/2017, the New York State Department of Environmental Conservation provided a copy of the NYS Office of Attorney General opinion finding that NY state administrative agencies are authorized to incorporate by reference federal statutes and regulations that are applicable to the state, and that such action is not prohibited by the NYS constitution.

Registration.” By adopting the requirements of the amended EG into Part 200, NYSDEC has the authority to include them as applicable requirements in permits of emission sources subject to such requirements. As a result, the Part 200 requirements are enforceable by New York and become federally enforceable once the State plan is approved by EPA.

New York’s revised State plan includes all of EPA’s required elements as described in the amended EG and 40 CFR subpart B, as summarized herein:

(1) A demonstration of the State’s legal authority to implement the sections 111(d) and 129 State plan;

(2) State rules adopting the amended EG (6 NYCRR Part 200) as the mechanism for implementing and enforcing the State plan;

(3) An inventory of seven known large MWC facilities, including eighteen large MWC units, along with an inventory of their air pollutant emissions (see section C of New York’s State plan);

(4) Emission limits, emission standards, operator training and qualification requirements, and operating limits that are at least as protective as the amended EG;

(5) Enforceable compliance schedules as indicated in the amended EG.

Compliance with revised emission limits (see 60.39b) is required as expeditiously as practicable, but not later than April 28, 2009 except as noted in 60.39b(g)(2) for a facility planning an extensive emission control system upgrade who petitions the Administrator for a longer compliance schedule. If approved by the Administrator, the longer compliance schedule may be extended but not later than May 10, 2011. In the event that no plan for implementing the amended

EG is approved by EPA, the applicable large MWC units must be in compliance with all requirements of the amended EG no later than May 10, 2011 (see 60.39b(h)).

(6) Testing, monitoring, reporting and recordkeeping requirements for the designated facilities;

(7) Records of the public hearing on the revised State plan; and,

(8) Provisions for annual state progress reports to EPA on implementation of the revised State plan.

EPA proposes to determine that New York's revised State plan for large MWC units includes all the required State plan elements described in the amended EG and 40 CFR subpart

B. What approval criteria did we use to evaluate New York's revised State plan?

EPA reviewed New York's revised State plan for approval against the following criteria: 40 CFR 60.23 through 60.26, "Subpart B-Adoption and Submittal of State Plans for Designated Facilities;" and "Subpart Cb Emission Guidelines and Compliance Times for Large Municipal Waste Combustors That are Constructed on or Before September 20, 1994;" and 40 CFR 62, subpart A, "General Provisions" for "Approval and Promulgation of State Plans for Designated Facilities and Pollutants."

IV. What is EPA's Conclusion?

The EPA has determined that New York's revised State plan meets all the applicable approval criteria as discussed above and, therefore, EPA is proposing to approve New York State's sections 111(d) and 129 revised State plan for existing large municipal waste combustor units.

V. Statutory and Executive Order Reviews

Pursuant to EPA regulations, the Administrator may approve a plan or any portion thereof upon a determination that it meets Sections 111(d) and 129 of the Act and applicable regulations. 40 CFR Section 62.02.

Accordingly, this action, if finalized, would merely approve state law as meeting Federal requirements and would not impose additional requirements beyond those imposed by state law.

For that reason, this action, if finalized:

- 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); and 13563 (76 FR 3821, January 21, 2011);
- is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866;
- 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 CAA; 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 proposed 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).

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides, waste treatment and disposal.

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

Dated: August 19, 2018. Peter D. Lopez,
Regional Administrator,
Region 2.

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