



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA-R05-OAR-2018-0600; FRL-9989-36-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: Final 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. On October 3, 2018, EPA published a notice of proposed rulemaking for these negative declarations.

DATES: This final rule is effective on **[insert date 30 days**

after date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2018-0600. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) 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 through www.regulations.gov or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Margaret Sieffert, Environmental Engineer, at (312) 353-1151 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Margaret Sieffert, Environmental Engineer, Environmental Protection Agency, Region 5, 77 West Jackson Boulevard (AT-18J), Chicago, Illinois 60604, (312) 353-1151, sieffert.margaret@epa.gov.

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

II. What Public Comments Were Received on the Proposed Approval and What is EPA's Response?

III. What Action is EPA Taking?

IV. Statutory and Executive Order Reviews

I. Background

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.¹

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. Because there are no existing sources subject to the 2013 state plan, IDEM is requesting to withdraw the 2013 state plan and replace it with a negative declaration.

On October 3, 2018, EPA published a notice of proposed rulemaking (NPRM) proposing notice of Indiana's negative declarations for CISWI and SSI. The specific details of

¹ 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.

Indiana's request and the rationale for EPA's approval are discussed in the NPRM and will not be restated here.

II. What Public Comments Were Received on the Proposed Approval and What is EPA's Response?

EPA received one anonymous comment on its November 1, 2018, proposal. This comment addresses subjects outside the scope of our proposed action, does not explain (or provide a legal basis for) how the proposed action should differ in any way, and makes no specific mention of the substantive aspects of the proposed action. Therefore, this comment is not germane to this rulemaking and requires no further response.

III. What Action is EPA Taking?

EPA is notifying the public of EPA's receipt of IDEM's negative declarations for both CISWI and SSI facilities and amending 40 CFR part 62 to reflect both negative declarations. EPA received the CISWI and SSI negative declarations and withdrawal requests by letters dated July 31, 2017. In this action, EPA is finalizing its notification. EPA is also revising 40 CFR part 62.3660 and 62.3670 to reflect these notifications.

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.).

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).

Under section 307(b)(1) of the 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

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

Dated: December 21, 2018.

James O. Payne,
Acting Regional Administrator, Region 5.

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.*

2. Revise § 62.3660 to read as follows:

§ 62.3660 Identification of plan - negative declaration.

On July 31, 2017, the Indiana Department of Environmental Management submitted a negative declaration letter to EPA certifying that there are no existing Commercial and Industrial Solid Waste Incineration (CISWI) units in the State of Indiana subject to the emissions guidelines at 40 CFR part 60, subpart DDDD.

3. Revise § 62.3670 to read as follows:

§ 62.3670 Identification of plan - negative declaration.

On July 31, 2017, the Indiana Department of Environmental Management submitted a negative declaration letter to EPA certifying that there are no existing Sewage Sludge Incineration (SSI) units in the State of Indiana subject to the emissions guidelines at 40 CFR part 60, subpart MMMM.

§ 62.3671 [Removed and Reserved]

4. Section 62.3671 is removed and reserved.

§ 62.3672 [Removed and Reserved]

5. Section 62.3672 is removed and reserved.