



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA-R05-OAR-2018-0600; FRL-9984-56-Region 5]

Air Plan Approval; Indiana; Negative Declarations for Commercial and Industrial Solid Waste Incineration and Sewage Sludge Incineration Units for Designated Facilities and Pollutants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is notifying the public that we have received from Indiana requests for withdrawals of the previously approved state plans and notification of negative declarations for Commercial and Industrial Solid Waste Incineration (CISWI) units and Sewage Sludge Incineration (SSI) units. The Indiana Department of Environmental Management (IDEM) submitted its CISWI withdrawal and negative declaration by letter dated July 31, 2017 and its SSI withdrawal and negative declaration by letter dated July 31, 2017. IDEM notified EPA in its negative declaration letters that there are no CISWI or SSI units subject to the requirements of the Clean Air Act (Act) currently operating in Indiana.

DATES: 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-R05-OAR-2018-0600, at <https://www.regulations.gov> or via

email to cain.alexis@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 <https://www2.epa.gov/dockets/commenting-epa-dockets>.

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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
 - A. Sections 111 and 129 of the Act
 - B. Commercial and Industrial Solid Waste Incineration Units
 - C. Sewage Sludge Incineration Units
- II. Negative Declarations and EPA Analysis
 - A. Commercial and Industrial Solid Waste Incineration Units
 - B. Sewage Sludge Incineration Units
- III. Proposed EPA Action
- IV. Statutory and Executive Order Reviews

I. Background

A. Sections 111 and 129 of the Act

Sections 111 and 129 of the Act set forth EPA's statutory authority for regulating, among other types of emission sources, new and existing solid waste incineration units. Section 111(b) directs EPA to publish and periodically revise a list of categories of stationary sources which cause or significantly contribute to air pollution, and to establish new source performance standards (NSPS) within these categories. Section 111(d) grants EPA statutory authority to require states to submit implementation plans for establishing performance standards applicable to existing sources belonging to those

categories established in section 111(b).

Under Section 111(d), the state submits plans to control certain pollutants (designated pollutants) at existing facilities (designated facilities) which have been established under section 111(b). EPA has promulgated emission guidelines (EGs) for designated facilities, which are used by states to formulate their state plan. 40 CFR 60.21(a) and (b). Section 129(b) of the Act is specific to solid waste combustion, and requires EPA to establish performance standards pursuant to section 111 of the Act for each category of solid waste incineration units, which includes the categories addressed in today's action.

The regulations at 40 CFR part 60, subpart B, contain general provisions applicable to the adoption and submittal of state plans for the control of designated pollutants from designated facilities under section 111(d) of the Act, including those pollutants and facilities designated pursuant to section 129 of the Act. Further, 40 CFR part 62, subpart A, provides the procedural framework in which EPA will approve or disapprove such plans submitted by a state. If a state fails to submit a satisfactory plan, the Act provides EPA with 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 used to regulate designated facilities when

there is no EPA approved state-specific plan. Further, if there are no designated facilities within a state's jurisdiction, the state may submit to 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. The negative declaration exempts the state from the requirement to submit a state plan for the designated pollutants and facilities. Therefore, if a state submits a negative declaration for a category of solid waste incineration units, the state is not required to submit a state plan for that source category.

B. Commercial and Industrial Solid Waste Incineration Units

On December 1, 2000, EPA promulgated a NSPS for new CISWI units, 40 CFR part 60, subpart CCCC, and EGs for existing CISWI units, 40 CFR part 60, subpart DDDD. 65 FR 75338. On March 21, 2011 (76 FR 15704), EPA, after a "voluntarily remand" of the 2000 CISWI standards and EGs, promulgated a final CISWI NSPS and EGs.¹ Correspondingly, on the same date, EPA promulgated a final rule under the Resource Conservation and Recovery Act (RCRA) to identify which non-hazardous secondary materials, when used as fuels or ingredients in combustion units, are "solid wastes." 76 FR 15456; see 40 CFR part 241, Solid Wastes Used as Fuels or

¹ For more information on the history to this rule, including the remand, see 67 FR 70640 (November 25, 2002).

