



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA-R06-OAR-2020-0357; FRL-10012-53-Region 6]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Arkansas, New Mexico, and Albuquerque-Bernalillo County, New Mexico; Control of Emissions From Existing Commercial and Industrial Solid Waste Incineration Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is notifying the public that we have received CAA section 111(d)/129 negative declarations from Arkansas, New Mexico, and Albuquerque-Bernalillo County, New Mexico, for existing incinerators subject to the Commercial and Industrial Solid Waste Incineration units (CISWI) emission guidelines (EG). These negative declarations certify that incinerators subject to CISWI EG and the requirements of sections 111(d) and 129 of the CAA do not exist within the jurisdictions of Arkansas, New Mexico, and Albuquerque-Bernalillo County. The EPA is proposing to accept the negative declarations and amend the CFR in accordance with the requirements of the 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 No. EPA-R06-OAR-2020-0357, at <https://www.regulations.gov> or via email to ruan-lei.karolina@epa.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, please contact Karolina Ruan Lei, (214) 665-7346, *ruan-lei.karolina@epa.gov*. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

Docket: The index to the docket for this action is available electronically at www.regulations.gov. While all documents in the docket are listed in the index, some information may not be publicly available due to docket file size restrictions or content (e.g., CBI).

FOR FURTHER INFORMATION CONTACT: Karolina Ruan Lei, EPA Region 6 Office, Air and Radiation Division - State Planning and Implementation Branch, (214) 665-7346, *ruan-lei.karolina@epa.gov*. Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office will be closed to the public to reduce the risk of transmitting COVID-19. We encourage the public to submit comments via <https://www.regulations.gov>, as there will be a delay in processing mail and no courier or hand deliveries will be accepted. Please call or e-

mail the contact listed above if you need alternative access to material indexed but not provided in the docket.

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

I. Background

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. CAA section 129 directs the EPA to establish standards of performance for new sources (NSPS) and emissions guidelines (EG) for existing sources for each category of solid waste incinerator specified in CAA section 129. Under CAA section 129, NSPS and EG must contain numerical emissions limitations for particulate matter, opacity (as appropriate), sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins and dibenzofurans. While NSPS are directly applicable to new sources (affected facilities), EG for existing sources (designated facilities) are intended for states to use to develop a state plan to submit to the EPA. Once approved by the EPA, the state plan becomes federally enforceable. If a state does not submit an approvable state plan to the EPA, the EPA is responsible for developing, implementing, and enforcing a federal plan.

The regulations at 40 CFR part 60, subpart B, contain general provisions applicable to the adoption and submittal of state plans for controlling designated pollutants from designated facilities. Additionally, 40 CFR part 62, subpart A, provides the procedural framework by which the EPA will approve or disapprove such plans submitted by a state. When designated facilities

are located in a state, the state must then develop and submit a plan for the control of the designated pollutant(s). However, 40 CFR 60.23(b) and 40 CFR 62.06 provide that if there are no designated facilities of the designated pollutant(s) in the state, the state may submit a letter of certification to that effect (i.e., negative declaration) in lieu of a plan. The negative declaration exempts the state from the requirements of subpart B that require the submittal of a CAA section 111(d)/129 plan.

On December 1, 2000, EPA promulgated the CISWI NSPS at 40 CFR part 60, subpart CCCC, and the CISWI EG at 40 CFR part 60, subpart DDDD (65 FR 75338). On March 21, 2011, after voluntarily remanding the 2000 CISWI NSPS and EG, the EPA promulgated final CISWI NSPS and EG (76 FR 15704). 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).¹ 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).² On April 16, 2019, EPA finalized further amendments to the

¹ See 40 CFR part 241, Solid Wastes Used as Fuels or 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.

² In the June 23, 2016, final action, the EPA finalized amendments on these four topics: Definition of “continuous emission monitoring system (CEMS) data during startup and shutdown periods;” particulate matter (PM) limit for the waste-burning kiln subcategory; fuel variability factor (FVF) for coal-burning energy recovery units (ERUs); and the definition of “kiln.”

CISWI NSPS and EG in order to provide clarity and address implementation issues (84 FR 15846).³

The CISWI NSPS and EG were significantly revised in the February 7, 2013, rulemaking, and the subsequent final rulemakings on June 23, 2016, and April 16, 2019, contained minor amendments to the CISWI rules that did not make any changes to the applicability of the designated facilities, including 40 CFR 60.2505, “Am I affected by this subpart?”. As provided by 40 CFR 60.2505, the designated facilities to which the CISWI EG apply are CISWI and air curtain incinerators (ACI)⁴ 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 under 40 CFR 60.2555.

In order to fulfill obligations under CAA sections 111(d) and 129, the Arkansas Department of Environmental Quality (ADEQ), New Mexico Environment Department (NMED), and City of Albuquerque Environmental Health Department (AEHD) submitted negative declarations for incinerators subject to the CISWI EG for their individual air pollution control jurisdictions.⁵ The submittal of these negative declarations exempts Arkansas and New Mexico (including Albuquerque-Bernalillo County) from the requirement to submit a state plan under 40 CFR part 60, subpart DDDD.

ADEQ, NMED and AEHD each determined that there are no existing incinerators subject to the CISWI EG in accordance with CAA sections 111(d) and 129 requirements in their individual

³ In the April 16, 2016, final action, the EPA made technical amendments to correct and clarify various parts of the June 23, 2016 final rule; this includes issues with implementation of the standards, testing and monitoring issues and inconsistencies, and other regulatory provisions.

⁴ These air curtain incinerators (ACI) that are subject to the CISWI EG at 40 CFR part 60, subpart DDDD, are those ACI that may not fit the definition of a “CISWI” under the CISWI EG. See 40 CFR 60.2875.

⁵ These CISWI negative declarations from ADEQ, NMED and AEHD do not cover sources located in Indian country.

air pollution control jurisdictions. In order to fulfill obligations under CAA sections 111(d) and 129, ADEQ, NMED and AEHD submitted negative declaration letters to the EPA on April 26, 2017, June 15, 2020, and March 4, 2020, respectively. A copy of each negative declaration letter is included in the docket for this rulemaking (Docket No. EPA-R06-OAR-2020-0357).

II. Proposed Action

The EPA is proposing to acknowledge receipt of the negative declaration letters from Arkansas, New Mexico, and Albuquerque-Bernalillo County, New Mexico, and amend 40 CFR part 62 in accordance with the requirements at 40 CFR 60.23(b), 40 CFR 62.06, 40 CFR 60.2510, 40 CFR 60.2530, and sections 111(d) and 129 of the CAA. These negative declarations submitted by ADEQ, NMED, and AEHD certify that there are no existing incinerators subject to 40 CFR part 60, subpart DDDD, in their respective jurisdictions. If a designated facility (i.e., existing incinerators subject to the CISWI EG) is later found within the aforementioned jurisdictions after publication of a final action, then the overlooked facility will become subject to the requirements of the federal plan for that designated facility. The federal plan will no longer apply if we subsequently receive and approve the section 111(d)/129 plan from the jurisdiction with the overlooked facility.

III. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a CAA section 111(d)/129 submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. § 7411(d); 42 U.S.C. § 7429; 40 CFR part 60, subparts B and DDDD; and 40 CFR part 62, subpart A. With regard to negative declarations for designated facilities received by the EPA from states, the EPA's role is to notify the public of the receipt of such negative declarations and revise 40 CFR part 62 accordingly. 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);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) 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 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).

This rule also does not have Tribal implications because it will not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes, 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, Waste treatment and disposal.

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

Dated: July 28, 2020.

Kenley McQueen,

Regional Administrator, Region 6.

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