Ingredients in Combustion Units (also known as the "Non-Hazardous Secondary Material Rule"). The identification of solid waste in the Non-Hazardous Secondary Material Rule is used to determine whether a combustion unit is required to meet the emissions standards for solid waste incineration units issued under sections 111 and 129 of the Act, or meet the emissions standards for commercial, industrial, and institutional boilers issued under section 112 of the Act. EPA subsequently promulgated amendments to both rules on February 7, 2013: Commercial and Industrial Solid Waste Incineration Units: Reconsideration and Final Amendments; Non-Hazardous Secondary Materials That Are Solid Waste; Final Rule. 78 FR 9112. Reconsideration of certain aspects of the final CISWI rule resulted in minor amendments. 81 FR 40956 (June 23, 2016). Pursuant to sections 111(d) and 129 of the Act and 40 CFR part 60, subpart B, states were required to revise their state plans for existing CISWI units to comply with the amended regulations.

A CISWI unit is defined in 40 CFR 60.2875 as any distinct operating unit of any commercial or industrial facility that combusts, or has combusted in the preceding 6 months, any solid waste, as that term is defined in the Non-Hazardous Secondary Material Rule. 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 section 40 CFR 60.2555. 40 CFR 60.2550.

However, as discussed above, if there are no existing designated facilities in a state, the state may submit a negative declaration in lieu of a state plan. EPA will provide public notice of receipt of a state's negative declaration with respect to that solid waste incineration unit category. 40 CFR 60.2530. If any unit of a solid waste incineration category is subsequently identified in a state for which a negative declaration had been submitted, the Federal plan implementing the EGs for that source category would apply to that unit. In the case of a CISWI unit, subpart DDDD would automatically apply to that CISWI unit until a state plan is approved. 40 CFR 60.2530.

C. Sewage Sludge Incineration Units

EPA promulgated an NSPS and EGs for SSIs on March 21, 2011. 76 FR 15404. The NSPS and EGs are codified at 40 CFR part 60, subparts LLLL and MMMM, respectively. Thus, states were required to submit plans for existing SSIs, pursuant to sections 111(d) and 129 of the Act and 40 CFR part 60, subpart B.

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 applied to are existing

SSI units that commenced construction 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. 76 FR 15371.

II. Negative Declarations and EPA Analysis

A. Commercial and Industrial Solid Waste Incineration Units

IDEM submitted a CISWI state plan on December 20, 2002. EPA approved the state plan and it became effective on August 11, 2003. 68 FR 35181. On July 31, 2017, IDEM submitted its CISWI negative declaration, in which it certified that there are no longer any CISWI units currently operating in Indiana.²

B. Sewage Sludge Incineration Units

IDEM submitted a SSI state plan on February 27, 2013. EPA approved the state plan and it became effective on August 12, 2013. 78 FR 34918. On July 31, 2017, IDEM submitted its SSI withdrawal and negative declaration, in which it certified that there are no longer any existing SSI units currently operating in Indiana. Previously, IDEM listed Belmont Advanced Wastewater Treatment Facility as having an existing SSI. After modifications at the Belmont facility, however, the SSI unit became subject to the NSPS under 40 CFR part 60 subpart LLLL. Because there are no existing sources subject to the 2013 state

² Previously, an incinerator located at Covance Laboratories, Inc. was listed by Indiana as subject to the CISWI. In a letter dated June 18, 2018, however, EPA determined that Covance's incinerator was not a "CISWI unit" under the regulations.

plan, IDEM is requesting to withdraw the 2013 state plan and replace it with a negative declaration.

III. Proposed EPA Action

EPA is proposing to amend 40 CFR part 62 to reflect IDEM's withdrawals and negative declarations for both CISWI and SSI facilities. EPA received the CISWI and SSI negative declarations and withdrawal requests by letters dated July 31, 2017.

IV. 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 is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because this action is not significant under E.O. 12866. This action merely approves state law as meeting Federal requirements and merely notifies the public of EPA's receipt of negative declarations from an air pollution control agency without any existing CISWI or SSI 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 pertains to 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 provides notice of receipt of negative declarations, 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 just notifying the public regarding receipt of the negative declarations.

In reviewing state 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 state plan submission or negative declaration for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a state plan or negative declaration submission, to use VCS in place of a state 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.).

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Commercial and Industrial Solid Waste Incinerators, Intergovernmental relations, Sewage Sludge Incineration Units, Reporting and record-keeping requirements.

Dated: September 13, 2018.

Cathy Stepp,
Regional Administrator, Region 5.

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